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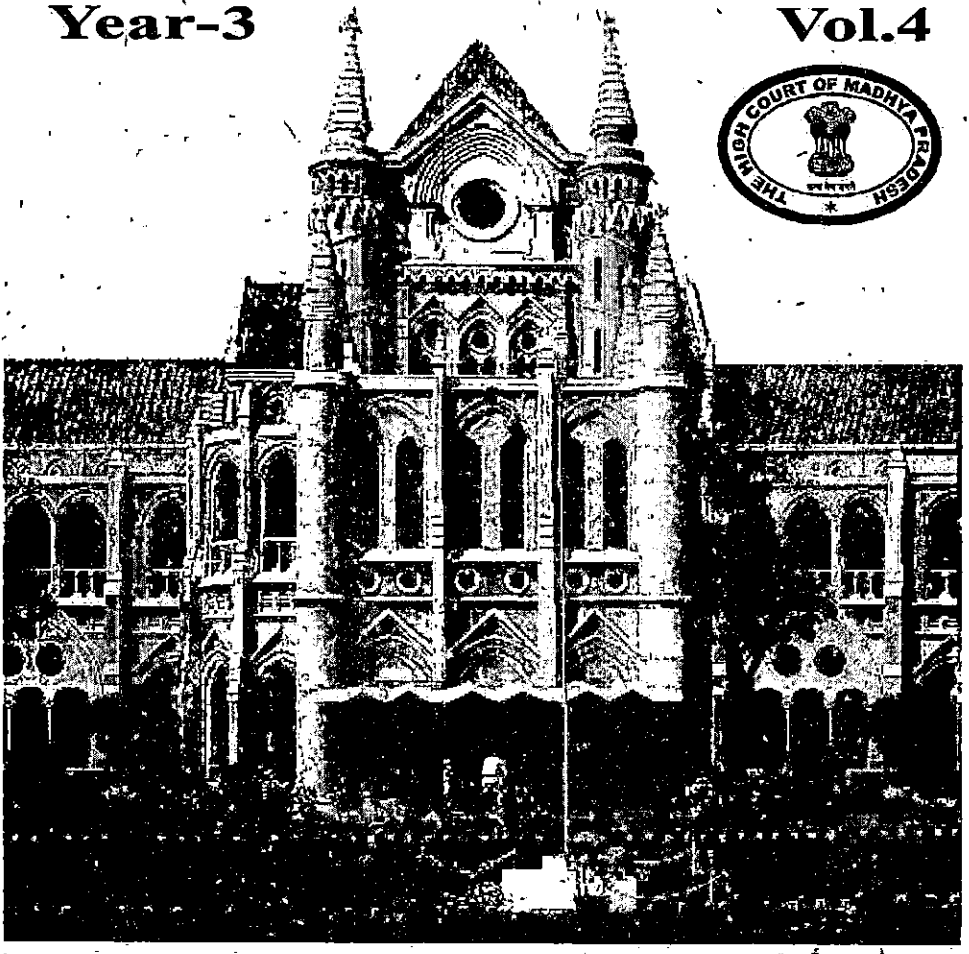
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M. P. SERIES

CONTAINING

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THE HIGH COURT OF MADHYA PRADESH

Year-3 **Vol.4**



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" " 20 (DB)	=	"	"	124	"	"	85	=	"	"	1549
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" " 35 (DB)	=	"	"	49	"	"	102	=	"	"	*69
" " 50 (DB)	=	"	"	1272	"	"	108	=	"	"	*58
" " 55	=	"	"	562	"	"	118	=	"	"	*59
" " 67	=	"	"	444	"	"	122 (DB)	=	"	"	*21
" " 72 (DB)	=	"	"	614	"	"	137 (DB)	=	"	"	*26
" " 80 (DB)	=	"	"	659	"	"	143 (DB)	=	"	"	*76
" " 89 (DB)	=	"	"	392	"	"	153	=	"	"	1182
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" " 177 (DB)	=	"	"	682	"	"	164	=	"	"	248
" " 180 (DB)	=	"	"	676	"	"	169 (DB)	=	"	"	*13
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" " 203 (DB)	=	"	"	598	"	"	196	=	"	"	1519
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" " 264	=	"	"	572	"	"	208	=	"	"	1047
" " 266	=	"	"	474	"	"	226 (DB)	=	"	"	351
" " 281 (DB)	=	"	"	671	"	"	229	=	"	"	*4
" " 287	=	"	"	*47	"	"	244	=	"	"	270
" " 298	=	"	"	175	"	"	250 (DB)	=	"	"	969
" " 314 (DB)	=	"	"	839	"	"	253	=	"	"	*75
" " 343 (DB)	=	"	"	826	"	"	258	=	"	"	696
" " 359	=	"	"	1378	"	"	264 (DB)	=	"	"	1082
" " 368	=	"	"	*40	"	"	294	=	"	"	2063
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" " 396	=	"	"	*17	"	"	314	=	"	"	1777
" " 408 (FB)	=	"	"	575	"	"	317	=	"	"	1859
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" " 491	=	"	"	1085	"	"	324 (DB)	=	"	"	*73
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" " 30 (DB)	=	"	"	*62	"	"	406	=	"	"	96
" " 45	=	"	"	656	"	"	419	=	"	"	*8
" " 48 (DB)	=	"	"	621	"	"	443 (FB)	=	"	"	1637
" " 57 (DB)	=	"	"	774	"	"	465 (DB)	=	"	"	1437
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"	"	519 (DB)	=	"	"	1504	"	"	24	=	"	"	2004
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"	"	39	=	"	"	1607	"	"	79	=	"	"	1747
"	"	41	=	"	"	1745	"	"	90 (DB)	=	"	"	*102
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"	"	111	=	"	"	714	"	"	146	=	"	"	2277
"	"	115	=	"	"	732	"	"	150 (DB)	=	"	"	*119
"	"	124	=	"	"	*15	"	"	181	=	"	"	1104
"	"	137	=	"	"	808	"	"	191	=	"	"	294
"	"	140	=	"	"	1551	"	"	194 (DB)	=	"	"	*24
"	"	145 (DB)	=	"	"	1068	"	"	216 (DB)	=	"	"	1428
"	"	155 (DB)	=	"	"	1581	"	"	224 (DB)	=	"	"	705
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"	"	194 (DB)	=	"	"	*91	"	"	257 (DB)	=	"	"	2487
"	"	263 (DB)	=	"	"	*95	"	"	261	=	"	"	2199
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"	"	294	=	"	"	68	"	"	289	=	"	"	1941
"	"	311	=	"	"	*70	"	"	292 (DB)	=	"	"	2498
"	"	366	=	"	"	1895	"	"	308	=	"	"	1063
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"	"	474 (DB)	=	"	"	609	"	"	444	=	"	"	259
"	"	481	=	"	"	703	"	"	455 (DB)	=	"	"	144
"	"	483	=	"	"	787	"	"	457 (DB)	=	"	"	1310
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"	"	499 (DB)	=	"	"	1702							
"	"	528	=	"	"	1731							
"	"	531	=	"	"	*110							

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"	"	470	=	"	"	*112	"	"	400	=	" " 2464
"	"	479 (DB)	=	"	"	1441	"	"	405	=	" " 3071
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"	"	511 (DB)	=	"	"	1945	"	"	86	=	" " *20
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2011 (5) MPHT 35 (DB)			=	"	"	2097	"	"	127	=	" " 682
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"	"	47	=	"	"	2749	"	"	164	=	" " 696
"	"	62 (DB)	=	"	"	934	"	"	169	=	" " 444
"	"	66	=	"	"	2337	"	"	172	=	" " 351
"	"	78 (DB)	=	"	"	929	"	"	175	=	" " 36
"	"	81	=	"	"	1093	"	"	196	=	" " 1051
"	"	84	=	"	"	1755	"	"	223	=	" " *15
"	"	94 (DB)	=	"	"	2315	"	"	245	=	" " 117
"	"	97	=	"	"	2801	"	"	264	=	" " 722
"	"	105	=	"	"	1958	"	"	274	=	" " 548
"	"	112	=	"	"	2901	"	"	279	=	" " *17
"	"	129	=	"	"	*137	"	"	292	=	" " 732
"	"	146	=	"	"	3141	"	"	359	=	" " 392
"	"	162	=	"	"	2453	"	"	361	=	" " 53
"	"	168 (DB)	=	"	"	2425	"	"	366	=	" " *35
"	"	177 (DB)	=	"	"	2625	"	"	373	=	" " 671
"	"	180 (DB)	=	"	"	2401	"	"	401	=	" " 479
"	"	188	=	"	"	1954	"	"	410	=	" " *51
"	"	193	=	"	"	*120	"	"	424	=	" " *8
"	"	218	=	"	"	2168	"	"	436	=	" " *45
"	"	233	=	"	"	2410	"	"	444	=	" " 182
"	"	241 (DB)	=	"	"	1355	"	"	454	=	" " 614
"	"	271	=	"	"	2789	"	"	461	=	" " 1171
"	"	296	=	"	"	1089	"	"	466	=	" " 58
"	"	300	=	"	"	1323	"	"	472	=	" " 124
"	"	304	=	"	"	*63	"	"	475	=	" " *36
"	"	316	=	"	"	1768	"	"	513	=	" " 859
"	"	325	=	"	"	1988	"	"	540	=	" " 1378
"	"	364 (DB)	=	"	"	3235	"	"	547	=	" " 575

COMPARATIVE TABLE

"	"	571	=	"	"	992	"	"	317	=	"	"	*77
"	"	575	=	"	"	1464	"	"	324	=	"	"	1226
"	"	580	=	"	"	714	"	"	328	=	"	"	*93
"	"	583	=	"	"	951	"	"	333	=	"	"	926
"	"	589	=	"	"	1437	"	"	335	=	"	"	*78
"	"	592	=	"	"	*72	"	"	342	=	"	"	1534
"	"	596	=	"	"	*47	"	"	354	=	"	"	294
"	"	606	=	"	"	474	"	"	357	=	"	"	284
"	"	620	=	"	"	1387	"	"	365	=	"	"	*23
"	"	624	=	"	"	684	"	"	381	=	"	"	*68
"	"	636	=	"	"	1068	"	"	390	=	"	"	932
"	"	644	=	"	"	572	"	"	392	=	"	"	1867
"	"	663	=	"	"	*59	"	"	399	=	"	"	921
"	"	682	=	"	"	586	"	"	407	=	"	"	1456
"	"	692	=	"	"	*57	"	"	410	=	"	"	1056
"	"	700	=	"	"	997	"	"	416	=	"	"	1859
2011 (2) MPLJ		**48**	=	"	"	**278**	"	"	420	=	"	"	1401
"	"	52	=	"	"	603	"	"	424	=	"	"	1182
"	"	74	=	"	"	656	"	"	428	=	"	"	*13
"	"	96	=	"	"	918	"	"	433	=	"	"	1519
"	"	101	=	"	"	1637	"	"	453	=	"	"	621
"	"	116	=	"	"	792	"	"	461	=	"	"	*102
"	"	121	=	"	"	1484	"	"	529	=	"	"	*76
"	"	123	=	"	"	*62	"	"	546	=	"	"	1445
"	"	133	=	"	"	1678	"	"	573	=	"	"	2070
"	"	134	=	"	"	1128	"	"	590	=	"	"	1211
"	"	178	=	"	"	1441	"	"	601	=	"	"	*104
"	"	196	=	"	"	969	"	"	618	=	"	"	1504
"	"	201	=	"	"	972	"	"	643	=	"	"	1085
"	"	211	=	"	"	364	"	"	646	=	"	"	819
"	"	219	=	"	"	358	"	"	649	=	"	"	*58
"	"	224	=	"	"	839	"	"	652	=	"	"	1422
"	"	237	=	"	"	*40	"	"	657	=	"	"	*106
"	"	267	=	"	"	1470	"	"	674	=	"	"	1862
"	"	271	=	"	"	175	"	"	680	=	"	"	1688
"	"	307	=	"	"	*88	"	"	690	=	"	"	1392
"	"	311	=	"	"	1093	"	"	697	=	"	"	1852
"	"	314	=	"	"	2016							

COMPARATIVE TABLE

2011 (3) MPLJ	**22**	=	"	"	1661	"	"	529	=	"	"	1988
"	"	47	=	"	"	1124	"	"	547	=	"	"	1509
"	"	53	=	"	"	1668	"	"	561	=	"	"	1693
"	"	119	=	"	"	2097	"	"	563	=	"	"	2333
"	"	121	=	"	"	1724	"	"	575	=	"	"	2801
"	"	124	=	"	"	1843	"	"	579	=	"	"	1958
"	"	127	=	"	"	1259	"	"	588	=	"	"	1680
"	"	132	=	"	"	1180	"	"	594	=	"	"	718
"	"	144	=	"	"	796	"	"	598	=	"	"	2681
"	"	148	=	"	"	1187	"	"	604	=	"	"	1702
"	"	164	=	"	"	1231	"	"	618	=	"	"	2705
"	"	184	=	"	"	154	"	"	663	=	"	"	2255
"	"	187	=	"	"	*91	"	"	675	=	"	"	1777
"	"	200	=	"	"	985	"	"	678	=	"	"	1607
"	"	205	=	"	"	1551	"	"	680	=	"	"	1082
"	"	210	=	"	"	1807	**2011 (4) MPLJ**		**83**	=	"	"	**1954**
"	"	233	=	"	"	1221	"	"	99	=	"	"	2491
"	"	292	=	"	"	2100	"	"	101	=	"	"	2739
"	"	294	=	"	"	2464	"	"	104	=	"	"	3106
"	"	297	=	"	"	*95	"	"	108	=	"	"	2410
"	"	306	=	"	"	2806	"	"	121	=	"	"	2487
"	"	318	=	"	"	2106	"	"	131	=	"	"	*140
"	"	325	=	"	"	1895	"	"	144	=	"	"	1941
"	"	329	=	"	"	2153	"	"	170	=	"	"	*103
"	"	333	=	"	"	1731	"	"	195	=	"	"	*111
"	"	336	=	"	"	2134	"	"	207	=	"	"	2390
"	"	341	=	"	"	*97	"	"	228	=	"	"	2199
"	"	347	=	"	"	2191	"	"	252	=	"	"	2354
"	"	350	=	"	"	2811	"	"	270	=	"	"	*154
"	"	355	=	"	"	2194	"	"	307	=	"	"	3099
"	"	369	=	"	"	*119	"	"	311	=	"	"	1912
"	"	387	=	"	"	2468	"	"	327	=	"	"	2762
"	"	403	=	"	"	2280	"	"	340	=	"	"	*144
"	"	405	=	"	"	2073	"	"	356	=	"	"	1475
"	"	412	=	"	"	2315	"	"	360	=	"	"	2322
"	"	456	=	"	"	1932	"	"	369	=	"	"	*99
"	"	458	=	"	"	*66	"	"	373	=	"	"	1945
"	"	511	=	"	"	*70	"	"	391	=	"	"	*112

COMPARATIVE TABLE

"	"	396	=	"	"	*122	"	"	254	=	"	"	*118
"	"	404	=	"	"	*132	"	"	264	=	"	"	*79
"	"	409	=	"	"	2743	"	"	294	=	"	"	1768
"	"	417	=	"	"	*124	"	"	375	=	"	"	*125
"	"	427	=	"	"	*137	"	"	413	=	"	"	*103
"	"	447	=	"	"	2377	"	"	432	=	"	"	*95
"	"	452	=	"	"	2973	**2011 (I) MPJR 44**			**=**	**ILR (2011) MP**		***23**
"	"	463	=	"	"	2342	"	"	57 (DB)	=	"	"	780
"	"	477	=	"	"	2425	"	"	104	=	"	"	*47
2011 (1) JLJ 5			**=**	**ILR (2011) MP**		***12**	"	"	112	=	"	"	392
"	"	115	=	"	"	*4	"	"	114	=	"	"	284
"	"	146	=	"	"	722	"	"	124	=	"	"	951
"	"	181	=	"	"	117	"	"	138	=	"	"	1171
"	"	196 (FB)	=	"	"	36	"	"	148	=	"	"	1475
"	"	254 (FB)	=	"	"	586	"	"	152	=	"	"	*88
"	"	270	=	"	"	479	"	"	165	=	"	"	*7
"	"	294	=	"	"	1104	"	"	210	=	"	"	819
"	"	303	=	"	"	562	"	"	250	=	"	"	572
"	"	330	=	"	"	*63	"	"	265	=	"	"	714
"	"	337	=	"	"	*45	"	"	269	=	"	"	1323
"	"	355	=	"	"	*49	"	"	272	=	"	"	*58
2011 (2) JLJ1 (SC)			**=**	"	"	**1623**	"	"	276	=	"	"	1085
"	"	6	=	"	"	1124	"	"	298	=	"	"	*36
"	"	19	=	"	"	*68	"	"	316	=	"	"	*45
"	"	30 (SC)	=	"	"	1433	"	"	SN 10	=	"	"	969
"	"	47	=	"	"	1068	"	"	SN 11	=	"	"	*49
"	"	60	=	"	"	*69	**2011 (II) MPJR (SC) 1**			**=**	"	"	***133**
"	"	71	=	"	"	1441	"	"	35	=	"	"	*8
"	"	80 (SC)	=	"	"	1119	"	"	90	=	"	"	300
"	"	84	=	"	"	*104	"	"	135	=	"	"	1089
"	"	94 (FB)	=	"	"	1807	"	"	143	=	"	"	1867
"	"	119	=	"	"	1355	"	"	155	=	"	"	1355
"	"	138 (FB)	=	"	"	1637	"	"	160	=	"	"	1387
"	"	178	=	"	"	1371	"	"	(FB) 183	=	"	"	1637
"	"	193	=	"	"	1211	"	"	199	=	"	"	1613
"	"	212	=	"	"	*70	"	"	201	=	"	"	1504
"	"	234	=	"	"	*102	"	"	205	=	"	"	1470
"	"	245	=	"	"	*116	"	"	214	=	"	"	*93

COMPARATIVE TABLE

"	"	220	=	"	"	1445	"	"	63	=	"	"	*125
"	"	236	=	"	"	*39	"	"	100	=	"	"	2468
"	"	253	=	"	"	2106	"	"	107	=	"	"	*112
"	"	261	=	"	"	*102	"	"	112	=	"	"	*111
"	"	(SC) 268	=	"	"	1623	"	"	122	=	"	"	2277
"	"	290	=	"	"	*101	"	"	125	=	"	"	2591
"	"	306	=	"	"	*89	"	"	133	=	"	"	1947
"	"	345	=	"	"	1859	"	"	138	=	"	"	2119
"	"	349	=	"	"	*76	"	"	148	=	"	"	2811
"	"	368	=	"	"	1702	"	"	(SC) 156	=	"	"	1433
"	"	391	=	"	"	1878	"	"	160	=	"	"	2410
"	"	411	=	"	"	1695	"	"	(SC) 178	=	"	"	*153
"	"	SN 2	=	"	"	926	"	"	251	=	"	"	*118
"	"	SN 15	=	"	"	948	"	"	258	=	"	"	2354
"	"	SN 20	=	"	"	2063	"	"	281	=	"	"	1231
2011 (III) MPJR 8			=	"	"	**1226**	"	"	286	=	"	"	2322
"	"	12	=	"	"	1124	"	"	288	=	"	"	2753
"	"	(SC) 15	=	"	"	1119	"	"	292	=	"	"	*140
"	"	19	=	"	"	2020	"	"	(SC) 301	=	"	"	2665
"	"	27	=	"	"	1513	"	"	380	=	"	"	*35
"	"	40	=	"	"	606	"	"	SN 7	=	"	"	*121
"	"	42	=	"	"	1988	"	"	SN 12	=	"	"	2743
"	"	53	=	"	"	621	"	"	SN 13	=	"	"	2191
"	"	59	=	"	"	2734							

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(Note An asterisk (*) denotes Note number)

Accommodation Control Act, M.P. (41 of 1961), Sections 12(1)(h) & 12(7) - No pleading that plaintiff is having a plan or estimate of reconstruction and she is also having necessary funds with her - In absence of such a pleading and further by not proving those ingredients by any documentary evidence like filing of plans and estimates and the bank account etc., it can be held that learned two Courts below have grossly erred in passing the decree of eviction u/s 12(1)(h) of the Act - Appeal allowed. [Santosh Kumar Vs. Smt. Parwati Bai] ...2818

Accommodation Control Act, M.P. (41 of 1961), Section 23-A(b) - Eviction ordered on the ground of personal bona fide need of Dr. 'R' to open dispensary in the premises - After his death, such need completely eclipsed on account of his death, during the pendency of the present revision - None of the legal heirs came forward expressing bona fide need of any kind and no such application for amendment of pleadings in the application for eviction was submitted before High Court - Held - On account of this subsequent event, the order of eviction can not be, permitted to be kept alive - Revision petition allowed. [Amritlal Vs. (Dr.) Ravishchandra Pandey (Deceased)] ...*135

Accommodation Control Act, M.P. (41 of 1961), Section 23-J(ii) - Landlord - Retired employee of Municipal Corporation is a landlord. Law laid down by the Single Bench in the case of Mohandas (1994(1) MPLJR 259) stands impliedly overruled in view of the observation of Division Bench (1995 MPLJ 21). [Ghanshyam Vs. Subhash Chandra] ...2586

Advocate Act, (25 of 1961), Section 15 - See - State Bar Council of Madhya Pradesh Rules,1962, Rules 121,122-A [Pratap Chandra Mehta Vs. State Bar Council of M.P.] (SC)...*153

Arbitration Act (10 of 1940), Sections 30 & 33 - Arbitral awards can be interfered only on limited grounds - The Court does not sit in appeal over the findings of the Arbitrator - It will interfere with an award if there is an error apparent on the face of the award or if there are apparent inconsistencies in the award or if the Arbitrator has misconducted himself or the proceedings. [B.D. Sharma Firm (M/s.) Vs. Western Coalfields Ltd.] (SC)...2312

(Note An asterisk (*) denotes Note number)

स्थान नियंत्रण अधिनियम, म.प्र. (1961 का 41), धाराएँ 12(1)(एच) व 12(7) – कोई अभिवचन नहीं कि याची के पास योजना या पुनर्निर्माण का प्राक्कलन है और उसके पास आवश्यक निधि भी है – ऐसे अभिवचन की अनुपस्थिति में और आगे उन तथ्यों को किसी दस्तावेजी साक्ष्य जैसे कि योजना तथा प्राक्कलन एवं बैंक खाता इत्यादि को प्रस्तुत करके साबित नहीं किये जाने से यह धारणा की जा सकती है कि निचले दो विद्वान न्यायालयों ने अधिनियम की धारा 12(1)(एच) के अंतर्गत डिक्री पारित करने में गंभीर त्रुटि की है – अपील मंजूर। (संतोष कुमार वि. श्रीमती पार्वती बाई) 2818

स्थान नियंत्रण अधिनियम, म.प्र. (1961 का 41), धारा 23–ए(बी) – परिसर में दवाखाना खोलने की डॉक्टर 'आर' की व्यक्तिगत वास्तविक आवश्यकता के आधार पर बेदखली आदेशित की गयी – प्रस्तुत पुनरीक्षण लंबित रहने के दौरान उसकी मृत्यु के पश्चात ऐसी आवश्यकता उसकी मृत्यु हो जाने के कारण पूर्णतः समाप्त हो जाती है – कोई भी विधिक वारिस किसी प्रकार की वास्तविक आवश्यकता अभिव्यक्त करते हुये सामने नहीं आया और न ही उच्च न्यायालय के समक्ष बेदखली के आवेदन में अभिवचनों में संशोधन हेतु ऐसा कोई आवेदन प्रस्तुत किया – अभिनिर्धारित – इस पश्चातवर्ती घटना के कारण, बेदखली का आदेश कायम रखने की अनुमति नहीं दी जा सकती – पुनरीक्षण याचिका मंजूर। (अमृतलाल वि. डॉ. रवीशचन्द्र पाण्ड्रे (मृतक)) ...*135

स्थान नियंत्रण अधिनियम, म.प्र. (1961 का 41), धारा 23–जे(ii) – *भू–स्वामी* – नगरपालिका निगम का सेवानिवृत्त कर्मचारी भू–स्वामी है। खंड न्यायपीठ का प्रेक्षण (1995 एमपीएलजे 21) को दृष्टिगत रखते हुए एकल न्यायपीठ द्वारा मोहनदास (1994(1) एमपीएलजेआर 259) में अधिकथित विधि विवक्षित रुप से उलट जाती है। (घनश्याम वि. सुभाष चन्द्र) ...2586

अधिवक्ता अधिनियम (1961 का 25), धारा 15 – देखें – राज्य अधिवक्ता परिषद नियम, मध्यप्रदेश 1962, नियम 121, 122–ए (प्रताप चन्द्र मेहता वि. स्टेट बार कांउसिल ऑफ एम.पी.) (SC)...*153

माध्यस्थम् अधिनियम (1940 का 10), धाराएँ 30 व 33 – माध्यस्थम अवार्ड में केवल सीमित आधारों पर हस्तक्षेप किया जा सकता है – न्यायालय माध्यस्थ के निष्कर्षों पर अपील के लिए नहीं बैठता – वह अवार्ड में हस्तक्षेप करेगा यदि त्रुटि अवार्ड से स्पष्ट रुप से प्रकट होती हो अथवा यदि अवार्ड में दृष्यमान असंगतियां हैं अथवा यदि माध्यस्थ ने स्वयं या कार्यवाही में अवचार किया हो। (बी.डी. शर्मा फर्म (मे.) वि. वेस्टर्न कोलफील्डस् लि.) (SC)...2312

Arbitration and Conciliation Act (26 of 1996), Sections 2(2) & 42 - Parties agreeing that the arbitration proceedings, if any, would be governed by the SIAC Rules as the Curial law, which included Rule 32 - It was no longer available to the appellant to contend that the 'proper law' of the agreement would apply to the arbitration proceedings. Section 2(2) of the 1996 Act, in fact, indicates that Part-I would apply only in cases where the seat of arbitration is in India - Once the parties had specifically agreed that the arbitration proceedings would be conducted in accordance with the SIAC Rules, which includes Rule 32. Section 42 of the Act, the same, in our view was applicable at the pre-arbitral stage, when the Arbitrator had not also been appointed - Once the Arbitrator was appointed and the arbitral proceedings were commenced, the SIAC Rules became applicable shutting out the applicability of Section 42 and for that matter Part-I of the 1996 Act, including the right of appeal under Section 37 thereof. [Yograj Infrastructure Ltd. Vs. Ssang Young Engineering And Construction Co. Ltd.] (SC) ...*145

Arbitration and Conciliation Act (26 of 1996), Section 11(6) - Scope - In absence of an arbitration agreement, the application for appointment of an Arbitrator is not maintainable - Application dismissed. [GEI Industrial Systems Ltd. Vs. Bharat Heavy Electricals Ltd.] ...3192

Arbitration Clause - An arbitration clause is a collateral term in the contract which relates to resolution of disputes and not performance - Even if performance of contract comes to an end on account of repudiation, frustration or breach of contract, the arbitration clause would survive for the purpose of resolution of the disputes. [Shin-Etsu Chemical Co. Ltd. Vs. Vindhya Telelinks Ltd.] *156

Arms Act (54 of 1959), Section 14 - Refusal of licenses - Licensing Authority can refuse to grant arms license to a person tried for serious criminal offences though acquitted by extending benefit of doubt. [Ram Kumar Sharma Vs. State of M.P.] (DB)...2964

Banking - Guarantee - Letter of Credit - A draft accompanying documents must be in strict accord with the letter of credit - If the documents presented comply with the terms of credit, the issuing bank

माध्यस्थम और सुलह अधिनियम (1996 का 26), धाराएँ 2(2) व 42 – पक्षकारों की सहमति कि माध्यस्थम कार्यवाही, यदि कोई हो तो, क्यूरिअल विधि के रुप में एसआईएसी नियमों द्वारा शासित होगी, जिसमें नियम 32 सम्मिलित है – अपीलार्थी तब यह तर्क नहीं कर सकता कि अनुबंध की 'उचित विधि' माध्यस्थम कार्यवाहियों में लागू होगी। वास्तव में अधिनियम 1996 की धारा 2(2) इंगित करती है कि भाग–I केवल उन मामलों में लागू होगा जहां माध्यस्थम का स्थान भारत में है – एक बार जब पक्षकार विनिर्दिष्ट रुप से सहमत है कि माध्यस्थम कार्यवाहियां एसआईएसी नियमों के अनुसार की जायेंगी जिसमें नियम 32 सम्मिलित है। अधिनियम की धारा 42 हमारे दृष्टिकोण से माध्यस्थम के पूर्व के प्रक्रम पर लागू होगा जब मध्यस्थ की नियुक्ति नहीं की गयी थी – एक बार जब माध्यस्थ नियुक्त किया गया और माध्यस्थम कार्यवाही आरंभ हो गयी थी, धारा 42 तथा जहां तक उसका संबंध है अधिनियम 1996 का भाग–I जिसमें धारा 37 के अंतर्गत समाविष्ट है, की प्रयोज्यता को बाहर करते हुये एसआईएसी नियम लागू हो गये। (योगराज इन्फ्रास्ट्रक्चर लि. वि. सेंगयंग इंजीनियरिंग एण्ड़ कन्सट्रक्शन कं. लि.) (SC) ...*145

माध्यस्थम् और सुलह अधिनियम (1996 का 26), धारा 11 (6) – विषयक्षेत्र – माध्यस्थम करार की अनुपस्थिति में, माध्यस्थ की नियुक्ति हेतु आवेदन पोषणीय नहीं है – आवेदन खारिज। (जी.ई.आई. इंडस्ट्रियल सिस्टम्स् लि. वि. भारत हैवी इलेक्ट्रिकल्स लि.) 3192

माध्यस्थम खंड – माध्यस्थम खंड संविदा में सांपार्श्विक शर्त है जो विवादों के निराकरण से संबंधित है और न कि पालन से – यदि प्रत्याख्यान, विफलीकरण या संविदा के भंग हो जाने के कारण संविदा का पालन समाप्त हो जाता है तब भी विवादों के निराकरण के प्रयोजन हेतु माध्यस्थम खंड जीवित रहेगा। (शिन–एटसू केमिकल कं. लि. वि. विंध्या टेलीलिंक्स लि.) ...*156

आयुध अधिनियम (1959 का 54), धारा 14 – लाईसेंस का नामंजूर किया जाना – लाईसेंसिंग प्राधिकारी, गंभीर दाण्डिक अपराधों के लिए विचारण किये गये व्यक्ति को आयुध लाईसेंस प्रदान करने से इंकार कर सकता है यद्यपि उसे संदेह का लाभ देते हुए दोषमुक्त किया गया था। (राम कुमार शर्मा वि. म.प्र. राज्य)(DB)...2964

बैंकिंग – प्रत्यामूति – प्रत्यय पत्र – दस्तावेजों के साथ का ड्राफ्ट, सम्यक रुप से प्रत्यय पत्र के अनुरुप होना चाहिये – यदि प्रस्तुत किये गये दस्तावेज क्रेडिट की शर्तों का अनुपालन करते हैं, तब निर्गामी बैंक को क्रेडिट की शर्तोनुसार अपने

must honour its obligation in accordance with the terms of credit. [State Bank of India Vs. M/s. Emmsons International Ltd.] (SC)...2939

Benami Transactions (Prohibition) Act, 1988, Section 4(1) - Plea of Benami - Plaint allegation itself is evident that suit property was purchased benami - No evidence was required to be recorded for deciding the preliminary issue - The suit is not maintainable. [Mukesh Vs. Shantilal] ...2893

Ceiling on Agricultural Holdings Act, M.P. (20 of 1960) - Bar of Jurisdiction of Civil Courts - Respondents not a party to the ceiling proceedings - Civil suit for declaration that order passed by competent authority be declared null and void is maintainable and Civil Court had jurisdiction at the time of filing of the plaint. [State of M.P. Vs. Ramcharan] ...2468

Ceiling on Agricultural Holdings Act, M.P. (20 of 1960) (Unamended) - Section 11(5) - Period of limitation - Respondents not a party to the ceiling proceedings before the competent authority although were in possession of the property for the last 40 years - They had filed certain objections but were not accepted by competent authority - Period of filing suit within 3 months for filing suit as per the provisions of un-amended Act would not apply to the suit filed by the respondents - Suit filed by respondents within 3 years is within limitation. [State of M.P. Vs. Ramcharan] ...2468

Civil Procedure Code (5 of 1908), Section 9 - See - Land Revenue Code, M.P., 1959, Section 57(2),(3) [State of M.P. Vs. Vijaya Bai]...3039

Civil Procedure Code (5 of 1908), Section 9 - See - Workmen's Compensation Act, 1923, Sections 3(5) & 19, [Jairam Vs. Jaswant Singh alias Fakirchand] ...2464

Civil Procedure Code (5 of 1908), Section 11 - Principle of Resjudicata - Section 11, CPC is based partly on the maxim of Roman jurisprudence, 'interest reipublicae ut sit finis litium' it concerns the State that there be an end to law suits and partly on the maxim 'Nemo debet bis vexari pro una et eadem causa' which would mean that no man should be vexed twice over the same cause - In the present case, cause of action and the nature of cause of action are quite distinct in

दायित्व का सम्मान करना चाहिये। (स्टेट बैंक ऑफ इंडिया वि. मे. एमसन्स इन्टरनेशनल लि.) (SC)...2939

बेनामी संव्यवहार (प्रतिषेध) अधिनियम (1988 का 45), धारा 4(1) – बेनामी होने का अभिवाक् – वाद पत्र के अभिकथन अपने आप में प्रकट करते हैं कि वाद सम्पत्ति बेनामी क्रय की गयी – प्रारंभिक विवाद्यक के निश्चय हेतु कोई साक्ष्य अभिलिखित करना अपेक्षित नहीं था – वाद पोषणीय नहीं है। (मुकेश वि. शान्तिलाल) 2893

कृषि जोत अधिकतम सीमा अधिनियम म.प्र. (1960 का 20) – सिविल न्यायालयों की अधिकारिता का वर्जन – अधिकतम सीमा की कार्यवाही में प्रत्यर्थीगण पक्षकार नहीं – इस घोषणा हेतु सिविल वाद कि सक्षम प्राधिकारी द्वारा पारित आदेश को अकृत एवं शून्य घोषित किया जाए, पोषणीय है और वादपत्र की प्रस्तुती के समय सिविल न्यायालय को अधिकारिता थी। (म.प्र. राज्य वि. रामचरण) 2468

कृषि जोत अधिकतम सीमा अधिनियम म.प्र. (1960 का 20) (असंशोधित) – धारा 11(5) – परिसीमा अवधि – प्रत्यर्थीगण, सक्षम प्राधिकारी के समक्ष की अधिकतम सीमा की कार्यवाही के पक्षकार नहीं थे यद्यपि वे पिछले 40 वर्षों से सम्पत्ति के कब्जाधारी थे – उन्होंने कतिपय आक्षेप प्रस्तुत किये थे परन्तु सक्षम प्राधिकारी द्वारा उन्हें स्वीकार नहीं किया गया – असंशोधित अधिनियम के उपबंधों के अनुसार 3 महिनों के भीतर वाद प्रस्तुत करने की समय सीमा, प्रत्यर्थीगण द्वारा प्रस्तुत वाद को लागू नहीं होगी – प्रत्यर्थीगण द्वारा 3 वर्षों के भीतर प्रस्तुत किया गया वाद परिसीमा के भीतर है। (म.प्र. राज्य वि. रामचरण) 2468

सिविल प्रक्रिया संहिता (1908 का 5), धारा 9 – देखें – भू राजस्व संहिता, म.प्र., 1959, धारा 57(2),(3) (म.प्र. राज्य वि. विजया बाई) 3039

सिविल प्रक्रिया संहिता (1908 का 5), धारा 9 – देखें – कर्मकार प्रतिकर अधिनियम, 1923, धाराएँ 3(5), व 19, (जयराम वि. जसवंत सिंह उर्फ फकीरचंद्र) 2464

सिविल प्रक्रिया संहिता (1908 का 5), धारा 11 – पूर्व न्याय का सिद्धांत – धारा 11 सि.प्र.सं. अंशतः रोमन विधि शास्त्र के सूत्र 'इन्ट्रेस्ट रिपब्लिके अट सिट फिनिस लिटियम' अर्थात राज्य का हित इस बात में है कि मुकदमेबाजी का अंत हो पर आधारित है और अंशतः सूत्र 'नेमो डेबेट बिस वेक्झारी प्रो अना एट इएडम क्वासा' अर्थात किसी भी व्यक्ति को एक ही हेतुक के लिए दो बार तंग नहीं किया जाना चाहिएं पर आधारित है – वर्तमान मामले में वाद हेतुक तथा वाद हेतुक का स्वरुप दोनों मुकदमों में बिल्कुल भिन्न है, इस अतिरिक्त कारण से भी धारा 11 सि.

both the suits, for this additional reason also Section 11 CPC would not be applicable. [Chanderbai (Smt.) Vs. State of M.P.] ...3099

***Civil Procedure Code (5 of 1908), Section 11 - Resjudicata* - Issue in the earlier suit quite distinct to the issue in the present suit - Issues are not directly and substantially identical to each other - Bar of Resjudicata would not be applicable. [Chanderbai (Smt.) Vs. State of M.P.] ...3099**

***Civil Procedure Code (5 of 1908), Section 96 - First Appeal* - Where the first appellate Court reverses the judgment of the Trial Court, it is required to consider all the issues of law and fact - As High Court had not considered the issue No. 5, therefore, the judgment and decree of High Court is set aside and First Appeal is restored for re-hearing and fresh decision. [State Bank of India Vs. M/s. Emmsons International Ltd.] (SC)...2939**

***Civil Procedure Code, (5 of 1908), Section 100 - Second Appeal - New Plea* - Applicability of Article 43 of Limitation Act not at all has been pleaded by appellant in its written statement - This plea is having nexus with the facts, therefore, can not be raised for the first time at the stage of Second Appeal. [Oriental Fire & General Insurance Co. Ltd. Vs. Saifuddin] ...2811**

***Civil Procedure Code (5 of 1908), Section 151, Order 39 Rules 1 & 2, Order 43 Rules R(r) - Interim Injunction - Appeal from order* - Trial Court passing ad interim order directing maintaining status quo between the parties - The order is necessarily an order passed under Order 39 Rules 1 & 2 of the Code - The aggrieved party has a remedy under Order 43 Rules 1(r) of the Code to prefer an appeal - Writ Petition dismissed with a direction to return the certified copy of impugned order. [Ved Prakash Mukhariya Vs. Bal Mukund Sharma] ...2410**

***Civil Procedure Code (5 of 1908), Section 151 - See* - Evidence Act, 1872, Section 45 [Amol Chavhan Vs. Smt. Jyoti Chavhan]...3076**

***Civil Procedure Code (5 of 1908), Order II Rule 2 - Bar to sue* - Present suit altogether on different cause of action from earlier suit - Matter in controversy which is directly and substantially in issue is also altogether different - Bar is not applicable. [Chanderbai (Smt.) Vs. State of M.P.] ...3099**

प्र.सं. लागू नहीं होगी। (चन्दरबाई (श्रीमति) वि. म.प्र. राज्य) 3099

सिविल प्रक्रिया संहिता (1908 का 5), धारा 11 – पूर्व न्याय – पूर्ववर्ती वाद का विवाद्यक, वर्तमान वाद के विवाद्यक से बिल्कुल भिन्न है – विवाद्यक प्रत्यक्ष रुप से तथा सारवान रुप से एक दूसरे के समरुप नहीं है – पूर्व न्याय का वर्जन लागू नहीं होगा। (चन्दरबाई (श्रीमति) वि. म.प्र. राज्य) 3099

सिविल प्रक्रिया संहिता (1908 का 5), धारा 96 – प्रथम अपील – जब प्रथम अपीलीय न्यायालय, विचारण न्यायालय के निर्णय को पलट देता है, उसे विधि एवं तथ्य के सभी विवाद्यकों को विचार में लेना चाहिये – चूंकि उच्च न्यायालय ने विवाद्यक क्र. 5 पर विचार नहीं किया इसलिये, उच्च न्यायालय का निर्णय एवं डिक्री अपास्त तथा प्रथम अपील पुनः सुनवाई एवं पुनः निर्णय हेतु पुनः स्थापित। (स्टेट बैंक ऑफ इंडिया वि. मे. एमसन्स इन्टरनेशनल लि.) (SC)...2939

सिविल प्रक्रिया संहिता (1908 का 5), धारा 100 – द्वितीय अपील – नया अभिवचन – जबाव दावे में अपीलार्थी ने परिसीमा अधिनियम के अनुच्छेद 43 के लागू होने का अभिवचन नहीं किया – इस अभिवचन का तथ्यों से संबंध है, अतएव, द्वितीय अपील के प्रक्रम पर नहीं उठाया जा सकता। (ओरियेन्टल फायर एण्ड़ जनरल इंश्योरेंस कं. लि. वि. सेफुद्दीन) 2811

सिविल प्रक्रिया संहिता (1908 का 5), धारा 151, आदेश 39 नियम 1 व 2, आदेश 43 नियम R(r) – अंतरिम व्यादेश – आदेश की अपील – विचारण न्यायालय ने पक्षकारों के मध्य यथा स्थिति बनाये रखने का निर्देश देते हुए अंतरिम आदेश पारित किया – आदेश, आवश्यक रुप से संहिता के आदेश 39 नियम 1 व 2 के अंतर्गत पारित आदेश – व्यथित पक्षकार को संहिता के आदेश 43 नियम 1(आर) के अंतर्गत अपील करने का उपचार उपलब्ध है – आक्षेपित आदेश की प्रमाणित प्रति वापस करने के निर्देश के साथ रिट याचिका खारिज। (वेद प्रकाश मुखारिया वि. बाल मुकुंद शर्मा) 2410

सिविल प्रक्रिया संहिता (1908 का 5), धारा 151 – देखें – साक्ष्य अधिनियम, 1872, धारा 45 (अमोल चव्हाण वि. श्रीमति ज्योति चव्हाण) 3076

सिविल प्रक्रिया संहिता (1908 का 5), आदेश II नियम 2 – वाद का वर्जन – वर्तमान वाद का वाद हेतुक पूर्ववर्ती वाद के वाद हेतुक से बिल्कुल भिन्न है – विवादित मामला जो प्रत्यक्ष एवं सारवान रुप से विवाद्य है वह भी बिल्कुल भिन्न है – वर्जन लागू नही होगा। (चन्दरबाई (श्रीमति) वि. म.प्र. राज्य) 3099

Civil Procedure Code (5 of 1908), Order 7 Rule 3, Order 20 rule 9 - Description of Property - Sufficient to identify **- Sufficient description of suit property was given in the plaint, therefore, a decree as per provisions of O. 29 Rule 9 can be passed in compliance of O. 7 Rule 3. [Anand @ Chhotelal Soni Vs. Mahavir Prasad Shukla] ...3141**

Civil Procedure Code (5 of 1908), Order VII Rule 11, Representation of the People Act (43 of 1951), Sections 83, 86, 87 & 123 - Election Petition **- Material Facts and particulars of corrupt practices - In absence of averment that respondent did incur the expenditure of hiring vehicles for specified number of days or that he had authorized his election agent for hiring such vehicles or that he had authorized any other person for hiring such vehicles to whom he has undertaken to reimburse the amount, it must be held that material facts in relation to an allegation of corrupt practice are lacking - Mere assertion that returned candidate was guilty of corrupt practice in as much as he had not maintained/furnished true and correct accounts of expenditure incurred or authorized would not satisfy the requirements of pleadings in an election petition based on corrupt practice. [Doman Singh Nagpure Vs. Pradeep Jaiswal] ...2793**

Civil Procedure Code (5 of 1908), Order IX Rule 6 - Proceeding Ex parte **- Court before proceeding ex parte against a defendant, must cautiously see the process and the report of service of the summons and should not formally use the words that the defendant was served, but was absent. The Court shall always be justified by recording cogent reasons in proceeding ex parte provided it is convinced that the defendant despite lawful service of summons and knowledge of the pendency of the proceedings had chosen to remain absent before proceeding ex parte, the Court must advert itself and follow the legal requirements regarding service of summons as provided under Order V of CPC. [Brajendra Singh Bhadauria Vs. Usha Singh @ Deepa (Smt.)] (DB) ...*136**

Civil Procedure Code (5 of 1908), Order 9 Rules 8 & 9, Order 17 Rules 2 & 3 - Restoration of Proceeding **- If a decision is rendered (whether on merits or otherwise) in absence of plaintiff or petitioner, he has a right to apply for restoration of the case, provided of course that the litigant is able to establish that there was sufficient cause**

सिविल प्रक्रिया संहिता (1908 का 5), आदेश 7 नियम 3, आदेश 20 नियम 9 – संपत्ति का विवरण – पहचान के लिए पर्याप्त – वादपत्र में वाद सम्पत्ति का पर्याप्त विवरण दिया गया, इसलिए आदेश 7 नियम 3 के अनुपालन में, आदेश 29 नियम 9 के अनुसार डिक्री पारित की जा सकती है। (आनंद उर्फ छोटेलाल सोनी वि. महावीर प्रसाद शुक्ला) 3141

सिविल प्रक्रिया संहिता (1908 का 5), आदेश VII नियम 11, लोक प्रतिनिधित्व अधिनियम (1951 का 43), धाराएँ 83, 86, 87 व 123 – चुनाव याचिका – भ्रष्ट आचरण के महत्वपूर्ण तथ्य तथा विवरण – इस प्रकथन के अभाव में कि प्रत्यर्थी ने विनिर्दिष्ट दिनों के लिये वाहन किराये पर लेने के लिये व्यय किया अथवा उसे अपने चुनाव एजेंट को ऐसा वाहन किराये पर लेने हेतु प्राधिकृत किया अथवा किसी अन्य व्यक्ति को जिसको उसने रकम की प्रतिपूर्ति करने का वचन दिया, ऐसा वाहन किराये पर लेने हेतु प्राधिकृत किया, यह माना जाना चाहिये कि भ्रष्ट आचरण के आरोप के संबंध में महत्वपूर्ण तथ्यों का अभाव है – यह प्रकथन मात्र कि अभ्यर्थी भ्रष्ट आचरण के दोषी थे जहां तक कि उन्होंने किये गये अथवा करवाये गये व्यय का सही हिसाब–किताब प्रस्तुत नहीं किया, चुनाव याचिका भ्रष्ट आचरण पर आधारित अभिवचनों की अपेक्षाओं को पूरा नहीं करती। (डोमन सिंह नागपुरे वि. प्रदीप जयसवाल) 2793

सिविल प्रक्रिया संहिता (1908 का 5), आदेश IX नियम 6 – एकपक्षीय कार्यवाही – प्रतिवादी के विरुद्ध एकपक्षीय कार्यवाही करने से पूर्व न्यायालय को प्रोसेस तथा समन की तामीली की रिपोर्ट को सावधानीपूर्वक देखना चाहिये और औपचारिक रुप से शब्दों का प्रयोग नहीं करना चाहिये कि प्रतिवादी को तामील किया गया था परंतु वह अनुपस्थित रहा। एकपक्षीय कार्यवाही में न्यायालय द्वारा प्रबल कारणों को अभिलिखित करना सदैव न्यायोचित होगा परंतु यह तब जब वह संतुष्ट हो जाये कि प्रतिवादी समन की विधिपूर्ण तामीली एवं कार्यवाही लंबित होने की जानकारी के बावजूद वह एकपक्षीय कार्यवाही में अनुपस्थित रहा, न्यायालय को ध्यान देना होगा और समन की तामीली से संबंधित विधिक अपेक्षाओं का अनुसरण करना होगा जैसा कि सीपीसी के आदेश V के अंतर्गत उपबंधित है। (ब्रजेन्द्र सिंह भदौरिया वि. उषा सिंह उर्फ दीपा (श्रीमती)) (DB)...*136

सिविल प्रक्रिया संहिता (1908 का 5), आदेश 9 नियम 8 व 9, आदेश 17 नियम 2 व 3 – कार्यवाही का प्रत्यावर्तन – वादी या याची की अनुपस्थिति में यदि निर्णय दिया गया (या तो गुणदोषों पर अथवा अन्यथा), उसे मामले के प्रत्यावर्तन हेतु आवेदन करने का अधिकार है परंतु निश्चित रुप से यह भी कि वादकारी यह स्थापित करने में सक्षम है कि अनुपस्थिति के लिए पर्याप्त कारण था जब प्रकरण सुनवाई हेतु

for non-appearance when the case was called on for hearing - This right is not curtailed only because the Court or the Tribunal has examined the merits of the matter. [Narendra Kumar Rathor Vs. State of M.P.] (DB)...2322

***Civil Procedure Code (5 of 1908), Order IX Rule 13 Proviso - Applicability of Proviso* - If the plaintiff satisfies the Court that summons was in fact served in accordance with law but certain directive provision was not observed, only in such a case, the Court may on being satisfied that the defendant had sufficient time to approach the Court on the date of hearing, can refuse to set aside the ex parte decree. [Brajendra Singh Bhadauria Vs. Usha Singh @ Deepa (Smt.)] (DB) ...*136**

***Civil Procedure Code (5 of 1908), Order IX Rule 13 r/w Section 151* - Application filed under would not become infructuous on the ground that the plaintiff/appellant had re-married after passing of the ex parte decree for divorce. [Brajendra Singh Bhadauria Vs. Usha Singh @ Deepa (Smt.)] (DB) ...*136**

***Civil Procedure Code (5 of 1908), Order IX Rule 13 - Setting aside of ex parte decree* - Show cause notice was issued on the application filed by the respondent No. 2 under Order 39 rule 1 & 2 CPC on which Court proceeded ex parte against respondent No. 1 - No copy of the plaint was pasted alongwith summons - Process server, who served notice by affixture admitted that he did not record the statement or to obtain signature of the witnesses in whose presence summons were served by affixture - Held - The second proviso to Rule 13 of Order IX not applicable - No satisfaction can be drawn that respondent No. 1 had notice of the date of hearing and had sufficient time to appear and answer the claim of respondent No.2. [Parvati Bai (Smt.) Vs. Mohd. Sharif] ...2888**

***Civil Procedure Code (5 of 1908), Order 14, Rule 1 - Framing of issues* - Suit merely for perpetual injunction - Plaintiff asserted his own title as well as possession - Defendant in written statement denied plaintiff's title as well as possession - It was obligatory on the part of trial Judge to raise specific issue whether the plaintiff is in exclusive possession of the disputed property on the date of institution of the suit - Without raising such an issue, the suit instituted by the plaintiff**

पुकारा गया – यह अधिकार केवल इसलिए कम नहीं होगा कि न्यायालय अथवा अधिकरण ने मामले के गुणदोषों का परीक्षण किया है। (नरेन्द्र कुमार राठौर वि. म.प्र. राज्य) (DB)...2322

सिविल प्रक्रिया संहिता (1908 का 5), आदेश IX नियम 13 परंतुक – परंतुक का लागू होना – यदि वादी न्यायालय की संतुष्टि करता है कि समन वास्तविक रुप से विधिनुसार तामील किया गया था परंतु कतिपय निर्देशिती उपबंध का पालन नहीं किया गया, केवल ऐसे मामले में, न्यायालय संतुष्टि उपरांत कि प्रतिवादी को सुनवाई के दिनांक को न्यायालय आने के लिये पर्याप्त समय था, एकपक्षीय डिक्री अपास्त करने से मना कर सकता है। (ब्रजेन्द्र सिंह भदौरिया वि. उषा सिंह उर्फ दीपा (श्रीमती)) (DB)...*136

सिविल प्रक्रिया संहिता (1908 का 5), आदेश IX नियम 13 सहपठित धारा 151 – के अंतर्गत प्रस्तुत आवेदन इस आधार पर निष्फल नहीं होगा कि वादी/अपीलार्थी ने विवाह विच्छेद की एकपक्षीय डिक्री पारित होने के पश्चात पुनः विवाह कर लिया है। (ब्रजेन्द्र सिंह भदौरिया वि. उषा सिंह उर्फ दीपा (श्रीमती)) (DB)...*136

सिविल प्रक्रिया संहिता (1908 का 5), आदेश IX नियम 13 – एकपक्षीय डिक्री का अपास्त किया जाना – प्रत्यर्थी क्र. 2 द्वारा सीपीसी के आदेश 39 नियम 1 व 2 के अंतर्गत प्रस्तुत आवेदन पर कारण बताओ नोटिस जारी किया गया जिस पर न्यायालय ने प्रत्यर्थी क्र. 1 के विरुद्ध एक पक्षीय कार्यवाही की – समन के साथ वादपत्र की कोई प्रति संलग्न नहीं की गयी – प्रोसेस सर्वर जिसने चस्पे द्वारा नोटिस की तामील की, ने स्वीकार किया कि उसने कथन अभिलिखित नहीं किये ना ही उन साक्षियों के हस्ताक्षर प्राप्त किये जिनकी उपस्थिति में समन चस्पा द्वारा तामील किया गया था – अभिनिर्धारित – आदेश IX नियम 13 का द्वितीय परंतुक लागू नहीं होगा – कोई संतुष्टि नहीं निकाली जा सकती कि प्रत्यर्थी क्र. 1 को सुनवाई के दिनांक की सूचना थी और उसके पास प्रत्यर्थी क्र. 2 के दावे का उत्तर देने के लिये एवं उपस्थित होने के लिये पर्याप्त समय था। (पार्वती बाई (श्रीमती) वि. मो. शरीफ)....2888

सिविल प्रक्रिया संहिता (1908 का 5), आदेश 14, नियम 1 – विवाद्यकों को विरचित किया जाना – मात्र शाश्वत व्यादेश हेतु वाद – वादी का स्वयं का हक तथा कब्जे का प्राख्यान – प्रतिवादी ने लिखित कथन में वादी का हक तथा कब्जे को अस्वीकार किया – विचारण न्यायाधीश को यह विनिर्दिष्ट विवाद्यक उठाना बाध्यकारी था कि क्या वाद संस्थापित करने की तिथि को वाद सम्पत्ति वादी के अनन्य कब्जे में थी – ऐसा विवाद्यक उठाये बिना, वादी द्वारा अपने कब्जे के आधार पर शाश्वत व्यादेश हेतु संस्थापित वाद विधिक रुप से निर्णित नहीं किया जा सकता – ऐसे

for perpetual injunction on the basis of his possession can not be legally decided - Judgment of Courts below granting decree for perpetual injunction in the absence of such issue stand vitiated. [Municipal Council, Jaora Vs. Chand Khan] ...2493

Civil Procedure Code (5 of 1908), Order 41 Rule 11 - Dismissal of Appeal without notice to respondent - Appellate Court is required to consider the correctness of the judgment and decree challenged before it - Lower Appellate Court had considered all the objections after summoning and examining the record of the Trial Court - Findings were tested and thereafter first appellate court after marshalling the evidence came to a conclusion that there was no error of law or facts committed by trial court in passing the judgment and decree - Appeal dismissed. [Anand @ Chhotelal Soni Vs. Mahavir Prasad Shukla] ...3141

Civil Procedure Code (5 of 1908), Order 41 Rule 22 - Cross objection - Respondent/defendant in an appeal, without filing cross objection can attack an adverse finding upon which a decree in part has been passed for the purposes of sustaining the decree - Filing of cross objection is purely optional and not mandatory - However, respondents in their replies to the memo of appeal supported the order of the Trial Court - They neither assailed the findings recorded by Trial Court nor raised any grievance before appellate Court - In absence of any grievance made by respondents, the petitioner could not be put to a disadvantageous position - Remand of case by Appellate Court not proper. [Shin-Etsu Chemical Co. Ltd. Vs. Vindhya Telelinks Ltd.]...*156

Civil Procedure Code (5 of 1908), Order 41 Rule 27 - Additional Evidence - Photocopy of Certificate of Municipality, certifying that in the Municipal Register house is in dilapidated condition, the ownership of 'S' has been entered - Held - Application can not be accepted on the ground that the document which is filed is the photocopy of some certificate and that certificate itself is not a primary evidence. [Rashid Khan Vs. State of M.P.] ...2801

Civil Procedure Code (5 of 1908) - Order 41 Rule 27 - Examination of signatures of Executant - There is no evidence that will is a forged document - At the stage of Appeal, prayer for getting the signatures examined by handwriting expert can not be allowed. [Asharfi Devi (Smt.) Vs. Hari Prasad] ...*121

विवाद्यक की अनुपस्थिति में शाश्वत व्यादेश हेतु निचले न्यायालय का निर्णय दूषित हो जाता है। (म्यूनिसिपल काउंसिल, जावरा वि. चाँद खान) 2493

सिविल प्रक्रिया संहिता (1908 का 5), आदेश 41 नियम 11 – प्रत्यर्थी को नोटिस दिए बिना अपील की खारिजी – अपीलीय न्यायालय को उसके समक्ष चुनौती दिये गये निर्णय एवं डिक्री की शुद्धता को विचार में लेना अपेक्षित है – निचले अपीलीय न्यायालय ने विचारण न्यायालय से अभिलेख बुलवाने के पश्चात् तथा उसके परीक्षण पश्चात् सभी आक्षेपों को विचार में लिया – निष्कर्षों का परीक्षण किया गया और तत्पश्चात् प्रथम अपीलीय न्यायालय, साक्ष्य के क्रमबंधन पश्चात् इस निष्कर्ष पर पहुंचा कि विचारण न्यायालय द्वारा निर्णय एवं डिक्री पारित करने में विधि अथवा तथ्यों की कोई त्रुटि कारित नहीं की गयी – अपील खारिज। (आनंद उर्फ छोटेलाल सोनी वि. महावीर प्रसाद शुक्ला) 3141

सिविल प्रक्रिया संहिता (1908 का 5), आदेश 41 नियम 22 – प्रत्याक्षेप – प्रत्यर्थी/प्रतिवादी अपील में प्रत्याक्षेप प्रस्तुत किये बिना, डिक्री को कायम रखने हेतु प्रतिकूल निष्कर्ष का विरोध कर सकता है, जिस पर डिक्री भागतः पारित की गयी है – प्रत्याक्षेप प्रस्तुत करना शुद्ध रुप से वैकल्पिक है और न कि आज्ञापक – अपितु प्रत्यर्थीगण ने अपील के मेमो के अपने प्रतिउत्तर में विचारण न्यायालय के आदेश का समर्थन किया है – उन्होंने न तो विचारण न्यायालय द्वारा अभिलिखित निष्कर्षों पर आक्षेप लिया है और न ही अपीली न्यायालय के समक्ष कोई शिकायत उठायी – प्रत्यर्थीगण द्वारा किसी शिकायत के अभाव में याची को अहित की स्थिति में नहीं रखा जा सकता – अपीली न्यायालय द्वारा प्रकरण का प्रतिप्रेषण उचित नहीं। (शिन–एटसू केमिकल कं. लि. वि. विंध्या टेलीलिंक्स लि.) ...*156

सिविल प्रक्रिया संहिता (1908 का 5), आदेश 41 नियम 27 – अतिरिक्त साक्ष्य – नगर पालिका के प्रमाण पत्र की प्रति प्रमाणित करती है कि नगर पालिका रजिस्टर में मकान जीर्ण अवस्था में है, 'एस' के स्वामित्व की प्रविष्टि की गयी है – अभिनिर्धारित – इस आधार पर आवेदन स्वीकार नहीं किया जा सकता कि दस्तावेज जिसे प्रस्तुत किया गया है वह किसी प्रमाण पत्र की प्रति है और वह प्रमाण पत्र अपने आप में प्राथमिक साक्ष्य नहीं है। (राशिद खान वि. म.प्र. राज्य) 2801

सिविल प्रक्रिया संहिता (1908 का 5) – आदेश 41 नियम 27 – निष्पादिती के हस्ताक्षरों का परीक्षण – कोई साक्ष्य नहीं कि वसीयतनामा कूटरचित दस्तावेज हैं – अपील के प्रक्रम पर, हस्तलेख विशेषज्ञ द्वारा हस्ताक्षरों का परीक्षण कराये जाने हेतु प्रार्थना स्वीकार नहीं की जा सकती। (अशर्फी देवी (श्रीमति) वि. हरी प्रसाद)...*121

Civil Services (Classification, Control and Appeal) Rules, M.P., 1966, Rule 10 - See - Service Law [State of M.P. Vs. Shailendra] (DB)...2315

Civil Services (Classification, Control & Appeal) Rules, M.P. 1966 - Rule 14 - Penalties - Compulsory Retirement - Petitioner compulsorily retired on demand of illegal gratification, making illegal recovery from villagers and misappropriation of Govt. fund - Officers who conducted fact finding enquiry were examined in Departmental Enquiry however, villagers who were examined during fact finding enquiry were neither summoned as witnesses nor were examined by enquiry officer - There is no evidence direct or indirect whatsoever to the effect that the petitioner personally demanded any money or illegal gratification from any of villagers/complainants - Rule 14 provides that disciplinary authority should prove and establish the charges against the petitioner in departmental enquiry and not to record a finding on the basis of a fact finding/preliminary enquiry - Making fact finding inquiry as basis for recording finding against petitioner is apparently in derogation of and contrary to the procedure prescribed by rule 14 - Petition allowed. [Umkant Dwivedi Vs. State of M.P.] ...*158

Civil Services (Classification, Control and Appeal) Rules, M.P., 1966, Rule 15(3) - Imposing the punishment - Order imposing the punishment of reversion not containing any reason - Held - Where disciplinary authority has agreed with the finding of the enquiry officer, the provisions of Rule 15(3) are not attracted - Order passed by the disciplinary authority can not be said to be violative of Article 15(3) of the Rules. [S.B. Bhargava Vs. State of M.P.] (DB)...2425

Civil Services (Pension) Rules, M.P. 1976, Rule 42 - Notice of Voluntary Retirement - Withdrawal from - Petitioner working in the establishment of District & Sessions Judge, on 28.03.2002 submitted an application for voluntary retirement w.e.f. 31.07.2002 - District & Sessions Judge, accepted this application for voluntary retirement and passed the order on 11.04.2002 - Petitioner, later on 24.05.2002, made the application for granting him permission to withdraw his notice/ application for voluntary retirement which was rejected - Appeal was also dismissed vide order dated 01.07.2003 - Held - Petitioner was precluded to withdraw his application/notice for voluntary retirement,

सिविल सेवा (वर्गीकरण, नियंत्रण और अपील) नियम, म.प्र., 1966 नियम 10 – *देखें* – सेवा विधि (म.प्र. राज्य वि. शैलेन्द्र) (DB)...2315

सिविल सेवा (वर्गीकरण, नियंत्रण और अपील) नियम, म.प्र. 1966 – नियम 14 – शास्ति – अनिवार्य सेवानिवृत्ति – याची को अवैध परितोषण की मांग, ग्रामीणों से अवैध वसूली और सरकारी निधि के दुर्विनियोजन के कारण अनिवार्य सेवानिवृत्ति दी गयी – अधिकारी जिन्होनें तथ्य का पता लगाने की जांच की थी उनका विभागीय जांच में परीक्षण किया गया, किन्तु, तथ्य का पता लगाने की जांच के दौरान जिन ग्रामीणों का परीक्षण किया गया उन्हे न तो साक्षियों के रूप में समन किया गया न ही जांच अधिकारी द्वारा उनका परीक्षण किया गया – किसी प्रकार की कोई प्रत्यक्ष या अप्रत्यक्ष साक्ष्य नही कि याची ने व्यक्तिगत रूप से किसी ग्रामीण/शिकायतकर्ता से रूपये या अवैध परितोषण की कोई मांग की – नियम 14 उपबंधित करता है कि विभागीय जांच में अनुशासनिक प्राधिकारी को याची के विरुद्ध लगे आरोपों को साबित एवं स्थापित करना चाहिए – तथ्य का पता लगाने की जांच को याची के विरुद्ध निष्कर्ष अभिलिखित करने हेतु आधार बनाना प्रकट रूप से नियम 14 द्वारा विहित प्रकिया का उदाहरण एवं उसके विपरीत है – याचिका मंजूर। (उमाकांत द्विवेदी वि. म.प्र. राज्य) ...*158

सिविल सेवा (वर्गीकरण, नियंत्रण और अपील) नियम, म.प्र., 1966 नियम 15(3) – शास्ति अधिरोपित करना – पदावनत की शास्ति अधिरोपित करने के आदेश में कोई कारण अंतर्विष्ट नहीं – अभिनिर्धारित – जहां अनुशासनात्मक प्राधिकारी जांचकर्ता अधिकारी के निष्कर्षों से सहमत है, नियम 15(3) के उपबंध आकर्षित नहीं होंगे – अनुशासनिक प्राधिकारी द्वारा पारित आदेश नियमों के अनुच्छेद 15(3) के उल्लंघन में नहीं कहे जा सकते। (एस.बी. भार्गव वि. म.प्र. राज्य) (DB)...2425

सिविल सेवा (पेंशन) नियम, म.प्र. 1976, नियम 42 – स्वेच्छिक सेवानिवृत्ति का नोटिस – वापस लिया जाना – याची जिला एवं सत्र न्यायाधीश की स्थापना में कार्यरत था और उसने दिनांक 31.07.2002 से प्रभावी स्वेच्छिक सेवा निवृत्ति के लिए दिनांक 28.03.2002 को आवेदन प्रस्तुत किया – जिला एवं सत्र न्यायाधीश ने यह आवेदन स्वीकार किया और दिनांक 11.04.2002 को आदेश पारित किया – याची ने, बाद में, स्वेच्छिक सेवानिवृत्ति हेतु अपने नोटिस/आवेदन वापस लिये जाने की अनुमति प्रदान किये जाने के लिए 24.05.2002 को आवेदन किया, जिसे अस्वीकार किया गया – आदेश दिनांक 01.07.2003 द्वारा अपील भी खारिज की गयी – अभिनिर्धारित – एक बार सक्षम प्राधिकारी द्वारा स्वीकार किये जाने के बाद याची को अपना स्वेच्छिक सेवानिवृत्ति हेतु आवेदन/नोटिस वापस लिये जाने से प्रवरित किया

once it was accepted by the competent authority - Nothing wrong committed by the respondents in passing the impugned order - Writ petition dismissed. [Upendra Arvindekar Vs. State of M.P.] ...*144

***Commercial Bid - Principles of fair play and opportunity of hearing* - Even in a contractual matter, an instrumentality of State must follow the principles of fair play and give an opportunity of hearing to the person whose rights would be affected by the decision in which such instrumentality has more than one option. [ORG Informatics Ltd. Vs. M.P.S.E. Development Corporation Ltd.] (DB)...2327**

***Commercial Bid* - Withdrawal from a consortium of a material member, without whose presence in the consortium the consortium could not have qualified all or any of the stages of the bids evaluation, the same should be treated as withdrawal of the bid by the concerned consortium. [ORG Informatics Ltd. Vs. M.P.S.E. Development Corporation Ltd.] (DB)...2327**

***Commercial Tax Act, M.P. 1994 (5 of 1995), Sections 17 & 43 - See* - Entry Tax Act, M.P., 1976, Sections 2(d)(f), 3, 7 & 14 [Kalyani Minerals Pvt. Ltd. (M/s.) Vs. Additional Commissioner of Commercial Tax] (DB)...2381**

***Commercial Tax Act, M.P. 1994 (5 of 1995), Entry 20(ii) of Part IV of Schedule II, Sthaniya Kshetra Me Mal Ke Pravesh Par Kar Adhiniyam, M.P. 1976, Entry 14 of Schedule II* - Whether GRD Powder and GRD Bix falls within expression non-alcoholic drink and beverage - Expression Beverage in common understood means any liquid other than water, which may be consumed neat or after dilution - GRD Powder and GRD Bix are not in liquid form - Can not be said to fall with the relevant entries of 1994 Act and 1976 Act. [Cadila Health Care Ltd. Vs. Additional Commissioner, Commercial Tax] (DB)...2394**

***Commercial Tax Act, M.P. 1994 (5 of 1995), Entry 49 of Schedule II* - Mobile handsets are covered under entry 49 of Schedule II of the Act and excisable to levy for entry tax at the rate of 1% and the Commissioner u/s 70 of the M.P. VAT Act 2002, has power to make an order determining the rate of tax. [Drive India Dot Co. Ltd. (M/s.) Vs. State of M.P.] (DB)...2798**

गया – आक्षेपित आदेश पारित करने में प्रत्यर्थियों द्वारा कुछ गलत नहीं किया गया – रिट याचिका खारिज। (उपेन्द्र अरविंदेकर वि. म.प्र. राज्य) ...*144

वाणिज्यक बोली – निष्पक्ष व्यवहार और सुनवाई के अवसर का सिद्धांत – संविदात्मक मामले में भी, राज्य के परिकरण को निष्पक्ष व्यवहार के सिद्धांतों का पालन करना होगा और उस व्यक्ति को सुनवाई का अवसर देना होगा जिसके अधिकार उस निर्णय द्वारा प्रभावित होंगे जिसमें ऐसे परिकरण के पास एक से अधिक विकल्प हैं। (ओ.आर.जी. इन्फार्मेटिक्स लि. वि. एम.पी.एस.ई. डेव्हेलपमेन्ट कारपोरेशन लि.) (DB)...2327

वाणिज्यक बोली – संघ से महत्वपूर्ण सदस्य की वापसी जिसकी संघ में उपस्थिति के बिना, संघ बोली के मूल्यांकन के सभी अथवा किसी भी प्रक्रम की अर्हता नहीं रख सकता था, उसे संबंधित संघ द्वारा बोली की वापसी समझी जानी चाहिए। (ओ.आर.जी. इन्फार्मेटिक्स लि. वि. एम.पी.एस.ई. डेव्हेलपमेन्ट कारपोरेशन लि.) (DB)...2327

वाणिज्यिक कर अधिनियम, म.प्र. 1994 (1995 का 5), धाराएँ 17 व 43 – देखें – प्रवेश कर अधिनियम, म.प्र., 1976, धाराएँ 2(डी)(एफ), 3, 7 व 14 (कल्याणी मिनरल्स प्रा. लि. (मे.) वि. एडीशनल कमिश्नर ऑफ कमर्शियल टेक्स)(DB)...2381

वाणिज्यिक कर अधिनियम, म.प्र. 1994 (1995 का 5), अनुसूची II के भाग IV की प्रविष्टि 20(ii), स्थानीय क्षेत्र में माल के प्रवेश पर कर अधिनियम, म.प्र. 1976, अनुसूची II की प्रविष्टि 14 – क्या जीआरडी पाउडर और जीआरडी बिक्स, अमद्यसारित मद्य एवं पेय शब्द प्रयोग के अंतर्गत आता है – शब्द पेय का सामान्यतः समझा जाने वाला अर्थ है, जल के अलावा कोई द्रव्य जिसका शुद्ध अथवा तनुकरण पश्चात प्राषण किया जा सकता है – जीआरडी पाउडर तथा जीआरडी बिक्स द्रव्य रुप में नहीं है, उसे अधिनियम 1994 और अधिनियम 1976 की सुसंगत प्रविष्टियों में होना नहीं माना जा सकता है। (केडीला हेल्थ केयर लि. वि. एडीशनल कमिश्नर, कमर्शियल टेक्स) (DB)...2394

वाणिज्यिक कर अधिनियम, म.प्र. 1994 (1995 का 5), अधिसूचना II की प्रविष्टि 49 – मोबाईल हैंडसेट अधिनियम की अनुसूची II की प्रविष्टि 49 के अंतर्गत समाविष्ट है तथा 1 प्रतिशत की दर से प्रवेश कर हेतु उत्पाद–शुल्क के उद्ग्रहण किये जाने योग्य है और म.प्र. वैट अधिनियम 2002 की धारा 70 के अंतर्गत आयुक्त को कर की दर का निर्धारण करने वाला आदेश देने की शक्ति है। (ड्राइव इंडिया डॉट कं. लि. (मे.) वि. म.प्र. राज्य) (DB)...2798

Companies (Amendment) Act, (31 of 1988), Section 68 - Transitional Provision - Restoration of Company Petition - Company Petition filed prior to coming into force of Amendment Act, 1988 however was dismissed in default for non-prosecution vide Court's order dated 07.09.2005 - Held - Expression disposed off contained in Section 68 necessarily implies that a petition was required to be disposed of by adjudicating the rival contentions of the parties on merits - It is first principle that the Court which had dismissed the petition in default for non-prosecution alone is competent to deal with its restoration - Company Petition was rightly restored by Company Judge. [Bhaskar Publication & Allied Industries Pvt. Ltd. Vs. Smt. Kishori Devi Agrawal] (DB)...*149

Constitution, Article 14 - Allotment of Land - Allotment of land to bodies/organisations/institutions on political considerations or by way of favouritism and/or nepotism or with a view to nurture the vote bank for future is constitutionally impermisible. [Akhil Bharitya Upbhokta Congress Vs. State of M.P.] (SC)...*133

Constitution, Article 14 & 16 - Discrimination - Petitioners/ employees of FCI were governed by Central Dearness Allowance Pattern - Payment of gratuity to CDA employees is as per the provisions of Payment of Gratuity Act whereas to employees of Industrial Dearness Allowance are governed by recommendations of pay commission - Employees under CDA pattern can not claim benefit of gratuity limit of 10 lacs from 01.01.2006 as employees under IDA pattern have got as the employees of CDA pattern are governed by the provisions of Payment of Gratuity Act and the employees under CDA Pattern are class apart from IDA pattern - There was an opportunity to the petitioners to opt for IDA pattern, but the same was not availed - Now they can not turn around and say that they are treated differently than the IDA pattern employees - Petition dismissed. [A.K. Thakur Vs. Food Corporation of India] ...*146

Constitution, Article 14 & 226 - Equality before law - Prima facie evidence for filing charge-sheet is available against the petitioner - He can not be exonerated or his prosecution be quashed merely on the ground that because of some supervening circumstances another accused could not be proceeded against similarly. In view of the peculiar

कम्पनी (संशोधन) अधिनियम, (1988 का 31), धारा 68 – अंतःकालीन उपबंध – कम्पनी याचिका का पुनःस्थापन – कम्पनी याचिका, संशोधन अधिनियम, 1988 लागू होने से पूर्व प्रस्तुत की गयी अपितु न्यायालय के आदेश दिनांक 07.09. 2005 द्वारा, अभियोजन न करने के व्यतिक्रम में खारिज की गयी – अभिनिर्धारित – धारा 68 में अंतर्विष्ट अभिव्यक्ति 'निपटारा किया गया' आवश्यक रुप से विवक्षित करता है कि याचिका का निपटारा पक्षकारों के विरोधी तर्कों को गुणदोषों पर न्यायनिर्णित करके किया जाना अपेक्षित था – यह प्रथम सिद्धांत है कि जिस न्यायालय ने अभियोजन न करने के व्यतिक्रम में याचिका खारिज की है केवल वही उसके पुनःस्थापन का निपटारा करने के लिये सक्षम है – कम्पनी याचिका को कम्पनी जज द्वारा उचित रुप से पुनः स्थापित किया गया। (मास्कर पब्लिकेशन एण्ड ऐलाईड इंडस्ट्रीज प्रा.लि. वि. श्रीमति किशोरी देवी अग्रवाल) (DB)...*149

संविधान, अनुच्छेद 14 – भूमि का आवंटन – राजनीतिक प्रभाव या पक्षपात और/या भाई भतीजावाद या भविष्य के लिये वोट बैंक के परिपोषण को दृष्टिगत रखते हुये निकाय/संगठन/संस्थाओं को भूमि का आवंटन संवैधानिक रुप से अनुज्ञेय नहीं है। (अखिल भारतीय उपभोक्ता कांग्रेस वि. म.प्र. राज्य)(SC)...*133

संविधान, अनुच्छेद 14 व 16 – विभेद – याचीगण एफसीआई के कर्मचारी केन्द्रीय मंहगाई भत्ता पैटर्न द्वारा शासित थे – सीडीए के कर्मचारियों को उपदान का संदाय, उपदान संदाय अधिनियम के उपबंधों के अनुसार होता है जबकि औद्योगिक मंहगाई भत्ता के कर्मचारी को उपदान का संदाय वेतन आयोग की सिफारिशों द्वारा शासित होता है – सीडीए पैटर्न के अंतर्गत कर्मचारी, 01.01.2006 से 10 लाख की उपदान सीमा के लाभ जो कि आईडीए पैटर्न के कर्मचारियों को मिला है, का दावा नहीं कर सकते क्योंकि सीडीए पैटर्न के कर्मचारी उपदान संदाय अधिनियम के उपबंधों द्वारा शासित है और सीडीए पैटर्न के कर्मचारी, आईडीए पैटर्न से भिन्न श्रेणी में आते हैं – याचीगण को आईडीए पैटर्न के विकल्प का अवसर था परंतु उसका अवलंब नहीं लिया गया – अब वे पलटकर यह नहीं कह सकते कि उनके साथ, आईडीए पैटर्न कर्मचारियों से अलग व्यवहार किया जा रहा है – याचिका खारिज। (ए.के. ठाकुर वि. फुड कारपोरेशन ऑफ इंडिया) ...*146

संविधान, अनुच्छेद 14 व 226 – विधि के समक्ष समानता – याची के विरुद्ध आरोप पत्र दाखिल करने हेतु प्रथम दृष्ट्या साक्ष्य उपलब्ध – उसे दोषमुक्त नहीं किया जा सकता अथवा उसका अभियोजन अभिखंडित नहीं किया जा सकता मात्र इस आधार पर किसी गतिरोधक परिस्थितियों के कारण अन्य अभियुक्त के विरुद्ध समान रुप से कार्यवाही नहीं की जा सकती। प्रकरण की विशिष्ट परिस्थिति एवं तथ्यों को

facts and circumstances of the case, it can not be held that the petitioner has been discriminated or denied equality before the law. [Ajoy Acharya Vs. State Bureau of Investigation, Bhopal] (DB)...2762

Constitution - Article 20(3) - Direction given by Family Court for medical examination of defendant regarding alleged impotency - Article 20(3) has no application as said Article gives protection to accused in criminal case and deals with criminal matters - In divorce case, husband can not be equated with an accused. [Amol Chavhan Vs. Smt. Jyoti Chavhan] ...3076

Constitution, Article 21 - Livelihood - Petitioners were carrying on their small business by putting gumtis on the site where the huge complex has been constructed - State is under obligation as well as constitutionally bound to rehabilitate them as they were carrying on their business in the said compound before the construction of the complex - If kiosks in said complex are not allotted to the vendors then they may be provided suitable alternative place where they can earn their livelihood. [Thela Gumti Footpath Vyapari Seva Samiti Vs. State of M.P.] ...*132

Constitution, Articles 77(3), 166(3) - Rules of Business - Functions or duties which are vested in a State Govt by a Statute may be allocated to ministers by Rules of Business framed under Article 166(3) - Decision of any minister or officer under the Rules of Business is the decision of the President or the Governor and these Articles do not provide for delegation - Decisions made and action taken by minister or officer under the Rules of Business can not be treated as exercise of delegated power in real sense but are deemed to be the actions of the President or Governor and that are taken or done by them on the aid and advice of the Council of Ministers - Rules of Business operate even when a statute does not authorize sub-delegation. [Narmada Bachao Andolan Vs. State of M.P.] (SC)...*141

Constitution, Article 166 - Conduct of Govt. Business - Provisions of Article 166 are only directory and not mandatory in character - Council of Ministers is permitted to delegate the power to amend its decision to a Committee of Ministers consisting of the Ministers-in-charge of the Departments concerned and the Chief Minister -

दृष्टिगत रखते हुये, यह धारणा नहीं की जा सकती कि याची के साथ भेदभाव हुआ है अथवा विधि के समक्ष समानता से वंचित किया गया है। (अजॉय आचार्य वि. स्टेट ब्यूरो ऑफ इन्वेस्टिगेशन, भोपाल) (DB)...2762

संविधान – अनुच्छेद 20 (3) – कुटुम्ब न्यायालय द्वारा अभिकथित नपुंसकता के संबंध में प्रतिवादी के चिकित्सीय परीक्षण हेतु निदेश दिया गया – अनुच्छेद 20 (3) लागू नही होता क्योंकि उक्त अनुच्छेद अभियुक्त को दाण्डिक प्रकरण में संरक्षण देता और दाण्डिक मामलों से संबंधित है – विवाह विच्छेद के प्रकरण में, पति को अभियुक्त के समतुल्य नही माना जा सकता। (अमोल चव्हाण वि. श्रीमति ज्योति चव्हाण) 3076

संविधान, अनुच्छेद 21 – आजीविका– याचीगण अपना लघु व्यवसाय उस स्थान पर गुमटी लगाकर चला रहे थे जहां भव्य कॉम्पलेक्स का निर्माण किया गया है – राज्य उन्हें पुनर्स्थापित करने के लिए बाध्यताधीन है तथा संवैधानिक रुप से आबद्ध है क्योंकि वे अपना व्यवसाय उक्त परिसर में कॉम्पलेक्स के निर्माण के पूर्व से चला रहे थे – यदि उक्त कॉम्पलेक्स में विक्रेताओं को छोटी दुकानें आवंटित नहीं की गई हैं तब उन्हें उपयुक्त वैकल्पिक स्थान उपलब्ध कराया जा सकता है जहां वे अपनी आजीविका अर्जित कर सकें। (ठेला गुमटी फुटपाथ व्यापारी सेवा समिति वि. म.प्र. राज्य) ...*132

संविधान, अनुच्छेद 77(3), 166(3) – कामकाज के नियम – कानून द्वारा राज्य सरकार में निहित कार्य एवं कर्तव्यों को अनुच्छेद 166(3) के अंतर्गत विरचित कामकाज के नियमों द्वारा मंत्रियों को आवंटित किया जा सकता है – कामकाज के नियमों के अंतर्गत किसी मंत्री अथवा अधिकारी का निर्णय राष्ट्रपति अथवा राज्यपाल का निर्णय है और इन अनुच्छेदों में प्रत्यायोजन के लिए उपबंध नहीं है – मंत्री अथवा अधिकारी द्वारा कामकाज के नियमों के अंतर्गत की गयी कार्यवाही और लिये गये निर्णय वास्तविक अर्थ में प्रत्यायोजन शक्ति के प्रयोग में होना नहीं माने जा सकते बल्कि राष्ट्रपति अथवा राज्यपाल की कार्यवाहियां समझी जाती है और मंत्री परिषद की सहायता एवं सूचना से इन्हें उनके द्वारा लिया या किया जाता है – कामकाज के नियम क्रियाशील रहेंगे तब भी जब कानून उप प्रत्यायोजन प्राधिकृत नहीं करता। (नर्मदा बचाओ आंदोलन वि. म.प्र. राज्य) (SC)...*141

संविधान, अनुच्छेद 166 – सरकारी कामकाज का संचालन – अनुच्छेद 166 के उपबंध केवल निर्देशिती स्वरुप के हैं और न कि आज्ञापक – मंत्री परिषद को अपने निर्णय में संशोधन करने की शक्ति मंत्रियों की समिति को प्रत्यायोजित करने की अनुमति है जिसमें सबंधित विभागों के भारसाधक मंत्री तथा मुख्यमंत्री समाविष्ट हैं – शक्ति का प्रत्यायोजन अनुज्ञेय है और कामकाज के नियम निर्देशिती हैं। (नर्मदा बचाओ आंदोलन वि. म.प्र. राज्य) (SC)...*141

Delegation of power is permissible and Rules of Business are directory. [Narmada Bachao Andolan Vs. State of M.P.] (SC)...*141

Constitution, Article 226 - Allotment of shops - Promissory Estoppel - Petitioners were carrying on their small business on the land which was used for constructing huge complex - Petitioners relied upon pamphlet and invitation card to contend that there was promissory estoppel to allot shops to them - Held - There is nothing in pamphlet and invitation card which could have triggered the principle of promissory estoppel - Petitioner not entitled for the relief they have claimed. [Thela Gumti Footpath Vyapari Seva Samiti Vs. State of M.P.] ...*132

Constitution, Article 226 - Alternative Remedy - Bar - Alternative remedy is not an absolute bar and it is a self imposed restriction - Once the High Court entertains the writ petition and hears the same on merits, the petition thereafter can not be rejected on the ground that statutory remedy is not availed off. [Ramkishore Tiwari Vs. State of M.P.] (DB)...*130

Constitution, Article 226 - Contract - Judicial Review - Terms of invitation are not open to judicial scrutiny because invitation to tender is in the realm of contract - Authority inviting tender can fix its own terms of invitation to tender - Court can examine the decision making process and interfere only if it is found to have vitiated by malafide and arbitrariness - Authority is the best judge to prescribe the terms and conditions of tender and Courts can not say that whether the conditions prescribed in the tender under consideration were better than one prescribed in earlier tender invitations. [L.M.P. Precision Engineering Co. Pvt. Ltd. Vs. Union of India] (DB)...2347

Constitution, Article 226, Court Fees Act (7 of 1870), Section 17 - Payment of Court Fees on Petition - Where more than one person have joined in one petition and are seeking relief on distinct and separate causes of action, then each of the petitioner is required to make payment of separate court fees. [Rakesh Gautam Vs. State of M.P.] (DB)...2734

Constitution, Article 226, Criminal Procedure Code, 1973 (2 of 1974), Section 482 - Quashing of investigation - F.I.R. discloses the

संविधान, अनुच्छेद 226 – दुकानों का आवंटन – वचन विबंध – याचीगण उस भूमि पर अपना लघु व्यवसाय चला रहे थे जिसे भव्य कॉम्पलेक्स हेतु उपयोग किया जा रहा था – याचीगण ने उन्हें दुकानें आवंटित करने का वचन विबंध होने का तर्क प्रस्तुत करने हेतु, पुस्तिका एवं आमंत्रण पत्र को आधार बनाया – अभिनिर्धारित – पुस्तिका एवं आमंत्रण पत्र में ऐसा कुछ नहीं जिससे वचन विबंध लागू होता हो – याचीगण उनके द्वारा दावित अनुतोष के हकदार नहीं। (ठेला गुमटी फुटपाथ व्यापारी सेवा समिति वि. म.प्र. राज्य) ...*132

संविधान, अनुच्छेद 226 – वैकल्पिक उपचार – वर्जन – वैकल्पिक उपचार आत्यांतिक वर्जन नहीं है और यह स्वतः अधिरोपित निर्बंधन है – एक बार जब उच्च न्यायालय रिट याचिका ग्रहण करता है और गुणदोषों पर उसे सुनता है, तत्पश्चात याचिका को इस आधार पर अस्वीकार नहीं किया जा सकता कि कानूनी उपचार का अवलंब नहीं लिया गया। (रामकिशोर तिवारी वि. म.प्र. राज्य) (DB)...*130

संविधान, अनुच्छेद 226 – संविदा – न्यायिक पुनर्विलोकन – आमंत्रण की शर्तों की न्यायिक संविक्षा नहीं की जा सकती क्योंकि निविदा आमंत्रण संविदा के परिमंडल में आता है – निविदा आमंत्रित करने वाला प्राधिकारी निविदा के आमंत्रण की स्वयं की शर्तें निर्धारित कर सकता है – न्यायालय, निर्णय करने की प्रक्रिया का परीक्षण कर सकता है और केवल तब हस्तक्षेप करेगा यदि उसे असद्भाव एवं मनमानेपन से दूषित होना पाया जाता है – निविदा की शर्तें निर्धारित करने के लिए प्राधिकारी सर्वोत्तम निर्णेता है और न्यायालय नहीं बता सकता कि क्या विचाराधीन निविदा में विहित शर्तें, पूर्वतर निविदा आमंत्रणों में विहित शर्तों से बेहतर थी। (एल.एम.पी. प्रिसिशन इंजीनियरिंग कं. प्रा. लि. वि. यूनियन ऑफ इंडिया)(DB)...2347

संविधान, अनुच्छेद 226, न्यायालय फीस अधिनियम (1870 का 7), धारा 17 – याचिका पर देय न्यायालय शुल्क – जहां एक से अधिक व्यक्ति एक ही याचिका में जुड़े हैं और भिन्न एवं पृथक–पृथक वाद हेतुक पर अनुतोष चाह रहे हैं, तब प्रत्येक याची को पृथक–पृथक न्यायालय शुल्क अदा करना अपेक्षित है। (राकेश गौतम वि. म.प्र. राज्य) (DB)...2734

संविधान, अनुच्छेद 226, दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 482 – जाँच को अभिखंडित किया जाना – एफ.आई.आर. प्रथम दृष्ट्या अपराध कारित

prima facie commission of offence - Investigation is still on its way - It is statutory function of the police and superintendence thereof is vested in State Govt. - Not a fit case requiring interference with the investigation either under writ jurisdiction or under Section 482 of Cr.P.C. [Meena Mehra (Smt.) Vs. The Lokayukt Organization] (DB)...3019

Constitution, Article 226 - Distributorship of LPG - Assessment process - Three members committee made their independent assessment of all the eligible candidates who appeared for interview and found appellant to be the best suitable person for allotting LPG Distributorship - Held - Awarding of marks under various sub-heads was exclusively within the domain of the selection Board - Exclusion of marks under the orders of the Court is outside the scope of judicial review. [Jinendra Kumar Jain Vs. Union of India] (DB)...*122

Constitution, Article 226 - Distributorship of LPG - Selection - Challenge as to - Respondent No. 4 challenged the selection on the ground that appellant was not eligible for consideration for allotment of LPG Distributorship on the date of application as he did not have the title of the land mentioned by him in his allotment application - Held - Appellant undisputedly acquired an enforceable right in respect of the land and, therefore, it can not be said that he was ineligible for his consideration for allotment of LPG Distributorship in terms of the advertisement. [Jinendra Kumar Jain Vs. Union of India](DB)...*122

Constitution, Article 226 - Election Process - Maintainability of writ petition - Where there is material on record to demonstrate that the entire election process is sham and it has no sanctity in the eye of law the entire election process stands vitiated - Writ Petition maintainable. [Ramkishore Tiwari Vs. State of M.P.] (DB)...*130

Constitution, Article 226 - Fraud - Allegations of fraud can not be adjudicated by High Court in Writ Petition - Same could be adjudicated by Civil Court under common Law after recording evidence and on appreciation of the same. [Satya Pal Anand Vs. State of M.P.] (DB)...2401

Constitution, Article 226 - Observation made in Review Petition -When may be modified - Order/Observation may result in person junior

होना प्रकट करती है – जांच जारी है – यह पुलिस का कानूनी कर्तव्य है और इसका अधीक्षण राज्य सरकार में निहित है – जाँच में हस्तक्षेप की आवश्यकता का उचित मामला नहीं है, न तो रिट अधिकारिता न ही दं.प्र.सं. की धारा 482 के अंतर्गत। (मीना मेहरा (श्रीमति) वि. द लोकायुक्त ऑर्गनाइजेशन) (DB)...3019

संविधान, अनुच्छेद 226 – एलपीजी की डिस्ट्रीब्यूटरशिप – निर्धारण प्रक्रिया – तीन सदस्यीय समिति ने सभी पात्र अभ्यर्थियों का स्वतंत्र रुप से निर्धारण किया जो साक्षात्कार हेतु उपस्थित थे और अपीलार्थी को एलपीजी डिस्ट्रीब्यूटरशिप के आवंटन हेतु अति उपयुक्त व्यक्ति पाया – अभिनिर्धारित – विभिन्न उपशीर्षों के अंतर्गत अंक प्रदान करना अनन्य रुप से चयन बोर्ड के अधिकार क्षेत्र में था – न्यायालय के आदेशों के अधीन अंकों का अपवर्जन न्यायिक पुनर्विलोकन की व्याप्ति से बाहर है। (जिनेन्द्र कुमार जैन वि. यूनियन ऑफ इंडिया) (DB) ...*122

संविधान, अनुच्छेद 226 – एलपीजी की डिस्ट्रीब्यूटरशिप – चयन – को चुनौती – प्रत्यर्थी क्रं. 4 ने इस आधार पर चयन को चुनौती दी कि एलपीजी के डिस्ट्रीब्यूटरशिप के आवंटन हेतु विचार किये जाने के लिए अपीलार्थी आवेदन के दिनांक को पात्र नहीं था क्योंकि आवंटन आवेदन में उसके द्वारा उल्लिखित भूमि पर उसका हक नहीं था – अभिनिर्धारित – अपीलार्थी ने भूमि के संबंध में अविवादित रुप से प्रवर्तनीय अधिकार अर्जित किया है और यह नहीं कहा जा सकता कि विज्ञापन की शर्तों के अनुसार एलपीजी डिस्ट्रीब्यूटरशिप के आवंटन के लिए विचार किये जाने हेतु वह अपात्र था। (जिनेन्द्र कुमार जैन वि. यूनियन ऑफ इंडिया) (DB) ...*122

संविधान, अनुच्छेद 226 – चुनाव कार्यवाही – रिट याचिका की पोषणीयता – जहां यह दर्शाने हेतु अभिलेख पर सामग्री है कि संपूर्ण निर्वाचन प्रक्रिया मिथ्या है और विधि की दृष्टि में उसकी कोई मान्यता नहीं हैं, संपूर्ण निर्वाचन प्रक्रिया दूषित हो जाएगी – रिट याचिका पोषणीय। (रामकिशोर तिवारी वि. म.प्र. राज्य)(DB)...*130

संविधान, अनुच्छेद 226 – कपट – कपट के अभिकथन उच्च न्यायालय द्वारा रिट याचिका में न्यायनिर्णित नहीं किये जा सकते – उन्हें सिविल न्यायालय द्वारा साक्ष्य अभिलिखित किये जाने के पश्चात और उसका मूल्यांकन करने पर सामान्य विधि के अंतर्गत न्यायनिर्णित किया जा सकता है। (सत्य पाल आनंद वि. म.प्र. राज्य) (DB)...2401

संविधान, अनुच्छेद 226 – पुनर्विलोकन याचिका में किये गये संप्रेक्षण – उपातंरण कब किया जा सकता है – आदेश/संप्रेक्षण से अपीलार्थी से कनिष्ठ व्यक्ति

to the appellant being asked to officiate against the higher posts and the present appellant will stand excluded because of the said observation - Order may be modified. [Mohd. Imran Siddique Vs. State of M.P.] (DB)...2699

Constitution, Article 226 - Power and Jurisdiction - Despite availability of alternate remedy, the High Court can exercise its powers and jurisdiction under Article 226 - However, there is a self imposed restraint on the High Court while deciding regarding exercise of such powers - The writ petition can be entertained if it is shown that there is something more in a case, something which would show that it would be a case of palpable injustice to the writ petitioner if he is forced to adopt the remedies provided by the statute. [Brij Mohan Singh Vs. State of M.P.] ...2753

Constitution, Article 226 - Relief under - When may not be given - Prima facie assessment regarding finding of fraud made by Board of Revenue, without conducting any proper enquiry into the matter and without giving proper opportunity to the petitioner to give their say in the matter - High Court does not deem it appropriate to overlook the aspect and grant relief to the petitioner - Instead, interest of justice requires that the allegations of fraud, if any exercised in seeking allocation of patta or mutation etc., should be inquired into and then only action taken. [Chandrika Prasad Sahu Vs. State of M.P.] ...2780

Constitution, Article 226 - Uchcha Nyayalaya (Khand Nyaypeeth Ko Appeal) Adhiniyam, M.P. 2005 (14 of 2006), Section 2(1) -Writ Appeal - Maintainability of - Order passed or direction issued in a review petition which was not contained in the order under review - Would amount to a fresh writ order or direction under Article 226 and would therefore be amenable to a writ appeal. [Mohd. Imran Siddique Vs. State of M.P.] (DB)...2699

Constitution, Article 226 - Writ of certiorari - Non impleadment of necessary Party - Challenge made of an order passed by the Additional Commissioner, exercising power of an appellate authority under the Panchayats (Appeal and Revision) Rules, M.P. 1995 - The appeal before the Additional Commissioner was filed by 238 appellants and without impleading these 238 appellants who have been appointed

को उच्च पदों पर स्थानापन्न होने के लिये कहा जाने का परिणाम हो सकता है और उक्त संप्रेक्षण के कारण अपीलार्थी अपवर्जित हो जायेगा – आदेश में उपांतरण किया जा सकता है। (मो. इमरान सिद्दकी वि. म.प्र. राज्य) (DB)...2699

संविधान, अनुच्छेद 226 – शक्ति एवं अधिकारिता – वैकल्पिक उपचार की उपलब्धता के बावजूद उच्च न्यायालय अनुच्छेद 226 के अंतर्गत अपनी शक्ति एवं अधिकारिता का प्रयोग कर सकता है – किन्तु, ऐसी शक्तियों के प्रयोग के संबंध में निर्णय करते समय उच्च न्यायालय पर स्वयं अधिरोपित अवरोध है – रिट याचिका ग्रहण की जा सकती है यदि यह दर्शाया जाता है कि प्रकरण में कुछ और अधिक है, कुछ ऐसा जो यह दर्शाये कि रिट याची पर प्रत्यक्ष अन्याय का मामला होगा यदि उसे कानून द्वारा उपबंधित उपचारों को अंगीकृत करने के लिये बाध्य किया गया। (ब्रिज मोहन सिंह वि. म.प्र. राज्य) ...2753

संविधान, अनुच्छेद 226 – के अंतर्गत अनुतोष – कब दिया नहीं जा सकता – मामले में उचित जांच किये बिना एवं मामले में अपनी बात रखने के लिये याची को उचित अवसर दिये बिना राजस्व मंडल द्वारा कपट पाये जाने से संबंधित प्रथम दृष्ट्या निर्धारण – उच्च न्यायालय इस पहलू को अनदेखा करना और याची को अनुतोष प्रदान करना उचित नहीं मानता – बल्कि, न्यायहित की अपेक्षा है कि पट्टे का आवंटन अथवा नामातंरण इत्यादि चाहने में किसी कपट का प्रयोग किये जाने का अभिकथन यदि कोई हो तो उसकी जांच होनी चाहिये और केवल तभी कार्यवाही करनी चाहिये। (चंद्रिका प्रसाद साहू वि. म.प्र. राज्य) 2780

संविधान, अनुच्छेद 226 – उच्च न्यायालय (खण्ड न्यायपीठ को अपील) अधिनियम, म.प्र., 2005 (2006 का 14), धारा 2(1) – रिट अपील – की पोषणीयता – पुनर्विलोकन याचिका में जारी निर्देश या पारित आदेश जो पुनर्विलोकनार्थ आदेश में अंतर्विष्ट नहीं था – अनुच्छेद 226 के अंतर्गत नया रिट आदेश या निर्देश की कोटि में आयेगा और इसलिए रिट अपील के अध्याधीन होगा। (मो. इमरान सिद्दकी वि. म.प्र. राज्य) (DB) ...2699

संविधान, अनुच्छेद 226 – उत्प्रेषण रिट – आवश्यक पक्षकार को पक्षकार नहीं बनाया जाना – पंचायत (अपील तथा पुनरीक्षण) नियम, म.प्र. 1995 के अधीन अपीलीय प्राधिकार की शक्ति का प्रयोग करते हुए अपर आयुक्त द्वारा पारित आदेश को चुनौती – अपर आयुक्त के समक्ष अपील 238 अपीलार्थियों द्वारा प्रस्तुत की गई थी और इन 238 अपीलार्थियों को जिन्हें पारित आदेश के अनुसरण में नियुक्त किया गया है, पक्षकार बनाए बिना – रिट याचिका पोषणीय नहीं है। (चक्रेश कुमार जैन

in pursuance to the order passed - The writ petition is not maintainable. [Chakresh Kumar Jain Vs. State of M.P.] ...2453

Constitution, Article 226 - Writ Petition - Alternative Remedy - Challenge of termination order being on the basis of non-compliance of the Rules of 1999 - Alternative remedy will not bar the writ petition. [Dinesh Pawar Vs. State of M.P.] ...2337

Constitution, Article 226 - Writ Petition - Alternative Remedy - Disciplinary authority passed the impugned order and inflicted the punishment - This order is admittedly appealable under Rule 23 of M.P. C.S. (CCA) Rules, 1966 - Held - The Rules are complete code and provide in house redressal of grievance - It can not be said that efficacious remedy is not available to the petitioner - No interference is warranted. [Brij Mohan Singh Vs. State of M.P.] ...2753

Constitution, Article 226 - Writ Petition - Findings of D.P.C. is based on inadmissible, irrelevant or insignificant material/fact - This can very well be a ground to interfere in Article 226 proceedings. [Virendra Kumar Swarnkar Vs. Madhya Pradesh State Agricultural Marketing Board] ...2743

Constitution, Article 226 - Writ Petition - Jurisdiction - Concurrent findings recorded by the Estate officer and the District Judge, showing that the premise is a 'public premise', and the petitioner an 'unauthorized occupant' - Interference into the matter by the High Court is not warranted. Concurrent findings recorded by the authorities can be interfered with by the Court exercising limited jurisdiction available under Article 226 of the Constitution only if it is found that the findings are perverse, without jurisdiction or there is an error apparent on the face of the record. [Ramcharan Vs. Airport Authority of India] ...2770

Constitution, Article 226 - Writ petition - Justifiable excuse for delay in filing - Filing of a review and its pendency would be a justifiable excuse for delay, provided such review is permissible under the relevant service rules - A review application filed without any legal provision can not provide an excuse for delay or laches. [Munni Shrivas (Ku.) Vs. State of M.P.] (DB)...2326

Constitution, Article 226 - Writ Petition - Petitioner-Company

वि. म.प्र. राज्य) 2453

संविधान, अनुच्छेद 226 – रिट याचिका – वैकल्पिक उपचार – सेवा समाप्ति के आदेश को चुनौती नियम 1999 के अननुपालन के आधार पर होते हुए – वैकल्पिक उपचार रिट याचिका को वर्जित नहीं करेगा। (दिनेश पवार वि. म.प्र. राज्य) 2337

संविधान, अनुच्छेद 226 – रिट याचिका – वैकल्पिक उपचार – अनुशासनिक प्राधिकारी ने आक्षेपित आदेश पारित किया और शस्ति अधिरोपित की – यह आदेश म.प्र. सिविल सेवा (वर्गीकरण, नियंत्रण और अपील) नियम 1966 के अंतर्गत स्वीकृत रुप से अपीलीय है – अभिनिर्धारित – नियम संपूर्ण संहिता है और इसके भीतर ही शिकायत का निवारण उपबंधित करते हैं – यह नहीं कहा जा सकता कि याची को प्रभावकारी उपचार उपलब्ध नहीं है – किसी हस्तक्षेप की आवश्यकता नहीं। (ब्रिज मोहन सिंह वि. म.प्र. राज्य) 2753

संविधान, अनुच्छेद 226 – रिट याचिका – डी.पी.सी. के निष्कर्ष, अग्राह्य, असंगत एवं महत्वहीन सामग्री/तथ्य पर आधारित है – यह अनुच्छेद 226 की कार्यवाही में हस्तक्षेप के लिये उचित आधार हो सकता है। (वीरेन्द्र कुमार स्वर्णकार वि. एम.पी. स्टेट एग्रीकल्चरल मार्केटिंग बोर्ड) 2743

संविधान, अनुच्छेद 226 – रिट याचिका – अधिकारिता – सम्पत्ति अधिकारी तथा जिला न्यायाधीश के समवर्ती निष्कर्ष दर्शाते हैं कि स्थान 'सरकारी स्थान' है और याची 'अप्राधिकृत अधिभोगी' है – उच्च न्यायालय द्वारा मामले में हस्तक्षेप का औचित्य नहीं। इस न्यायालय द्वारा संविधान के अनुच्छेद 226 के अंतर्गत उपलब्ध सीमित अधिकारिता का प्रयोग करते हुये प्राधिकारियों द्वारा अभिलिखित समवर्ती निष्कर्षों में केवल तब हस्तक्षेप किया जा सकता है यदि यह पाया जाता है कि निष्कर्ष अनुचित है, बिना अधिकारिता के है अथवा भूल जो अभिलेख से प्रकट है। (रामचरण वि. एयरपोर्ट अथॉरिटी ऑफ इण्डिया) 2770

संविधान, अनुच्छेद 226 – रिट याचिका – प्रस्तुत करने में विलंब का न्यायोचित कारण – पुनर्विलोकन की प्रस्तुती तथा उसका लंबित रहना, विलंब के लिए न्यायोचित कारण होगा, परंतु यह तब जब ऐसा पुनर्विलोकन सुसंगत सेवा नियमों के अंतर्गत अनुज्ञेय है – बिना किसी विधिक उपबंध के प्रस्तुत किया गया पुनर्विलोकन आवेदन, विलंब अथवा गफलत के लिए कारण उपलब्ध नहीं कर सकता। (मुन्नी श्रीवास (कु.) वि. म.प्र. राज्य) (DB)...2326

संविधान, अनुच्छेद 226 – रिट याचिका – याची–कम्पनी ने न्यायालय के समक्ष

has not placed all the facts before the Court rather it has concealed material facts in order to camouflage its activities - Prima-facie, the petitioner-company has played fraud with the Court - The petitioner-company is not entitled to any relief under Article 226 of the Constitution, which is a discretionary and equitable relief. [P.A.C.L. India Ltd. Vs. State of M.P.] (DB)...*125

Constitution, Article 226 - Writ Petition - Transfer fee **- Petitioner purchased a plot from previous owner and on 27.03.2008 made an application for transfer - On 21.05.2008, Rs. 600/- as lease rent were also deposited - Before consideration of petitioner's application the transfer fee was enhanced from 1% to 3% vide circular dated 06.05.2008 - Held - Increased transfer fee in force at the time of consideration of transfer application, would be payable. [Pushpa Jajodia (Smt.) Vs. M.P. Housing Board, Bhopal] ...2333**

Constitution, Articles 226, 227 - Distinction **- Powers under Article 226 and 227 are distinct, separate and operate in different fields - High Court under Article 226 quashes or annuls an order or proceedings but in exercise of power under Article 227 High Court apart from annulling the proceeding, can also substitute the impugned order by order which the inferior Tribunal should have made - However power should be exercised sparingly only to keep the subordinate Courts and Tribunals within the bounds of their authority and to see that they obey the law. [Shin-Etsu Chemical Co. Ltd. Vs. Vindhya Telelinks Ltd.] ...*156**

Constitution - Article 226 & 227 - Remedy under **- Petition being filed against the order of the Tribunal and its subordinate Courts constituted under the Societies Act could be entertained under the superintendence of power of this Court enumerated under Article 227 only and not under Article 226. [Satya Pal Anand Vs. The Punjabi Housing Cooperative Society Ltd.] (DB)...2983**

Constitution - Article 227 **- Application of the petitioner was not considered by the the Dy. Registrar in accordance with law and the prescribed procedure and the settled propositions of the law - The Joint Registrar of Cooperative Society or the Tribunal had no option except to set aside the order passed by the Dy. Registrar and send back the**

सभी तथ्य प्रस्तुत नहीं किये बल्कि अपनी क्रियाकलापों को छिपाने के उद्देश्य से उसने तात्विक तथ्यों को छिपाया है – प्रथम दृष्टया, याची–कम्पनी ने न्यायालय के साथ छल किया है – याची–कम्पनी संविधान के अनुच्छेद 226 के अंतर्गत किसी अनुतोष की हकदार नहीं है, जो कि विवेकाधीन एवं साम्यापूर्ण अनुतोष है। (पी.ए. सी.एल. इंडिया लि. वि. म.प्र. राज्य) (DB):..*125

संविधान, अनुच्छेद 226 – रिट याचिका – अंतरण फीस – याची ने पूर्व के स्वामी से प्लाट क्रय किया और 27.03.2008 को अंतरण हेतु आवेदन दिया – 21.05.2008 को पट्टा भाड़ा के रुप में रु. 600/– भी जमा किये गये – याची के आवेदन पर विचार किये जाने से पूर्व, परिपत्र दि. 06.05.2008 द्वारा अंतरण फीस 1 प्रतिशत से बढ़ाकर 3 प्रतिशत की गयी – अभिनिर्धारित – अंतरण आवेदन पर विचार करते समय करते समय बढ़ी हुई अंतरण फीस देय होगी। (पुष्पा जाजोदिया (श्रीमति) वि. एम.पी. हाउसिंग बोर्ड, भोपाल) 2333

संविधान, अनुच्छेद 226, 227 – भिन्नता – अनुच्छेद 226 व 227 के अंतर्गत शक्तियां भिन्न एवं पृथक हैं और भिन्न क्षेत्रों में प्रवर्तित होते हैं – अनुच्छेद 226 के अंतर्गत उच्च न्यायालय आदेश अथवा कार्यवाही अभिखंडित एवं बातिल कर सकता है परंतु अनुच्छेद 227 के अंतर्गत शक्ति का प्रयोग करते हुये उच्च न्यायालय कार्यवाही बातिल करने के अलावा ऐसे आदेश द्वारा आक्षेपित आदेश को भी प्रतिस्थापित कर सकता है जिसे अधीनस्थ अधिकरण द्वारा दिया जाना चाहिये था – तथापि, शक्ति का प्रयोग, कृशता से केवल अधीनस्थ न्यायालयों एवं अधिकरणों को उनकी प्राधिकारिता की सीमा के भीतर रखने के लिये और यह देखने के लिये कि उनके द्वारा विधि का पालन किया जा रहा है, किया जाना चाहिये। (शिन–एटसू केमिकल कं. लि. वि. विंध्या टेलीलिंक्स लि.) ...*156

संविधान – अनुच्छेद 226 व 227 – के अन्तर्गत उपचार – सोसाइटी अधिनियम के अंतर्गत गणित अधिकरण एवं उसके अधीनस्थ न्यायालयों के आदेश के विरुद्ध याचिका दायर किये जाने से उसे केवल अनुच्छेद 227 के अंतर्गत प्रमाणित इस न्यायालय की अधीक्षण की शक्ति के अंतर्गत ग्रहण किया जा सकता है और न कि अनुच्छेद 226 के अंतर्गत। (सत्य पाल आनंद वि. द पंजाबी हाउसिंग कोऑपरेटिव सोसायटी लि.) (DB)...2983

संविधान – अनुच्छेद 227 – याची के आवेदन का डिप्टी रजिस्ट्रार द्वारा विधि के अनुसार तथा विहित प्रक्रिया एवं विधि की सुस्थापित प्रतिपादनाओं के अनुसार विचार नहीं किया गया – सहकारी सोसाइटी या अधिकरण के संयुक्त रजिस्ट्रार के पास डिप्टी रजिस्ट्रार के द्वारा पारित आदेश अपास्त करने तथा विहित प्रक्रिया के अनुसार आवेदन पर पुनः विनिश्चय हेतु विचारण न्यायालय को मामला

matter again to trial Court to decide the application afresh in accordance with prescribed procedure - Impugned order is not found faulted - Petition dismissed. [Satya Pal Anand Vs. The Punjabi Housing Cooperative Society Ltd.] (DB)...2983

Constitution - Article 227 - Writ Petition - Award passed by Lok Adalat - On the basis of compromise arrived at between the parties, an award was passed by Lok Adalat - Petitioner later learnt that land allotted to petitioner under the award belongs to other persons who are not parties to the proceedings and the lands allotted to the petitioner under the award have already been sold by respondents vide registered sale-deeds - Held - Consent to settlement, was obtained from the petitioner by playing fraud - Or even otherwise, parties to the agreement were under mistake as to a matter of fact essential the agreement, which renders the agreement void -Award passed by Lok Adalat can not be sustained in the eye of law - Award quashed. [Jagdish Prasad Vs. Sangamlal] ...3071

Constitution - Article 227 - Writ Petition - Validity of award passed by Lok Adalat - Award passed by the Lok Adalat is akin to a compromise decree, its validity can be challenged by a party in a writ petition on the ground that the same has been obtained by playing fraud. [Jagdish Prasad Vs. Sangamlal] ...3071

Constitution - Article 311 - Opportunity of Hearing - Examination of witnesses - Principles of Natural Justice require that all the witnesses in the departmental enquiry shall be examined in the presence of delinquent who shall be given an opportunity to cross-examine them. [Umkant Dwivedi Vs. State of M.P.] ...*158

Contract Act (9 of 1872), Section 16 - Contract - Undue influence - Respondents alleged that contract was null and void on account of undue influence - Respondents alleged that since the petitioner is the only supplier of Preform and therefore there was inequality of bargaining power as the respondents had made large investment were solely dependent upon petition for supply of Preform - Held - Contract in question is a commercial contract - Contract was acted upon between the parties and the respondents had received 18 shipments - Respondents having entered into contract and having derived benefit under agreement can not be permitted to approbate or reprobate -

पुनः वापिस भेजने के अलावा कोई विकल्प नहीं – आक्षेपित आदेश दोषयुक्त नहीं पाया गया – याचिका खारिज। (सत्य पाल आनंद वि. द पंजाबी हाउसिंग कोऑपरेटिव सोसायटी लि.) (DB)...2983

संविधान – अनुच्छेद 227 – रिट याचिका – लोक अदालत द्वारा पारित अवार्ड – पक्षकारों के मध्य हुए समझौते के आधार पर लोक अदालत द्वारा अवार्ड पारित किया गया – याची को बाद में पता चला कि अवार्ड के अंतर्गत याची को आवंटित की गयी भूमि अन्य व्यक्तियों की है जो कार्यवाही में पक्षकार नहीं है और अवार्ड के अंतर्गत याची को आवंटित की गयी भूमि पहले ही प्रत्यर्थीगण ने रजिस्ट्रीकृत विक्रय पत्र द्वारा विक्रय कर दी है – अभिनिर्धारित – याची से समझौते के लिए सहमति कपट द्वारा अभिप्राप्त की गयी – अन्यथा भी, करार के पक्षकार करार के लिए आवश्यक मामले के तथ्यों के बारे में भ्रमित थे जिससे करार शून्य हो जाता है – लोक अदालत द्वारा पारित अवार्ड विधि की दृष्टि में कायम नही रखा जा सकता – अवार्ड अभिखंडित। (जगदीश प्रसाद वि. संगमलाल) 3071

संविधान – अनुच्छेद 227 – रिट याचिका – लोक अदालत द्वारा पारित अवार्ड की विधिमान्यता – लोक अदालत द्वारा पारित अवार्ड समझौता डिक्री के समान है, पक्षकार द्वारा उसकी विधिमान्यता को रिट याचिका में इस आधार पर चुनौती दी जा सकती है कि उसे कपट द्वारा अभिप्राप्त किया गया है। (जगदीश प्रसाद वि. संगमलाल) 3071

संविधान – अनुच्छेद 311 – सुनवाई का अवसर – साक्षियों का परीक्षण – नैसर्गिक न्याय के सिद्धांत की अपेक्षा है कि विभागीय जांच में सभी साक्षियों का परीक्षण अपचारी की उपस्थिति में किया जायेगा जिसे उनका प्रतिपरीक्षण करने का अवसर दिया जायेगा। (उमाकांत द्विवेदी वि. म.प्र. राज्य) ...*158

संविदा अधिनियम (1872 का 9), धारा 16 – संविदा – असम्यक असर – प्रत्यर्थीगण का अभिकथन कि संविदा असम्यक असर के कारण अकृत एवं शून्य थी – प्रत्यर्थीगण का अभिकथन कि चूंकि याची 'प्रीफार्म' का एकमात्र प्रदायकर्ता है और इसलिये सौदा करने की शक्ति की असमानता थी क्योंकि प्रत्यर्थीगण ने बड़ा निवेश किया था और 'प्रीफार्म' के प्रदाय हेतु पूर्णतः याची पर निर्भर थे – अभिनिर्धारित – प्रश्नगत संविदा, वाणिज्यिक संविदा है – पक्षकारों के मध्य संविदा पर कार्य किया गया और प्रत्यर्थीगण ने 18 लदान प्राप्त की – संविदा करने और अनुबंध के अंतर्गत लाभ प्राप्त करने के कारण प्रत्यर्थीगण को अनुमोदित अथवा अस्वीकृत करने की अनुज्ञा नहीं दी जा सकती – संविदा की वैधता या बाध्यकारी प्रभाव को अस्वीकार

Respondents are stopped from denying the validity or the binding effect of the Contract. [Shin-Etsu Chemical Co. Ltd. Vs. Vindhya Telelinks Ltd.] ...*156

***Contract Act (9 of 1872), Section 25 - Consideration - Proof of* - Consideration for the purpose of mortgage - May be even the money advanced in past - Past liability on the mortgagor would serve the purpose of consideration, which is permissible under law. [Rama Sharma (Sushri) Vs. Tajbi @ Badbi (Smt.)] ...2830**

***Contract Act, (9 of 1872), Section 25, Limitation Act (36 of 1963), Section 18* - Document executed after expiry of limitation - Loan amount taken against 12 Hundis between 03.10.1992 to 25.02.1993 - On 10.07.1999 the lonee executed a document acknowledging the non-payment of Hundis which comes to Rs. 62,116/- and also agreed to pay the amount of debt by clearing payment of each Hundi on monthly basis - Held - Though the debt was barred by law of limitation on the date when the document was executed, however, by this document appellant promised to pay the amount on account of debt which is a fresh contract, therefore, the Court below committed no error in decreeing the suit. [Sardar Surendra Singh Bedi Vs. Dhannalal] ...2824**

***Contract Act, 1872 (9 of 1872), Sections 124 & 125, Limitation Act (36 of 1963), Article 27 & 113 - Cause of Action and Limitation* - Respondent No.1 is a forest contractor - Govt. of M.P. directed him to furnish bank guarantee of Rs. 20,000 for due performance of the forest contract - Respondent No.1 deposited with plaintiff/bank a margin money of Rs. 3,000 by way of Fixed Deposit and appellant agreed to insure the rest of the guarantee amount that in case Govt. invokes the guarantee, appellant will reimburse the said amount to the extent of amount of policy - On account of default committed by defendant No.1, Govt. of M.P. invoked the guarantee - Plaintiff/bank paid the entire amount of claim to Govt. on 31.8.1978 - Appellant pleaded that policy was valid only upto 31.12.1971 and suit was filed on 06.10.1979 and therefore is time barred - Held - Under a contract of indemnity, cause of action would arise only when the damage is suffered by plaintiff and if a suit is brought before actual loss, it will be a premature suit - Thus, the cause of action arose only on 30.08.1978 when the plaintiff/bank paid the amount to the Govt. - Suit filed on 06.10.1979 within limitation**

करने से प्रत्यर्थीगण को रोका गया। (शिन–एटसू केमिकल कं. लि. वि. विंध्या टेलीलिंक्स लि.) ...*156

संविदा अधिनियम (1872 का 9), धारा 25 – प्रतिफल – का सबूत – बंधक के प्रयोजन हेतु प्रतिफल – पूर्व में अग्रेषित रकम भी हो सकती है – बंधककर्ता पर पूर्व दायित्व प्रतिफल के प्रयोजन की पूर्ति करेगा, जो विधि अंतर्गत अनुज्ञेय है। (रामा शर्मा (सुश्री) वि. ताज बी उर्फ बाद बी (श्रीमती)) 2830

संविदा अधिनियम (1872 का 9), धारा 25, परिसीमा अधिनियम (1963 का 36), धारा 18 – परिसीमा समाप्त हो जाने के पश्चात निष्पादित दस्तावेज – 03.10.1992 से 25.02.1993 के बीच 12 हुंडियों के बदले ऋण रकम ली गयी – 10.7.1999 को ऋणी ने हुंडियों के भुगतान जो रुपये 62,116/– बनती है नहीं किये जाने की अभिस्वीकृति का दस्तावेज निष्पादित किया और प्रत्येक हुंडी के मासिक भुगतान द्वारा ऋण की रकम के संदाय के लिये भी सहमति दी – अभिनिर्धारित – यद्यपि परिसीमा विधि द्वारा उस तिथि को, जब दस्तावेज निष्पादित किया गया था ऋण वर्जित हो गया था, तथापि, इस दस्तावेज द्वारा अपीलार्थी ने ऋण की रकम का संदाय करने का वचन दिया, जो कि नयी संविदा है, अतएव वाद डिक्रीत करने में निचले न्यायालय ने कोई त्रुटि कारित नहीं की। (सरदार सुरेन्द्र सिंह बेदी वि. घन्नालाल) 2824

संविदा अधिनियम (1872 का 9), धाराएँ 124 व 125, परिसीमा अधिनियम (1963 का 36), अनुच्छेद 27 व 113 – वादकारण तथा परिसीमा – प्रत्यर्थी क्र. 1 एक वन ठेकेदार – म.प्र. सरकार ने उसे संविदा के उचित पालन हेतु 20,000/– रुपये की बैंक गारंटी प्रस्तुत करने हेतु निर्देशित किया – प्रत्यर्थी क्र. 1 ने वादी/बैंक के पास सावधि जमा के रुप में 3,000/– रुपये अंतर राशि जमा कर दी तथा अपीलार्थी ने शेष गारंटी की रकम हेतु बीमा की सहमति दी कि यदि शासन गारंटी पर अवलम्ब करेगी तो, अपीलार्थी पॉलिसी की सीमा तक उक्त रकम की प्रतिपूर्ति कर देगा – प्रतिवादी क्र. 1 द्वारा किये गये व्यतिक्रम के कारण सरकार ने गारंटी पर अवलम्ब किया – दिनांक 31.08.1978 को वादी/बैंक ने दावे की पूर्ण राशि का सरकार को भुगतान कर दिया – अपीलार्थी ने अभिवचन किया कि पॉलिसी दिनांक 31.12.1971 तक ही वैध थी तथा वाद दिनांक 06.10.1979 को प्रस्तुत किया गया अतएव, यह अवधि बाधित है – अभिनिर्धारित – क्षतिपूर्ति की संविदा के अंतर्गत वाद कारण तभी उत्पन्न होगा जब कि वादी को क्षति होगी तथा यदि बिना वास्तविक हानि के कोई वाद लाया जाता है तो यह समयपूर्ण वाद होगा – इस प्रकार, वाद कारण केवल 30.08.1978 को ही उत्पन्न हुआ जब वादी/बैंक ने सरकार की रकम का भुगतान किया – दिनांक 06.10.1979 को प्रस्तुत वाद परिसीमा के भीतर – डिक्री रकम का भुगतान

- Appellant also jointly and severally liable to pay decreetal amount. [Oriental Fire & General Insurance Co. Ltd. Vs. Saifuddin] ...2811

Contract - Whether Bank which had issued guarantee is necessary party - Bank issuing a guarantee is not concerned with the underlying contract between the parties to the contract - The duty of the bank under the performance guarantee is created by the documents itself - Bank can not be termed as necessary party to the dispute - Dispute is not tripartite and hence arbitration clause would apply. [Shin-Etsu Chemical Co. Ltd. Vs. Vindhya Telelinks Ltd.] ...*156

Cooperative Societies Act, M.P. 1960 (17 of 1961), Sections 3 & 66 - Where the State Government has specified any officer to assist the Registrar in exercise of the powers u/s 3, the Registrar in such case need not have to further exercise his powers u/s 66(1) of the Act except to transfer the dispute to the officer specified. [Sayeed Ahmad Vs. State of M.P.] ...2701

Cooperative Societies Act, M.P. 1960 (17 of 1961), Section 67, Civil Procedure Code (5 of 1908), Order XL - Appointment of Receiver - Pendency of any litigation before any forum prescribed under the Cooperative Societies Act, the party has a right to approach such court with the application for appointment of the Receiver - But such application could be considered and adjudicated by such court keeping in view the scheme provided under Section 67 of the Societies Act and under Order 40 of the CPC and the settled propositions of law in that regard. [Satya Pal Anand Vs. The Punjabi Housing Cooperative Society Ltd.] (DB)...2983

Costs - Costs is intended to achieve the goal of acting as a deterrent to vexatious, frivolous and speculative litigations by the parties - In the fact situation of the present case a costs of Rs. 30,000/- is imposed to give a message that Courts are not asylum for frivolous litigations. [Leelawati (Smt.) Vs. Kanhaiyalal] ...*140

Court Fees Act (7 of 1870), Section (iv)(c) - Fixed Court Fee - Petitioner not a party to the sale deed - Allegation of the petitioner in the plaint is that the sale deed is void to the extent of his share - Held - The Court below was not correct in holding that the petitioner is liable

करने हेतु अपीलार्थी भी संयुक्त एवं पृथक रुप से दायी है। (ओरियेन्टल फायर एण्ड जनरल इंश्योरेंस कं. लि. वि. सेफुद्दीन) 2811

संविदा – क्या बैंक जिसने प्रत्याभूति जारी की है वह आवश्यक पक्षकार है – प्रत्याभूति जारी करने वाली बैंक संविदा के पक्षकारों के मध्य अंतर्निहित संविदा से संबद्ध नहीं होती – पालन की प्रत्याभूति के अंतर्गत बैंक का कर्तव्य, दस्तावेजों द्वारा ही निर्माण होता है – बैंक को विवाद के आवश्यक पक्षकार होना नहीं माना जा सकता – विवाद त्रिपक्षीय नहीं है अतः माध्यस्थम खंड लागू होगा। (शिन–एटसू केमिकल कं. लि. वि. विंध्या टेलीलिंक्स लि.) *156

सहकारी सोसाइटी अधिनियम, म.प्र. 1960 (1961 का 17), धाराएँ 3 व 66 – जहां राज्य सरकार ने धारा 3 के अंतर्गत शक्तियों का प्रयोग करते हुए रजिस्ट्रार की सहायता के लिए किसी अधिकारी को विनिर्दिष्टित किया है, ऐसे मामले में विवाद विनिर्दिष्ट अधिकारी को अंतरित करने के अलावा रजिस्ट्रार को अधिनियम की धारा 66(1) के अंतर्गत अपनी शक्तियों का और आगे प्रयोग करने की आवश्यकता नहीं। (सईद अहमद वि. म.प्र. राज्य) 2701

सहकारी सोसाइटी अधिनियम, म.प्र. 1960 (1961 का 17), धारा 67, सिविल प्रक्रिया संहिता (1908 का 5) आदेश XL – रिसीवर की नियुक्ति – सरकारी सोसाइटी अधिनियम के अंतर्गत विहित किसी मंच के समक्ष प्रस्तुत कोई मुकदमा लंबित होने पर पक्षकार को ऐसे न्यायालय के समक्ष रिसीवर की नियुक्ति हेतु आवेदन प्रस्तुत करने का अधिकार है – किन्तु ऐसे न्यायालय द्वारा ऐसे आवेदन पर विचार एवं न्यायनिर्णयन सोसाइटी अधिनियम की धारा 67 तथा सि.प्र.सं. के आदेश 40 के अंतर्गत एवं इस संबंध में विधि की सुस्थापित प्रतिपादनाओं के अंतर्गत उपबंधित योजना को दृष्टिगत रखते हुए किया जा सकता है। (सत्य पाल आनंद वि. द पंजाबी हाउसिंग कोऑपरेटिव सोसायटी लि.) (DB)...2983

खर्चे – पक्षकारों द्वारा तंग करने वाले, तुच्छ एवं काल्पनिक मुकदमेबाजी पर भयपरतिकारी के रुप में कार्य करने के उद्देश्य को अभिप्राप्त करना खर्चों का आशय है – वर्तमान प्रकरण की तथ्यात्मक परिस्थिति में रुपये 30,000/– खर्च अधिरोपित किया जाता है यह संदेश देने के लिये कि न्यायालय तुच्छ मुकदमेबाजी के लिये आश्रय स्थान नहीं है। (लीलावती (श्रीमती) वि. कन्हैयालाल) *140

न्यायालय फीस अधिनियम (1870 का 7), धारा (iv)(c) – निश्चित न्यायालयीन शुल्क – याची विक्रय विलेख का पक्षकार नहीं – वाद पत्र में याची का अभिकथन है कि उसके शेयर की सीमा तक विक्रय विलेख शून्य है – अभिनिर्धारित – यह धारणा करने में निचले न्यायालय ने गलती की कि याची मूल्यानुसार न्यायालय

to pay ad valorem Court fee - Impugned order stands set aside. [Harinarayan Vs. Gulabchandra] ...2377

Court Fees Act (7 of 1870), Section 17 - See - Constitution, Article 226, [Rakesh Gautam Vs. State of M.P.] (DB)...2734

Court Fee (M.P. Amendment) Act, 2008 - Schedule II, Article 11(a)(i) - Ad valorem Court Fee - Discrimination - Payment of Ad valorem Court Fee on appeal for enhancement of compensation - Position of appellant seeking enhancement of compensation is different from that of Insurance Company and Owner - Insurance Company can challenge the award on limited grounds - Owner and Insurance Company are liable to pay atleast Rs. 25,000 alongwith memo of appeal - Owner and Insurance Company are saddled with liability of pay compensation whereas in case of claimant, compensation is awarded by Tribunal - Provision not discriminatory - Petition dismissed. [Ashok Kumar Vs. State of M.P.] (DB)...3084

Court Fee (M.P. Amendment) Act, 2008 - Schedule II, Article 11(a)(i) - Date of Operation - Right to file appeal vests in the suit or on the date when an action is initiated - Such right is Substantive Right can not be taken away by an enactment which is not retrospective unless it says so expressly - Fixed Court Fee is payable on claims filed before 02.04.2008 - Ad valorem Court Fee would be payable on claims filed on or after 02.04.2008. [Ashok Kumar Vs. State of M.P.] (DB)...3084

Court Fee (M.P. Amendment) Act, 2008 - Schedule II, Article 11(a)(i) - Enhancement of Court Fee - Purpose - Reason for increase in expenditure on Court is implementation of recommendation made by Justice Shetty Commission - Held - Need has arisen for amendment in Court Fees Act. [Ashok Kumar Vs. State of M.P.] (DB)...3084

Court Fee (M.P. Amendment) Act, 2008 - Schedule II, Article 11(a)(i) - Upper limit of Court Fee - Absence of - Issue of absence of limit of Court Fee does not arise in the present case - Issue left to be dealt with in an appropriate case. [Ashok Kumar Vs. State of M.P.] (DB)...3084

Criminal Procedure Code, 1973 (2 of 1974), Sections 91, 161 & 208 - Summons to produce documents - FIR recorded and statements of some witnesses were recorded by A.S.I. - At subsequent stage of

फीस अदा करने के लिए दायी है – आक्षेपित आदेश अपास्त। (हरिनारायण वि. गुलाबचन्द) 2377

न्यायालय फीस अधिनियम (1870 का 7), धारा 17 – देखें – संविधान, अनुच्छेद 226, (राकेश गौतम वि. म.प्र. राज्य) (DB)...2734

न्यायालय शुल्क (म.प्र.संशोधन) अधिनियम 2008 – अनुसूची *II* अनुच्छेद *11 (a)(i)*– मूल्य के अनुसार न्यायालय शुल्क – भेद – क्षतिपूर्ति में वृद्धि के लिए अपील में मूल्यानुसार न्यायालय शुल्क का भुगतान – अपीलांट जो क्षतिपूर्ति में वृद्धि चाहता है की स्थिति बीमा कम्पनी तथा मालिक से भिन्न – बीमा कम्पनी अधिनिर्णय को सीमित आधारों पर चुनौती दे सकती है – स्वामी और बीमा कम्पनी अपील मेमो के साथ कम से कम 25000/– रुपये अदा करने हेतु दायित्वाधीन है – मालिक एवं बीमा कंपनी क्षतिपूर्ति भुगतान हेतु बोझ के अधीन दायित्वाधीन है जबकि दावाकर्ता की स्थिति में क्षतिपूर्ति अधिकरण द्वारा अधिनिर्णीत की जाती है – प्रावधान भेदपूर्ण नही – याचिका खारिज। (अशोक कुमार वि. म.प्र. राज्य) (DB)...3084

न्यायालय शुल्क (म.प्र.संशोधन) अधिनियम 2008 – अनुसूची *II* अनुच्छेद *11 (a)(i)*– प्रवर्तन की तिथि – अपील प्रस्तुत करने का अधिकार वादपत्र में अथवा कार्यवाही आरंभ करने की तिथि में निहित है – ऐसा अधिकार मौलिक अधिकार है जिसे अधिनियमिति द्वारा हटाया नही जा सकता जो भूतलक्षी नही है, जब तक कि वह ऐसा अभिव्यक्त रुप से प्रकट नही करती – 02.04.2008 से पूर्व प्रस्तुत किये गये दावे पर निश्चित न्यायालय शुल्क देय होगा – 02.04.2008 को या उसके पश्चात् प्रस्तुत किये गये दावों पर मूल्यानुसार न्यायालय शुल्क देय होगा। (अशोक कुमार वि. म.प्र. राज्य) (DB)...3084

न्यायालय शुल्क (म.प्र.संशोधन) अधिनियम 2008 – अनुसूची *II* अनुच्छेद *11 (a)(i)* – न्यायालय शुल्क में वृद्धि – उद्देश्य – न्यायशुल्क में वृद्धि का कारण न्यायमूर्ति शेट्टी की अनुशंसा का क्रियान्वयन है – अभिनिर्धारित – न्यायालय शुल्क अधिनियम में संशोधन की आवश्यकता उत्पन्न हो चुकी है। (अशोक कुमार वि. म.प्र. राज्य) (DB)...3084

न्यायालय शुल्क (म.प्र.संशोधन) अधिनियम 2008 – अनुसूची *II* अनुच्छेद *11 (a)(i)* – न्यायालय शुल्क की अधिकतम सीमा – की अनुपस्थिति – वर्तमान प्रकरण में न्यायालय शुल्क की सीमा की अनुपस्थिति का विवाद्यक उत्पन्न नही होता – समुचित प्रकरण में कार्यवाही के लिये विवाद्यक छोड़ दिया गया। (अशोक कुमार वि. म.प्र. राज्य) (DB)...3084

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धाराएँ 91, 161 व 208 – दस्तावेजों को प्रस्तुत करने के लिए समंस – एफ.आई.आर. अभिलिखित की गई और ए.एस. आई. द्वारा कुछ साक्षियों के बयान अभिलिखित किये गये – अन्वेषण के पश्चातवर्ती

investigation supplementary statements (of these witnesses) were recorded by I.O. and have been filed (with charge-sheet) - Statements recorded at earlier stage were not submitted by the I.O. at the time of filing of charge sheet before the Court - Held - Investigation agency is duty bound to furnish the statements recorded after lodging FIR and after launching investigation before the trial Court and is also bound to supply the copies of those statements recorded on earlier stage to the accused - Revision allowed. [Ramprasad Vs. State of M.P.] ...2596

Criminal Procedure Code, 1973 (2 of 1974), Section 144 - Prohibitory Order - Magistrate passed an order u/s 144, Cr.P.C. on 4th May, 2011 prohibiting the business of the petitioner-company - The order was valid for a period of two months - During pendency of the petition another order was passed by the District Magistrate dated 1st July 2011, prohibiting the business of the company-petitioner - No material on record to show that any request was made by the District Magistrate or other authority to the State Government to extend the period of the order - State Government has not accorded approval to the District Magistrate for extending the period of the order passed earlier - Held - Second order passed on 1st July 2011 u/s 144, Cr.P.C. by the District Magistrate is beyond his power and authority. [P.A.C.L. India Ltd. Vs. State of M.P.] (DB)...*125

Criminal Procedure Code, 1973 (2 of 1974), Section 144 - Prohibitory Order - When can be issued - Petitioner-company, in the business of accepting deposits from the investors, it may be using the amount in real estate business and various activities - Company though receiving huge deposits from customers and investing the amount in certain activities, but deliberately concealing from the Court, District administration and Police authorities - Amount invested in purchasing of land is a drop in ocean in comparison to the amount collected by the Company - On asking by District and Police authorities, the company has not furnished the vital information as to how much money it had collected and how much land it had purchased - Petitioner-company would have created serious disturbances of grave character in the society -- Held - There is no illegality or irregularity in passing the order u/s 144, Cr.P.C. prohibiting the business of the petitioner-company. [P.A.C.L. India Ltd. Vs. State of M.P.] (DB)...*125

प्रक्रम पर (इन साक्षियों के) अनुपूरक बयान आई.ओ. द्वारा अभिलिखित किये गये और प्रस्तुत किये गये हैं (आरोप पत्र के साथ) – न्यायालय के समक्ष आरोप पत्र प्रस्तुत करते समय पूर्ववर्ती प्रक्रम पर अभिलिखित बयान आई.ओ. द्वारा पेश नहीं किये गये – अभिनिर्धारित – अन्वेषण एजेंसी एफ.आई.आर. दर्ज होने के पश्चात एवं अन्वेषण आरंभ होने के पश्चात अभिलिखित बयान विचारण न्यायालय के समक्ष प्रस्तुत करने के लिए कर्तव्यबद्ध है और पूर्ववर्ती प्रक्रम पर अभिलिखित उन बयानों की प्रतियां अभियुक्त को प्रदाय करने के लिए भी बाध्य है – पुनरीक्षण मंजूर। (रामप्रसाद वि. म.प्र. राज्य) 2596

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 144 – प्रतिषेधात्मक आदेश – मजिस्ट्रेट ने याची–कम्पनी के कारोबार को धारा 144, द.प्र.सं. के अंतर्गत प्रतिषिद्ध करने का आदेश 4 मई 2011 को पारित किया – आदेश दो महिनों की अवधि तक विधिमान्य था – याचिका लंबित रहने के दौरान जिला मजिस्ट्रेट द्वारा कम्पनी–याची का कारोबार प्रतिषिद्ध करने का आदेश दिनांक 1 जुलाई 2011 को पारित किया – अभिलेख पर यह दर्शाने हेतु कोई सामग्री नहीं कि जिला मजिस्ट्रेट अथवा अन्य प्राधिकारी द्वारा आदेश की अवधि बढ़ाये जाने के लिए राज्य सरकार से कोई निवेदन किया – राज्य सरकार ने पूर्व में पारित आदेश की अवधि बढ़ाने के लिए जिला मजिस्ट्रेट को मंजूरी प्रदान नहीं की – अभिनिर्धारित – दिनांक 1 जुलाई 2011 को दण्ड प्रक्रिया संहिता की धारा 144 के अंतर्गत जिला मजिस्ट्रेट द्वारा पारित द्वितीय आदेश उसके किसी प्राधिकार एवं शक्ति के बाहर है। (पी.ए.सी.एल. इंडिया लि. वि. म.प्र. राज्य) (DB)...*125

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 144 – प्रतिषेधात्मक आदेश – कब जारी किया जा सकता है – याची कम्पनी, निवेशकों से जमा राशियां स्वीकार करती है, वह रकम को जमीन जायदाद के कारोबार एवं विभिन्न क्रियाकलापों में उपयोग कर सकती है – यद्यपि कम्पनी ग्राहकों से विशाल जमा राशियां अभिप्राप्त कर रही थी तथा कतिपय क्रियाकलापों में रकम का निवेश कर रही थी तथापि न्यायालय, जिला प्रशासन एवं पुलिस प्राधिकारियों से जानबूझकर छिपाव किया – भूमि के क्रय हेतु निवेश की गई रकम, कम्पनी द्वारा एकत्रित की गयी रकम की तुलना में सागर में एक बूंद मात्र है – जिला प्रशासन एवं पुलिस प्राधिकारियों द्वारा पूछे जाने पर कम्पनी ने महत्वपूर्ण जानकारी प्रस्तुत नहीं की है कि उसने कितनी रकम एकत्रित की है और कितनी भूमि उसने क्रय की है – याची–कम्पनी ने समाज में गंभीर स्वरुप का घोर उपद्रव निर्मित किया होता – अभिनिर्धारित – याची कम्पनी का कारोबार प्रतिषिद्ध करने वाले दण्ड प्रक्रिया संहिता की धारा 144 के अंतर्गत पारित आदेश में कोई अवैधता अथवा अनियमितता नहीं। (पी.ए.सी.एल. इंडिया लि. वि. म.प्र. राज्य) (DB)...*125

Criminal Procedure Code, 1973 (2 of 1974), Sections 154 & 157- Delay - Delay of 15 hours in registration of FIR coupled with non sending of report of the crime to the Magistrate - May create serious doubt on the fair and impartial investigation of the case. [Amar Singh Vs. State of M.P.] (DB)...*134

Criminal Procedure Code, 1973 (2 of 1974), Sections 154 & 227 - Non-mentioning of name in F.I.R. - Non-mentioning of name in F.I.R. is no ground to reject the outcome of the investigation. [State of M.P. Vs. Deepak Surana] (DB)...*157

Criminal Procedure Code, 1973 (2 of 1974), Section 161 - See - Evidence Act, 1872, Section 3 [Ramesh Vs. State of M.P.](DB)...2565

Criminal Procedure Code, 1973 (2 of 1974), Sections 161 & 162, Evidence Act, (1 of 1872), Section 3 - Statement read over to witness before examination in chief - Witness admitted that statement recorded under Section 161 was read over to him by Advocate before entering into witness box - Testimony of witness becomes valueless. [Rajesh Kumar Goswami Vs. State of M.P.] (DB)...2837

Criminal Procedure Code, 1973 (2 of 1974), Section 173(8) - See - Prevention of Corruption Act, 1988, Sections 13(1)(d),& 19 [Arun Kumar Aggarwal Vs. State of M.P.] (SC)...2951

Criminal Procedure Code, 1973 (2 of 1974), Section 197 - Sanction for prosecution - Appellant was charged for offence punishable under Section 409 of I.P.C. - Provision of Section 197 has no application when a public servant is prosecuted for such offence. [Rambabu Sharma Vs. State of M.P.] ...*129

Criminal Procedure Code, 1973 (2 of 1974), Section 216 - Alteration of Charge - The Court is empowered to alter or add to any charge at any stage before the judgment is pronounced - The Section is comprehensive and includes not only the correction of an error in framing the charge but will also include non-framing of a charge - Hence, even though the charges for offences under sections are made at initial stages, the Court has jurisdiction or power to alter that charge and frame a new charge as it has the power to correct the omission. [Kastoorchand Vs. State of M.P.] ...*123

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धाराएँ 154 व 157 – विलंब – प्रथम सूचना रिपोर्ट दर्ज करने में 15 घंटों का विलंब और इसके अलावा अपराध की रिपोर्ट मजिस्ट्रेट को न भेजी जाना – मामले के निष्पक्ष एवं समुचित अन्वेषण पर गंभीर संदेह पैदा कर सकता है। (अमर सिंह वि. म.प्र. राज्य) (DB)...*134

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धाराएँ 154 व 227 – एफ.आई.आर. में नाम उल्लिखित नही किया जाना – एफ.आई.आर. में नाम उल्लिखित नहीं किया जाना, जांच के परिणाम को अस्वीकार करने का आधार नहीं है। (म.प्र. राज्य वि. दीपक सुराना) (DB)...*157

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 161 – देखें – साक्ष्य अधिनियम, 1872, धारा 3, (रमेश वि. म.प्र. राज्य) (DB)...2565

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धाराएँ 161 व 162, साक्ष्य अधिनियम (1872 का 1), धारा 3 – मुख्य परीक्षण से पूर्व साक्षी को कथन पढ़कर सुनाया गया – साक्षी ने स्वीकार किया कि कठघरे में प्रवेश करने से पूर्व धारा 161 के अंतर्गत अभिलिखित कथन उसे अधिवक्ता द्वारा पढ़कर सुनाया गया – साक्षी की परिसाक्ष्य मूल्यहीन हो जाती है। (राजेश कुमार गौस्वामी वि. म.प्र. राज्य) (DB)...2837

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 173(8) – देखें – भ्रष्टाचार निवारण अधिनियम, 1988, धाराएँ 13(1)(डी), व 19 (अरूण कुमार अग्रवाल वि. म.प्र. राज्य) (SC)...2951

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 197 – अभियोजन के लिए मंजूरी – अपीलार्थी को आई.पी.सी. की धारा 409 के अंतर्गत दण्डनीय अपराध हेतु आरोपित किया गया – धारा 197 के उपबंध की कोई प्रयोज्यता नहीं जब ऐसे अपराध हेतु लोक सेवक को अभियोजित किया जाता है। (रामबाबू शर्मा वि. म.प्र. राज्य) ...*129

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 216 – आरोप का परिवर्तन – न्यायालय, निर्णय घोषित करने से पूर्व किसी भी प्रक्रम पर, किसी भी आरोप में परिवर्तन अथवा परिवर्धन करने के लिए समर्थ है – धारा व्यापक है और न केवल आरोप के विरचित किये जाने में हुई त्रुटि का सुधार सम्मिलित है बल्कि आरोप को अविरचित करना भी सम्मिलित है – इसलिए, यद्यपि प्रारंभिक प्रक्रम पर धाराओं के अंतर्गत अपराध के लिए आरोप लगाये जाते हैं, तथापि, न्यायालय को उस आरोप को परिवर्तित करने की तथा नये आरोप विरचित करने की अधिकारिता एवं शक्ति है जैसा कि उसे लोप सुधारने का अधिकार है। (कस्तूरचंद वि. म.प्र. राज्य)...*123

Criminal Procedure Code, 1973 (2 of 1974), Section 227 - Framing of Charges - Even a strong suspicion leading to presumption as to possibility as against certainty makes out a case for framing of charge - Trial judge is required to record reasons only if he decides to discharge the accused. [State of M.P. Vs. Deepak Surana] (DB)...*157

Criminal Procedure Code, 1973 (2 of 1974), Section 227, Penal Code (45 of 1860), Section 307 - Framing of charge - Unless the prima facie evidence showing the ingredients of first part of Section 300 of IPC are not found from the charge sheet, the charge of the Section 307 could not be framed - Revision allowed. [Kanhaiya Lal Vs. State of M.P.] ...2601

Criminal Procedure Code, 1973 (2 of 1974), Section 227 - Production of material by accused - Materials/documents furnished by the accused could not have been considered at the stage of framing of charge. [State of M.P. Vs. Deepak Surana] (DB)...*157

Criminal Procedure Code, 1973 (2 of 1974), Sections 227 & 228 - Framing of Charge - Judge is required to record reasons only if he decides to discharge the accused - Mere strong suspicion leading to presumption as to possibility as against certainty about commission of crime makes out a case for framing of charge. [Ashok Kumar Jain Vs. Central Bureau of Investigation] (DB)...2629

Criminal Procedure Code, 1973 (2 of 1974), Sections 227 & 228, Penal Code (45 of 1860), Section 306 - Framing of Charge - Whenever the deceased visited the market either to go school or for some other purpose, she was always subjected to harassment/humiliation and torture with funny acts by the applicant - Due to such activities and behaviour of the applicant she felt herself insulted in family as well in the community and pursuant to such instigation, she proceeded to commit suicide and committed the same - In such premises, only one inference could be drawn that she was instigated to commit suicide by the applicant - Prime-facie ingredients of abetment to commit suicide is available in the charge-sheet - Trial Court committed no error in framing the alleged charge. [Sachin Tamrakar Vs. State of M.P.] ...2909

Criminal Procedure Code, 1973 (2 of 1974), Sections 227 & 228 - See - Prevention of Corruption Act, 1947, Section 5(1)(d)/5(2) [Ramnarayan Vs. State of M.P.] (DB)...2537

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 227 – आरोपों को विरचित करना – निश्चितता के विरुद्ध, संभावना की उपधारणा की ओर ले जाने वाला प्रबल संदेह भी आरोप विरचित किये जाने का मामला बनाता है – विचारण न्यायाधीश को केवल तभी कारण अभिलेख करना अपेक्षित है यदि वह अभियुक्त को मुक्त करने का निश्चय करता है। (म.प्र. राज्य वि. दीपक सुराना) (DB)...*157

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 227, दण्ड संहिता (1860 का 45), धारा 307 – आरोप विरचित करना – जब तक कि आरोप पत्र से आई.पी.सी. की धारा 300 के प्रथम भाग के अवयव दर्शाने वाली प्रथम दृष्ट्या साक्ष्य नहीं पायी जाती, धारा 307 के आरोप विरचित नहीं किये जा सकते – पुनरीक्षण मंजूर। (कन्हैया लाल वि. म.प्र. राज्य) 2601

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 227 – अभियुक्त द्वारा सामग्री को प्रस्तुत किया जाना – अभियुक्त द्वारा प्रस्तुत की गयी सामग्री/दस्तावेजों को आरोप विरचित किये जाने के प्रक्रम पर विचार में नहीं लिया जा सकता था। (म.प्र. राज्य वि. दीपक सुराना) (DB)...*157

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धाराएँ 227 व 228 – आरोप विरचित करना – न्यायाधीश को केवल तभी कारण अभिलिखित करना अपेक्षित है यदि वह अभियुक्त को आरोपमुक्त करने का निश्चय करता है – अपराध के कारित होने के संबंध में निश्चितता के विरुद्ध संभावना की अवधारणा की ओर ले जाने वाला प्रबल संदेह मात्र, आरोप विरचित करने का मामला बनाता है। (अशोक कुमार जैन वि. सेंट्रल ब्यूरो ऑफ इन्वेस्टिगेशन) (DB)...2629

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धाराएँ 227 व 228, दण्ड संहिता (1860 का 45), धारा 306 – आरोप विरचित करना – जब भी मृतिका मॉर्केट/बाजार जाती थी या तो स्कूल जाने के लिये या किसी अन्य प्रयोजन हेतु, उसे आवेदक द्वारा प्रायः उत्पीड़ित/अपमानित किया जाना एवं अशिष्ट कृत्यो से प्रताड़ित किया जाता था – आवेदक के ऐसे कृत्य एवं व्यवहार के कारण वह परिवार में तथा समाज में स्वयं को अपमानित महसूस करती थी और ऐसे दुष्प्रेरण के अनुसरण में उसने आत्महत्या की – ऐसी स्थिति में केवल एक निष्कर्ष निकाला जा सकता है कि उसे आत्महत्या करने के लिये आवेदक द्वारा दुष्प्रेरित किया गया – आत्महत्या के दुष्प्रेरण के प्रथम दृष्टया घटक आरोप पत्र में उपलब्ध है – अभिकथित आरोप विरचित करने में विचारण न्यायालय ने कोई भूल नहीं की। (सचिन ताम्रकार वि. म.प्र. राज्य) 2909

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धाराएँ 227 व 228 – देखें – भ्रष्टाचार निवारण अधिनियम, 1947, धारा 5(1)(डी)/5(2) (रामनारायण वि. म.प्र. राज्य) (DB)...2537

Criminal Procedure Code, 1973 (2 of 1974), Section 228 - See - Penal Code, 1860, Section 306 [Bhagbai Vs. State of M.P.] ...3231

Criminal Procedure Code, 1973 (2 of 1974), Section 320 - Application for compromise - Application for compromise filed after the pronouncement of judgment - Application is not maintainable as the Court is no more seisin over the case. [OTG Global Finance Ltd. Company Vs. Mohan Mandelia] ...*152

Criminal Procedure Code, 1973 (2 of 1974), Section 391 - Further/ Addtional Evidence - Appellate Court remanded the case back to the trial Court with a direction to provide an opportunity to prosecution for exhibiting and proving the report of examination of seized liquor by the Excise Department and decide the case on merits afresh - Held - The Section nowhere authorises the appellate Court to set aside the conviction and remand the whole case back to the trial Judge for the sole purpose of examining a particular witness and then deciding the matter afresh after recording his evidence. The section is not intended to remedy the negligence or laches of the prosecution. [Ramu Vs. State of M.P.] ...2901

Criminal Procedure Code, 1973 (2 of 1974), Section 439 - Bail - Applicant was enlarged on bail vide order dated 23.08.2006 and that order was not at all cancelled by the Court - Held - Such order shall remain in force till the end of the trial - The trial Court has no option except to enlarge the applicant on bail again, if he furnishes the fresh bail bond and surety bond in compliance to that order - However, the trial Court is free to recover any sum from the previous bail bond and surety bond due to bail jump done by the applicant. [Amgod @ Khimla Nayak Vs. State of M.P.] ...3257

Criminal Procedure Code, 1973 (2 of 1974), Sections 451 & 457 - Supurdnama - Conditions therefore - Condition of deposit of value of seized silver worth Rs. 1,40,00,000 imposed while directing supurdnama to Income Tax Authorities - Held - Income Tax Authority is a Statutory Authority under Income Tax Act which is responsible to its higher authorities/tribunals and Courts of law having jurisdiction - Conditions imposed by Magistrate superfluous and redundant - Application allowed. [Income Tax Officer Vs. State of M.P.] ...2919

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 228 – देखें – दण्ड संहिता, 1860, धारा 306 (भागबाई वि. म.प्र. राज्य) 3231

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 320 – समझौते के लिए आवेदन – समझौते के लिये आवेदन निर्णय की घोषणा के पश्चात प्रस्तुत किया गया – आवेदन पोषणीय नहीं है क्योंकि मामला अब न्यायालय के अधीन नहीं है। (ओ. टी.जी. ग्लोबल फाइनेन्स लि. कम्पनी वि. मोहन मंडेलिया) ...*152

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 391 – इसके अलावा अतिरिक्त साक्ष्य – अपीलीय न्यायालय ने विचारण न्यायालय को उत्पाद शुल्क विभाग द्वारा जब्त मदिरा के परीक्षण की रिपोर्ट प्रदर्शित एवं साबित करने हेतु अभियोजन को अवसर प्रदान करने के निर्देश तथा प्रकरण को गुणदोषों पर पुनः निर्णित करने के निर्देश के साथ प्रकरण प्रतिप्रेषित किया – अभिनिर्धारित – धारा कहीं भी अपीलीय न्यायालय को दोषसिद्धि को अपास्त करने के लिए और विशिष्ट साक्षी के परीक्षण के एकमात्र प्रयोजन हेतु और उसकी साक्ष्य अभिलिखित करने के पश्चात मामला पुनः निर्णित करने के लिए विचारण न्यायालय को संपूर्ण प्रकरण प्रतिप्रेषित करने के लिए प्राधिकृत नहीं करती। धारा अभियोजन की उपेक्षा अथवा गफलत को सुधारने के लिए नहीं है। (रामू वि. म.प्र. राज्य) 2901

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 439 – जमानत – आदेश दिनांक 23.08.2006 द्वारा आवेदक को जमानत पर छोड़ा गया था और उस आदेश को न्यायालय द्वारा निरस्त नही किया गया – अभिनिर्धारित – ऐसा आदेश विचारण की समाप्ति तक प्रभावी रहेगा – विचारण न्यायालय के पास आवेदक को पुनः जमानत पर छोड़ने के अलावा कोई विकल्प नही यदि वह उस आदेश के अनुपालन में नया जमानतपत्र एवं बंधपत्र पेश करता है – अपितु, आवेदक द्वारा किये गये जमानत के उल्लंघन से पूर्ववर्ती जमानत पत्र-से किसी रकम की वसूली के लिए विचारण न्यायालय स्वतंत्र है। (अमगोद उर्फ खिमला नायक वि. म.प्र. राज्य)....3257

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धाराएँ 451 व 457 – सुपुर्दनामा – की शर्तें – सुपुर्दनामा आयकर प्राधिकारियों को निदेशित करते समय, रुपये 1,40,00,000 कीमत की जब्तशुदा चांदी का मूल्य जमा करने की शर्त – अभिनिर्धारित – आयकर प्राधिकारी आयकर अधिनियम के अंतर्गत कानूनी प्राधिकारी है जो उससे उच्चतर प्राधिकारियों/अधिकरणों और आधिकारिता वाले न्यायालयों के प्रति उत्तरदायी है – मजिस्ट्रेट द्वारा अधिरोपित शर्तें अतिशयोक्ति और अनावश्यक है – आवेदन मंजूर। (इन्कम टैक्स आफीसर वि. म.प्र. राज्य) 2919

Criminal Procedure Code, 1973 (2 of 1974), Section 482, Penal Code (45 of 1860), Section 498-A, Dowry Prohibition Act (28 of 1961), Section 3/4 - Complainant/respondent No. 2 lodged an FIR on 11.03.2006 at police station Bina against the petitioners alongwith her husband with allegation that her father gave sufficient dowry at the time of her marriage but she was continuously being harassed by petitioners for getting the less dowry from her father - It is undisputed on record that respondent No. 2 is living separately since one year as mentioned by herself in the FIR - It is also undisputed that she is having three children - No specific allegation that when demand was made, when she was beaten, by whom, no specific year, month, date or time was mentioned - Further the report was lodged on 11.03.2006, just after the filing of the divorce petition against the respondent No. 2 and date of appearance on the aforesaid case i.e. 10.03.2006 - Held - No prima facie case made out against these petitioners, near relatives of husband of respondent No. 2 and permitting to continue such criminal proceeding against them would be abuse of process of law - Prosecution against the petitioners is liable to be quashed. [Dashrath P. Bundela Vs. State of M.P.] ...2923

Criminal Procedure Code, 1973 (2 of 1974), Section 482 - See - Constitution, Article 226 [Meena Mehra (Smt.) Vs. The Lokayukt Organization] (DB)...3019

Dowry Prohibition Act (28 of 1961), Section 3/4 - See - Criminal Procedure Code, 1973, Section 482, [Dashrath P. Bundela Vs. State of M.P.] ...2923

Drugs and Cosmetics Act, (23 of 1940), Section 25(3) - Delay in filing complaint - Appellants did not express any intention to adduce evidence to controvert the analyst report within the statutory limitation period of 28 days - Delay in the filing the complaint (more than 3 years and 9 months) becomes immaterial. [Glaxosmithkline Pharmaceuticals Ltd. Vs. State of M.P.] (SC)...2651

Election - Co-operative Society - Mass rejection of nomination papers resulting in unopposed election of members - Even State Counsel could not dispute that nomination papers were rejected on factually incorrect grounds and the candidates whose nomination papers were

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 482, दण्ड संहिता (1860 का 45), धारा 498–ए, दहेज प्रतिषेध अधिनियम (1961 का 28), धारा 3/4 – परिवादी/प्रत्यर्थी क्रं. 2 ने 11.03.2006 को अपने पति सहित याचीगण के विरुद्ध पुलिस थाना बीना में इस अभिकथन के साथ एफ.आई.आर. दर्ज की कि उसके विवाह के समय उसके पिता ने पर्याप्त दहेज दिया था परंतु उसे याचीगण द्वारा अपने पिता से कम दहेज प्राप्त होने के लिये लगातार प्रताड़ित किया जाता था – यह अभिलेख पर अविवादित है कि प्रत्यर्थी क्र. 2 एक वर्ष से अलग रह रही है जैसा कि उसने स्वयं एफ.आई.आर. में उल्लिखित किया है – यह भी अविवादित है कि उसकी तीन संताने हैं – कोई विनिर्दिष्ट अभिकथन नहीं कि मांग कब की गयी, किसके द्वारा उसे कब मारा पीटा गया, कोई विनिर्दिष्ट वर्ष, महिना, दिनांक या समय उल्लिखित नहीं किया गया – इसके अलावा रिपोर्ट 11.03.2006 को दर्ज की गयी, प्रत्यर्थी क्र. 2 के विरुद्ध विवाह विच्छेद याचिका प्रस्तुती तथा उपरोक्त प्रकरण में उपस्थिति के दिनांक अर्थात 10.03.2006 के तुरंत पश्चात – अभिनिर्धारित – इन याचीगण, प्रत्यर्थी क्र. 2 के पति के नजदीकी रिश्तेदारों के विरुद्ध प्रथम दृष्ट्या कोई मामला नहीं बनता और उनके विरुद्ध ऐसी दाण्डिक कार्यवाहियां जारी रखने की अनुमति देना न्याय की प्रक्रिया का दुरुपयोग होगा – याचीगण के विरुद्ध अभियोजन अभिखंडित किये जाने योग्य है। (दशरथ पी. बुन्देला वि. म.प्र. राज्य) 2923

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 482 – देखें – संविधान, अनुच्छेद 226 (मीना मेहरा (श्रीमति) वि. द लोकायुक्त ऑर्गनाइजेशन)(DB)...3019

दहेज प्रतिषेध अधिनियम (1961 का 28), धारा 3/4 – देखें – दण्ड प्रक्रिया संहिता, 1973, धारा 482, (दशरथ पी. बुन्देला वि. म.प्र. राज्य) 2923

औषधि और प्रसाधन सामग्री अधिनियम (1940 का 23), धारा 25(3) – शिकायत प्रस्तुत करने में विलंब – अपीलार्थीगण ने विश्लेषक की रिपोर्ट के खंडन हेतु 28 दिनों की कानूनी सीमा अवधि के भीतर साक्ष्य प्रस्तुत करने में कोई आशय अभिव्यक्त नहीं किया – शिकायत प्रस्तुत करने में विलंब (3 वर्ष 9 महिनों से अधिक) तत्वहीन हो जाता है। (ग्लेक्सोस्मिथलाइन फार्मास्यूटिकल्स लि. वि. म.प्र. राज्य) (SC)...2651

चुनाव – सहकारिता समिति – बड़े पैमाने पर नामनिर्देशन पत्रों की नामंजूरी के परिणामतः सदस्यों का निर्विरोध निर्वाचंन – राज्य अधिवक्ता भी इसका विरोध नहीं कर पाये हैं कि नामनिर्देशन पत्रों को तथ्यात्मक रुप से अनुचित आधारों पर नामंजूर किया गया थां और जिन प्रत्याशियों के नामनिर्देशन पत्र नामंजूर किये गये

rejected were entitled to contest the elections - Irresistible conclusion is that entire process of election was sham and it was no election in the eye of law and entire election process was vitiated - Petition allowed. [Ramkishore Tiwari Vs. State of M.P.] (DB)...*130

Electricity Act, (9 of 1910), Section 22-B, Electricity (Supply) Act, (54 of 1948) - Penalty - Demand of higher charges/tariff for electricity consumed beyond legally fixed limit is a reasonable deterrent measure providing an appropriate sanction not as harsh as disconnection of electricity supply. [Sanghvi Foods Private Ltd. (M/s.) Vs. M.P. Electricity Board] ...*154

Electricity (Supply) Act, (54 of 1948) - See - Electricity Act, (9 of 1910), Section 22-B [Sanghvi Foods Private Ltd. (M/s.) Vs. M.P. Electricity Board] ...*154

Entry Tax Act, M.P. (52 of 1976), Sections 2(d)(f), 3, 7 & 14, Commercial Tax Act, M.P. 1994 (5 of 1995), Sections 17 & 43 - Levy of Entry Tax - Petitioner Company made purchases from industrial units having facility of exemption from payment of entry tax and commercial tax - Entry Tax is a tax on the entry of goods into local area for consumption, use or sale in course of business of dealer of Schedule II goods - Petitioner made purchase of goods at Panna and caused entry of goods into another local area namely Satna - Since taxable event had occurred therefore, the petitioner has incurred the liability to make payment of tax - Petition dismissed. [Kalyani Minerals Pvt. Ltd. (M/s.) Vs. Additional Commissioner of Commercial Tax] (DB)...2381

Evidence Act (1 of 1872), Section 3 - Credibility of witnesses - Doctor, who wrote the tehrir for Dying declaration and Naib Tahsildar, who recorded the Dying declaration stating that deceased told them that she got burnt by stove while preparing the food - Both are Government Servants and are independent witnesses - Nothing in cross examination to disbelieve them - Held - the trial Court committed illegality in not placing reliance on testimony of these witnesses. [Ashok Kumar Vs. State of M.P.] ...2532

Evidence Act (1 of 1872), Section 3, Criminal Procedure Code, 1973 (2 of 1974), Section 161 - Discrepency in police statement and Court statement - Witness (aged 9-10 years) the son of deceased (and

थे वे चुनाव लड़ने के लिए हकदार थे – अप्रतिरोध्य निष्कर्ष यह है कि निर्वाचन की संपूर्ण प्रक्रिया मिथ्या थी तथा विधि की दृष्टि में वह कोई निर्वाचन था ही नहीं एवं संपूर्ण निर्वाचन प्रक्रिया दूषित थी – याचिका मंजूर। (रामकिशोर तिवारी वि. म.प्र. राज्य) (DB)...*130

विद्युत अधिनियम (1910 का 9), धारा 22–बी, विद्युत (प्रदाय) अधिनियम (1948 का 54) – शास्ति – विधितः नियत सीमा से परे बिजली का उपभोग किये जाने के लिये उच्चतर प्रभार/टेरिफ की मांग युक्तियुक्त भयोपरतिकारक उपाय है जिसमें समुचित अनुशास्ति उपबंधित है परंतु जो विद्युत प्रदाय के विच्छेद सी कठोर नहीं। (संघवी फुड्स प्रा. लि. (मे.) वि. म.प्र. इलेक्ट्रिसिटी बोर्ड) ...*154

विद्युत (प्रदाय) अधिनियम (1948 का 54) – देखें – विद्युत अधिनियम (1910 का 9), धारा 22–बी (संघवी फुड्स प्रा. लि. (मे.) वि. म.प्र. इलेक्ट्रिसिटी बोर्ड)...*154

प्रवेश कर अधिनियम, म.प्र. (1976 का 52), धाराएँ 2(डी)(एफ), 3, 7 व 14, वाणिज्यिक कर अधिनियम, म.प्र. 1994 (1995 का 5), धाराएँ 17 व 43 – प्रवेश कर लगाना – याची कम्पनी ने, प्रवेश कर और वाणिज्यिक कर के भुगतान से छूट प्राप्त औद्योगिक ईकाईयों से क्रय किया – प्रवेश कर स्थानीय क्षेत्र में अनुसूची II के माल के डीलर के व्यवसाय के क्रम में उपभोग, उपयोग अथवा विक्रय हेतु माल के प्रवेश पर कर लगाना, प्रवेश कर है – याची ने पन्ना में माल क्रय किया और अन्य स्थानीय क्षेत्र, सतना में माल का प्रवेश कराया चूंकि, इससे कर लगने योग्य घटना घटित हुई इसलिए याची कर का भुगतान करने के लिए दायी होगा – याचिका खारिज। (कल्याणी मिनरल्स प्रा. लि. (मे.) वि. एडीशनल कमिश्नर ऑफ कमर्शियल टेक्स) (DB)...2381

साक्ष्य अधिनियम (1872 का 1), धारा 3 – साक्षियों की विश्वसनीयता – चिकित्सक जिसने मृत्युकालिक कथन हेतु तहरीर लिखी तथा नायब तहसीलदार जिसने मृत्युकालिक कथन अभिलिखित किया है, का कथन कि मृतक ने उन्हें बताया कि वह खाना बनाते समय स्टोव से जली – दोनों ही सरकारी कर्मचारी हैं और स्वतंत्र साक्षी हैं – उन पर अविश्वास करने के लिए प्रति परीक्षण में कुछ नहीं – अभिनिर्धारित – विचारण न्यायालय ने इन साक्षियों पर विश्वास नहीं करके अंवैधता कारित की। (अशोक कुमार वि. म.प्र. राज्य) 2532

साक्ष्य अधिनियम (1872 का 1), धारा 3, दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 161 – पुलिस कथन और न्यायालयीन कथन में अन्तर – साक्षी (9–10 वर्ष की आयु का) मृतक का (तथा एक अभियुक्त) का पुत्र पुलिस को घटना का सही

one accused) could not give the correct statement of the incident to the police because at that time his maternal grand mother (Nani) was not in his favour and threatened him that if he will tell this incident to any person, then she will send him to jail - Held - The witness can not be disbelieved on the ground that he did not tell the truth to the Investigating Officer and stated it after a lapse of time in the Court. [Ramesh Vs. State of M.P.] (DB)...2565

Evidence Act, (1 of 1872), Section 3 - Independent Witness - Witness happened to be a witness of 3-4 raids conducted by C.B.I. - One witness works in the same department of the appellant - Witnesses can not be said to be independent - No reliance can be placed. [Rajesh Kumar Goswami Vs. State of M.P.] (DB)...2837

Evidence Act (1 of 1872), Section 3, Penal Code (45 of 1860), Section 149 - Common object - Appellants though armed with lathis did not use lathis in any manner - Only allegation against them is that they had exhorted their co-accused to fire at the opposite party - Possibility, that these accused were roped in on account of animosity, can not be ruled out - Benefit of doubt on that score must be given. [Prahlad Singh Vs. State of M.P.] (SC)...2309

Evidence Act (1 of 1872), Section 3, Penal Code (45 of 1860), Section 302 - Appreciation of Evidence - Murder case - Weapon and ammunition used is of uncertain make and quality - Normal pellet pattern based on standard weapons and ammunition, can not be applied with accuracy - Distance from which the shots fired can not therefore have the effect of dislodging a credible eye-witness account. [Prahlad Singh Vs. State of M.P.] (SC)...2309

Evidence Act (1 of 1872), Section 3, Penal Code (45 of 1860), Section 302 - Murder Case - Benefit of doubt - When may be extended - Prosecution not able to prove either the recovery of weapons or recovery of other articles of the deceased allegedly recovered by the I.O. from the spot - Recovery of weapons of offence alleged to have been recovered by PW 18 pursuant to disclosure statements of accused persons being appellants herein is not free from doubts - Weapons recovered by the I.O. were not sent for forensic examination - As there was no blood stain notices on the weapons - As per FSL report no blood

कथन नहीं दे सका क्योंकि उस समय उसकी नानी उसके पक्ष में नहीं थी और उसे धमकाया गया कि यदि उसने यह घटना किसी व्यक्ति को बतायी तो वह उसे जेल भेज देगी – अभिनिर्धारित – साक्षी पर अविश्वास इस आधार पर नहीं किया जा सकता कि उसने जांचकर्ता अधिकारी को सत्य बात नहीं बतायी और समय बीत जाने के पश्चात न्यायालय में बतायी। (रमेश वि. म.प्र. राज्य) (DB)...2565

साक्ष्य अधिनियम (1872 का 1), धारा 3 – स्वतंत्र साक्षी – साक्षी, सी.बी.आई. द्वारा संचालित 3–4 छापों का साक्षी था – एक साक्षी अपीलार्थी के ही विभाग में कार्यरत – साक्षियों को स्वतंत्र साक्षी नहीं कहा जा सकता – कोई विश्वास नहीं किया जा सकता। (राजेश कुमार गोस्वामी वि. म.प्र. राज्य) (DB)....2837

साक्ष्य अधिनियम (1872 का 1), धारा 3, दण्ड संहिता (1860 का 45), धारा 149 – सामान्य उद्देश्य – अपीलार्थीगण यद्यपि लाठियों से सुसज्जित थे किन्तु उन्होंने किसी प्रकार से लाठियों का उपयोग नहीं किया – उनके विरुद्ध केवल यह अभिकथन है कि उन्होंने अपने सह अभियुक्त को विरोधी पक्षकार पर गोली चलाने के लिए प्रोत्साहित किया – इस संभावना से इंकार नहीं किया जा सकता कि इन अभियुक्तों को वैमनस्यता के कारण आलिप्त किया गया हो – इस कारण संदेह का लाभ देना होगा। (प्रहलाद सिंह वि. म.प्र. राज्य) (SC)...2309

साक्ष्य अधिनियम (1872 का 1), धारा 3, दण्ड संहिता (1860 का 45), धारा 302 – साक्ष्य का मूल्यांकन – हत्या का प्रकरण – उपयोग किये गये हथियार और गोला बारुद अनिश्चित बनावट एवं क्वालिटी के हैं – मानक हथियार और गोला बारुद पर आधारित सामान्य छर्रे का नमूना शुद्धता से लागू नहीं किया जा सकता – जिस दूरी से गोलियां चलाई गईं, उससे विश्वसनीय प्रत्यक्षदर्शी साक्षी का कथन प्रभावित नहीं हो सकता। (प्रहलाद सिंह वि. म.प्र. राज्य) (SC)...2309

साक्ष्य अधिनियम (1872 का 1), धारा 3, दण्ड संहिता (1860 का 45), धारा 302 – हत्या का मामला – संदेह का लाभ – कब दिया जा सकता है – अभियोजन न तो हथियारों की बरामदगी न ही मृतक की अन्य वस्तुओं की बरामदगी साबित कर पाया है जिन्हें अभिकथित रुप से अन्वेषण अधिकारी द्वारा घटनास्थल से बरामद किया गया था – अभियुक्तगण/अपीलार्थीगण के प्रकटन कथनों के अनुसरण में पी. डब्ल्यू.18 द्वारा अभिकथित रुप से बरामद किये गये अपराध के हथियारों की बरामदगी संदेह से मुक्त नहीं है – अन्वेषण अधिकारी द्वारा जब्त किये गये हथियारों को विधि वैज्ञानिक परीक्षण हेतु नहीं भेजा गया – क्योंकि हथियारों पर रक्त के कोई दाग नहीं देखे गये – एफएसएल की रिपोर्ट के अनुसार मृतक की वस्तुओं पर

stain was found on the articals of the deceased - Prosecution could not establish beyond reasonable doubt that the human remains recovered by the I.O. from the spot were that of the deceased - No cogent evidence on record to establish the identity of the deceased as the person who was murdered in the incident -Appellants are acquitted of charges against them by extending them benefit of doubt. . [Amar Singh Vs. State of M.P.] (DB)...*134

Evidence Act (1 of 1872), Section 3, Penal Code (45 of 1860), Section 306 - Abetment of suicide - Proof of - No evidence and material available on record to hold that just before the incident, appellants abetted deceased for committing suicide - Held - Trial Court completely mis-directed itself in holding that the appellants are guilty of the offence u/s 306 of IPC. [Shripati @ Shriprasad Vs. State of M.P.] ...2559

Evidence Act (1 of 1872), Section 3 - Proof of Title - If the title of the plaintiff is challenged, he is not only bound to prove his title but he has to further prove the title of his vendor also. [Rashid Khan Vs. State of M.P.] ...2801

Evidence Act (1 of 1872), Section 3 - See - Criminal Procedure Code, 1973, Sections 161 & 162 [Rajesh Kumar Goswami Vs. State of M.P.] (DB)...2836

Evidence Act (1 of 1872), Section 3 - Sole testimony of prosecutrix - Rape - Prosecutrix sustaining injuries as a result of beating by the appellant and not in order to oppose the act of rape - Her statement is also not believable on certain counts - Held - Evidence of prosecutrix in this case, is not worthy of credence and can not be made basis of conviction for offence. [Roop Singh Vs. State of M.P.] ...2582

Evidence Act (1 of 1872), Section 3 - Witness - Merely because the panch witnesses had admitted that they had also witnessed trap proceedings in other CBI cases not sufficient to dub them to be accomplices per se or even as interested witness. [Kailash Kumar Rohitas Vs. State of M.P.] (DB)...2498

Evidence Act (1 of 1872), Sections 3 & 114 - See - Prevention of Corruption Act, 1988, Section 13(1)(e) [Kamal Lal Gharde Vs. State of M.P.] (DB) ...2514

रक्त के कोई दाग नहीं पाये गये – अभियोजन युक्तियुक्त संदेह से परे यह स्थापित नहीं कर पाया है कि घटनास्थल से अन्वेषण अधिकारी द्वारा बरामद किये गये मानव अवेशष, मृतक के थे – मृतक की पहचान स्थापित करने के लिये अभिलेख पर कोई प्रबल साक्ष्य नहीं कि मृतक वही व्यक्ति था जिसकी घटना में हत्या की गयी थी – संदेह का लाभ देते हुये अपीलार्थीगण को उनके विरुद्ध लगाये गये आरोपों से दोषमुक्त किया जाता है। (अमर सिंह वि. म.प्र. राज्य) (DB)...*134

साक्ष्य अधिनियम (1872 का 1), धारा 3, दण्ड संहिता (1860 का 45), धारा 306 – आत्महत्या का दुष्प्रेरण – का सबूत – अभिलेख पर यह धारण करने के लिए कोई साक्ष्य एवं सामग्री उपलब्ध नहीं कि घटना के ठीक पहले, अपीलार्थीगण ने मृतक को आत्महत्या कारित करने के लिए दुष्प्रेरित किया – अभिनिर्धारित – विचारण न्यायालय ने यह धारणा करने में पूर्णतः स्वयं की दिशाभूल की कि अपीलार्थीगण आईपीसी की धारा 306 के अंतर्गत अपराध के दोषी हैं। (श्रीपति उर्फ श्रीप्रसाद वि. म.प्र. राज्य) 2559

साक्ष्य अधिनियम (1872 का 1), धारा 3 – हक का सबूत – यदि वादी के हक को चुनौती दी गयी है, तब वह न केवल अपना हक सिद्ध करने के लिए बाध्य है बल्कि उसे और आगे अपने विक्रेता का हक भी साबित करना होगा। (राशिद खान वि. म.प्र. राज्य) 2801

साक्ष्य अधिनियम (1872 का 1), धारा 3 – देखें – दण्ड प्रक्रिया संहिता, 1973, धाराएँ 161 व 162 (राजेश कुमार गोस्वामी वि. म.प्र. राज्य) (DB)...2836

साक्ष्य अधिनियम (1872 का 1), धारा 3 – अभियोक्त्रि की एकमात्र परिसाक्ष्य – बलात्संग – अभियोक्त्रि को अपीलार्थी द्वारा पीटे जाने के फलस्वरुप क्षतियां कारित हुई और न कि बलात्संग के कृत्य का विरोध करने के कारण – उसका कथन भी कतिपय तथ्यों पर विश्वसनीय नहीं है – अभिनिर्धारित – इस प्रकण में अभियोक्त्रि की साक्ष्य विश्वास योग्य नहीं और उसे अपराध के लिए दोषसिद्धी का आधार नहीं बनाया जा सकता। (रूप सिंह वि. म.प्र. राज्य) 2582

साक्ष्य अधिनियम (1872 का 1), धारा 3 – साक्षी– मात्र इसलिए कि पंच साक्षियों ने स्वीकार किया है कि वे अन्य सीबीआई मामलों में भी ट्रेप कार्यवाहियों के साक्षी थे, वे प्रत्यक्ष सह–अपराधी होना या हितबद्ध साक्षी होना भी समझे जाने के लिए पर्याप्त नहीं है। (कैलाश कुमार रोहितास वि. म.प्र. राज्य) (DB)...2498

साक्ष्य अधिनियम (1872 का 1) धाराएँ 3 व 114 – देखें – भ्रष्टाचार निवारण अधिनियम, 1988, धारा 13(1)(ई) (कमल लाल घर्डे वि. म.प्र. राज्य) (DB)...2514

Evidence Act (1 of 1872), Sections 3 & 118 - Child Witness - Evidence of witness aged 9-10 years is natural and there seems no elements of tutoring about the incident - He gives a clear picture of the incident, which is supported by other prosecution evidence - His statement is also supported by medical evidence - His statement is believable. [Ramesh Vs. State of M.P.] (DB)...2565

Evidence Act (1 of 1872), Section 8 - Motive - Motive of crime is a double edged weapon and can be used either side - Possibilities of the appellants being falsely implicated in the case on account of previous animosity can not be completely ruled out - Benefit of the same necessarily shall go to the accused persons. [Amar Singh Vs. State of M.P.] (DB)...*134

Evidence Act (1 of 1872), Section 8, Penal Code (45 of 1860), Section 302 - Discrepancies and infirmities - Discrepancies and infirmities in the case of the prosecution - May not affect the case of the prosecution individually but taking them cumulatively renders the case of the prosecution against the appellant highly doubtful - It shall be totally unsafe to place reliance on such incredible and untrustworthy testimony of the prosecution witnesses. [Amar Singh Vs. State of M.P.] (DB)...*134

Evidence Act (1 of 1872), Section 9 - Identification of ornaments - Witness admitted that the no ornaments were mixed with the ornaments identified by her - Police party was also present at the time of identification and women of her caste wear similar type of ornaments - Identification not proper. [Babuji Vs. State of M.P.] (DB)...3173

Evidence Act (1 of 1872), Section 27 - Seizure of weapon -Non-production -Stones alleged to have been used for committing crime were not produced in evidence - Seizure memo was not legally proved. [Bhursingh Vs. State of M.P.] (DB)...3184

Evidence Act (1 of 1872), Section 45, Civil Procedure Code (5 of 1908), Section 151 - Medical Examination of defendant - Respondent filed application for divorce under Section 12 of Hindu Marriage Act, on the ground of impotency - Held - Family Court can issue direction for medical examination of a party regarding alleged impotency - Such direction does not violate the fundamental right flowing from Article 21 of Constitution. [Amol Chavhan Vs. Smt. Jyoti Chavhan] ...3076

साक्ष्य अधिनियम (1872 का 1), धाराएँ 3 व 118 – बालक साक्षी – 9–10 वर्ष की आयु के गवाह की साक्ष्य स्वाभाविक है और घटना के बारे में सिखाये जाने के कोई तत्व प्रकट नहीं होते – वह घटना का स्पष्ट चित्रण देता है, जो अन्य अभियोजन साक्ष्य द्वारा समर्थित है – उसका कथन चिकित्सीय साक्ष्य द्वारा भी समर्थित है – उसका कथन विश्वास योग्य है। (रमेश वि. म.प्र. राज्य)(DB)...2565

साक्ष्य अधिनियम (1872 का 1), धारा 8 – हेतु – अपराध का हेतु दुधारी हथियार है और दोनों तरफ से उपयोग किया जा सकता – पूर्व वैमनस्यता के कारण अपीलार्थीगण को मामले में मिथ्या आलिप्त किये जाने की संभावनाओं से इंकार नहीं किया जा सकता – इसका लाभ अवश्य ही अभियुक्त व्यक्तियों को जायेगा। (अमर सिंह वि. म.प्र. राज्य) (DB)...*134

साक्ष्य अधिनियम (1872 का 1), धारा 8, दण्ड संहिता (1860 का 45), धारा 302 – असंगतियां एवं कमजोरियां – अभियोजन के प्रकरण में असंगतियां एवं कमजोरियां – अभियोजन के प्रकरण को पृथक–पृथक रुप से प्रभावित नहीं कर सकती परंतु संयुक्त रुप से वह अपीलार्थी के विरुद्ध अभियोजन के मामले को बेहद संदेहास्पद बना देती है – अभियोजन साक्षियों की ऐसी अविश्वसनीय एवं अविश्वासपात्र परिसाक्ष्य पर विश्वास करना पूर्णतः असुरक्षित होगा। (अमर सिंह वि. म.प्र. राज्य) (DB)...*134

साक्ष्य अधिनियम (1872 का 1), धारा 9 – आभूषणों की पहचान – साक्षी ने स्वीकार किया कि उसके द्वारा पहचाने गये आभूषणों के साथ कोई आभूषण नही मिलाये गये थे – पहचान के समय पुलिस दल भी उपस्थित था और उसकी जति की महिलायें एक जैसे आभूषण पहनती है – पहचान अनुचित। (बाबूजी वि. म.प्र. राज्य) (DB)...3173

साक्ष्य अधिनियम (1872 का 1), धारा 27 – हथियार की जब्ती – प्रस्तुत नही किया जाना – अभिकथित रूप से अपराध कारित करने हेतु उपयोग किये गये पत्थरों को साक्ष्य में प्रस्तुत नहीं किया गया – जब्ती मेमो विधिक रूप से साबित नहीं किया गया। (भूरसिंह वि. म.प्र. राज्य) (DB)...3184

साक्ष्य अधिनियम (1872 का 1), धारा 45, सिविल प्रक्रिया संहिता (1908 का 5), धारा 151 – प्रतिवादी का चिकित्सीय परीक्षण – प्रत्यर्थी ने हिन्दू विवाह अधिनियम की धारा 12 के अंतर्गत नपुंसकता के आधार पर विवाह विच्छेद हेतु आवेदन प्रस्तुत किया – अभिनिर्धारित – अभिकथित नपुंसकता के संबंध में पक्षकार का चिकित्सीय परीक्षण हेतु कुटुम्ब न्यायालय निदेश जारी कर सकता है – ऐसा निदेश संविधान के अनुच्छेद 21 के मूलभूत अधिकार का अतिलंघन नही करता। (अमोल चव्हाण वि. श्रीमति ज्योति चव्हाण) 3076

Evidence Act (1 of 1872), Sections 64 & 77 - Photocopy of Certificate of Municipality - Certificate prepared from the entry made in the register at page No. 149 of the Municipality certifying that in the Municipal Register house is in dilapidated condition, the ownership of 'S' has been entered - Held - The document filed is nothing but a waste paper because it is a photocopy of some certificate and photocopy of a document is inadmissible in evidence - Indeed, the certified copy of the Municipal register which is a public document ought to have been filed. [Rashid Khan Vs. State of M.P.] ...2801

Evidence Act (1 of 1872), Sections 64, 65(e) &(f) - See - Registration Act, 1908, Section 57(5), [Jamuna Prasad Vs. Shivnandan] ...*137

Evidence Act (1 of 1872), Sections 67 & 68 - See - Registration Act, 1908, Section 57(5), [Jamuna Prasad Vs. Shivnandan] ...*137

Evidence Act (1 of 1872), Section 68 - See - Succession Act, 1925, Section 63 [Devkaran Vs. Rameshwar] ...3135

Evidence Act (1 of 1872), Section 68 - See - Succession Act, Indian, 1925, Section 63(c), [Asharfi Devi (Smt.) Vs. Hari Prasad] ...*121

Evidence Act (1 of 1872), Section 73 - Comparison of signature, handwriting etc. - Applicant filed application for sending the Dehati Nalishi, F.I.R. and other documents to handwriting expert as according to him it were written by same person- These documents are very much available before the Trial Court - There is no rule of law that Court is precluded from coming to its own conclusion in such cases where it is fully familiar with language and script of document which is under scrutiny - Where the Court considers that opinion of a handwriting expert would be of assistance to it in coming to a decision, it may call for the evidence of an expert - Trial Court is not bound to refer the matter to the handwriting expert when by itself it can note dissimilarity in the handwritings - Revision allowed with direction to Trial Court to either itself compare the handwriting and if it considers that opinion of handwriting expert is necessary then it shall call for the evidence of an expert. [Rinku @ Yatendra Vs. State of M.P.] ...3200

Evidence Act (1 of 1872), Sections 91, 103, 114(g) - Plaintiff is consumer of Electricity Board for supply of electricity upto the extent

साक्ष्य अधिनियम (1872 का 1), धाराएँ 64 व 77 – नगर पालिका के प्रमाण पत्र की प्रति – नगर पालिका के रजिस्टर में पृष्ठ क्र. 149 पर की गयी प्रविष्टि से प्रमाण पत्र तैयार किया गया कि नगर पालिका रजिस्टर में मकान जीर्ण अवस्था में है, 'एस' के स्वामित्व की प्रविष्टि की गई है – अभिनिर्धारित – प्रस्तुत दस्तावेज बेकार कागज हैं क्योंकि वह किसी प्रमाण पत्र की प्रति है और दस्तावेज की प्रति साक्ष्य में अग्राह्य है – निश्चित रुप से, नगर पालिका रजिस्टर की प्रमाणित प्रति प्रस्तुत करनी चाहिये थी जो कि लोक दस्तावेज है। (राशिद खान वि. म.प्र. राज्य) 2801

साक्ष्य अधिनियम (1872 का 1), धाराएँ 64, 65(ई) व (एफ) – देखें – रजिस्ट्रीकरण अधिनियम, 1908, धारा 57(5) (जमुना प्रसाद वि. शिवनंदन)...*137

साक्ष्य अधिनियम (1872 का 1), धाराएँ 67 व 68 – देखें – रजिस्ट्रीकरण अधिनियम, 1908, धारा 57(5) (जमुना प्रसाद वि. शिवनंदन) ...*137

साक्ष्य अधिनियम (1872 का 1), धारा 68 – देखें – उत्तराधिकार अधिनियम, 1925, धारा 63 (देवकरण वि. रमेश्वर) 3135

साक्ष्य अधिनियम (1872 का 1), धारा 68 – देखें – उत्तराधिकार अधिनियम भारतीय, 1925, धारा 63(सी), (अशर्फी देवी (श्रीमति) वि. हरी प्रसाद) ...*121

साक्ष्य अधिनियम (1872 का 1), धारा 73 – हस्ताक्षर, हस्तलेख इत्यादि का मिलान – आवेदक ने हस्तलेख विशेषज्ञ को देहाती नालिशी, एफआईआर तथा अन्य दस्तावेजों को भेजने हेतु आवेदन प्रस्तुत किया क्योंकि उसके अनुसार वह एक ही व्यक्ति द्वारा लेख किये गये थे – यह दस्तावेज न्यायालय के समक्ष भलिभांति उपलब्ध हैं – विधि का कोई नियम नहीं कि न्यायालय पर ऐसे मामलों में अपने स्वयं के निष्कर्ष पर पहुंचने पर रोक है, जहां वह संविक्षाधीन दस्तावेज की लिपि एवं भाषा से पूर्णतः परिचित है – जब न्यायालय यह मानता है कि निष्कर्ष पर पहुंचने के लिये हस्तलेख विशेषज्ञ की राय उसे सहायक हो सकती है, वह विशेषज्ञ की साक्ष्य बुला सकता है – मामला हस्तलेख विशेषज्ञ को निर्देशित करने के लिये विचारण न्यायालय बाध्य नहीं है जब वह स्वयं हस्तलेखों में असमानता को नोट कर सकता है – विचारण न्यायालय को या तो स्वयं हस्तलेख का मिलान करने और यदि उसके मत में हस्तलेख विशेषज्ञ की राय आवश्यक है तब विशेषज्ञ की साक्ष्य बुला सकने के निर्देश के साथ पुनरीक्षण मंजूर। (रिन्कू उर्फ यतेन्द्र वि. म.प्र. राज्य) 3200

साक्ष्य अधिनियम (1872 का 1), धाराएँ 91, 103, 114(जी) – वादी 308 केव्हीए की सीमा तक विद्युत प्रदाय के लिये विद्युत मंडल का उपभोक्ता है – वादी को 277 केव्हीए अतिरिक्त बिजली की आवश्यकता थी – अनुपूरक करार निष्पादित किया गया

of 308 KVA - Plaintiff required additional energy of 277 KVA - Supplementary agreement was executed - Number of letters were sent by Plaintiff for supply of additional energy - However, plaintiff started consuming additional electricity using its existing meter - Penalty was imposed by the Board for consuming additional electricity - Held - Plaintiff did not file the original agreement - Contention of the plaintiff that no condition for realization of penalty was embodied in additional agreement can not be accepted as original agreement was not filed - Document is in power and control of plaintiff and the burden of proof was on plaintiff and it was for him to produce the original agreement - Plaintiff was also required to plead and prove the terms and conditions of earlier agreement - Appeal dismissed. [Sanghvi Foods Private Ltd. (M/s.) Vs. M.P. Electricity Board] ...*154

Evidence Act (1 of 1872), Section 92 - Exclusion of oral evidence - Plaintiff did not file the original agreement - Penalty imposed can not be said to be in contravention of Section 92 of the Act. [Sanghvi Foods Private Ltd. (M/s.) Vs. M.P. Electricity Board] ...*154

Evidence Act (1 of 1872), Section 113-A -Statutory presumption - Marriage took place more than seven years back - Statutory presumption u/s 113 of the Act was not applicable. [Shripati @ Shriprasad Vs. State of M.P.] ...2559

Evidence Act (1 of 1872), Section 114(g) - Adverse Inference - Party in possession of best evidence, which would throw sufficient light on the issue in controversy withholding it - Court should draw an adverse inference against him notwithstanding that onus of proof does not lie on him. [State of M.P. Vs. Mangilal] ...3106

Evidence Act (1 of 1872), Section 114(g) - Non examination of Prosecurtix - Prosecutrix, aged 15 years, a mentally retarded girl, suffering with 60% mental disability - She was not able to speak - Her non examination would not be fatal to the prosecution. [Shyam Lal Vs. State of M.P.] ...2866

Evidence Act (1 of 1872), Section 115 - Promissory Estoppel - Estoppel should always be clear, unambiguous and certain - Promise should be definite and beyond any doubt - It can only arise from a clear definite statement - Not necessarily susceptible of only one interpretation but such

– अतिरिक्त बिजली प्रदाय किये जाने हेतु वादी ने कई पत्र भेजे – अतएव, वादी ने अस्तित्वमान मीटर का उपयोग करते हुये अतिरिक्त बिजली का उपभोग आरंभ किया – अतिरिक्त बिजली का उपभोग करने के कारण विद्युत मंडल ने शास्ति अधिरोपित की – अभिनिर्धारित – वादी ने मूल करार प्रस्तुत नहीं किया – वादी का तर्क कि अतिरिक्त करार में शास्ति की वसूली की कोई शर्त सम्मिलित नहीं थी, को स्वीकार नहीं किया जा सकता क्योंकि मूल करार प्रस्तुत नहीं किया गया – दस्तावेज, वादी की शक्ति एवं नियंत्रण में है और सबूत का भार वादी पर था और उसे ही मूल करार प्रस्तुत करना था – पूर्ववर्ती करार की शर्तों का अभिवाक् करना और साबित करना भी वादी से अपेक्षित था – अपील खारिज। (संघवी फुड्स प्रा. लि. (मे.) वि. म.प्र. इलेक्ट्रिसिटी बोर्ड) ...*154

साक्ष्य अधिनियम (1872 का 1), धारा 92 – मौखिक साक्ष्य का अपवर्जन – वादी ने मूल करार प्रस्तुत नहीं किया – अधिरोपित शास्ति को अधिनियम की धारा 92 का उल्लंघन नहीं कहा जा सकता। (संघवी फुड्स प्रा. लि. (मे.) वि. म.प्र. इलेक्ट्रिसिटी बोर्ड) ...*154

साक्ष्य अधिनियम (1872 का 1), धारा 113–ए – कानूनी उपधारणा – विवाह सात से अधिक वर्ष पूर्व हुआ – अधिनियम की धारा 113 के अंतर्गत कानूनी उपधारणा लागू नहीं होती। (श्रीपति उर्फ श्रीप्रसाद वि. म.प्र. राज्य) 2559

साक्ष्य अधिनियम (1872 का 1), धारा 114(जी) – प्रतिकूल निष्कर्ष – पक्षकार के कब्जे में सर्वोत्तम साक्ष्य जो अंतर्ग्रस्त विवाद्यक पर पर्याप्त प्रकाश डाल सकती है – उस पर सबूत का भार नहीं होते हुए भी न्यायालय को उसके विरुद्ध प्रतिकूल निष्कर्ष निकालना चाहिए। (म.प्र. राज्य वि. मांगीलाल) 3106

साक्ष्य अधिनियम (1872 का 1), धारा 114(जी) – अभियोक्त्री का परीक्षण नहीं किया जाना – अभियोक्त्री 15 वर्ष आयु की विक्षिप्त बालिका 60 प्रतिशत मानसिक दुर्बलता से ग्रसित – वह बात करने में सक्षम नहीं थी – उसका परीक्षण नहीं किया जाना अभियोजन के लिये घातक नहीं होगा। (श्यामलाल वि. म.प्र. राज्य) 2866

साक्ष्य अधिनियम (1872 का 1), धारा 115 – वचन विबंध – विबंध सदैव स्पष्ट, असंदिग्ध, एवं निश्चित होना चाहिए – वचन निश्चित एवं संदेह से परे होना चाहिए – यह केवल स्पष्ट निश्चित विवरण से उत्पन्न हो सकता है – आवश्यक रुप से केवल एक निर्वचन का पात्र नहीं बल्कि ऐसा, जैसा कि तर्क के बोध में युक्तियुक्त रुप से

as will reasonably be understood in the senses contended for and for this purpose the entire material must be looked upon. [Thela Gumti Footpath Vyapari Seva Samiti Vs. State of M.P.] ...*132

Financial Code M.P. - Rule 84 - Clerical Error - Clerical error or mistake would fall within the ambit of the rule which is caused due to the negligence or want of proper care on the part of some person other than the employee seeking correction - Onus is on the employee concerned to prove such negligence. [State of M.P. Vs. Premlal Shrivas] (SC)...2665

Financial Code M.P. - Rule 84 - Delay in applying for correction - Delay of over two decades in applying for the correction of date of birth is ex-facie fatal, notwithstanding the fact that there is no specific rule or order, prescribing the period within which such application could be filed. [State of M.P. Vs. Premlal Shrivas] (SC)...2665

Fiscal Laws - Laws relating to economic activities should be viewed with greater latitude - State has to be left with wide latitude in devising ways and means of fiscal or regulatory measures, and the Court should not unless compelled by the Statute or by the Constitution encroach into this field, or invalidate such law. [Ashok Kumar Vs. State of M.P.] (DB)...3084

High Court Rules, M.P. 2008 - Chapter 5 - Powers, Duties and Functions of Registrar - High Court directed the Petitioner to pay Process Fee within a week otherwise, the petition shall be liable to be dismissed without reference to the Court - Section 148 of C.P.C. gives sufficient powers to the Court to extend time given by it earlier - Registrar instead of listing the case before the Court chose to dismiss the petition by his order dated 28.06.2006 - Order passed by Registrar is without jurisdiction and can only be termed as an error of the Court - Even if no application for restoration of petition is filed, still it was the duty of the Court to rectify its mistake in exercise of its suo moto powers - Order passed by Registrar is non-est. [Bhaskar Publication & Allied Industries Pvt. Ltd. Vs. Smt. Kishori Devi Agrawal] (DB)...*149

High Court Rules, M.P. 2008 - Rule 4(12) - Part Heard Case - It is open to the Bench/Judge who has heard the case to mark a case as part heard if the Bench/Judge feels that it/he has devoted sufficient time in hearing - If the case has not been marked part-heard, it would not be proper for counsel to suggest to other bench/judge that the case be sent

समझा जाएगा और इस प्रयोजन हेतु संपूर्ण सामग्री का परीक्षण किया जाना चाहिए। (ठेला गुमटी फुटपाथ व्यापारी सेवा समिति वि. म.प्र. राज्य) ...*132

वित्तीय संहिता म.प्र. – नियम 84 – लिपिकीय त्रुटि – लिपिकीय त्रुटि या गलती नियम की परिधि के भीतर आयेगी जो सुधार चाहने वाले कर्मचारी के अतिरिक्त किसी अन्य व्यक्ति द्वारा उपेक्षा एवं उचित सतर्कता के अभाव के कारण कारित हुयी है – ऐसी उपेक्षा साबित करने का भार संबंधित कर्मचारी पर होता है। (म.प्र. राज्य वि. प्रेमलाल श्रीवास) (SC)...2665

वित्तीय संहिता म.प्र. – नियम 84 – सुधार के लिये आवेदन करने में विलंब – जन्म तिथि के सुधार हेतु आवेदन करने में दो दशकों से अधिक का विलंब स्पष्टतः घातक है बावजूद इसके कि अवधि जिसके भीतर ऐसा आवेदन प्रस्तुत किया जा सकता है विहित करने वाला कोई विनिर्दिष्ट नियम या आदेश नहीं है। (म.प्र. राज्य वि. प्रेमलाल श्रीवास) (SC)...2665

वित्तीय कानून – आर्थिक गतिविधियों संबंधी कानूनों को विस्तृत दृष्टि से देखा जाना चाहिये – राज्य को वित्तीय तथा विनियामक उपायों के प्रबंध हेतु योजना बनाने के लिए व्यापक विस्तार की स्वतंत्रता देना चाहिए और जब तक कानून द्वारा अथवा संविधान द्वारा विवश न हो न्यायालय को इस क्षेत्र में अधिक्रमण नही करना चाहिए या ऐसे कानून को अविधिमान्य नही करना चाहिए। (अशोक कुमार वि. म.प्र. राज्य) (DB)...3084

उच्च न्यायालय नियम, म.प्र. 2008 – अध्याय 5 – रजिस्ट्रार, की शक्तियां, कर्तव्य और कार्य – उच्च न्यायालय ने याची को निदेशित किया कि एक सप्ताह के भीतर प्रोसेस शुल्क अदा करे अन्यथा याचिका न्यायालय को निर्दिष्ट किये बिना ख़ारिज किये जाने योग्य होगी – सि.प्र.सं. की धारा 148 न्यायालय को उसके द्वारा पूर्व में दी गई अवधि को बढ़ाने की पर्याप्त शक्तियां प्रदान करती है – रजिस्ट्रार ने प्रकरण न्यायालय के समक्ष लगाने के बजाए अपने आदेश दिनांक 28.06.2006 द्वारा याचिका खारिज की – रजिस्ट्रार द्वारा पारित आदेश बिना अधिकारिता के हैं और इसे केवल न्यायालय की भूल कहा जा सकता है – याचिका को पुनः स्थापित करने हेतु यद्यपि कोई आवेदन प्रस्तुत नहीं किया गया तथापि अपनी स्वप्रेरणा की शक्तियों के प्रयोग में अपनी गलती सुधारना न्यायालय का कर्तव्य था – रजिस्ट्रार द्वारा पारित आदेश शून्य है। (भास्कर पब्लिकेशन एण्ड ऐलाईड इंडस्ट्रीज प्रा.लि. वि. श्रीमति किशोरी देवी अग्रवाल) (DB)...*149

उच्च न्यायालय नियम, म.प्र. 2008 – नियम 4 (12) – आंशिक रूप से सुना गया प्रकरण (पार्ट हर्ड केस) – जिस न्यायपीठ/न्यायाधीश ने प्रकरण सुना हो, वह उस प्रकरण को आंशिक रूप से सुना गया प्रकरण चिन्हांकित कर सकता है यदि उस न्यायपीठ/न्यायाधीश की भावना है कि उसने सुनवाई में पर्याप्त समय अर्पित किया है – यदि प्रकरण आंशिक रूप से सुना गया प्रकरण (पार्ट हर्ड) चिन्हांकित नही किया गया है तब अधिवक्ता के लिए अन्य न्यायपीठ/न्यायाधीश को यह सुझाव देना उचित

to another Bench/Judge by orally saying that the case was actually part-heard by other Bench/Judge -This procedure may result in bench hunting on the part of litigants - Matter directed to be listed before appropriate bench as per roster. [State of M.P. Vs. V.K. Shrivas] (DB)...2971

Hindu Marriage Act (25 of 1955), Section 13 (1) - Divorce - Allegations of Cruelty - Cruelty must be of such a nature that the parties can not reasonably be expected to live together. [Anil Kumar Rathore Vs. Smt. Shashi Rathore] (DB)...2487

Hindu Marriage Act (25 of 1955), Section 13(1) - Divorce - General Allegations of Cruelty - Allegations in the nature of 'normal wear and tear' in matrimonial life of a couple - Can not fall within the field of Clauses (i-a) and (i-b) of Sub-section (1) of Section 13 of the Act. [Anil Kumar Rathore Vs. Smt. Shashi Rathore] (DB)...2487

Hindu Marriage Act (25 of 1955), Section 13(1)(a) - Divorce - Cruelty - Respondent did not have any sexual intercourse with the appellant - This amounts to mental cruelty, apart from this there is ample evidence that the respondent treated the appellant with cruelty - Mere smiling faces in photographs can not disprove cruelty - Appellant has successfully proved the ground of cruelty and she is entitled for a decree of divorce - Appeal allowed. [Amita Pathak (Smt.) Vs. S. Shiv Prasad] (DB)...*148

Income Tax Act (43 of 1961), Section 11(1)(a) - Income from Property - Expenses for charitable and religious purposes have been incurred in the earlier year and adjusted against the income of a subsequent year - The income of that year can be said to have been applied for charitable and religious purposes in the year in which expenses incurred for charitable and religious purposes had been adjusted. [Commissioner of Income Tax-1, Indore Vs. Shri Gujrati Samaj (Regd.), Indore] (DB)...2916

Income Tax Act (43 of 1961), Section 32 - Claim of Depreciation.- A Charitable trust is entitled for claim of depreciation on the assets owned by it. [Commissioner of Income Tax-1, Indore Vs. Shri Gujrati Samaj (Regd.), Indore] (DB)...2916

Income Tax Act (43 of 1961), Section 37(1) - Allowable deduction

नही होगा कि प्रकरण अन्य न्यायपीठ/न्यायाधीश को प्रेषित किया जाये, मौखिक रूप से यह कहकर कि प्रकरण वास्तविक रूप से अन्य न्यायपीठ/न्यायाधीश द्वारा आंशिक रूप से सुना गया था – इस प्रकिया के परिणाम स्वरूप मुकदमेबाजों की ओर से 'बेंच हंटिंग' हो सकती है – रोस्टर के अनुसार समुचित न्यायपीठ के समक्ष मामला सूचीबद्ध करने के लिए निदेशित किया गया। (म.प्र. राज्य वि. व्ही.के. श्रीवास) (DB)...2971

हिन्दू विवाह अधिनियम (1955 का 25), धारा 13(1) – विवाह विच्छेद – क्रूरता के अभिकथन – क्रूरता ऐसे स्वरुप की होनी चाहिए कि पक्षकारों को एक साथ रहने की युक्तियुक्त रुप से अपेक्षा नहीं की जा सकती। (अनिल कुमार राठौर वि. श्रीमति शशी राठौर) (DB)...2487

हिन्दू विवाह अधिनियम (1955 का 25), धारा 13(1) – विवाह विच्छेद – क्रूरता के सामान्य अभिकथन – दाम्पत्य जीवन में 'सामान्य टकराव' की प्रकृति के अभिकथन – अधिनियम की धारा 13 की उप धारा (1) के खंड (i-a) व (i-b) के क्षेत्र के भीतर नहीं आ सकते। (अनिल कुमार राठौर वि. श्रीमति शशी राठौर) (DB)...2487

हिन्दू विवाह अधिनियम (1955 का 25), धारा 13(1)(ए)– विवाह विच्छेद – क्रूरता – प्रत्यर्थी ने अपीलार्थी के साथ कोई लैंगिक संभोग नहीं किया – यह मानसिक क्रूरता की कोटि मे आता है, इसके अतिरिक्त इसकी व्यापक साक्ष्य है कि प्रत्यर्थी, अपीलार्थी के साथ क्रूरता का व्यवहार करता था – मात्र फोटो में मुस्कुराते चेहरे क्रूरता को नासाबित नही कर सकते – अपीलार्थी ने क्रूरता के आधार को सफलतापूर्वक साबित किया है और वह विवाह विच्छेद की डिक्री के लिये हकदार है – अपील मंजूर। (अमिता पाठक (श्रीमति) वि. एस.शिव प्रसाद) (DB)...*148

आयकर अधिनियम (1961 का 43), धारा 11(1)(ए) – सम्पत्ति से आय – पूर्व वर्ष में पूर्त एवं धार्मिक प्रयोजनों हेतु व्यय उपगत किये गये और पश्चातवर्ती वर्ष की आय में समायोजित किये गये – जिस वर्ष में पूर्त एवं धार्मिक प्रयोजनों हेतु किये गये खर्चे समायोजित किये गये हैं, उसी वर्ष की आय को पूर्त एवं धार्मिक प्रयोजनों हेतु उपयोग किया जाना माना जा सकता है। (कमिश्नर ऑफ इन्कम टैक्स–1, इन्दौर वि. श्री गुजराती समाज (रजि.), इन्दौर) (DB)...2916

आयकर अधिनियम (1961 का 43), धारा 32 – अवक्षयण का दावा – धार्मिक न्यास उसके स्वामित्व की अस्तियों पर अवक्षयण का दावा करने के लिए हकदार है। (कमिश्नर ऑफ इन्कम टैक्स–1, इन्दौर वि. श्री गुजराती समाज (रजि.), इन्दौर) (DB)...2916

आयकर अधिनियम (1961 का 43), धारा 37(1) – मंजूर करने योग्य कटौती –

- Director of the Company, when he was on business tour, was kidnapped and for his release the ransom amount of Rs. 5,50,000/- was paid (by the Company) - Held - The amount paid as ransom money to the kidnappers was an allowable deduction. [Commissioner of Income Tax, Jabalpur Vs. M/s. Khemchand Motilal Jain] (DB)...2616

Income Tax Act (43 of 1961), Section 43-B - Deduction - Petitioner firm made a provision of Rs. 51,918/- for the payment of sales tax liability pertaining to period of February-March 1984 - The amount of tax was paid on 31.05.1984 before the last date of filing of Income Tax return i.e. 30.06.1984 - Petitioner claimed aforesaid deduction in the assessment year 1984-85 - The assessing officer by interpreting section 43B held that without actual payment, no provision can be made for payment of sales tax and no deduction in that regard could have been allowed unless actually paid within the accounting year - Held - Tribunal was not justified in sustaining the addition of Rs. 51,918/- on account of sales tax liability, which was actually paid by the assessee within the statutory period and before the due date of filing of return for the aforesaid year. [Kishan Automobile (M/s.) Vs. Commissioner of Income Tax] (DB)...2625

Income Tax Act (43 of 1961), Section 249(4) - Payment of admitted Tax - Appellant did not make payment of admitted tax and submitted that in the search and the seizure conducted by the revenue, the Hundies of the assessee (appellant) were seized and on realization, the revenue has recovered more than the amount of admitted tax, required to have been paid to make the appeal maintainable - Held - Amount more than the admitted tax has been recovered by the revenue out of the seized Hundies - The defect in the appeal before the CIT(A) due to non-compliance of payment of admitted tax which is a directory requirement can be treated to have been removed. [Mansukhlal Vs. Commissioner of Income Tax] (DB)...2614

Industrial Disputes Act (14 of 1947), Sections 2(oo) & 25F - Retrenchment - Petitioner who was initially appointed on 13.03.1996 continued to serve without any break and served for more than 240 days in one calendar year preceding his termination - Held - Petitioner was therefore entitled for protection u/s 25F of the Act before his services could be terminated. [Sanjay Pratap Singh Vs. The Secretary, Krishi Upaj Mandi Samiti] (DB)...*155

कंपनी का निदेशक जब व्यावसायिक दौरे पर था, व्यपहत किया गया और उसकी मुक्ति के लिए रु. 5,50,000/– की रकम की फिरौती अदा की गई (कंपनी द्वारा) – अभिनिर्धारित – व्यपहरणकर्ताओं को फिरौती की रकम के रुप में अदा की गई राशी मंजूर करने योग्य कटौती थी। (कमिश्नर ऑफ इनकम टेक्स, जबलपुर वि. मे. खेमचंद मोतीलाल जैन) (DB)...2616

आयकर अधिनियम (1961 का 43), धारा 43बी – कटौती – फरवरी–मार्च 1984 के अवधि के संबंध में विक्रय कर के दायित्व के भुगतान हेतु याची फर्म ने 51,918/– रुपये का प्रबंध किया – आय कर रिटर्न भरने की अंतिम तिथि अर्थात 30.06.1984 से पूर्व 31.05.1984 को कर की रकम का भुगतान किया गया – याची ने उपरोक्त कटौती के निर्धारण वर्ष 1984–85 की होने का दावा किया – धारा 43बी के निर्वचन द्वारा निर्धारण अधिकारी ने धारण किया कि वास्तविक भुगतान किये बिना, विक्रय कर के भुगतान हेतु कोई प्रावधान नहीं किया जा सकता और जब तक कि लेखा वर्ष के भीतर वास्तविक भुगतान नहीं किया जाता, उसके संबंध में कोई कटौती को मंजूरी नहीं दी जा सकती – अभिनिर्धारित– अधिकरण द्वारा विक्रय कर के दायित्व के रुप में रु. 51,918/– के जोड़े जाने को कायम रखना न्यायोचित नहीं, जिसका करदाता द्वारा कानूनी अवधि के भीतर और उपरोक्त वर्ष के रिटर्न भरने की सम्यक् तिथि से पहले वास्तविक भुगतान कर दिया गया था। (किशन ऑटोमोबाइल (मे.) वि. कमिश्नर ऑफ इनकम टेक्स) (DB)...2625

आयकर अधिनियम (1961 का 43), धारा 249(4) – स्वीकार किये गये कर का भुगतान – अपीलार्थी ने स्वीकार किये गये कर का भुगतान नहीं किया और निवेदित किया कि राजस्व द्वारा की गई छानबीन और जब्ती में निर्धारिती/करदाता(अपीलार्थी) की हुंडियां जब्त की गई और वसूली पर, स्वीकार किये गये कर की राशी से अधिक की बरामदगी राजस्व द्वारा की गई, अपील को पोषणीय बनाने के लिए जिसका भुगतान किया जाना अपेक्षित था – अभिनिर्धारित – राजस्व द्वारा जब्तशुदा हुंडियों में से स्वीकार किये गये कर से अधिक की राशी बरामद की गई – स्वीकार किये गये कर जो निर्देशिनी अपेक्षा है के भुगतान के अपालन के कारण से सीआईटी(ए) के समक्ष प्रस्तुत अपील में त्रुटि को हटा दिया जाना माना जा सकता है। (मनसुखलाल वि. कमिश्नर ऑफ इनकम टेक्स) (DB)...2614

औद्योगिक विवाद अधिनियम (1947 का 14), धाराएँ 2(00) व 25एफ – छंटनी – याची जिसे 13.03.1996 को प्रारंभिक रुप से नियुक्त किया गया था उसने बिना किसी खंडता के सेवाऐं जारी रखी और उसकी सेवा समाप्ति से पूर्ववर्ती एक कलेण्डर वर्ष में 240 दिनों से अधिक के लिये सेवाऐं दी – अभिनिर्धारित – इसलिये याची की सेवा समाप्त किये जाने पूर्व वह अधिनियम की धारा 25एफ के अंतर्गत संरक्षण के लिये हकदार था। (संजय प्रताप सिंह वि. द सेक्रेटरी, कृषि उपज मंडी समिति) (DB)...*155

Industrial Disputes Act (14 of 1947), Section 10 - Benefit to retiree employees - When a dispute is raised against the employer, the person regarding whose employment, non-employment, terms of employment or conditions of labour the dispute is raised, need not be, strictly speaking a workman within the meaning of the act, but must be one in whose employment, non-employment, terms of employment or conditions of labour the workmen as a class have a direct or substantial interest - Dispute was related to the dearness allowance of the employees, when they were workmen of the corporation - Retiree (VRS) employees are entitled to revised dearness allowance during their service period before VRS. [Managing Director, M.P. State Road Transport Corporation Bhopal Vs. Prantiya Rajya Parivahan Karmachari Sangh (Congress), Gwalior] (DB)...2705

Industrial Disputes Act (14 of 1947), Section 10 - Reference of Disputes - Order of reference not challenged by petitioner but also participated in the proceedings - Objection with regard to absence of competence never challenged in the reply - Not open to the petitioner to challenge the award on this ground. [Managing Director, M.P. State Road Transport Corporation Bhopal Vs. Prantiya Rajya Parivahan Karmachari Sangh (Congress), Gwalior] (DB)...2705

Industrial Disputes Act (14 of 1947), Section 25 F - Labour Court passed an award for reinstatement of petitioner but without back wages and without assigning any reason for denying back wages to the petitioner - Held - The conferment of quashi judicial power implies that the person concerned must follow the rules of natural justice and must give reasons for making the order which he is empowered to make - Award to the extent denying back wages set aside and matter remanded for afresh decision on the point. [Pramod Singh Vs. Divisional Forest Officers] (DB)...2413

Industrial Disputes Act (14 of 1947), Section 25F - Principle of Estoppel - The petitioner, after receiving the cheque of wages for one month and retrenchment compensation, immediately encashed the same - He is, therefore, estopped from complaining that his termination was illegal because of the non-compliance of the provisions of the Section 25F of the Act. [Chedilal Dahiya Vs. Manager, Christukula Mission Higher Secondary School, Satna] (DB)...2759

औद्योगिक विवाद अधिनियम (1947 का 14), धारा 10 – सेवानिवृत्त होने वाले कर्मचारियों को लाभ – जब नियोक्ता के विरुद्ध विवाद उठाया जाता है, व्यक्ति जिसके नियोजन, अभियोजन, नियोजन की शर्तें अथवा श्रम की शर्तों के संबंध में विवाद उठाया गया है, को अधिनियम के अर्थान्तर्गत कर्मकार होना सर्वथा आवश्यक नहीं, परंतु ऐसा व्यक्ति होना चाहिये जिसके नियोजन, अनियोजन, नियोजन शर्तें अथवा श्रम की शर्तों का एक वर्ग के रुप में कर्मकारों का प्रत्यक्ष एवं सारभूत हित है – विवाद कर्मचारियों के मंहगाई भत्ते से संबंधित था जब वे निगम के कर्मचारी थे – सेवानिवृत्त (स्वेच्छा सेवा निवृत्त) कर्मचारी व्ही.आर.एस. से पूर्व उनकी सेवा के दौरान की अवधि में पुनरीक्षित महंगाई भत्ते के हकदार हैं। (मैनेजिंग डायरेक्टर, एम.पी. स्टेट रोड़ ट्रांसपोर्ट कारपोरेशन, भोपाल वि. प्रांतीय राज्य परिवहन कर्मचारी संघ (कांग्रेस), ग्वालियर) (DB)...2705

औद्योगिक विवाद अधिनियम (1947 का 14), धारा 10 – विवादों को निर्देशित किया जाना – याची द्वारा निर्देश के आदेश को चुनौती नहीं दी गयी बल्कि कार्यवाही में सहभाग भी लिया – सक्षमता की अनुपस्थिति के संबंध में आक्षेप को उत्तर में कभी चुनौती नहीं दी गयी – इस आधार पर अवार्ड को याची चुनौती नहीं दे सकता। (मैनेजिंग डायरेक्टर, एम.पी. स्टेट रोड़ ट्रांसपोर्ट कारपोरेशन, भोपाल वि. प्रांतीय राज्य परिवहन कर्मचारी संघ (कांग्रेस), ग्वालियर) (DB)...2705

औद्योगिक विवाद अधिनियम (1947 का 14), धारा 25एफ – श्रम न्यायालय ने याची की बहाली हेतु अवार्ड पारित किया परंतु पिछले वेतन के बिना एवं याची को पिछला वेतन अस्वीकार करने हेतु कोई कारण नहीं दिया – अभिनिर्धारित – न्यायिककल्प शक्ति के प्रदान से अभिप्रेत है कि संबंधित व्यक्ति को नैसर्गिक न्याय के नियमों का पालन करना चाहिए और आदेश जिसे करने के लिए वह सशक्त है, करने के कारण देने चाहिए – पिछले वेतन की अस्वीकृति की सीमा तक का अवार्ड अपास्त तथा इस बिंदू पर नवीन निर्णय करने हेतु प्रकरण प्रतिप्रेषित। (प्रमोद सिंह वि. डिवीजनल फॉरेस्ट ऑफिसर) (DB)...2413

औद्योगिक विवाद अधिनियम (1947 का 14), धारा 25एफ – विबंध का सिद्धांत – याची ने एक महिने के वेतन तथा छंटनी प्रतिकर का चेक प्राप्त करने के पश्चात अविलंब उसे भुनाया – इसलिए उसे यह शिकायत करने से रोका गया कि अधिनियम की धारा 25एफ के उपबंधों के अननुपालन के कारण उसकी सेवा समाप्ति अवैध थी। (छेदीलाल दाहिया वि. मैनेजर क्राइस्टकुला मिशन हायर सेकण्डरी स्कूल, सतना) (DB)...2759

Industrial Disputes Act (14 of 1947), Section 25F - Wages for one month and retrenchment compensation sent to the petitioner by registered post before the order of dismissal became effective - Respondent did everything within his means to pay the wages and retrenchment compensation to the petitioner before the order of dismissal became effective - There was, thus, no failure to comply with the provisions - There has been sufficient compliance of the mandatory provisions. [Chedilal Dahiya Vs. Manager, Christukula Mission Higher Secondary School, Satna] (DB)...2759

Industrial Employment (Standing Orders) Rules, M.P. 1963, Rule 2(i) - Permanent Employee - Workman does not satisfy the condition that she was appointed against a clear vacant post and the post on which she was said to have been appointed was sanctioned by the statutory authority and that her appointment was made by operating the regular mode of recruitment - No right accrued in her favour as would entitle her to be classified as permanent employee - Orders passed by Labour Court and Industrial Court, quashed. [State of M.P. Vs. Vatsala Rao (Smt.)] (DB)...2990

Interpretation of Statute/Documents - It is impermissible in law to read a part of the document in isolation - The document has to be read as a whole. [Narmada Bachao Andolan Vs. State of M.P.] (SC)...*141

Interpretation of Statutes - Language of Statute - Language of the statute has to be examined before giving a provision an extensive meaning - Court would be justified in giving the provision a purposive construction to perpetuate the object of the Act, while ensuring that such rules framed are within the field circumscribed by the Parent Act. [Pratap Chandra Mehta Vs. State Bar Council of M.P.] (SC)...*153

Judges (Protection) Act (59 of 1985), Section 3(1) - Additional Protection to Judges - Petitioner working as Tahsildar entertained application under Section 113 of M.P. Land Revenue Code, although she has no jurisdiction to entertain the same - Held - Protection does not extend to acts purely administrative/ministerial/extra judicial/alien to Judicial duty - Any act, which is not done in the discharge of official duty, is not covered by Section 3(1) - As application under Section 113 of the Code could have been entertained only by S.D.O. therefore, it was not

औद्योगिक विवाद अधिनियम (1947 का 14), धारा 25एफ – सेवा से हटाये जाने का आदेश प्रभावी होने से पूर्व याची को रजिस्ट्रीकृत डाक द्वारा एक महिने का वेतन तथा छंटनी प्रतिकर भेजा गया – हटाये जाने का आदेश प्रभावी होने से पूर्व याची को वेतन तथा छंटनी प्रतिकर का भुगतान करने के लिए प्रत्यर्थी ने अपने बस में जितना था सब किया – इस कारण, उपबंधों के पालन में कोई कमी नहीं – आज्ञापक उपबंधों का पर्याप्त अनुपालन किया गया है। (छेदीलाल दाहिया वि. मैनेजर क्राइस्टकुला मिशन हायर सेकण्डरी स्कूल, सतना) (DB)...2759

औद्योगिक नियोजन (स्थायी आदेश) नियम, म.प्र. 1963, नियम 2*(i)* – स्थाई कर्मचारी – कर्मचारी इस शर्त की तुष्टि नहीं करती कि उसे स्पष्ट रिक्त पद पर नियुक्ति दी गयी थी और जिस पद पर उसे कथित रुप से नियुक्ति दी गयी उसे कानूनी प्राधिकारी द्वारा मंजूरी दी गयी है और यह कि उसकी नियुक्ति नियमित भर्ती प्रक्रिया के प्रवर्तन द्वारा की गयी थी – उसे स्थाई कर्मचारी के रुप में वर्गीकृत करने के लिये उसके पक्ष में कोई अधिकार प्रोद्भूत नहीं होता – श्रम न्यायालय तथा औद्योगिक न्यायालय द्वारा पारित आदेश अभिखंडित। (म.प्र. राज्य वि. वत्सला राव (श्रीमति)) (DB)...2990

कानून/दस्तावेजों का निर्वचन – दस्तावेज के किसी भाग को अलग करके पढ़ा जाना विधि में अननुज्ञेय है – दस्तावेज को संपूर्णता से पढ़ा जाना चाहिये। (नर्मदा बचाओ आंदोलन वि. म.प्र. राज्य) (SC)...*141

कानूनों का निर्वचन – कानून की भाषा – उपबंध को व्यापक अर्थ देने से पूर्व कानून की भाषा का परीक्षण करना होगा – अधिनियम के उद्देश्य को शाश्वत करने के लिये उपबंध को प्रयोजनात्मक अर्थान्वयन देना न्यायालय के लिये न्यायोचित होगा, यह सुनिश्चित करते हुये कि ऐसे विरचित किये गये नियम मूल अधिनियम द्वारा परिमित क्षेत्र के भीतर है। (प्रताप चन्द्र मेहता वि. स्टेट बार कांउसिल ऑफ एम. पी.) (SC)...*153

न्यायाधीश (संरक्षण) अधिनियम (1985 का 59), धारा 3(1) – न्यायाधीशों को अतिरिक्त संरक्षण – तहसीलदार के रुप में कार्यरत याची ने म.प्र. भू–राजस्व संहिता की धारा 113 के अंतर्गत आवेदन ग्रहण किया यद्यपि उसे ग्रहण करने का उसे कोई प्राधिकार नहीं था – अभिनिर्धारित – शुद्ध रुप से प्रशासनिक/अनुसचिवीय/न्यायातिरिक्त/न्यायिक कर्तव्य से भिन्न कार्यों के लिये संरक्षण नहीं है – कोई कार्य जो कार्यालयीन कर्तव्य के निर्वहन में नहीं किया गया है, धारा 3(1) द्वारा आवृत्त नहीं है – चूंकि संहिता की धारा 113 के अंतर्गत आवेदन केवल एसडीओ द्वारा ग्रहण किया जा सकता है इसलिये संहिता की धारा 113 के अंतर्गत

her official or judicial duty to entertain the application under Section 113 of the Code - Petitioner not entitled for protection - Petition dismissed. [Meena Mehra (Smt.) Vs. The Lokayukt Organization] (DB)...3019

Judges Protection Act, (59 of 1985), Section 3(2) - Additional Protection of Judges - In view of the provisions of Section 3(2) of the Act, protection do not operate as legal bar to investigate into allegation against any one of the Petitioners. [Meena Mehra (Smt.) Vs. The Lokayukt Organization] (DB).....3019

Juvenile Justice (Care and Protection of Children) Act (56 of 2000), Sections 7 & 49, Juvenile Justice (Care and Protection of Children) Rules 2007, Rule 12 - Determination of age - Sessions Court, after the case is committed to it has the power to make an enquiry and determine the age of the accused if it considers it necessary in the interests of justice or a prayer is made in that behalf. [Govind Vs. State of M.P.] ...2591

Juvenile Justice (Care and Protection of Children) Rules 2007, Rule 12 - See - Juvenile Justice (Care and Protection of Children) Act, 2000, Sections 7 & 49 [Govind Vs. State of M.P.] ...2591

Land Acquisition Act (1 of 1894), Sections 4, 6 - Acquisition of land for Construction of Canal - Canal Affected Persons - Canal affected persons can not be put at par with the submergence affected persons - However, State agreed to give more benefit to canal affected persons by shifting the date of notification under Section 4 from the date of its actual notification to the date of judgment in this case - L.A.O. accordingly directed to reconsider the market value of canal affected persons as if notification under Section 4 has been issued on 02.08.2011 and make supplementary awards in accordance with provisions of Act, 1894 - Such concession extended by State would be over and above the interim relief granted by the Court vide order dated 05.05.2010. [State of M.P. Vs. Medha Patkar] (SC)...2929

Land Acquisition Act (1 of 1894), Section 18 - Collector's Guidelines - Market price assessed by reference Court considering the guidelines issued by Collector for collecting stamp duty - Held - Guidelines can be a basis for ascertaining the market value of land, at the relevant time - When the State can charge stamp duty on the basis

आवेदन को ग्रहण करना उसका कार्यालयीन अथवा न्यायिक कर्तव्य नहीं था – याची संरक्षण की हकदार नहीं – याचिका खारिज। (मीना मेहरा (श्रीमति) वि. द लोकायुक्त ऑर्गनाइजेशन) (DB)...3019

न्यायाधीश (संरक्षण) अधिनियम (1985 का 59), धारा 3(2) – न्यायाधीशों को अतिरिक्त संरक्षण – अधिनियम की धारा 3(2) के उपबंधो को दृष्टिगत रखते हुये, किसी एक याची के विरुद्ध अभिकथनों की जांच पर विधिक अवरोध के रुप में संरक्षण प्रवर्तित नहीं होता। (मीना मेहरा (श्रीमति) वि. द लोकायुक्त ऑर्गनाइजेशन) (DB)...3019

किशोर न्याय (बालकों की देख–रेख और संरक्षण) अधिनियम (2000 का 56), धाराएँ 7 व 49, किशोर न्याय (बालकों की देख–रेख और संरक्षण) नियम 2007, नियम 12 – आयु का निर्धारण – सेशन न्यायालय, को उसे प्रकरण उपार्पित किये जाने के पश्चात जांच करने की और अभियुक्त की आयु निर्धारित करने की शक्ति है यदि वह ऐसा करना न्यायहित में आवश्यक समझता है अथवा इस संबंध में प्रार्थना की जाती है। (गोविन्द वि. म.प्र. राज्य) ...2591

किशोर न्याय (बालकों की देख–रेख और संरक्षण) नियम 2007, नियम 12 – देखें – किशोर न्याय (बालकों की देख–रेख और संरक्षण) अधिनियम, 2000, धाराएँ 7 व 49, (गोविन्द वि. म.प्र. राज्य) 2591

भूमि अर्जन अधिनियम (1894 का 1), धाराएँ 4, 6 – नहर के निर्माण हेतु भूमि का अर्जन – नहर से प्रभावित व्यक्ति – नहर से प्रभावित व्यक्तियों को जलमग्नावस्था से प्रभावित व्यक्तियों के समतुल्य नहीं माना जा सकता – तथापि, राज्य उसकी अधिसूचना के वास्तविक दिनांक के बदले इस मामले के निर्णय के दिनांक को धारा 4 के अंतर्गत अधिसूचना का दिनांक करके नहर से प्रभावित व्यक्तियों को अधिक लाभ देने के लिये सहमत हुआ – धारा 4 के अंतर्गत अधिसूचना को 02.08.2011 को जारी किया जाना मानते हुये नहर प्रभावित व्यक्तियों के बाजार मूल्य का पुनर्विचार करने के लिये तथा अधिनियम 1894 के उपबंधों के अनुसार अनुपूरक अवार्ड देने के लिये भूमि अर्जन अधिकारी को तद्नुसार निदेशित किया गया – राज्य द्वारा दी गई ऐसी रियायत, न्यायालय के आदेश दिनांक 05.05.2010 द्वारा प्रदान किये गये अंतरिम अनुतोष के अतिरिक्त होगी। (म.प्र. राज्य वि. मेधा पाटकर) (SC)...2929

भूमि अर्जन अधिनियम (1894 का 1), धारा 18 – कलेक्टर के मार्गदर्शक सिद्धांत – स्टाम्प शुल्क संग्रहण करने हेतु कलेक्टर द्वारा जारी किये गये मार्गदर्शक सिद्धांतों पर विचार करके संदर्भ न्यायालय द्वारा बाजार मूल्य का निर्धारण किया गया – अभिनिर्धारित – भूमि के बाजार मूल्य निर्धारण हेतु सुसंगत समय के मार्गदर्शक सिद्धांत आधार बन सकते हैं – जब ऐसे मार्गदर्शक सिद्धांतों के आधार पर राज्य

of such guidelines than for assessing market value of the land the Courts can very well take into consideration the guidelines for assessing the market value of the land at the relevant time. [State of M.P. Vs. Water Resource Department] (DB)...2834

Land Revenue Code, M.P. (20 of 1959), Section 50 - Suo motu revision - Limitation - Under normal circumstances the powers of suo motu revision could not be exercised after an inordinate period of time, but if fraud is seen to have been committed in the matter of obtaining the patta or showing the land to be in ownership of a particular person, the aforesaid restriction of limitation or action to be taken within a reasonable time will not arise. [Chandrika Prasad Sahu Vs. State of M.P.] ...2780

Land Revenue Code, M.P. (20 of 1959), Section 51(1) - Review - Proceedings for review initiated by the Collector who had passed the order, but the review order was passed by the Collector, who was successor in office - Held - It was imperative on the part of the Collector to seek permission of the Board of Revenue before seeking to review the order passed by his predecessor in office - Impugned order is without jurisdiction. [Rajendra Kumar Agrawal Vs. State of M.P.] ...2749

Land Revenue Code, M.P. (20 of 1959), Section 57(2),(3), Civil Procedure Code (5 of 1908), Section 9 - Dispute with the State Government - Plaintiffs' suit for declaration of Bhumiswami right and injunction against the Government - Held - Civil suit is maintainable. [State of M.P. Vs. Vijaya Bai] ...3093

Land Revenue Code, M.P. (20 of 1959), Sections 146 & 147 - Recovery of Land Revenue - Sale - No demand notice was issued to defaulters - The person (defaulter) against whom proceeding were taken up had already died prior to the initiation of such proceedings - Legal Representatives were not brought on record and no notice was given to them - Held - The sale which was without notice was null and void. [Suresh Kumar Vs. Mohan Lal] ...2477

Land Revenue Code, M.P. (20 of 1959), Section 158 - Bhumiswami - Land given to plaintiffs' forefather in Inam by the-then Holkar State and not to the deity - Firstly the plaintiffs' forefather and after his death, the plaintiffs became the Bhumiswami on coming into force of the Code. [State of M.P. Vs. Vijaya Bai] ...3093

स्टाम्प शुल्क प्रभारित कर सकता है तब भूमि के बाजार मूल्य का निर्धारण करने हेतु न्यायालय समुचित रुप से भूमि के बाजार मूल्य के निर्धारण हेतु सुसंगत समय के मार्गदर्शक सिद्धांत को विचार में ले सकता है। (म.प्र. राज्य वि. वाटर रिसोर्स डिपार्टमेंट) (DB)...2834

भू राजस्व संहिता, म.प्र. (1959 का 20), धारा 50 – स्वप्रेरणा से पुनरीक्षण – परिसीमा – असाधारण समयावधि पश्चात सामान्य परिस्थतियों में स्वप्रेरणा से पुनरीक्षण की शक्तियों का प्रयोग नहीं किया जा सकता, किन्तु यदि पट्टा अभिप्राप्त करने में कपट कारित होना देखा जाता है या भूमि किसी विशिष्ट व्यक्ति के स्वामित्वाधीन होना दर्शित होता है, परिसीमा का अथवा युक्तियुक्त समय के भीतर कार्यवाही करने का निर्बंधन लागू नहीं होगा। (चंद्रिका प्रसाद साहू वि. म.प्र. राज्य) ...2780

भू राजस्व संहिता, म.प्र. (1959 का 20), धारा 51(1) – पुनर्विलोकन – कलेक्टर जिसने आदेश पारित किया था, द्वारा पुनर्विलोकन हेतु कार्यवाही आरंभ की गयी परंतु पुनर्विलोकन आदेश, पद उत्तरवर्ती कलेक्टर द्वारा पारित किया गया – अभिनिर्धारित– उसके पद पूर्ववर्ती द्वारा पारित आदेश का पुनर्विलोकन करने से पूर्व कलेक्टर की ओर से राजस्व मंडल की अनुमति अभिप्राप्त करना अनिवार्य था – आक्षेपित आदेश बिना आधिकारिता के है। (राजेन्द्र कुमार अग्रवाल वि. म.प्र. राज्य) ...2749

भू राजस्व संहिता, म.प्र. (1959 का 20), धारा 57(2),(3), सिविल प्रक्रिया संहिता (1908 का 5), धारा 9 – राज्य सरकार के साथ विवाद – वादीगण का सरकार के विरुद्ध भूमिस्वामी अधिकार की घोषणा एवं व्यादेश हेतु वाद – अभिनिर्धारित – सिविल वाद पोषणीय है। (म.प्र. राज्य वि. विजया बाई) 3093

भू राजस्व संहिता, म.प्र. (1959 का 20), धाराएँ 146 व 147 – भूराजस्व की वसूली – विक्रय – व्यतिक्रमियों को कोई मांग नोटिस जारी नहीं किये गये – व्यक्ति (व्यतिक्रमी) जिसके विरुद्ध कार्यवाही की गई, उसकी मृत्यु से पहले ही ऐसी कार्यवाही आंरभ हो चुकी थी –विधिक प्रतिनिधिगण अभिलेख पर नहीं लाये गये और उन्हें कोई नोटिस नहीं दिया गया – अभिनिर्धारित – विक्रय जो बिना नोटिस के था, अकृत एवं शून्य है। (सुरेश कुमार वि. मोहन लाल) ...2477

भू राजस्व संहिता, म.प्र. (1959 का 20), धारा 158 – भूमिस्वामी – तत्कालीन होल्कर राज्य द्वारा वादीगण के पूर्वजों को भूमि ईनाम में दी गई और न कि 'देवता' को – संहिता के प्रवर्तित होने पर सर्वप्रथम वादीगणों के पूर्वज और उसकी मृत्यु पश्चात वादीगण भूमिस्वामी बने। (म.प्र. राज्य वि. विजया बाई) 3093

Land to Landless Persons - Landless persons are not entitled for allotment of agricultural land admeasuring two hectares - It had never been contemplated nor it is compatible with R & R Policy. [Narmada Bachao Andolan Vs. State of M.P.] (SC)...*141

Limitation Act (36 of 1963), Section 18 - See - Contract Act, 1872, Section 25 [Sardar Surendra Singh Bedi Vs. Dhannalal] ...2824

Limitation Act (36 of 1963), Sections 36 & 37 - Limitation under - Document containing the terms of repayment in monthly installments executed on 10.07.1999 - Under the terms of document, the amount was required to be repaid in twelve months - Held - Since the amount was repayable in installment and the first installment was due on or before 10.08.1999 and last installment was due on 10.07.2000 and the suit was filed on 26.07.2002, therefore, the suit filed by the respondent was in time - Appeal dismissed. [Sardar Surendra Singh Bedi Vs. Dhannalal] ...2824

Limitation Act (36 of 1963), Article 27 & 113 - See - Contract Act, 1872, Sections 124 & 125 [Oriental Fire & General Insurance Co. Ltd. Vs. Saifuddin] ... 2811

Limitation Act (36 of 1963), Article 99 - Sale proceedings initiated by the respondent/State authorities without issuing demand notice as required u/s 146 of the Land Revenue Code or following the procedure prescribed u/s 147 of the Land Revenue Code, are null and void - The suit for possession filed by appellant/plaintiffs is not barred by limitation. [Suresh Kumar Vs. Mohan Lal] ...2477

Lokayukt and Uplokayukt Adhiniyam, M.P. 1981, Section 12(1)& (2) - Report - Lokayukt or Uplokayukt can only recommend about the action to be taken - Recommendation received from the Lokayukt or Uplokayukt has to be examined by Competent Authority and then it has to take decision on it instead of treating the recommendation so received to be directory in nature for issuance of charge sheet and holding departmental enquiry. [Dharmendra Vs. State of M.P.] (DB)...2681

Maxim - Obitur Dictum - Obitur dictum is a mere observation or remark made by the Court by way of aside while deciding the actual issue before it - Mere casual statement or observation which is not relevant, pertinent or essential to decide the issue in hand does not

भूमिहीन व्यक्तियों को भूमि – भूमिहीन व्यक्ति दो हेक्टेयर माप वाली कृषि भूमि के आवंटन हेतु हकदार नहीं हैं – यह कभी भी अनुध्यात नहीं या न ही यह आर व आर नीति के अनुरुप है। (नर्मदा बचाओ आंदोलन वि. म.प्र. राज्य)(SC)...*141

परिसीमा अधिनियम (1963 का 36), धारा 18 – देखें – संविदा अधिनियम, 1872, धारा 25 (सरदार सुरेन्द्र सिंह बेदी वि. धन्नालाल) 2824

परिसीमा अधिनियम (1963 का 36), धाराएँ 36 व 37 – के अंतर्गत परिसीमा – दस्तावेज जिसमें मासिक किश्तों में प्रतिसंदाय की शर्तें अंर्तविष्ट थी, दिनांक 10.07.1999 को निष्पादित किया गया – दस्तावेज की शर्तों के अंतर्गत, रकम बारह महिनों में प्रतिसंदाय करना अपेक्षित था – अभिनिर्धारित – चूंकि रकम का प्रतिसंदाय किश्तों में किया जाना था और प्रथम किश्त 10.08.1999 को या उसके पूर्व देय थी तथा अंतिम किश्त 10.07.2000 को देय थी और वाद 26.07.2002 को प्रस्तुत किया गया, इसलिये, प्रत्यर्थी द्वारा प्रस्तुत वाद समय के भीतर था – अपील खारिज। (सरदार सुरेन्द्र सिंह बेदी वि. धन्नालाल) 2824

परिसीमा अधिनियम (1963 का 36), अनुच्छेद 27 व 113 – देखें – संविदा अधिनियम, 1872, धाराएँ 124 व 125 (ओरियेन्टल फायर एण्ड़ जनरल इंश्योरेंस कं. लि. वि. सेफुद्दीन) 2811

परिसीमा अधिनियम (1963 का 36), अनुच्छेद 99 – प्रत्यर्थी/राज्य प्राधिकारियों द्वारा भू राजस्व संहिता की धारा 146 के अंतर्गत अपेक्षित मांग नोटिस जारी किये बिना अथवा भू राजस्व संहिता की धारा 147 के अंतर्गत विहित प्रक्रिया का अनुपालन किये बिना आंरभ की गई विक्रय की कार्यवाहियां अकृत एवं शून्य है – अपीलार्थी /वादीगण द्वारा कब्जे के लिए वाद परिसीमा द्वारा वर्जित नहीं होता। (सुरेश कुमार वि. मोहन लाल) 2477

लोकायुक्त और उपलोकायुक्त अधिनियम, म.प्र., 1981, धारा 12 (1) व (2) – रिपोर्ट – लोकायुक्त या उपलोकायुक्त कार्यवाही करने के बारे में केवल सिफारिश कर सकता है – लोकायुक्त या उपलोकायुक्त से प्राप्त सिफारिश का सक्षम प्राधिकारी द्वारा परीक्षण किया जाना चाहिये और तब उस पर उसे निर्णय लेना चाहिये बजाय इसके कि प्राप्त सिफारिश आरोप पत्र जारी करने हेतु निदेशिका के स्वरुप की समझकर विभागीय जांच करें। (धर्मेंद्र वि. म.प्र. राज्य) (DB)...2681

सूत्र – इतरोक्ति – इतरोक्ति, न्यायालय द्वारा उसके समक्ष वास्तविक विवाद्यक का निर्धारण करते समय अलग से दिये गये मात्र संप्रेक्षण एवं टिप्पणी है – मात्र आकस्मिक कथन अथवा संप्रेक्षण जो प्रश्नगत विवाद्यक को अधिनिर्णीत करने के लिये सुसंगत, योग्य एवं आवश्यक नहीं है, न्यायालय के निर्णय का भाग नहीं बनते

form the part of judgment of the Court and have no authoritative value - These casual remarks are considered or treated as beyond the ambit of the authoritative or operative part of judgment. [Arun Kumar Aggarwal Vs. State of M.P.] (SC)...2951

Motor Vehicles Act (59 of 1988), Sections 66 & 192 - Using Vehicle without registration/permit - Co-accused carrying crackers in a jeep without valid license - Driver of the jeep was also not possessing the permit to drive the motor vehicle - Co-accused informed that crackers were being carried for Applicant - Held - Applicant is neither owner nor driver of the jeep therefore, no charge under Section 66/192 of the Act can be framed - Order framing charge under Section 66/192 set aside - Trial would proceed for other charges. [Vijay Kumar Jain Vs. State of M.P.] ...3206

Motor Vehicles Act (59 of 1988), Section 166 - Just compensation - Deceased (aged 43 years) was having his own business of Box making - He was also Income Tax payee - It would be proper to assess the income @ 4000/- per month - Compensation enhanced from 3,80,000/- to 5,10,000/-. [Sunita (Smt.) Vs. Akbar] ...2483

Motor Vehicles Act (59 of 1988), Section 166 - Quantum of Compensation - Deceased working as Electro Homeopathy Doctor - As he was a skilled and trained person in Electro Homeopathy his income from profession and agriculture is held to be Rs. 150 per day - Four persons were dependent upon him therefore, ¼ of the income is deducted towards expenses on deceased - Annual dependency comes to Rs. 40,500 - As deceased was aged about 35 years therefore, multiplier of 16 would apply - Compensation amount comes to Rs. 6,48,000 + 20,000 towards traditional heads - Compensation enhanced to Rs. 6,68,000 with 6% interest from the date of filing of claim petition - Appeal allowed. [Kalawati (Smt.) Vs. Haneef Ahmad] ...2459

Municipal Corporation Act, M.P. (23 of 1956), Section 292A & B - Amending Provision - Limit to the extent of application - Petitioners, private colonizer submitted application for development & building permission on 23.12.2009 - Requisite deposits were made by petitioners with regard to fees payable - Amended provision came into force on 19.04.2010 - Held - Applications for building permission or development

और उसका कोई प्रमाणिक मूल्य नहीं है – यह आकस्मिक टिप्पणियां निर्णय के प्रमाणिक एवं प्रवर्तित होने वाले भाग की परिधि से परे होना माना या समझा जायेगा। (अरूण कुमार अग्रवाल वि. म.प्र. राज्य) (SC)...2951

मोटर यान अधिनियम (1988 का 59), धाराएँ 66 व 192 – रजिस्ट्रेशन/परमिट के बगैर वाहन का उपयोग – सह–अभियुक्त बिना वैध लाईसेंस के जीप में पटाखे ले जा रहा था – जीप के चालक के पास भी मोटर यान चलाने का परमिट नही था – सह–अभियुक्त ने सूचना दी कि पटाखे आवेदक के लिये ले जाये जा रहे थे – अभिनिर्धारित – आवेदक न तो जीप का स्वामी है, न ही चालक अतएव, अधिनियम की धारा 66/192 के अंतर्गत कोई आरोप विरचित नहीं किये जा सकते – धारा 66/192 के अंतर्गत आरोप विरचित करने वाला आदेश अपास्त – अन्य आरोपों हेतु विचारण जारी रहेगा। (विजय कुमार जैन वि. म.प्र. राज्य) 3206

मोटर यान अधिनियम (1988 का 59), धारा 166 – उचित प्रतिकर – मृतक (आयु 43 वर्ष) का स्वयं का बक्से बनाने का कारोबार था – वह आयकर दाता भी था – 4000/– प्रतिमाह की आय निर्धारित करना उचित होगा – प्रतिकर 3,80,000/– से बढ़ाकर 5,10,000/– किया गया। (सुनीता (श्रीमति) वि. अकबर) ...2483

मोटर यान अधिनियम (1988 का 59), धारा 166 – प्रतिकर की मात्रा – मृतक इल्क्ट्रो होमियोपेथी डॉक्टर के रुप में कार्यरत था – चूंकि वह इलेक्ट्रो होमियोपेथी में निपुण व प्रशिक्षित व्यक्ति था, उसकी व्यवसाय व कृषि से आय रुपये 150/– प्रति दिवस निर्धारित की गई – चार व्यक्ति उस पर आश्रित थे, इसलिए मृतक के व्यैक्तिक खर्चे के लिये 1/4 उसकी आय से घटा दिये – वार्षिक आश्रितता रुपये 40,500/– आती है – चूंकि मृतक 35 वर्ष की आयु का था, इसलिये 16 का गुणक लागू होगा – प्रतिकर राशी, रुपये 6,48,000 पारंपारिक खर्चों के मद में रुपये 20,000 बनती है – दावा याचिका फाईल करने की दिनांक से प्रतिकर रुपये 6,68,000, 6 प्रतिशत ब्याज के साथ बढ़ाया गया – अपील मंजूर। (कलावती (श्रीमति) वि. हनीफ अहमद) 2459

नगरपालिक निगम अधिनियम, म.प्र. (1956 का 23), धारा 292ए व बी – संशोधी उपबंध – उपयोजन के विस्तार की सीमा – याचीगण, निजी उपनिवेशों ने विकास एवं निर्माण की अनुज्ञा हेतु 23.12.2009 को आवेदन प्रस्तुत किया – देय फीस के संबंध में याचीगण द्वारा आवश्यक निधि जमा की गई – संशोधित उपबंध 19.04.2010 को लागू हुआ – अभिनिर्धारित – कॉलोनी के विकास एवं निर्माण अनुमति हेतु प्रस्तुत आवेदनों को उस तिथि को उपयोज्य कानूनी उपबंधों के

of colony submitted have to be processed and decided in accordance to the statutory provisions applicable on the date permission or sanction is accorded - In insisting on doing so the respondents committed no error - Petition dismissed. [Paras Lifestyles Pvt. Ltd. Vs. State of M.P.]...*127

Nagar Tatha Gram Nivesh Adhiniyam, M.P. (23 of 1973), Section 23-A(1)(a) - Modification of Plan - Bhopal Development Plan was modified vide notifications dated 06.06.2008 and 05.09.2008 - State Government modified the plan for the purpose of facilitating establishment of an institute by respondent No. 5 and not for any proposed project of the Government or for implementation of any Town Development Scheme - Exercise undertaken for the change of land use, which resulted in modification of the development plan was an empty formality - Modification of the development plan was ultra vires the provision of Section 23-A(1)(a). [Akhil Bharitya Upbhokta Congress Vs. State of M.P.] (SC)...*133

Narcotic Drugs and Psychotropic Substances Act (61 of 1985), Section 8 r/w Section 20(b)(i) - For holding a person cultivator of plants, it has to be established that he deliberately developed and maintained the plants by cultivation using agricultural techniques or he prepared the land or soil for growing such crops - In the absence of such evidence, it can not be held that cannabis plants were being cultivated - Conviction set aside. Mere growing of stray cannabis plants in the field midst of number of other plants will not amount to cultivation of the said plants. [Chhotelal Lodh Vs. State of M.P.] ...3163

Narcotic Drugs and Psychotropic Substances Act, (61 of 1985), Sections 8(b), 18, & 54 - Exclusive Possession - 135 plants of opium were seized from field - No evidence on record to show that appellant himself cultivated the opium poppy plants or the land where the plants were found exclusively belonged to him and was in his exclusive possession - On the contrary evidence on record is that land is recorded in the joint names of appellant and his brothers and father - In view of joint possession and joint ownership, the possibility of cultivation of prohibited plants by joint owners or joint cultivator can not be ruled out - It can not be safely concluded beyond all reasonable doubts that it was the appellant who cultivated the opium plants - No presumption under Section 54 can be drawn - Appeal allowed. [Ramesh Vs. State of M.P.] ...2853

अनुसार प्रसंस्कृत कर निर्णित किया जाना होगा जिस तिथि को अनुज्ञा अथवा मंजूरी प्रदान की गई – ऐसे करने का आग्रह करके प्रत्यर्थियों ने कोई भूल नहीं की – याचिका खारिज। (पारस लाइफस्टाइल प्रा. लि. वि. म.प्र. राज्य) ...*127

नगर तथा ग्राम निवेश अधिनियम, म.प्र. (1973 का 23), धारा 23–ए(1)(ए)–योजना का परिवर्तन – भोपाल विकास योजना को अधिसूचना दिनांक 06.06.2008 और 05.09.2008 द्वारा परिवर्तित किया गया – राज्य सरकार ने प्रत्यर्थी क्र. 5 की संस्था की स्थापना सुकर बनाने के प्रयोजन हेतु योजना का परिवर्तन किया और न कि सरकार की किसी प्रस्तावित योजना के लिये या किसी शहर विकास स्कीम को लागू करने के लिये – कार्यवाही भूमि के उपयोग को बदलने के लिये की गयी जिसके परिणामस्वरुप विकास योजना का परिवर्तन मात्र औपचारिकता रह गई – विकास योजना का परिवर्तन धारा 23–ए(1)(ए) के उपबंध के अधिकारातीत था। (अखिल भारतीय उपभोक्ता कांग्रेस वि. म.प्र. राज्य) (SC)...*133

स्वापक औषधि और मनःप्रभावी पदार्थ अधिनियम (1985 का 61), धारा 8 सहपठित धारा 20(बी)(*i*) – किसी व्यक्ति को वनस्पतियों का कृषक होने की धारणा करने हेतु यह स्थापित करना होगा कि उसने कृषि तकनीकों के उपयोग द्वारा वनस्पतियों का जानबूझकर विकास एवं संधारण किया या ऐसी फसल की पैदावार हेतु भूमि एवं मिट्टी को उसने तैयार किया – ऐसी साक्ष्य की अनुपस्थिति में यह धारणा नहीं की जा सकती कि गांजे के पौधों की खेती की जा रही थी – दोषसिद्धि अपास्त। अनेक अन्य पौधों के बीच खेत में बिखरे हुये गांजे के पौधों का उगना, उक्त पौधों की खेती करने की कोटि में नहीं आयेगा। (छोटेलाल लोध वि. म.प्र. राज्य) 3163

स्वापक औषधि और मनःप्रभावी पदार्थ अधिनियम (1985 का 61), धाराएँ 8(बी), 18 व 54 – अनन्य कब्जा – खेत से अफीम के 135 पौधे जब्त किये गये – यह दर्शाने के लिये अभिलेख पर कोई साक्ष्य नहीं कि अपीलार्थी ने स्वयं वे अफीम के पौधे उगाये थे अथवा भूमि जहां पर पौधे उगाये गये थे अनन्य रुप से उसकी थी तथा वह उसके अनन्य कब्जे में था – इसके विपरीत अभिलेख पर यह साक्ष्य है कि भूमि संयुक्त रुप से अपीलार्थी, उसके भाईयों तथा पिता के नाम पर दर्ज थी – संयुक्त कब्जे तथा स्वामित्व को देखते हुये प्रतिषिद्ध पौधों के संयुक्त स्वामियों अथवा कृषकों के द्वारा उगाये जाने की संभावना से इंकार नहीं किया जा सकता – युक्तियुक्त संदेह के परे यह निष्कर्ष नहीं निकाला जा सकता कि अपीलार्थी ने ही अफीम के पौधे उगाये थे – धारा 54 के अंतर्गत कोई उपधारणा नहीं की जा सकती – अपील मंजूर। (रमेश वि. म.प्र. राज्य) 2853

Narcotic Drugs and Psychotropic Substances Act (61 of 1985), Section 8(c) & 20(b)(ii)(c) -Unauthorised possession of 162 Kg of Contraband Ganja - Contraband was seized from a locked pump house in presence of appellant - No witness stated specifically about the exclusive and conscious possession to that pump house - As per record, pump house belonged to one Jitendra who could not be interrogated by the Investigation Officer, though he tried to search him - Held - Exclusive and conscious possession of the pump house in which contraband was kept is not proved with sufficient evidence by prosecution. [Chandra Shekhar Prasad Tiwari Vs. State of M.P.]...2576

Narcotic Drugs and Psychotropic Substances Act (61 of 1985), Section 20(b)(i) - Offence under - Proof - Investigation Officer not complying with the provision of Section 42 of the Act - He did not weigh the seized Ganja before seizure - The seized material was also not produced in the Court - No independent witness from adjoining shop was taken for search of contraband - No other witness supported the evidence of Investigation Officer - Held - The prosecution failed to prove beyond a reasonable doubt that Ganja/contraband was seized from the shop or possession of the appellant - Conviction set aside. [Ram Narayan Raikwar Vs. State of M.P.] ...3167

Narcotic Drugs and Psychotropic Substances Act (61 of 1985), Section 42 - If a police officer does not record the information at all and does not inform the official superior, it will be a clear violation of Section 42 of the Act. [Ram Narayan Raikwar Vs. State of M.P.]...3167

Narcotic Drugs and Psychotropic Substances Act (61 of 1985), Section 52(A) - Non compliance of - To make case of the prosecution credible and free from dents and lacuna, it is desirable rather necessary to make sincere compliance of Section 52(A). [Chandra Shekhar Prasad Tiwari Vs. State of M.P.] ...2576

National Security Act (65 of 1980), Section 3 - Detention order - Pre-execution stage - Power of Judicial Review - Purpose of detention is to afford protection to Society - Object is not to punish a man for having done something but to intercept before he does it and to prevent him from doing so. [Brijesh Dubey Vs. State of M.P.] (DB)...2354

National Security Act (65 of 1980), Section 3 - Grounds of

स्वापक औषधि और मनःप्रभावी पदार्थ अधिनियम (1985 का 61), धारा 8(सी) व 20(बी)*(ii)*(सी) – 162 किग्रा. विनिषिद्ध गांजे का अनाधिकृत कब्जा – अपीलार्थी की उपस्थिति में तालाबंद पंप हाउस से विनिषिद्ध पदार्थ जब्त किया गया – किसी साक्षी ने विनिर्दिष्ट रुप से उस पंप हाउस के कब्जे के अनन्य एवं मानपूर्वक कब्जे के बारे में कथन नहीं दिये – अभिलेख के अनुसार, पंप हाउस जितेंन्द्र का था जिसकी अन्वेषण अधिकारी द्वारा पूछताछ नहीं की जा सकी यद्यपि उसने उसे खोजने का प्रयास किया – अभिनिर्धारित – पंप हाउस जिसमें विनिषिद्ध पदार्थ रखा गया था, उसका अनन्य एवं मानपूर्वक कब्जा अभियोजन द्वारा पर्याप्त साक्ष्य से साबित नहीं किया गया। (चन्द्रशेखर प्रसाद तिवारी वि. म.प्र. राज्य) ...2576

स्वापक औषधि और मनःप्रभावी पदार्थ अधिनियम (1985 का 61), धारा 20 (बी) (*i*) – के अन्तर्गत अपराध – सबूत – अन्वेषण अधिकारी द्वारा अधिनियम की धारा 42 के उपबंध का अनुपालन नहीं किया गया – उसने जब्तशुदा गांजे को जब्ती से पूर्व तौल नहीं किया – जब्तशुदा सामग्री न्यायालय में भी प्रस्तुत नहीं की गई – विनिषिद्ध पदार्थ की तलाशी हेतु निकटवर्ती दुकान से कोई स्वतंत्र साक्षी नही लिया गया – अन्वेषण अधिकारी की साक्ष्य की पुष्टि किसी अन्य साक्षी ने नही की – अभिनिर्धारित – अभियोजन युक्तियुक्त संदेह से परे साबित करने मे असफल रहा कि गांजा/विनिषिद्ध पदार्थ अपीलार्थी की दुकान से अथवा उसके कब्जे से जब्त किया गया था – दोषसिद्धि अपास्त। (राम नारायण रैकवार वि. म.प्र. राज्य) 3167

स्वापक औषधि और मनःप्रभावी पदार्थ अधिनियम (1985 का 61), धारा 42 – यदि पुलिस अधिकारी सूचना को दर्ज ही नहीं करता और वरिष्ठ अधिकारी को सूचित नही करता, तब यह अधिनियम की धारा 42 का स्पष्ट उल्लंघन होगा। (राम नारायण रैकवार वि. म.प्र. राज्य) 3167

स्वापक औषधि और मनःप्रभावी पदार्थ अधिनियम (1985 का 61), धारा 52(ए) – का अननुपालन – अभियोजन के मामले को विश्वसनीय तथा दरारें एवं कमियों से मुक्त करने के लिए, यह न केवल अपेक्षित है, अपितु आवश्यक है कि धारा 52(ए) का सच्चाई से अनुपालन किया जाये। (चन्द्रशेखर प्रसाद तिवारी वि. म.प्र. राज्य) 2576

राष्ट्रीय सुरक्षा अधिनियम (1980 का 65), धारा 3 – निरोध आदेश – निष्पादन पूर्व स्थिति – न्यायिक पुनर्विलोकन की शक्ति – निरोध का प्रयोजन समाज को सुरक्षा प्रदान करने के लिए है – इसका उद्देश्य किसी व्यक्ति द्वारा कुछ किये जाने के लिए दण्डित करना नहीं बल्कि उसके द्वारा ऐसा कुछ किये जाने से पूर्व रोकना तथा उसे ऐसा करने से निवारित करना है। (ब्रिजेश दुबे वि. म.प्र. राज्य)(DB)...2354

राष्ट्रीय सुरक्षा अधिनियम (1980 का 65), धारा 3 – निरोध के आधार –

Detention - Petitioners engaged in manufacturing synthetic ghee on large scale - There was a danger to the health and hygiene of the large number of persons - Detention of the petitioners could not be said to be for wrong purpose. [Brijesh Dubey Vs. State of M.P.] (DB)...2354

National Security Act (65 of 1980), Section 3, Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, (7 of 1980), Section 3 - Detention order - Petitioners engaged in manufacturing synthetic ghee - Words 'maintenance of supplies of commodities of essential to the community' means the natural commodity - Synthetic Ghee is not a natural commodity - Detention order under Section 3 of National Security Act within the power and authority of District Magistrate. [Brijesh Dubey Vs. State of M.P.] (DB)...2354

National Security Act (65 of 1980), Section 3(2) - Order of Detention - Petitioner committed various offences even in public and also terrorized the people of the locality by throwing the country made bombs - Such acts are bound to create fear in the minds of the people and is bound to disturb the normal life of the locality - Hence, it is a case of public order - Writ petition dismissed. [Banti@ Brijesh@ Ashish Vs. Avar Sachiv] (DB)...2723

National Security Act (65 of 1980), Section 3(2) - Preventive Detention - Petitioner had let out a premises to one M/s Hind Dairy Food Products against whom it is alleged that it is involved in manufacturing adulterated Ghee - Held - There is nothing on record relating to the relationship of Petitioner with functioning of M/s Hind Dairy Food Products - He is only owner of premises which is let out to said M/s Hind Dairy Food Products - A landlord can not be made responsible for an act of tenant - No rebuttal of allegations that the material facts, documents and pronouncement of judgment in favour of petitioner granting him acquittal in criminal cases were not brought to the notice of detaining authority - There was no occasion to pass any order of preventive detention - Petition allowed. [Gyanesh Sharma Vs. State of M.P.] (DB)...*151

Negotiable Instruments Act (26 of 1881), Section 141 - Offences by Company - Appellant No. 2 is the signatory of the cheque and appellant No.3 is the Managing Director of the Company - Both the persons by virtue of their position are vicariously liable for the offence

याचीगण बड़े स्तर पर बनावटी घी के विनिर्माण में लगे थे – बड़ी संख्या में व्यक्तियों के स्वास्थ्य एवं आरोग्य को खतरा था – याचीगण का निरोध अनुचित प्रयोजन हेतु होना नहीं कहा जा सकता। (ब्रिजेश दुबे वि. म.प्र. राज्य)(DB)...2354

राष्ट्रीय सुरक्षा अधिनियम (1980 का 65), धारा 3, चोरबाजारी निवारण और आवश्यक वस्तु प्रदाय अधिनियम (1980 का 7), धारा 3 – निरोध आदेश – याची बनावटी घी के विनिर्माण में लगा हुआ था – शब्द 'समुदाय के लिए आवश्यक वस्तुओं का प्रदाय' का अर्थ है प्राकृतिक वस्तु – बनावटी घी प्राकृतिक वस्तु/पदार्थ नहीं है – राष्ट्रीय सुरक्षा अधिनियम की धारा 3 के अंतर्गत निरोध आदेश जिला मजिस्ट्रेट की शक्ति एवं प्राधिकार के भीतर है। (ब्रिजेश दुबे वि. म.प्र. राज्य) (DB)...2354

राष्ट्रीय सुरक्षा अधिनियम (1980 का 65), धारा 3(2) – निरोध आदेश – याची ने पब्लिक में विभिन्न अपराध कारित किये और देशी बम फेंककर परिक्षेत्र के लोगों को आतंकित भी किया – ऐसे कृत्य से लोगों के मन में निश्चित रुप से भय उत्पन्न होगा और परिक्षेत्र का सामान्य जीवन विक्षुब्ध होगा – अतएव यह लोक व्यवस्था का मामला है – रिट याचिका खारिज। (बंटी उर्फ ब्रिजेश उर्फ आशीष वि. अवर सचिव) (DB)...2723

राष्ट्रीय सुरक्षा अधिनियम (1980 का 65), धारा 3(2) – निवारक निरोध – याची ने मेसर्स हिन्द डेयरी फूड प्रोडक्ट्स को स्थान भाड़े पर दिया जिसके विरुद्ध यह अभिकथन है कि वह मिलावटी घी के उत्पादन में शामिल था – अभिनिर्धारित – मेसर्स हिन्द डेयरी फूड प्रोडक्ट्स के कार्य के साथ याची के संबंध के बारे में अभिलेख पर कुछ नहीं – वह मेसर्स हिन्द डेयरी फूड प्रोडक्ट्स को भाड़े पर दिये गये स्थान का केवल स्वामी है – अभिधारी के कृत्य के लिये भू–स्वामी को उत्तरदायी नहीं ठहराया जा सकता – इन अभिकथनों का खंडन नहीं किया गया कि तात्विक तथ्य, दस्तावेज एवं दाण्डिक प्रकरणों में दोषमुक्ति प्रदान करने वाला याची के पक्ष में घोषित किया गया निर्णय, निरोध प्राधिकारी की जानकारी में नहीं लाया गया – निवारक निरोध के किसी आदेश को पारित करने का मामला नहीं था – याचिका मंजूर। (ज्ञानेश शर्मा वि. म.प्र. राज्य) (DB)...*151

परक्राम्य लिखत अधिनियम (1881 का 26), धारा 141 – कम्पनी द्वारा अपराध – अपीलार्थी क्र. 2 चेक का हस्ताक्षरकर्ता है और अपीलार्थी क्र. 3 कम्पनी का प्रबंध निदेशक है – दोनों व्यक्ति अपने पद की हैसियत से, अपीलार्थी क्र. 1/कम्पनी द्वारा कारित अपराध के लिये प्रतिनिधिक रुप से दायी है। (ओ.टी.जी. ग्लोबल फाइनेन्स लि. कम्पनी वि. मोहन मंडेलिया) ...*152

committed by appellant No.1/Company. [OTG Global Finance Ltd. Company Vs. Mohan Mandelia] ...*152

Negotiable Instruments Act (26 of 1881), Section 141 - Person In charge and Responsible - Notice was issued to all the partners but no reply was sent stating that applicant was only a sleeping partner and not in charge of management, control or conduct of business or having any responsibility in management and administration of Company - Complaint specifically mentions that all are responsible for non-payment of cheque amount after receipt of notice - Whether a person is not such person responsible for the offence is a question of fact to be proved at the stage of trial - Revision dismissed. [Naresh Kumar Vs. Smt. Prabha Bai] ...3209

Panchayats (Election Petitions, Corrupt Practices and Disqualification for Membership), M.P. Rules 1995 - Rule 13 - Withdrawal of election petition - Mere filing of an application for withdrawal will not automatically result into withdrawal of election petition - It can be withdrawn only with the leave of the Specified Officer. [Leelawati (Smt.) Vs. Kanhaiyalal] ...*140

Panchayat Raj Evam Gram Swaraj Adhiniyam, M.P. 1993 (1 of 1994) - Panchayat Karmi Yojna dated 12.09.1995 clause 3.3 - Age limit - Scheme only prescribes the minimum age limit for appointment to the post of Panchayat Karmi and it is silent with regard to the maximum age limit - Panchayat fixed a maximum age limit - Decision of the Panchayat can not be termed as illegal - Petitioner found to be over-age can not seek the appointment. [Dharmendra Singh Vs. Commissioner, Shahdol] ...2447

Panchayat Raj Evam Gram Swaraj Adhiniyam, M.P. 1993 (1 of 1994), Sections 37(3) & 86(2) - Appointment on the post of Panchayat Karmi - Respondent No. 6 working on the post of Sarpanch when advertisement was issued for appointment of Panchayat Karmi and last date for submission of form was 10.8.2009 - Another advertisement was got issued and the last date for submission of form was 30.8.2009 - Resignation submitted by Respondent No. 6 was accepted by Deputy Director on 30.8.2009 and on the same day, respondent No. 6 submitted his application form - Held - Dy. Director was not competent to accept

परक्राम्य लिखत अधिनियम (1881 का 26), धारा 141 – प्रभारी एवं उत्तरदायी व्यक्ति – सभी भागीदारों को नोटिस जारी किया गया था परंतु कोई उत्तर नहीं भेजा गया इस कथन के साथ कि आवेदक केवल निष्क्रिय भागीदार था और वह व्यवसाय के प्रबंधन, नियंत्रण अथवा कार्य संचालन का प्रभारी नहीं था और कंपनी के प्रबंधन एवं प्रशासन में उसका कोई उत्तरदायित्व नहीं था – शिकायत विनिर्दिष्ट रुप से उल्लिखित करती है कि नोटिस प्राप्ति पश्चात चेक रकम के असंदाय हेतु सभी उत्तरदायी हैं – क्या कोई व्यक्ति अपराध के लिये उत्तरदायी व्यक्ति है अथवा नहीं, तथ्य का प्रश्न है जिसे विचारण के प्रक्रम पर साबित करना होगा – पुनरीक्षण खारिज। (नरेश कुमार वि. श्रीमति प्रभाबाई) ...3209

पंचायत (निर्वाचन अर्जियाँ, भ्रष्टाचार और सदस्यता के लिए निरर्हता) नियम, म.प्र. 1995 – नियम 13 – निर्वाचन याचिका का वापस लिया जाना – वापस लेने के लिये आवेदन प्रस्तुत करने मात्र से निर्वाचन याचिका की अपने आप वापसी परिणित नहीं होगी – वह केवल विनिर्दिष्ट अधिकारी की अनुज्ञा से वापस ली जा सकती है। (लीलावती (श्रीमती) वि. कन्हैयालाल) ...*140

पंचायत राज एवं ग्राम स्वराज अधिनियम, म.प्र. 1993 (1994 का 1) – पंचायत कर्मी योजना दिनांक 12.09.1995 खंड 3.3 – आयु सीमा – पंचायत कर्मी के पद पर नियुक्ति के लिए योजना केवल न्यूनतम आयु सीमा विहित करती है और अधिकतम आयु सीमा के संबंध में वह मौन है – पंचायत ने अधिकतम आयु सीमा निश्चित की – पंचायत के निर्णय को अवैध नहीं कहा जा सकता – याची अधिक आयु का होने से नियुक्ति का हकदार नहीं। (धर्मेन्द्र सिंह वि. कमिश्नर, शहडोल) 2447

पंचायत राज एवं ग्राम स्वराज अधिनियम, म.प्र. 1993 (1994 का 1), धाराएँ 37(3) व 86(2) – पंचायत कर्मी के पद पर नियुक्ति – प्रत्यर्थी क्र. 6 सरपंच के पद पर कार्यरत था जब पंचायत कर्मी की नियुक्ति हेतु विज्ञापन जारी किया गया और फार्म जमा करने हेतु अंतिम तिथि 10.8.2009 थी – एक और विज्ञापन जारी करवाया गया और फार्म जमा करने की अंतिम तिथि 30.08.2009 थी – प्रत्यर्थी क्र. 6 द्वारा प्रस्तुत त्यागपत्र, उप निदेशक द्वारा 30.8.2009 को स्वीकार किया गया और उसी दिनांक को, प्रत्यर्थी क्र. 6 ने अपना आवेदन फार्म जमा किया – अभिनिर्धारित – उप निदेशक त्यागपत्र स्वीकार करने के लिए सक्षम नहीं था और इसलिए वैध पदत्याग नहीं था और ना ही उसकी स्वीकृति का कोई प्रश्न था – आगे और, याची, प्रत्यर्थी

resignation and therefore, there was no valid resignation nor there was any question of its acceptance - Further more Petitioner was more meritorious than respondent No. 6 as he was not entitled to additional marks for higher education and experience - Collector was well within his competence to set aside such an illegal selection and directing for proper selection. [Mukesh Prasad Vs. State of M.P.] ...*124

Panchayat Raj Evam Gram Swaraj Adhiniyam, M.P. 1993 (1 of 1994), Section 86(1) & 86(2) - Appointment of Panchayat Karmi - Respondent No. 5 was appointed by casting of majority vote - It is argued that this is contrary to the principles laid down in the policy dated 13.08.2007 issued by the State Government - Held - Prior, to 13.08.2007, the procedure for appointment by majority of vote was permissible - Provisions of appointment on merit in the circular dated 27.01.2006 will be applicable only if the appointment is made by the State Authorities u/s 86(2). [Dharmendra Singh Vs. Commissioner, Shadol] ...2447

Panchayat Raj Evam Gram Swaraj Adhiniyam, M.P. 1993 (1 of 1994), Section 86(1) & 86(2) - Selection of Panchayat Karmi - Dispute raised in the meeting of the Gram Panchayat with respect to the selection of a candidate and because of the difference of opinion amongst the Panchas, the matter was referred to the Chief Executive Officer of Janpad Panchayat - This indicate that the instructions issued under sub-section (1) of Section 86 of the Act were not fully complied with by the Gram Panchayat - The only option left was to direct the competent authority to pass the order exercising the power of the Gram Panchayat as per the provisions of sub-section (2) of Section 86 of the Act - Writ petition dismissed. [Satyendra Pratap Singh Bundela Vs. State of M.P.] ...2390

Panchayat Raj Evam Gram Swaraj Adhiniyam, M.P. 1993 (1 of 1994), Section 122 - Election Petition - Election Tribunal in Section 122 proceedings can examine the entitlement of the candidate to contest against a reserve seat. [Leelawati (Smt.) Vs. Kanhaiyalal] ...*140

Panchayat Raj Evam Gram Swaraj Adhiniyam, M.P. 1993 (1 of 1994), Section 122 - Election Tribunal - Alongwith nomination only photocopy of caste certificate was produced by the petitioner - The original was neither produced during nomination nor in the proceedings before Election Tribunal - Factum of issuance of said certificate by the

क्र. 6 से अधिक गुणवान था क्योंकि वह उच्चतर शिक्षा एवं अनुभव के लिए अतिरिक्त अंकों का हकदार नहीं था – ऐसे अवैध चयन को अपास्त करने एवं उचित चयन करने के लिए निर्देशित करने हेतु कलेक्टर पूरी तरह सक्षम था। (मुकेश प्रसाद वि. म.प्र. राज्य) ...*124

पंचायत राज एवं ग्राम स्वराज अधिनियम, म.प्र. 1993 (1994 का 1), धाराएँ 86(1) व 86(2) – पंचायत कर्मी की नियुक्ति – प्रत्यर्थी क्रं. 5 की नियुक्ति निर्णायक बहुमत द्वारा की गई – यह तर्क किया गया है कि यह राज्य सरकार द्वारा जारी की गयी नीति दिनांक 13.08.2007 में दिये गये सिद्धांतों के विपरीत है – अभिनिर्धारित – 13.08.2007 से पूर्व, बहुमत द्वारा नियुक्ति की प्रक्रिया अनुज्ञेय थी – परिपत्र दिनांक 27.01.2006 में योग्यता पर नियुक्ति के उपबंध केवल तब लागू होंगे यदि नियुक्ति धारा 86(2) के अंतर्गत राज्य प्राधिकारियों द्वारा की गई है। (धर्मेन्द्र सिंह वि. कमिश्नर, शहडोल) 2447

पंचायत राज एवं ग्राम स्वराज अधिनियम, म.प्र. 1993 (1994 का 1), धारा 86(1) व 86(2) – पंचायत कर्मी का चयन – अभ्यर्थी के चयन के संबंध में ग्राम पंचायत की सभा में विवाद उठाया गया और पंचों के बीच मतभेद के कारण मामला जनपद पंचायत के मुख्य कार्यपालिक अधिकारी को निर्देशित किया गया – यह दर्शाता है कि अधिनियम की धारा 86 की उपधारा (1) के अंतर्गत जारी किये गये अनुदेशों का ग्राम पंचायत द्वारा पूर्णरुप से अनुपालन नहीं किया गया – अधिनियम की धारा 86 की उप धारा (2) के उपबंधों के अनुसार ग्राम पंचायत की शक्ति का प्रयोग करते हुए आदेश पारित करने के लिए सक्षम प्राधिकारी को निर्देशित करने का एकमात्र विकल्प बचता है – रिट याचिका खारिज। (सतेन्द्र प्रताप सिंह बुन्देला वि. म.प्र. राज्य) 2390

पंचायत राज एवं ग्राम स्वराज अधिनियम, म.प्र. 1993 (1994 का 1), धारा 122 – निर्वाचन याचिका – निर्वाचन अधिकरण धारा 122 की कार्यवाही में आरक्षित सीट पर चुनाव लड़ने की प्रत्याशी की हकदारी का परीक्षण कर सकता है। (लीलावती (श्रीमती) वि. कन्हैयालाल) ...*140

पंचायत राज एवं ग्राम स्वराज अधिनियम, म.प्र. 1993 (1994 का 1), धारा 122 – निर्वाचन अधिकरण – याची द्वारा नामांकन पत्र के साथ केवल जाति प्रमाण पत्र की फोटो प्रति प्रस्तुत की गयी – मूल प्रति न तो नामांकन के दौरान प्रस्तुत की गयी न ही निर्वाचन अधिकरण के समक्ष की कार्यवाही में प्रस्तुत की गयी – कथित प्रमाण पत्र सक्षम प्राधिकारी द्वारा जारी नहीं किये जाने का तथ्य स्थापित नहीं होता।

competent authority is not established. The judgment in Kumari Madhuri Patil and anr. Vs. Addl. Commissioner, Tribunal Development and ors. has no application in such cases where only photocopy of a certificate is produced and original was never produced. [Leelawati (Smt.) Vs. Kanhaiyalal] ...*140

Panchayat Service (Discipline and Appeal) Rules, M.P. 1999, Rules 5, 6 & 7 - Complaints regarding misuse of funds of various scheme such as S.G.R.Y. Food Scheme, Indira Awas Scheme, Mid Day Meal against petitioner, a Panchayat Karmi, appointed in accordance with Panchayat Karmi Yojna 1995 - Services of petitioner terminated by the impugned resolution of Panchayat - Held - No charges are framed nor any enquiry under Rule 9 has been held, the termination order vide impugned resolution can not be withheld. [Dinesh Pawar Vs. State of M.P.] ...2337

Penal Code (45 of 1860), Section 37 - Where several acts are done so as to result together in the commission of an offence, the doing of any one of them with intention to co-operate in the offence makes the actor liable to be punished for the commission of the offence. [State of M.P. Vs. Deepak Surana] (DB)...*157

Penal Code (45 of 1860), Section 120A - Conspiracy - It is a distinct offence - The very agreement, concert or league is the ingredient of the offence - Not necessary that all the conspirators must know each and every detail of the conspiracy as long as they are co-participators in the main object of conspiracy - There may be so many devices and techniques adopted to achieve the common goal of conspiracy and there may be division of performances in the chain of actions with one object to achieve the real end of which every collaborator be interested - There must of unity of object or purpose but there may be plurality of means some times even unknown to the others - Only relevant fact is that all means adopted and illegal acts done must be purported to be in furtherance of the object of conspiracy. [Rahis Ahmad Vs. State of M.P.] (DB)...*128

Penal Code (45 of 1860), Section 120B - Conspiracy - Criminal conspiracy is always hatched in secrecy and it is impossible to adduce direct evidence - Offence can be proved largely from the inferences drawn from acts or illegal omission committed by conspirators in

ऐसे प्रकरणों में जहां केवल प्रमाणपत्र की फोटोकापी प्रस्तुत की गयी है और मूल प्रमाणपत्र कभी भी प्रस्तुत नहीं किया गया था, कुमारी माधुरी पाटिल और अन्य वि. अतिरिक्त आयुक्त, ट्रिब्यूनल डेवलपमेंट और अन्य में पारित निर्णय लागू नहीं होगा। (लीलावती (श्रीमती) वि. कन्हैयालाल) ...*140

पंचायत सेवा (अनुशासन और अपील) नियम, म.प्र. 1999, नियम 5, 6 व 7 – याची, पंचायत कर्मी योजना 1995 के अनुसार नियुक्त पंचायत कर्मी के विरुद्ध एस.जी. आर.वाय. अन्न योजना, इंदिरा आवास योजना, मध्यान्ह भोजन जैसी विभिन्न योजनाओं की निधियों के दुरुपयोग संबंधी शिकायतें – पंचायत के आक्षेपित संकल्प द्वारा याची की सेवा समाप्त की गई – अभिनिर्धारित – न तो कोई आरोप विरचित किये गये, और न ही नियम 9 के अंतर्गत कोई जांच की गई, आक्षेपित संकल्प द्वारा सेवा समाप्ति के आदेश की पुष्टि नहीं की जा सकती। (दिनेश पवार वि. म.प्र. राज्य) 2337

दण्ड संहिता (1860 का 45), धारा 37 – जब पृथक–पृथक कार्य किये गये जो एक साथ किसी अपराध को फलीभूत करते हैं, अपराध में सहयोग के आशय के साथ उसमें से किसी एक कार्य का किया जाना उसके कर्ता को अपराध कारित करने के लिये दंडित किये जाने योग्य बनाता है। (म.प्र. राज्य वि. दीपक सुराना)(DB)...*157

दण्ड संहिता (1860 का 45), धारा 120ए – षडयंत्र – यह सुभिन्न अपराध है – सहमति, सामान्य मति या सन्धि, अपराध का घटक है – आवश्यक नहीं है कि सभी षडयंत्रकारियों को षडयंत्र के प्रत्येक ब्यौरे की जानकारी होनी चाहिए, जब तक कि वे षडयंत्र के मुख्य उद्देश्य में सहभागी हैं – षडयंत्र के सामान्य उद्देश्य को प्राप्त करने के कई साधन एवं तरीके अंगीकृत किये जा सकते हैं और वास्तविक लक्ष्य को हासिल करने के समान उद्देश्य, जिसमें प्रत्येक सहयोगी हितबद्ध होगा ऐसे उद्देश्य के साथ किये कृत्यों की श्रृंखला में कार्यों का विभाजन हो सकता है – उद्देश्य या प्रयोजन की समानता होनी चाहिए किन्तु ऐसे साधनों का बहुत्व भी हो सकता है जो अन्य को अज्ञात है – सुसंगत तथ्य केवल यह है कि अंगीकृत किये गये सभी साधन एवं किये गये सभी अवैध कृत्य षडयंत्र के उद्देश्य के अग्रसरण में होने का तात्पर्य निकलना चाहिए। (रहीश अहमद वि. म.प्र. राज्य) (DB)...*128

दण्ड संहिता (1860 का 45), धारा 120बी – षडयंत्र – आपराधिक षडयंत्र प्रायः गुप्त रुप से रचा जाता है और प्रत्यक्ष साक्ष्य देना असंभव है – अपराध को षडयंत्रकारियों द्वारा समान उद्देश्य के अग्रसरण में कारित की गई अवैध लोप या

pursuance of a common design. [Ashok Kumar Jain Vs. Central Bureau of Investigation] (DB)...2629

Penal Code (45 of 1860), Section 120 B - Conspiracy - If some steps are resorted to by one or two of the conspirators without the knowledge of the others it will not affect the culpability of those others when they are associated with the object of Conspiracy - Merely because Company Secretary is not prosecuted, it would not exonerate the applicant of his conduct of allowing the agenda to be in meeting dated 19.04.1995. [Ajoy Achary Vs. State Bureau of Investigation, Bhopal] (DB)...*147

Penal Code (45 of 1860), Section 120B - Conspiracy - There is no difference between the mode of proof of the offence of conspiracy and that of any other offence - It can be established by direct evidence or by circumstantial evidence - Section 10 of Evidence Act introduces the doctrine of agency and if the conditions laid down therein are satisfied, the act done by one is admissible against the co-conspirators. [State of M.P. Vs. Deepak Surana] (DB)...*157

Penal Code (45 of 1860), Section 149 - See - Evidence Act, 1872, Section 3 [Prahlad Singh Vs. State of M.P.] (SC)...2309

Penal Code (45 of 1860), Section 302 - Murder - Accused/ appellants (A-1 & A-2) are the wife and her parmour - They allegedly murdered the deceased and threw the dead body in the well situated nearby - Blood stained Axe was recovered from the accused - Blood Stained cloths were recovered from the house - The room of deceased was found recently painted by cow-dung which was having blood stains - Accused/wife (A-1) avoided to search her husband/deceased - Son of deceased gave a full statement of the incident how his father was murdered by A-1 & A-2 and his evidence was found believable - No explanation by A-1 about the cause of death of husband and her silence for not searching or informing to anybody - Homicidal death was also supported by medical evidence and F.S.L. report - Held - Appellants (A-1 & A-2) were responsible for the murder of deceased - Appeals dismissed. [Ramesh Vs. State of M.P.] (DB)...2565

Penal Code (45 of 1860), Section 302 - Murder - Circumstantial Evidence - Appellant alleged to have killed his five daughters as his proposal to sell the land was not accepted by his wives - P.W. 1 admitted

कृत्यों से निकाले गये निष्कर्षों से मुख्य रुप से साबित किया जा सकता है। (अशोक कुमार जैन वि. सेंट्रल ब्यूरो ऑफ इन्वेस्टिगेशन) (DB)...2629

दण्ड संहिता (1860 का 45), धारा 120बी – षड्यंत्र – यदि एक या दो षड्यंत्रकारियों द्वारा अन्य की जानकारी के बिना किन्ही उपायों का आश्रय लिया जाता है, इससे उन अन्य व्यक्तियों की दोषिता प्रभावित नहीं होगी, जब वे षड्यंत्र के उद्देश्य के साथ सहभागी हैं – मात्र इसलिये कि कम्पनी सेक्रेटरी को अभियोजित नहीं किया गया, आवेदक का मीटिंग दिनांक 19.04.1995 के एजेंडा को मंजूर करने का उसका आचरण माफ नहीं किया जायेगा। (अजॉय आचार्य वि. स्टेट ब्यूरो ऑफ इन्वेस्टिगेशन, भोपाल) (DB)...*147

दण्ड संहिता (1860 का 45), धारा 120बी – षडयंत्र – षडयंत्र के अपराध की साक्ष्य का ढंग और किसी अन्य अपराध की साक्ष्य के ढंग के बीच कोई अंतर नहीं – इसे प्रत्यक्ष साक्ष्य अथवा परिस्थितिजन्य साक्ष्य द्वारा स्थापित किया जा सकता है – साक्ष्य अधिनियम की धारा 10 एजेंसी के सिद्धांत को पुरःस्थापित करती है और यदि उसमें प्रतिपादित शर्तों की संतुष्टि होती है, तक एक द्वारा किया गया कार्य सह–षडयंत्रकारियों के विरुद्ध ग्राह्य होगा। (म.प्र. राज्य वि. दीपक सुराना)(DB)...*157

दण्ड संहिता (1860 का 45), धारा 149 – देखें – साक्ष्य अधिनियम, 1872, धारा 3, (प्रहलाद सिंह वि. म.प्र. राज्य) (SC)...2309

दण्ड संहिता (1860 का 45), धारा 302 – हत्या – अभियुक्त/अपीलार्थीगण (ए–1 व ए–2) पत्नी तथा उसका प्रेमी है – उन्होंने अभिकथित रुप से मृतक की हत्या की तथा पास में स्थित कुएँ में लाश फेंक दी – अभियुक्त से रक्त रंजित कुल्हाड़ी बरामद की गई – घर से रक्त के दाग लगे कपड़े बरामद किये गये – मृतक के कमरे को हाल ही में गोबर द्वारा लिपाई की गई होना पाया गया जिस पर रक्त के दाग थे – अभियुक्त/पत्नी (ए–1) ने अपने पति/मृतक को नहीं तलाशा – मृतक के पुत्र ने घटना का पूर्ण कथन दिया है कि कैसे ए–1 व ए–2 द्वारा उसके पिता की हत्या की गई और उसकी साक्ष्य विश्वसनीय पाई गयी – ए–1 द्वारा पति के मृत्यु के कारण के बारे में और न तलाशने के लिए या किसी को सूचित न करने के लिए उसके मौन के बारे में कोई स्पष्टीकरण नहीं – आपराधिक मानव वध चिकित्सीय साक्ष्य एवं एफ.एस.एल. रिपोर्ट द्वारा भी समर्थित – अभिनिर्धारित – अपीलार्थीगण (ए–1 व ए–2) मृतक की हत्या के लिए जिम्मेदार थे – अपीलें खारिज। (रमेश वि. म.प्र. राज्य) (DB)...2565

दण्ड संहिता (1860 का 45), धारा 302 – हत्या – परिस्थितिजन्य साक्ष्य – अपीलार्थी ने अभिकथित रुप से अपनी पांच पुत्रियों की हत्या की क्योंकि उसकी पत्नियों ने भूमि को विक्रय करने के उसके प्रस्ताव को अस्वीकार किया था – अ.

that after seeing the dead bodies she started shouting that appellant had cut down the girls - Specific information that appellant had killed five daughters in his residence was given to police which was entered in the Rojnamchasanha - As information received by police was not vague or cryptic but contained precise particulars therefore, it could be treated as F.I.R. - Information given immediately after the commission of the crime so as to form part of the same transaction was relevant under Section 6 of Evidence Act - Subsequent conduct of appellant, another circumstance that he was found tied to a teak tree by means of a rope and same blood group was found on his pant as that of one of his daughter, presence of blood on the nail clipping and falsity of defence are circumstances which clearly prove the guilt of the appellant - Appeal dismissed. [In Reference Vs. Maganlal](DB)...3235

Penal Code (45 of 1860), Section 302 - Murder - Discrepancies with regard to the roles played by accused A and B in the F.I.R. and Court evidence of the complainant - Fact of assault by accused A and B to the husband of the complainant not proved. [Bhursingh Vs. State of M.P.] (DB)...3184

Penal Code (45 of 1860), Section 302 - Proof of Murder - The report does not reveal that appellant assaulted the deceased - The information memo and seizure memo not proved by the independent witnesses - The seized leg of cot was not produced before the Court at the time of evidence - Therefore, memo and seizure memo not legally proved - Finger prints of appellant were not collected during investigation to connect the appellant with the seized leg of cot - No evidence to connect the appellant with the murder of deceased or the appellant was guilty of murder - Appeal allowed. [Ramchandra Vs. State of M.P.] (DB)...3147

Penal Code (45 of 1860), Section 302 - See - Evidence Act, 1872, Section 3 [Amar Singh Vs. State of M.P.] (DB)...*134

Penal Code (45 of 1860), Section 302 - See - Evidence Act, 1872, Section 3 [Prahlad Singh Vs. State of M.P.] (SC)...2309

Penal Code (45 of 1860), Section 302 - Sentence - Rarest of Rare Case - Appellant killed his five minor daughters as his proposal to sell the land was objected by his two wives - The aggravating circumstances

सा.।1 ने स्वीकार किया कि मृत शरीरों को देखने के पश्चात वह चिल्लाने लगी कि अपीलार्थी ने बच्चियों को काट डाला – विनिर्दिष्ट सूचना कि अपीलार्थी ने अपने घर में पांच पुत्रियों को मार दिया है, पुलिस को दी गई जिसकी रोजनामचासान्हा में प्रविष्टि की गयी – चूंकि पुलिस द्वारा प्राप्त सूचना अस्पष्ट अथवा गुप्त नहीं थी बल्कि यथावत् विशिष्टियां अंतर्विष्ट थी इसलिये, उसे प्रथम सूचना रिपोर्ट माना जा सकता है – अपराध कारित होने के तुरंत पश्चात दी गयी सूचना जो उसी संव्यवहार का भाग बनती है, साक्ष्य अधिनियम की धारा 6 के अंतर्गत सुसंगत है – अपीलार्थी का पश्चातवर्ती आचरण, अन्य परिस्थिति कि वह सागौन के वृक्ष पर रस्सी द्वारा बंधा हुआ पाया गया था और उसकी पतलून पर वही रक्त श्रेणी पायी गयी थी जो कि उसकी एक पुत्री की थी, नाखूनों की कतरन में रक्त की उपस्थिति तथा बचाव की असत्यता ऐसी परिस्थितियां है जो अपीलार्थी की दोषिता को स्पष्ट रुप से साबित करती है – अपील खारिज। (इन रेफ्रेन्स वि. मगनलाल) (DB)...3235

दण्ड संहिता (1860 का 45), धारा 302 – हत्या – अभियुक्त ए और बी द्वारा निभायी गई भूमिका के संबंध में एफ.आई.आर. व शिकायतकर्ता की न्यायालयीन साक्ष्य में असंगतियां – अभियुक्त ए व बी द्वारा शिकायतकर्ता के पति पर हमला करने के तथ्य को साबित नहीं किया गया। (भूर सिंह वि. म.प्र. राज्य) (DB)...3184

दण्ड संहिता (1860 का 45), धारा 302 – हत्या का सबूत – रिपोर्ट यह प्रकट नही करती कि अपीलार्थी ने मृतक पर हमला किया था – सूचना पत्र एवं जब्ती पत्र को स्वतंत्र साक्षियों द्वारा साबित नही किया गया – जब्त किये गये खाट का पाया, साक्ष्य के समय न्यायालय के समक्ष प्रस्तुत नही किया गया – अतएव, सूचना मेमो तथा जब्ती मेमो विधिक रूप से साबित नही किये गये – जब्तशुदा खाट के पाये के साथ अपीलार्थी को सम्बद्ध करने के लिए, अन्वेषण के दौरान अपीलार्थी की उंगलियों के छाप नही लिये गये – मृतक की हत्या के साथ अपीलार्थी को सम्बद्ध करने अथवा अपीलार्थी हत्या का दोषी होने की कोई साक्ष्य नहीं – याचिका खारिज। (रामचन्द्र वि. म.प्र. राज्य) (DB)...3147

दण्ड संहिता (1860 का 45), धारा 302 – देखें – साक्ष्य अधिनियम, 1872, धारा 3, (अमर सिंह वि. म.प्र. राज्य) (DB)...*134

दण्ड संहिता (1860 का 45), धारा 302 – देखें – साक्ष्य अधिनियम, 1872, धारा 3, (प्रहलाद सिंह वि. म.प्र. राज्य) (SC)...2309

दण्ड संहिता (1860 का 45), धारा 302 – दण्डादेश – विरल से विरलतम मामला – अपीलार्थी ने अपनी पांच अवयस्क पुत्रियों की हत्या की क्योंकि उसकी दो पत्नियों ने भूमि विक्रय के उसके प्रस्ताव का विरोध किया – गुरुतरकारी परिस्थितियों

overwhelmingly outweigh the mitigating circumstances - Considering the personalities of victims, age of appellant, manner of commission of crime, its magnitude and surrounding circumstances suggesting that he had committed murders of innocent children brutally neither under duress nor on provocation, the case fall under the category of rarest of rare case - Death sentence awarded to appellant confirmed. [In Reference Vs. Maganlal] (DB)...3235

Penal Code (45 of 1860), Sections 302, 201, 404 - Trial Court found two circumstances against appellant to have been proved by the prosecution and they are (i) recovery of the dead body of the deceased from a well pursuant to his disclosure statement and (ii) recovery of Rs. 90,000/- from his house pursuant to his disclosure statement and Rs. 5,000/- from PW 17 pursuant to his disclosure statement - However, trial Court disbelieved the circumstance of last seen relied upon by the prosecution as one of the circumstances in the chain of circumstances - Held - The widow of the deceased has testified that the disclosure statement of the appellant was extracted by the Police from him by use of third degree method - Trial Court has strangely taken the circumstance of recovery of the dead body at the behest of the appellant as proved only on the basis of uncorroborated testimony of the investigating officer - No cogent evidence on record to show that the deceased was last seen in the company of the appellant before his dead body was recovered -- Evidence of the investigating officer which has been made the sole basis of conviction of the appellant is of very weak type and does not inspire our confidence - Conviction of the appellant is legally unsustainable. [Vijay Bahadur Vs. State of M.P.](DB)...2860

Penal Code (45 of 1860), Sections 302, 397 - Murder - Circumstantial Evidence - Dog Tracking - Picking of smell and pointing towards appellant by sniffer dog is not a circumstance which could exclude the possibility of guilt of another person - This circumstance alone not sufficient to hold the appellants guilty. [Babuji Vs. State of M.P.] (DB)...3173

Penal Code (45 of 1860), Section 304-A - Rash and Negligent Driving - Proof of - Prosecution did not make any attempt to prove the exact speed from any of the witnesses - Possibility that deceased might have fell down because of his own fault from the tractor could not be

का भार, कम करने वाली परिस्थितियों से अधिक है – पीड़ितों का व्यक्तित्व, अपीलार्थी की आयु, अपराध का स्वरुप, उसका पैमाना और यह दर्शाने वाली बाहरी परिस्थितियां कि उसने न तो विबाध्यता के आधीन और न ही किसी प्रकोपन पर उसने निरपराध बालिकाओं की पाशिवक रुप से हत्या कारित की है, को विचार में लेते हुये प्रकरण विरल से विरलतम मामले की श्रेणी में आता है – अपीलार्थी को दिये गये मृत्युदण्ड की अभिपुष्टि की गयी। (इन रेफ्रेन्स वि. मगनलाल) (DB)...3235

दण्ड संहिता (1860 का 45), धाराएँ 302, 201, 404 – विचारण न्यायालय ने अपीलार्थी के विरुद्ध दो परिस्थितियां अभियोजन द्वारा साबित की जाना पाया और वे हैं (1) उसके प्रकटन कथन के अनुसार मृतक के मृत शरीर की कुएँ से बरामदगी और (2) उसके प्रकटन कथन के अनुसार उसके मकान से रु. 90,000/– की बरामदगी तथा पीडब्ल्यू. 17 से उसके प्रकटन कथन के अनुसार रु. 5,000/– की बरामदगी – किन्तु, विचारण न्यायालय ने अंतिम बार देखे जाने की परिस्थिति पर अविश्वास किया जिस पर अभियोजन द्वारा परिस्थितियों की श्रृंखला में से एक परिस्थिति होने का विश्वास किया गया था – अभिनिर्धारित – मृतक की विधवा ने साक्ष्य दी है कि अपीलार्थी से प्रकटन कथन उगलवाने के लिए पुलिस द्वारा उस पर थर्ड डिग्री का उपयोग किया गया – विचारण न्यायालय ने विलक्षण रुप से केवल अन्वेषण अधिकारी की असंपुष्ट परिसाक्ष्य के आधार पर अपीलार्थी की निशादेही पर लाश की बरामदगी की परिस्थिति साबित होने की धारणा की – अभिलेख पर यह दर्शाने के लिए कोई प्रबल साक्ष्य नहीं कि मृतक की लाश की बरामदगी से पूर्व उसे अंतिम बार अपीलार्थी की संगत में देखा गया था – अन्वेषण अधिकारी की साक्ष्य जिसे अपीलार्थी की दोषसिद्धि का एकमात्र आधार बनाया गया है वह अति दुर्बल प्रकार की है और विश्वास उत्पन्न नहीं करती – अपीलार्थी की दोषसिद्धि विधिक रुप से अपोषणीय। (विजय बहादुर वि. म.प्र. राज्य) (DB)...2860

दण्ड संहिता (1860 का 45), धाराएँ 302, 397 – हत्या – परिस्थितिक साक्ष्य – कुत्तों द्वारा खोज – खोजी कुत्तें द्वारा गंध पकड़कर अपीलार्थी की ओर इशारा किया जाना ऐसी परिस्थिति नही है जो अन्य व्यक्ति के दोषी होने की संभावना को अपवर्जित कर सके – केवल यह परिस्थिति अपीलार्थीगण के दोषी होने की धारणा करने के लिए पर्याप्त नही है। (बाबूजी वि. म.प्र. राज्य) (DB)...3173

दण्ड संहिता (1860 का 45), धारा 304–ए – उतावलेपन से या उपेक्षापूर्वक वाहन चलाना – सबूत – अभियोजन ने किसी भी साक्षी से निश्चित गति साबित करने का कोई प्रयत्न नहीं किया – मृतक अपने स्वयं के दोष के कारण ट्रेक्टर से नीचे गिरने की संभावना से नकारा नहीं जा सकता, मात्र साक्षियों के कथनों के आधार

ruled out - Mere on basis of the version of the witnesses, stating the high speed or the allegation of negligent driving of the offending vehicle, the person like applicant could not be convicted - Revision allowed. [Arvind Singh Rajput Vs. State of M.P.] ...2904

Penal Code (45 of 1860), Section 304-A - Speed of vehicle - No technical and scientific investigation like the tyre makes or its photo graph were collected by the investigating agency - Exact or approximate speed and the factum of negligence on the part of the applicant could have been ascertained. [Arvind Singh Rajput Vs. State of M.P.] ...2904

Penal Code (45 of 1860), Section 306 - Abatement of Suicide - Within period of 3 years of marriage deceased committed suicide in her matrimonial house by pouring kerosene and setting herself on fire - Nothing has been suggested by the witnesses that prior to the incident of suicide something specific was done by the appellants with the deceased worth driving her to commit suicide - Normal instances of ill-treatment by way of neglecting the deceased or by quarreling with the deceased are not sufficient to constitute the abatement on the part of the appellants - There must be some more evidence showing specific acts during the last spell of the stay of the deceased in her matrimonial house suggestive of mens rea to instigate the deceased to commit suicide - Not a sufficient evidence for holding appellants guilty for abatement of suicide. [Shyam Lal Vs. State of M.P.] ...2871

Penal Code (45 of 1860), Section 306, Criminal Procedure Code, 1973 (2 of 1974), Section 228 - Abetment of Suicide - Charge under - Making allegations against the character of the deceased with a threat and intimidation to lodge a false report against him for committing the rape and due to such act of the applicants, the deceased was instigated to commit suicide and ultimately committed the same - Held - Once, any of the ingredients of abetment defined under Section 107 of the IPC, is revealed then it could be assumed that prima facie ingredient for framing the charge of Section 306 IPC is available in the matter - Revision dismissed. [Bhagbai Vs. State of M.P.] ...3231

Penal Code (45 of 1860), Section 306 - See - Criminal Procedure Code, 1973, Sections 227 & 228 [Sachin Tamrakar Vs. State of M.P.] ...2909

पर कि आक्रामक वाहन की उच्च गति अथवा उपेक्षापूर्ण वाहन चलाने के अभिकथन के आधार पर आवेदक जैसे व्यक्ति को दोषसिद्ध नहीं किया जा सकता – पुनरीक्षण मंजूर। (अरविंद सिंह राजपूत वि. म.प्र. राज्य) 2904

दण्ड संहिता (1860 का 45), धारा 304–ए – वाहन की गति – अन्वेषण एजेंसी द्वारा कोई तकनीकी एवं वैज्ञानिक अन्वेषण जैसे कि टायर की बनावट या उसकी चित्रप्रति एकत्रित नहीं की गई – निश्चित अथवा अनुमानित गति तथा आवेदक की ओर से उपेक्षा के तथ्यों का अभिनिश्चय नहीं किया जा सकता। (अरविंद सिंह राजपूत वि. म.प्र. राज्य) ३2904

दण्ड संहिता (1860 का 45), धारा 306 – आत्महत्या का दुष्प्रेरण – विवाह के तीन वर्ष के भीतर मृतिका ने अपने ससुराल में मिट्टी का तेल उडेलकर स्वयं को आग लगाकर आत्महत्या कारित की – साक्षियों द्वारा कोई सुझाव नहीं कि आत्महत्या की घटना से पूर्व अपीलार्थीगण द्वारा मृतिका के साथ ऐसा कुछ विनिर्दिष्ट रुप से किया जिससे वह आत्महत्या करने के लिये दुष्प्रेरित हुयी हो – मृतिका की उपेक्षा अथवा मृतिका के साथ झगड़े की सामान्य घटनायें अपीलार्थीगण की ओर से दुष्प्रेरण गठित करने के लिये पर्याप्त नहीं है – मृतिका के उसके ससुराल में अंतिम काल में रहने के दौरान मृतिका को आत्महत्या कारित करने के लिये दुष्प्रेरण के दुराशय की ओर इंगित करने वाले विनिर्दिष्ट कृत्य दर्शाने वाली और अधिक साक्ष्य होनी चाहिये – अपीलार्थीगण को आत्महत्या के दुष्प्रेरण हेतु दोषी मानने के लिये पर्याप्त साक्ष्य नहीं है। (श्यामलाल वि. म.प्र. राज्य) 2871

दण्ड संहिता (1860 का 45), धारा 306, दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 228 – आत्महत्या का दुष्प्रेरण – के अन्तर्गत आरोप – मृतक के विरुद्ध बलात्कार कारित करने की मिथ्या रिपोर्ट दर्ज करने की धमकी एवं अभित्रास के साथ उसके चरित्र पर आरोप लगाये गये तथा ऐसे कृत्य के कारण मृतक आत्महत्या करने के लिये दुष्प्रेरित हुआ और उसने अंत में आत्महत्या कारित की – अभिनिर्धारित – एक बार जब भा.द.सं. की धारा 107 के अन्तर्गत परिभाषित दुष्प्रेरण के घटकों में से कोई घटक प्रकट किया जाता है, तब यह धारणा की जा सकती है कि मामले में भा.द.सं. की धारा 306 के आरोप विरचित किये जाने हेतु प्रथम दृष्ट्या घटक उपलब्ध हैं – पुनरीक्षण खारिज। (भागबाई वि. म.प्र. राज्य) ...3231

दण्ड संहिता (1860 का 45), धारा 306 – देखें – दण्ड प्रक्रिया संहिता, 1973, धाराएँ 227 व 228, (सचिन ताम्रकार वि. म.प्र. राज्य) 2909

Penal Code (45 of 1860), Section 306 - See - Evidence Act, 1872, Section 3 [Shripati @ Shriprasad Vs. State of M.P.] ...2559

Penal Code (45 of 1860), Section 307 - See - Criminal Procedure Code, 1973, Section 227 [Kanhaiya Lal Vs. State of M.P.] ...2601

Penal Code (45 of 1860), Section 315 - Act causing a newly born child to die - No one was examined as eye-witness either to the delivery of child or alleged act of abandonment attributed to appellant - Opinion of doctor by itself is not sufficient to raise the presumption that the child was delivered by appellant - No evidence on record that the appellant was with child and she actually delivered the baby in question - Trial Court committed error in raising presumption to hold the appellant guilty of the offence - Appeal allowed. [Dhuli Bai Vs. State of M.P.] ...2556

Penal Code, (45 of 1860), Section 363 - Kidnapping - Appellant took away the minor girl out of the keeping of his lawful guardianship, without his consent - Appellant is guilty of committing offence under Section 363 of I.P.C. - However, sentence of 5 years R.I. is reduced to 3 years R.I. [Khemraj @ Gannu Vs. State of M.P.] ...2847

Penal Code, (45 of 1860), Section 363 - Kidnapping - Determination of age - Prosecutrix stated that her date of birth is 13.02.1976 - Scholar register of school mentions the same date of birth which according to the father of the prosecutrix was recorded on the basis of entry in Kotwar Diary - Held - There is cogent and authentic evidence as to date of birth of prosecutrix and same can not be brushed aside merely for want of her radiological examination. [Khemraj @ Gannu Vs. State of M.P.] ...2847

Penal Code (45 of 1860), Section 376 - Rape - Consent - Prosecutrix was suffering 60% mental retardedness - It can safely be gathered that prosecutrix had no sense of discretion to give her consent or to express her opposition as well. [Shyam Lal Vs. State of M.P.]...2866

Penal Code (45 of 1860), Section 376 - Rape - False implication - Prosecutrix was minor and unmarried girl - It can not be presumed that prosecutrix would make a false allegation of rape against the appellant at the cost of her honour and dignity and would risk her future life - Parents of the victim would not concoct a false case against the

दण्ड संहिता (1860 का 45), धारा 306 – देखें – साक्ष्य अधिनियम, 1872, धारा 3, (श्रीपति उर्फ श्रीप्रसाद वि. म.प्र. राज्य) 2559

दण्ड संहिता (1860 का 45), धारा 307 – देखें – दण्ड प्रक्रिया संहिता, 1973, धारा 227 (कन्हैया लाल वि. म.प्र. राज्य) 2601

दण्ड संहिता (1860 का 45), धारा 315 – कृत्य जिसमें नवजात शिशु की मृत्यु हो गयी – ना तो शिशु के प्रसव के न ही परित्याग के अभिकथित कृत्य जिसे अपीलार्थी के कारण माना जा रहा है, के प्रत्यक्षदर्शी साक्षी के रुप में किसी का परीक्षण नहीं किया गया – चिकित्सक का अभिमत अपने आप में यह उपधारण करने के लिए पर्याप्त नहीं है कि शिशु का प्रसव अपीलार्थी द्वारा किया गया – अभिलेख पर कोई साक्ष्य नहीं कि अपीलार्थी शिशु के साथ थी और प्रश्नगत शिशु को उसने वास्तविक रुप से जन्म दिया – अपीलार्थी को अपराध का दोषी होने की धारणा करने के लिए उपधारणा खड़ी करने में विचारण न्यायालय ने भूल की – अपील मंजूर। (धूलीबाई वि. म.प्र. राज्य) 2556

दण्ड संहिता (1860 का 45), धारा 363 – व्यपहरण – अपीलार्थी अप्राप्तवय बालिका को उसकी विधिपूर्ण संरक्षकता से उसकी सहमति के बिना ले गया – अपीलार्थी आई.पी.सी. की धारा 363 के अंतर्गत अपराध कारित करने का दोषी है – तथापि, दण्डादेश 5 वर्ष के सश्रम कारावास से घटाकर 3 वर्ष सश्रम कारावास किया गया। (खेमराज उर्फ गन्नू वि. म.प्र. राज्य) 2847

दण्ड संहिता (1860 का 45), धारा 363 – व्यपहरण – आयु का निर्धारण – अभियोक्त्री का कथन कि उसकी जन्म तिथि 13.02.1976 है – विद्यालय के स्कालर रजिस्टर में वही जन्म तिथि उल्लिखित है जो अभियोक्त्री के पिता के अनुसार कोटवार डायरी में प्रविष्टि के आधार पर अभिलिखित की गयी थी – अभिनिर्धारित – अभियोक्त्री की आयु के बारे में प्रबल एवं अधिप्रमाणित साक्ष्य है और इसे मात्र उसके विकिरण चिकित्सीय परीक्षण के अभाव में खारिज नहीं किया जा सकता। (खेमराज उर्फ गन्नू वि. म.प्र. राज्य) 2847

दण्ड संहिता (1860 का 45), धारा 376 – बलात्संग – सहमति – अभियोक्त्री 60 प्रतिशत मानसिक दुर्बलता से ग्रसित – यह सुरक्षित रुप से समझा जा सकता है कि अभियोक्त्री को अपनी सहमति देने अथवा अपना विरोध प्रकट करने के लिए कोई स्वविवेक की समझबूझ नहीं थी। (श्यामलाल वि. म.प्र. राज्य) 2866

दण्ड संहिता (1860 का 45), धारा 376 – बलात्कार – झूठा आरोप – अभियोक्त्रि अप्राप्तवय तथा अविवाहित बालिका – यह उपधारणा नही की जा सकती कि अभियोक्त्रि अपनी मान मर्यादा की कीमत पर अपीलार्थी के विरूद्ध बलात्कार का मिथ्या आरोप लगायेगी और अपना भविष्य खतरे में डालेगी – पीड़िता के माता–पिता अपनी कोमल आयु की अप्राप्तवय पुत्री की शालीनता, सम्मान एवं प्रतिष्ठा के हितार्थ,

appellant for the sake of modesty, honour and reputation of their minor daughter of tender age - Appeal dismissed. [Gulab Vs. State of M.P.]...*150

Penal Code (45 of 1860), Section 376 - Rape - FIR lodged after about 12 hours of the incident - Prosecutrix was subjected to forcible rape or not can not be ascertained merely on the basis of her statement - Conviction of the appellant u/s 376 of I.P.C. deserves to be set aside. [Roop Singh Vs. State of M.P.] ...2582

Penal Code (45 of 1860), Sections 376 & 450 - House Tresspass & Rape - Mother of the prosecutrix upon information reached the house and saw the house closed from inside - She peeped inside from a hole of door and saw the appellant committing rape on her daughter - On raising alarm the appellant ran away - Contradictions regarding activities and posture are minor and inconsequential - Evidence of mother is worthy of credence even without corroborations from any other independent witness - Conviction upheld. [Shyam Lal Vs. State of M.P.] ...2866

Penal Code (45 of 1860), Section 409 - Misappropriation of funds - Appellant working as Manager on deputation for a short time of four months - No cash/cheque was entrusted to him nor he misappropriated the cash property - Accused No. 2 who had received the money did not make entry about of payment received and about transaction in stock register, thereby causing wrongful gain to himself and loss to society - If some body on whom one relies commits theft, he can not be held criminally liable for the other - Appellant/accused No. 1 entitled for acquittal. [Rambabu Sharma Vs. State of M.P.] ...*129

Penal Code (45 of 1860), Section 420 - Cheating - Company was extended benefit of ICD by MPSIDC without obtaining adequate security for repayment thereof - No resolution was passed by Board of Directors of Company for securing financial assistance in the form of ICD - Company was facing financial crisis and ultimately winded up - Held - Suppression of material facts as to adverse financial status of Company of which petitioner was Managing Director for securing loan by way of ICDs prima facie amount to cheating. [Rahis Ahmad Vs. State of M.P.] (DB)...*128

Penal Code (45 of 1860), Section 420 - Cheating - Concealment of

अपीलार्थी के विरूद्ध झूठा मामला कूटरचित नहीं करेंगे – अपील खारिज। (गुलाब वि. म.प्र. राज्य) ...*150

दण्ड संहिता (1860 का 45), धारा 376 – बलात्संग – घटना के करीब 12 घंटे बाद एफआईआर दर्ज की गई – अभियोक्त्रि के साथ बलपूर्वक बलात्संग किया गया अथवा नहीं, मात्र अभियोक्त्रि के कथन से सुनिश्चित नहीं किया जा सकता – आईपीसी की धारा 376 के अंतर्गत अपीलार्थी की दोषसिद्धि अपास्त किये जाने योग्य। (रूप सिंह वि. म.प्र. राज्य) 2582

दण्ड संहिता (1860 का 45), धारा 376 व 450 – गृह अतिचार तथा बलात्संग – सूचना मिलने पर अभियोक्त्री की मां घर पहुंची और देखा घर अंदर से बंद था – उसने दरवाजे के छेद से अंदर झांका ओर देखा कि अपीलार्थी उसकी पुत्री के साथ बलात्संग कारित कर रहा है – शोर मचाने पर अपीलार्थी भाग गया – क्रियायें और शारीरिक मुद्रा के संबंध में विरोधाभास गौण एवं असंगत है – माता की साक्ष्य किसी अन्य स्वतंत्र साक्षी से अभिपुष्टि के बिना भी विश्वास योग्य है – दोषसिद्धि कायम। (श्यामलाल वि. म.प्र. राज्य) 2866

दण्ड संहिता (1860 का 45), धारा 409 – निधि का दुर्विनियोजन – अपीलार्थी प्रबंधक के रुप में प्रतिनियुक्ति पर चार माह के अल्पकाल के लिए कार्यरत था – ना तो उसे कोई रकम/चेक सौंपा गया और न ही उसने रकम सम्पत्ति का दुर्विनियोजन किया – अभियुक्त क्र. 2, जिसने रकम प्राप्त की, अदायगी की प्राप्ति और संव्यवहार के बारे में स्टॉक रजिस्टर में प्रविष्टि नहीं की जिस कारण स्वयं को सदोष अभिलाभ और समाज को हानि कारित की – यदि कोई व्यक्ति किसी पर विश्वास करता है, वह चोरी करता है, तो उसे अन्य के लिए दाण्डिक रुप से दायी नहीं ठहराया जा सकता – अपीलार्थी/अभियुक्त क्र. 1 दोषमुक्ति का हकदार। (रामबाबू शर्मा वि. म.प्र. राज्य) ...*129

दण्ड संहिता (1860 का 45), धारा 420 – छल – एमपीएसआईडीसी द्वारा कम्पनी को आईसीडी का लाभ दिया गया, उसके प्रतिसंदाय हेतु पर्याप्त प्रतिभूति अभिप्राप्त किये बिना – कम्पनी के निदेशकों के बोर्ड द्वारा आईसीडी के रुप में वित्तीय सहायता प्रतिभूत करने हेतु कोई संकल्प पारित नहीं किया गया – कम्पनी वित्तीय संकट का सामना कर रही थी और अंततः परिसमापन किया गया – अभिनिर्धारित – आईसीडी के जरिये ऋण प्रतिभूति हेतु कम्पनी, जिसका याची प्रबंध निदेशक था, की विपरीत वित्तीय स्थिति के महत्वपूर्ण तथ्य का छिपाव, प्रथम दृष्ट्या, छल की कोटि में आता है। (रहीश अहमद वि. म.प्र. राज्य) (DB)...*128

दण्ड संहिता (1860 का 45), धारा 420 – छल – प्रथम अस्तित्वमान विवाह का

first subsisting marriage - Applicant No.1 got married with respondent No.2 by concealing the fact that his 1st marriage is still subsisting - Offence under Section 420 I.P.C. made out. [Praveen Choube (Dr.) Vs. State of M.P.] ...3214

Penal Code (45 of 1860), Section 498-A - Cruelty - Behaviour of appellant towards deceased was aggressive - Appellant humiliated and assaulted her in front of near relatives - Deceased was also beaten when she tried the appellant to stop his illicit relationship with other ladies - It is proved that the deceased was subjected to cruelty by the appellant within the meaning of Section 498-A. [Ashok Kumar Vs. State of M.P.] ...2532

Penal Code (45 of 1860), Section 498A - Respondent No.2 alleged that the applicant No.1 got married with her after concealing the factum of 1st marriage which is still subsisting - Such marriage could be declared to be void by competent Court in a petition filed in this regard - As neither of the parties have filed such petition under Hindu Marriage Act therefore, it shall be assumed that alleged marriage of parties is still subsisting and can not be treated as void - Court is not required to decide the validity of alleged marriage at the stage of framing of charge - It can not be said that respondent No.2 being illegally wedded wife, the applicants can not be prosecuted for offence of 498-A of I.P.C. [Praveen Choube (Dr.) Vs. State of M.P.] ...3214

Penal Code (45 of 1860), Section 498-A - See - Criminal Procedure Code, 1973, Section 482, [Dashrath P. Bundela Vs. State of M.P.] ...2923

Precedent - While interpreting a judgment court should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed - Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases - Hence, blind reliance on a decision is never proper. [Leelawati (Smt.) Vs. Kanhaiyalal] ...*140

Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, (7 of 1980), Section 3 - See - National Security Act, 1980, Section 3 [Brijesh Dubey Vs. State of M.P.] (DB)...2354

छिपाव – आवेदक क्र. 1 ने प्रत्यर्थी क्र. 2 से विवाह किया, इस तथ्य को छुपाकर कि उसका प्रथम विवाह अस्तित्व में है – भा.द.सं. की धारा 420 के अंतर्गत अपराध गठित होता है। (प्रवीण चौबे (डॉ.) वि. म.प्र. राज्य) 3214

दण्ड संहिता (1860 का 45), धारा 498–ए –क्रूरता – अपीलार्थी का मृतक के प्रति व्यवहार आक्रामक था – अपीलार्थी ने उसे करीबी रिश्तेदारों के सामने अपमानित किया और उस पर हमला किया – मृतक को तब भी मारा पीटा गया जब उसने अपीलार्थी को अन्य स्त्रीयों से अवैध संबंध से उसे रोकने का प्रयास किया – यह साबित किया गया है कि धारा 498–ए के अर्थांतर्गत अपीलार्थी द्वारा मृतक के साथ क्रूरता कारित की गई। (अशोक कुमार वि. म.प्र. राज्य) 2532

दण्ड संहिता (1860 का 45), धारा 498ए – प्रत्यर्थी क्र. 2 ने अभिकथन किया कि आवेदक क्र. 1 ने प्रथम विवाह जो अब तक भी अस्तित्व में है के तथ्य को छुपाने के पश्चात उसके साथ विवाह किया – ऐसे विवाह को, सक्षम न्यायालय द्वारा उसके संबंध में प्रस्तुत याचिका में, शून्य घोषित किया जा सकता है – चूंकि किसी भी पक्षकार ने हिन्दू विवाह अधिनियम के अंतर्गत ऐसी याचिका प्रस्तुत नहीं की है इसलिये, यह अवधारणा की जायेगी कि पक्षकारों का अभिकथित विवाह अभी तक अस्तित्वमान है और शून्य नहीं माना जा सकता – आरोप विरचित करने के प्रक्रम पर अभिकथित विवाह की विधि मान्यता निर्धारित करने की न्यायालय से अपेक्षा नहीं है – यह नहीं कहा जा सकता कि प्रत्यर्थी क्र. 2 अवैध रुप से विवाहित पत्नी होते हुये, आवेदकों को भा.द.सं. की धारा 498–ए के अपराध के लिये अभियोजित नहीं किया जा सकता। (प्रवीण चौबे (डॉ.) वि. म.प्र. राज्य) 3214

दण्ड संहिता (1860 का 45), धारा 498–ए – देखें – दण्ड प्रक्रिया संहिता, 1973, धारा 482, (दशरथ पी. बुन्देला वि. म.प्र. राज्य) 2923

पूर्व निर्णय – न्यायालय को निर्णय का निर्वचन करते समय जिस निर्णय पर विश्वास किया गया है उस निर्णय की तथ्यात्मक परिस्थिति के साथ किस प्रकार वर्तमान मामले की तथ्यात्मक परिस्थिति अनुकूल होने के बारे में परीक्षण किये बिना निर्णयों पर विश्वास नहीं करना चाहिये – परिस्थितिक लचीलापन, एक अतिरिक्त अथवा भिन्न तथ्य दो मामलों में निष्कर्षों के मध्य बहुत अधिक अंतर पैदा कर सकते हैं – इस प्रकार, बंद आंखों से निर्णय पर विश्वास करना कभी भी उचित नहीं। (लीलावती (श्रीमती) वि. कन्हैयालाल) ...*140

चोरबाजारी निवारण और आवश्यक वस्तु प्रदाय अधिनियम (1980 का 7), धारा 3 – देखें –राष्ट्रीय सुरक्षा अधिनियम, 1980, धारा 3 (ब्रिजेश दुबे वि. म.प्र. राज्य) (DB)...2354

Prevention of Corruption Act (2 of 1947), Section 5(1)(d)/5(2), Burden of Proof - Once it is held that money is found to have been passed to Public Servant, the burden is on Public Servant to establish that it was not by way of illegal gratification - If the initial burden is discharged by prosecution, it has to be presumed that he accepted the money as illegal gratification - However, where the accused offers an explanation for receipt of the alleged amount, the question would arise that whether such explanation can be said to have been established - Accused is not required to establish the defence by proving the same beyond reasonable doubt like to establish his defence by proving the same beyond reasonable doubt like prosecution, but can establish the same even by preponderance of probabilities. [Ramnarayan Vs. State of M.P.] (DB)...2537

Prevention of Corruption Act (2 of 1947), Section 5(1)(d)/5(2), Prevention of Corruption Act (49 of 1988), Section 13(1)(d)/13(2), Criminal Procedure Code, 1973 (2 of 1974), Sections 227 & 228 - Error in framing of charge - Offence was committed on 15.1.1988 whereas Act, 1988 came into force on 12.9.1988 - Charges were framed under Section 13(1)(d)/13(2) of Act, 1988 instead of 5(1)(d)/5(2) of Act, 1947 - Unless the convict is able to establish that the effect of omission of framing charge caused real prejudice to him, that he was not informed as to what was the real case against him and that he could not defend himself properly, no interference is required on mere technicalities - No prejudice is caused to appellant which could have rendered the conviction vitiated. [Ramnarayan Vs. State of M.P.] (DB)...2537

Prevention of Corruption Act (2 of 1947), Section 5(1)(d)/5(2) - Sentence - Offence is alleged to have been committed about 22 years back - Appellant is aged about 67 years of age - He has already lost his job - Sentence is reduced to 3 months R.I. [Ramnarayan Vs. State of M.P.] (DB)...2537

Prevention of Corruption Act (49 of 1988), Section 7 - Abatement - Accused No. 2 accepted money from the complainant on the directions of the accused No. 1 - No explanation given by accused No. 2 except that no money was recovered from him - Held - Once accused comes into possession of tainted money, the only inference is that he accepted the same and thus obtained the pecuniary advantage - Appeal dismissed. [Ravi Kumar Rajwani Vs. State of M.P.] (DB)...*131

भ्रष्टाचार निवारण अधिनियम (1947 का 2), धारा 5(1)(डी)/5(2) – सबूत का भार – एक बार जब यह धारणा की जाती है कि रकम लोक सेवक को दी जाना पाया गया है, यह स्थापित करने का भार लोक सेवक पर होगा कि वह अवैध परितोषण के रुप में नहीं थी – यदि प्रारंभिक भार का निर्वाहन अभियोजन द्वारा किया गया है, यह धारणा करनी होगी कि उसने अवैध परितोषण के रुप में रकम स्वीकार की है – किन्तु जहां अभियुक्त अभिकथित रकम की प्राप्ति के लिए स्पष्टीकरण प्रस्तुत करता है, तब यह प्रश्न उत्पन्न होगा कि क्या ऐसे स्पष्टीकरण का साबित हो जाना कहा जा सकता है – अभियुक्त से अभियोजन जैसी अपेक्षा नहीं कि वह युक्तियुक्त संदेह से परे साबित कर बचाव स्थापित करे, परन्तु अधिसंभाव्यताओं की प्रबलता द्वारा भी उसे स्थापित किया जा सकता है। (रामनारायण वि. म.प्र. राज्य)(DB)...2537

भ्रष्टाचार निवारण अधिनियम (1947 का 2), धारा 5(1)(डी)/5(2), भ्रष्टाचार निवारण अधिनियम (1988 का 49), धारा 13(1)(डी)/13(2), दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धाराएँ 227 व 228 – आरोप विरचित करने में त्रुटि – अपराध 15.1.1988 को कारित किया गया, जबकि अधिनियम, 1988 12.9.1988 से लागू हुआ – अधिनियम, 1947 की धारा 5(1)(डी)/5(2) की बजाए अधिनियम, 1988 की धारा 13(1)(डी)/13(2) के अंतर्गत आरोप विरचित किये गये – जब तक अपराधी यह स्थापित नहीं कर पाता कि आरोपों को विरचित करने के लोप के प्रभाव से उसे वास्तविक हानि कारित हुई है, यह कि उसे सूचित नहीं किया गया कि उसके विरुद्ध वास्तविक प्रकरण क्या है और यह कि वह उचित रुप से अपना बचाव नहीं कर सका, मात्र तकनीकीयों पर हस्तक्षेप अपेक्षित नहीं – अपीलार्थी को कोई हानि कारित नहीं हुई है जो दोषसिद्धि को दूषित कर देती। (रामनारायण वि. म.प्र. राज्य) (DB)...2537

भ्रष्टाचार निवारण अधिनियम (1947 का 2), धारा 5(1)(डी)/5(2) – दण्डादेश – अपराध करीब 22 वर्ष पूर्व घटित होना अभिकथित है – अपीलार्थी की आयु करीबन 67 वर्ष है – वह पहले ही अपनी नौकरी खो चुका है – दण्डादेश 3 माह के कठोर कारावास तक घटाया गया। (रामनारायण वि. म.प्र. राज्य) (DB)...2537

भ्रष्टाचार निवारण अधिनियम (1988 का 49), धारा 7 – उपशमन – अभियुक्त क्र. 2 ने अभियुक्त क्र. 1 के निर्देशों पर शिकायतकर्ता से रकम स्वीकार की – अभियुक्त क्र. 2 द्वारा, उससे कोई रकम बरामद नहीं हुई, के अलावा और कोई स्पष्टीकरण नहीं दिया गया – अभिनिर्धारित – एक बार जब अभियुक्त दूषित रकम का कब्जा ले लेता है, केवल यह निष्कर्ष निकलता है कि उसने वह स्वीकार की है और इस प्रकार धनीय लाभ अभिप्राप्त किया – अपील खारिज। (रवि कुमार राजवानी वि. म.प्र. राज्य) (DB)...*131

Prevention of Corruption Act (49 of 1988), Section 7 - Demand of Bribe - Complainant is said to have informed about demand to 'S' but 'S' was not examined in the Court - Shadow witness, happened to be the friend of complainant, but he did not say that complainant told to him about the alleged demand by the accused - Joint Collector though stated that complainant told to him that accused demanded bribe and that he gave an application to Collector for the trap of accused, but the complainant denied of having given any application to Collector - No such application/complaint was proved in the Court - Held - Except the uncorroborated evidence of complainant there appeared no other evidence to assure that accused made a demand of bribe from him - Sole uncorroborated evidence of complainant about the demand of bribe by the accused, does not inspire confidence. [Charanlal Vs. State of M.P.] (DB)...2878

Prevention of Corruption Act (49 of 1988), Sections 7, 13(1)(d) r/w 13(2) - Notes were not found in appellant's clothes and the money was found kept in a polythene bag, found hanging inside the room, which was seized - Complainant and shadow witness categorically stated that no 'Likha-Padhi' was done at the place of incident - Members of the trap party did not give their search before proceeding for trap - During the proceeding Phenolphthalein powder was not used - Evidence of Joint Collector, who played prominent role in the trap proceedings, also appears suspicious - Possibility that everything was managed by 'S' and the money was planted in the house of accused can not be ruled out - Held - It can not be held with certainty that accused voluntarily accepted/obtained marked money from the complainant - Special Judge did not appreciate the evidence on record in correct perspective - Appeal allowed. [Charanlal Vs. State of M.P.] (DB)...2878

Prevention of Corruption Act, (49 of 1988), Section 13(1)(d) - Acceptance of illegal gratification - Complainant did not substantially support the prosecution case - Spot map shows that tainted money was kept on table - Witnesses deposing that tainted money was recovered from the pocket of appellant - Evidence of complainant that he kept the money on table probable - It is suspicious as to where from the money was recovered - Appellant acquitted - Appeal allowed. [Rajesh Kumar Goswami Vs. State of M.P.] (DB)...2837

भ्रष्टाचार निवारण अधिनियम (1988 का 49), धारा 7 – रिश्वत की मांग – मांग के बारे में कथित रुप से शिकायतकर्ता ने 'एस' को सूचना दी थी किन्तु 'एस' का न्यायालय में परीक्षण नहीं किया गया – छाया साक्षी शिकायतकर्ता का मित्र था, परंतु उसने यह नहीं कहा कि शिकायतकर्ता ने उसे अभियुक्त द्वारा अभिकथित मांग के बारे में बताया था – संयुक्त कलेक्टर ने यद्यपि यह कथन किया कि शिकायतकर्ता ने उसे बताया था कि अभियुक्त ने रिश्वत मांगी और उसने अभियुक्त को ट्रेप करने हेतु कलेक्टर को आवेदन दिया था, परंतु शिकायतकर्ता ने कलेक्टर को कोई आवेदन दिया जाना अस्वीकार किया – ऐसा कोई आवेदन/शिकायत न्यायालय में साबित नहीं की गयी – अभिनिर्धारित – शिकायतकर्ता की असंपुष्ट साक्ष्य के अलावा यह सुनिश्चित करने के लिये कोई अन्य साक्ष्य प्रकट नहीं हुयी कि अभियुक्त ने उससे रिश्वत की मांग की थी – अभियुक्त द्वारा रिश्वत की मांग के बारे में शिकायतकर्ता की एकमात्र असंपुष्ट साक्ष्य विश्वास उत्पन्न नहीं करती। (चरणलाल वि. म.प्र. राज्य) (DB)...2878

भ्रष्टाचार निवारण अधिनियम (1988 का 49), धाराएँ 7, 13(1)(डी) सहपठित 13(2) – नोट अपीलार्थी के कपड़ों में नहीं पाये गये और रुपये पॉलीथीन बैग में रखे पाये गये, जो कमरे के अंदर टंगा था जिसे जब्त किया गया – शिकायतकर्ता तथा छाया साक्षी ने स्पष्ट कथन किया है कि घटना स्थल पर कोई लिखा पढ़ी नहीं की गयी थी – ट्रेप पार्टी के सदस्यों ने ट्रेप कार्यवाही से पूर्व अपनी तलाशी नहीं दी – कार्यवाही के दौरान फिनाल्फ्थेलीन पाउडर का उपयोग नहीं किया गया – ट्रेप कार्यवाही में अहम भूमिका निभाने वाले संयुक्त कलेक्टर की साक्ष्य भी संदेहास्पद प्रतीत होती है – संभावना कि सब कुछ 'एस' द्वारा प्रबंधित किया गया था और रुपये अभियुक्त के मकान में रखे गये थे से इंकार नहीं किया जा सकता – अभिनिर्धारित – यह निश्चित धारणा नहीं की जा सकती कि अभियुक्त ने स्वेच्छापूर्वक शिकायतकर्ता से चिन्हित रुपये स्वीकार/प्राप्त किये – विशेष न्यायाधीश ने सही परिप्रेक्ष्य में अभिलेख की साक्ष्य का अधिमूल्यन नहीं किया – अपील मंजूर। (चरणलाल वि. म.प्र. राज्य) (DB)...2878

भ्रष्टाचार निवारण अधिनियम (1988 का 49), धारा 13(1)(डी) – अवैध परितोषण को स्वीकार करना – शिकायतकर्ता ने अभियोजन मामले का पर्याप्त रुप से समर्थन नहीं किया है – घटना स्थल का नक्शा दर्शाता है कि दूषित रकम टेबिल पर रखी थी – साक्षियों का कथन कि दूषित रकम अपीलार्थी के पॉकेट से बरामद की गई थी – शिकायतकर्ता की साक्ष्य कि उसने टेबिल पर रुपये रखे थे संभाव्य है – रकम कहां से बरामद की गयी इस बारे में संदेह है – अपीलार्थी दोषमुक्त – अपील मंजूर। (राजेश कुमार गोस्वामी वि. म.प्र. राज्य) (DB)...2837

Prevention of Corruption Act (49 of 1988), Section 13(1)(d) - Cabinet in meeting dated 28.01.1994 decided to stop MPSIDC from financing the industries any further - MPSIDC in its meeting dated 31.01.1994 resolved to stop the financial assistance - MPSIDC thereafter resolved in its meeting dated 19.04.1995 to extend Inter Corporate Deposits - Applicant was present in the cabinet meeting and also in the meeting dated 31.01.1994 and 19.04.1995 - He knew fully well that Cabinet categorically issued directions for discontinuance of Financial Assistance, yet, as a Director, Applicant, by abusing his post in connivance of others, co-operated in passing the resolution about IDC - No investment, advancement of loan or deposits ought to have been made by the Directors except with the prior permission of the State Govt. [Ajoy Achary Vs. State Bureau of Investigation, Bhopal] (DB)...*147

Prevention of Corruption Act (49 of 1988), Section 13(1)(d) - Competence of accused - Duty to process claim put forward by the complainant was assigned to the accused - merely because he was not entitled to have the claim passed was of no consequence - Contention is also misconceived in the light of explanation (d) appended to Section 7 of the Act. [Kailash Kumar Rohitas Vs. State of M.P.] (DB)...2498

Prevention of Corruption Act (49 of 1988), Section 13(1)(d) - Defence - Trap proceedings continued for a considerable period of 2 ½ hours - Complainant did not support the theory of hand loan - The very undisputed fact that tainted currency notes reached the hands of accused served as a sufficient corroboration to the evidence relating to trap. [Kailash Kumar Rohitas Vs. State of M.P.] (DB)...2498

Prevention of Corruption Act (49 of 1988), Section 13(1)(d) - Demand - Appellant directed complainant to handover money to accused No. 2 - Money handed over to accused No. 2 which was recovered from him - There is a clear evidence of demand - Appellant guilty of commission of offence punishable under Section 13(1)(d) of P.C. Act. [Ravi Kumar Rajwani Vs. State of M.P.] (DB)...*131

Prevention of Corruption Act (49 of 1988), Section 13(1)(d) - Demand - Complainant not supported the prosecution story - However, for arriving at the conclusion as to whether all the ingredients of the offence like demand, acceptance and recovery of the amount of illegal gratification have been satisfied or not, the Court has to take into

भ्रष्टाचार निवारण अधिनियम (1988 का 49), धारा 13(1)(डी) – मंत्रिमंडल ने दिनांक 28.01.1994 की मीटिंग में उद्योगों को और आगे वित्त देने से एमपीएसआईडीसी को रोकने का निर्णय लिया – एमपीएसआईडीसी ने अपनी मीटिंग दिनांक 31.01.1994 में वित्तीय सहायता रोकने का संकल्प पारित किया – तत्पश्चात एमपीएसआईडीसी ने अपनी मीटिंग दिनांक 19.04.1995 में अंतर निगम जमा राशियों को बढ़ाने का निश्चय किया – मंत्रिमंडल की मीटिंग में आवेदक उपस्थित था तथा मीटिंग दिनांक 31.01.1994 व 19.04.1995 में भी उपस्थित था – उसे भलीभांति ज्ञात था कि मंत्रिमंडल ने वित्तीय सहायता रोके जाने हेतु स्पष्ट रुप से निदेश जारी किये फिर भी निदेशक के रुप में आवेदक ने अपने पद का दुरुपयोग करते हुये अन्य व्यक्तियों की मौनानुमति से आईडीसी के बारे में संकल्प पारित करने में सहयोग दिया – राज्य सरकार की पूर्वानुमति के बगैर निदेशकों द्वारा किसी निवेश, ऋण अथवा जमा राशियों का अग्रसरण नहीं किया जाना चाहिये था। (अजॉय आचार्य वि. स्टेट ब्यूरो ऑफ इन्वेस्टिगेशन, भोपाल) (DB)...*147

भ्रष्टाचार निवारण अधिनियम (1988 का 49), धारा 13(1)(डी) – अभियुक्त की सक्षमता – शिकायतकर्ता द्वारा प्रस्तुत दावे की कार्यवाही का कर्तव्य, अभियुक्त को सौंपा गया था – मात्र इसलिए कि वह दावा पारित किये जाने के लिए हकदार नहीं था, कोई महत्व नहीं रखता – अधिनियम की धारा 7 के साथ संलग्न स्पष्टीकरण(डी) के आलोक में, यह तर्क भ्रामक भी है। (कैलाश कुमार रोहितास वि. म.प्र. राज्य) (DB)...2498

भ्रष्टाचार निवारण अधिनियम (1988 का 49), धारा 13(1)(डी) – बचाव – ट्रेप कार्यवाही 2 ½ घंटे की दीर्घ अवधि तक जारी रही – शिकायतकर्ता ने दस्ती ऋण की बात को समर्थन नहीं दिया – अत्यंत अविवादित तथ्य कि दूषित करेंसी नोट, अभियुक्त के हाथों में पहुंचे, ट्रेप से संबंधित साक्ष्य की संपुष्टि के लिए पर्याप्त है। (कैलाश कुमार रोहितास वि. म.प्र. राज्य) (DB)...2498

भ्रष्टाचार निवारण अधिनियम (1988 का 49), धारा 13(1)(डी) – माँग – अपीलार्थी ने अभियुक्त क्र. 2 को रकम हस्तांतरित करने का शिकायतकर्ता को निर्देश दिया – रकम अभियुक्त क्र. 2 को सौंपी गयी जिसे उसके पास से बरामद किया गया – मांग की स्पष्ट साक्ष्य है– अपीलार्थी पी.सी. अधिनियम की धारा 13(1)(डी) के अंतर्गत दण्डनीय अपराध कारित करने का दोषी। (रवि कुमार राजवानी वि. म.प्र. राज्य) (DB)...*131

भ्रष्टाचार निवारण अधिनियम (1988 का 49), धारा 13(1)(डी) – माँग – शिकायतकर्ता ने अभियोजन कहानी का समर्थन नहीं किया – किन्तु, इस निष्कर्ष पर पहुंचने के लिए कि क्या अपराध के सभी तत्व जैसे कि अवैध परितोषण की रकम की मांग, स्वीकृति, एवं बरामदगी की संतुष्टि की गई है अथवा नहीं, न्यायालय को

consideration the facts and circumstances brought on record in their entirety. [Kailash Kumar Rohitas Vs. State of M.P.] (DB)...2498

Prevention of Corruption Act, (49 of 1988), Section 13(1)(d) - Illegal gratification - Court may feel safe in accepting the prosecution version on the basis of oral evidence of complainant and police officers even if the trap witnesses turn hostile or are not found to be reliable - Independent witness could not be examined due to his death - Evidence of complainant and police witnesses finds support from the circumstantial evidence that the hand and pocket of the shirt of the appellant and tainted notes gave pink colour to sodium carbonate solution - This establishes that tainted currency notes were accepted or received by the appellant - Appellant did not furnish any explanation as to how the tainted currency notes were found in his pocket - Appeal dismissed. [Jay Mangal Singh Vs. State of M.P.] (DB)...*138

Prevention of Corruption Act (49 of 1988), Section 13(1)(d) - Illegal Gratification - Mere receipt of money by the accused from the complainant will not be sufficient to fasten guilt in absence of any demand and acceptance of amount as illegal gratification - Appellant accepted the receipt of Rs. 50 from the complainant - Immediately after the trap, the appellant offered explanation that he had accepted the money towards loan transaction - The defence of appellant is corroborated by three receipts which have been brought forward by defence evidence and the complainant handed over Rs. 50 to him by way of installment of loan which he was legally entitled to receive - Explanation offered by appellant appears genuine, reasonable and probable - Appeal allowed. [Dwarka Prasad Mishra Vs. State of M.P.] (DB)...3152

Prevention of Corruption Act (49 of 1988), Section 13(1)(d) - Misconduct - Minister - Minister holds public office though he gets constitutional status and performs functions under the Constitution, law or executive policy - The Acts done and duties performed are public acts or duties as the holder of public office - He owes certain accountability for the acts done or duties performed in a democratic society governed by rule of law. [State of M.P. Vs. Deepak Surana] (DB)...*157

Prevention of Corruption Act (49 of 1988), Section 13(1)(d) - Misconduct - Respondents knowing full well that the acquisition of land by T.I.T. has attained finality and there was no provision for release of

अभिलेख पर लाये गये तथ्यों एवं परिस्थितियों को उनकी संपूर्णता में उन्हें विचार में लेना होगा। (कैलाश कुमार रोहितास वि. म.प्र. राज्य) (DB)...2498

भ्रष्टाचार निवारण अधिनियम (1988 का 49), धारा 13(1)(डी) – अवैध परितोषण – शिकायतकर्ता एवं पुलिस अधिकारियों की मौखिक साक्ष्य के आधार पर अभियोजन कहानी को स्वीकार करने में न्यायालय सुरक्षित महसूस कर सकता है तब भी जबकि ट्रेप के साक्षीगण पक्ष विरोधी हो गये या विश्वसनीय नहीं पाये गये – स्वतंत्र साक्षी की मृत्यु हो जाने के कारण परीक्षण नहीं किया जा सका – शिकायतकर्ता तथा पुलिस साक्षियों की साक्ष्य इस परिस्थितिजन्य साक्ष्य से समर्थन पाती है कि अपीलार्थी के हाथ तथा कमीज की जेब तथा दूषित नोटों ने सोडियम कॉर्बोनेट के घोल को गुलाबी रंग दिया – यह स्थापित करता है कि दूषित करेंसी नोट अपीलार्थी द्वारा स्वीकार या प्राप्त किये गये – अपीलार्थी ने कोई स्पष्टीकरण प्रस्तुत नहीं किया कि उसके पॉकेट में दूषित करेंसी नोट कैसे पाये गये – अपील खारिज। (जय मंगल सिंह वि. म.प्र. राज्य) (DB)...*138

भ्रष्टाचार निवारण अधिनियम (1988 का 49), धारा 13(1)(डी) – अवैध परितोषण – शिकायतकर्ता से अभियुक्त द्वारा रुपये की मात्र प्राप्ति, अवैध परितोषण के रुप में रकम की किसी मांग एवं स्वीकृति के अभाव में दोष लगाने के लिये पर्याप्त नहीं होगी – अपीलार्थी ने शिकायतकर्ता से रुपये 50 की प्राप्ति स्वीकार की – ट्रेप के तुरंत पश्चात अपीलार्थी ने स्पष्टीकरण दिया कि उसने रुपये ऋण संव्यवहार में स्वीकार किये थे – अपीलार्थी के बचाव की तीन रसीदों द्वारा पुष्टि होती है जिसे बचाव साक्ष्य द्वारा प्रस्तुत किया गया और शिकायतकर्ता ने उसे रुपये 50 ऋण की किस्त के रुप में दिये जिसे प्राप्त करने के लिये वह विधिक रुप से हकदार था – अपीलार्थी द्वारा प्रस्तुत स्पष्टीकरण सत्य, युक्तियुक्त एवं संभाव्य प्रतीत होता है – अपील मंजूर। (द्वारका प्रसाद मिश्रा वि. म.प्र. राज्य) (DB)...3152

भ्रष्टाचार निवारण अधिनियम (1988 का 49), धारा 13(1)(डी) – अवचार – मंत्री – मंत्री लोक पद धारण करता है यद्यपि उसे संवैधानिक प्रतिष्ठा प्राप्त होती है और संविधान, विधि अथवा कार्यपालिक नीति के अंतर्गत कार्य संपादित करता है – किये गये कार्य तथा कर्तव्यों का निर्वहन लोक पद धारक के रुप में लोक कार्य अथवा कर्तव्य है – वह विधि के नियमों द्वारा शासित लोकतांत्रिक समाज में किये गये कार्य एवं कर्तव्य पालन के लिये कतिपय उत्तरदायी होता है। (म.प्र. राज्य वि. दीपक सुराना) (DB)...*157

भ्रष्टाचार निवारण अधिनियम (1988 का 49), धारा 13(1)(डी) – अवचार – प्रत्यर्थीगण ने यह भलिभांति जानते हुये कि टी.आई.टी. द्वारा भूमि का अर्जन अंतिमता प्राप्त कर चुका है और तत्संबंधी अधिनियम में भूमि की मुक्ति हेतु कोई

the lands in the corresponding Act, appointed co-accused as their attorneys and also executed agreement to sell reflecting their knowledge about the dispute and authorized the proposed purchasers to get the lands anyhow released and to alienate the same to any person - Respondents are prima facie guilty of commission of offence - Order discharging them set aside. [State of M.P. Vs. Deepak Surana] (DB)...*157

Prevention of Corruption Act (49 of 1988), Section 13(1)(d) - Status of accused - Non-Public Servant - Applicant is Managing Director of a Company - Status of applicant is of no relevance as the offences under the Act can be abetted by or committed in conspiracy with non-public servants also. [Rahis Ahmad Vs. State of M.P.] (DB)...*128

Prevention of Corruption Act (49 of 1988), Section 13(1)(d)/13(2) - See -Prevention of Corruption Act, 1947, Section 5(1)(d)/5(2) [Ramnarayan Vs. State of M.P.] (DB)...2537

Prevention of Corruption Act (49 of 1988), Sections 13(1)(d),& 19, Criminal Procedure Code, 1973 (2 of 1974), Section 173(8) - Final Report - Investigating agency filed Khatma Report stating no case is made out - Trial Court refused to accept final report and observed "therefore, matter may be taken up seeking necessary sanction to prosecute the accused persons and for further action, case be registered in the criminal case diary" - This order is in the nature of obiter dictum amounting to expression of his personal view - High Court erred in setting aside the proceedings by considering and treating this observation as direction of the Court - Order of High Court set aside and order of Trial Court restored. [Arun Kumar Aggarwal Vs. State of M.P.] (SC)...2951

Prevention of Corruption Act (49 of 1988), Section 13(1)(e) - Defective Investigation - Effect - Order taking cognizance not challenged at the earliest possible opportunity - Even if it is assumed that the investigation in any manner was defective, the order taking cognizance and consequent proceedings can not be quashed as no failure of justice had occasioned thereby. [Ashok Kumar Jain Vs. Central Bureau of Investigation] (DB)...2629

Prevention of Corruption Act (49 of 1988), Section 13(1)(e), Evidence Act (1 of 1872), Sections 3 & 114 - Articles found in possession

उपबंध नहीं था, सह–अभियुक्त को अपने मुख्त्यार के रुप में नियुक्त किया तथा विवाद के बारे में अपनी जानकारी प्रकट करते हुये विक्रय करार भी निष्पादित किया और प्रस्तावित क्रेता को किसी प्रकार भूमि मुक्त करवाने के लिये एवं भूमि किसी अन्य व्यक्ति को संक्रामित करने के लिये प्राधिकृत किया – प्रत्यर्थीगण प्रथम दृष्ट्या अपराध कारित करने के दोषी हैं – उन्हें मुक्त करने का आदेश अपास्त। (म.प्र. राज्य वि. दीपक सुराना) (DB)...*157

भ्रष्टाचार निवारण अधिनियम (1988 का 49), धारा 13(1)(डी) – अभियुक्त की स्थिति – अलोक सेवक – आवेदक कम्पनी का प्रबंध निदेशक है – अभियुक्त की स्थिति का कोई औचित्य नहीं क्योंकि अधिनियम के अंतर्गत अपराधों को अलोक सेवकों द्वारा भी अवप्रेरित किया जा सकता है अथवा उनके साथ षडयंत्र रचकर भी कारित किया जा सकता है। (रहीश अहमद वि. म.प्र. राज्य) (DB)...*128

भ्रष्टाचार निवारण अधिनियम (1988 का 49), धारा 13(1)(डी)/13(2) – देखें – भ्रष्टाचार निवारण अधिनियम, 1947, धारा 5(1)(डी)/5(2) (रामनारायण वि. म.प्र. राज्य) (DB)...2537

भ्रष्टाचार निवारण अधिनियम (1988 का 49), धाराएँ 13(1)(डी), व 19, दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 173(8) – अंतिम प्रतिवेदन – कोई मामला नहीं बनने का कथन करते हुये अन्वेषण एजेंसी ने खात्मा प्रतिवेदन प्रस्तुत किया – विचारण न्यायालय ने अंतिम प्रतिवेदन अस्वीकार किया और संप्रेक्षण दिया कि "इसलिये अभियुक्त व्यक्तियों को अभियोजित करने तथा आगे कार्यवाही करने के लिये आवश्यक मंजूरी चाहते हुये मामले की सुनवाई की जा सकती है, दाण्डिक केस डायरी में मामला पंजीबद्ध किया जाये" – यह आदेश इतरोक्ति के स्वरुप का है जो उसके व्यक्तिगत दृष्टिकोण को अभिव्यक्त करता है – संप्रेक्षण को न्यायालय का निदेश मानते हुये उच्च न्यायालय ने कार्यवाहियां अपास्त करने में भूल की – उच्च न्यायालय का आदेश अपास्त तथा विचारण न्यायालय का आदेश पुनःस्थापित। (अरूण कुमार अग्रवाल वि. म.प्र. राज्य) (SC)...2951

भ्रष्टाचार निवारण अधिनियम (1988 का 49), धारा 13(1)(ई) – त्रुटिपूर्ण अन्वेषण – प्रभाव – संज्ञान लेने के आदेश को यथासंभव सर्वप्रथम अवसर पर चुनौती नहीं दी गई – यदि यह धारणा भी की जाए कि अन्वेषण किसी प्रकार त्रुटिपूर्ण था, संज्ञान लेने का आदेश और परिणामिक कार्यवाहियां अभिखंडित नहीं की जा सकती क्योंकि इससे न्याय की विफलता कारित नहीं हुई है। (अशोक कुमार जैन वि. सेंट्रल ब्यूरो ऑफ इन्वेस्टिगेशन) (DB)...2629

भ्रष्टाचार निवारण अधिनियम (1988 का 49), धारा 13(1)(ई), साक्ष्य अधिनियम (1872 का 1) धाराएँ 3 व 114 – अभियुक्त के कब्जे में पायी गयी वस्तुऐं –

of accused - Electronic goods although purchased in the name of sister were found in possession of accused - Explanation for non-shifting of items from accused's house not plausible - Held - Fact is said to be proved when after considering the matters before it, the Court believes it to exist, or considers its existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it exists - Court presume existence of any fact which it thinks likely to have happened having regard to the natural course of event, human conduct and public and private business - Trial Court did not commit any error in including the electronic items in appellant's movable assets. [Kamal Lal Gharde Vs. State of M.P.] (DB) ...2514

Prevention of Corruption Act (49 of 1988), Section 13(1)(e) - Investigating Officer - Investigation conducted by same police officer who had lodged the F.I.R. - It is not barred - Such investigation could be assailed only on the ground of bias or real likelihood of bias on the part of Investigating Officer. [Ashok Kumar Jain Vs. Central Bureau of Investigation] (DB)...2629

Prevention of Corruption Act (49 of 1988), Section 13(1)(e) - Known Sources of Income - Income from legally forbidden sources can not be considered at all and on the other, income from any lawful source can be taken into account only when its existence is duly proclaimed under the relevant service rules - It can not be contended that known sources of income means sources known to accused. [Kamal Lal Gharde Vs. State of M.P.] (DB) ...2514

Prevention of Corruption Act (49 of 1988), Section 17 - Authorization - Dy.S.P. holding the charge of S.P. authorized himself under Section 17 of Act, 1988 - Each one of the officers designated in clauses (a) to (c) is competent to investigate the offence under Section 13(1)(e) even without order of authorization by S.P. as contemplated in second proviso - Order under second proviso would be necessary only in a case where investigation into the offence is sought to be conducted by an officer of a lower rank though authorized by State Govt. under first proviso - View taken in Umesh Kumar's case is erroneous and overruled. [Ashok Kumar Jain Vs. Central Bureau of Investigation] (DB)...2629

Prevention of Corruption Act, (49 of 1988), Section 19 - Sanction - Applicant already ceased to hold the office i.e., Director of MPSIDC,

इलेक्ट्रॉनिक माल यद्यपि बहिन के नाम पर क्रय किया गया तथापि उसे अभियुक्त के कब्जे में पाया गया – वस्तुओं को अभियुक्त के मकान से स्थानांतरित नहीं किये जाने के बारे में स्पष्टीकरण स्वीकार योग्य नहीं – अभिनिर्धारित – तथ्य को साबित माना जाएगा जब न्यायालय उसके समक्ष मामलों पर विचार करने के पश्चात उसके अस्तित्व पर विश्वास करता है या उसके अस्तित्व को इतना संभावित मानता है कि प्रज्ञावान मनुष्य, विशिष्ट मामले की परिस्थितियों में, उसे अस्तित्वमान समझते हुए उस पर कार्य करेगा – न्यायालय किसी तथ्य के अस्तित्वमान होने की उपधारणा करेगा जिसे घटना के प्राकृतिक क्रम के संबंध में मानव आचरण तथा लोक एवं व्यक्तिगत व्यवसाय संभावित रुप से घटित होना वह मानता है – विचारण न्यायालय ने इलेक्ट्रॉनिक वस्तुओं को अपीलार्थी की चल सम्पत्ति में शामिल करने में कोई त्रुटि कारित नहीं की। (कमल लाल घर्डे वि. म.प्र. राज्य) (DB)...2514

भ्रष्टाचार निवारण अधिनियम (1988 का 49), धारा 13(1)(ई) –अन्वेषण अधिकारी – अन्वेषण उसी पुलिस अधिकारी द्वारा किया गया जिसने एफ.आई.आर. दर्ज की थी – यह विबंधित नहीं है – ऐसे अन्वेषण का विरोध केवल अन्वेषण अधिकारी की ओर से पक्षपात या पक्षपात की वास्तविक संभावना के आधार पर किया जा सकता है। (अशोक कुमार जैन वि. सेंट्रल ब्यूरो ऑफ इन्वेस्टिगेशन)(DB)...2629

भ्रष्टाचार निवारण अधिनियम (1988 का 49), धारा 13(1)(ई) – आय के ज्ञात स्त्रोत – विधिक रुप से निषिद्ध स्त्रोतों से आय का बिल्कुल विचार नहीं किया जा सकता और किसी विधिपूर्ण स्त्रोत से आय को केवल तब विचार में लिया जा सकता है जब उसका अस्तित्व, सुसंगत सेवा नियमों के अंतर्गत सम्यक् रुप से घोषित है – यह तर्क नहीं किया जा सकता कि आय के ज्ञात स्त्रोत का अर्थ अभियुक्त को ज्ञात स्त्रोत है। (कमल लाल घर्डे वि. म.प्र. राज्य) (DB)...2514

भ्रष्टाचार निवारण अधिनियम (1988 का 49), धारा 17 – प्राधिकार देना – डिप्टी एस.पी. ने एस.पी. का भार धारण करते हुए, अधिनियम 1988 की धारा 17 के अंतर्गत स्वयं को प्राधिकृत किया – खंड (ए) से (सी) तक में नामनिर्दिष्ट प्रत्येक अधिकारी, एस.पी. द्वारा प्राधिकार के आदेश के बिना भी जैसा कि दूसरे परंतुक में अनुध्यात है, धारा 13(1)(ई) के अंतर्गत अपराध का अन्वेषण करने के लिए सक्षम है – दूसरे परंतुक के अंतर्गत आदेश केवल उस मामले में आवश्यक है जहां अपराध का अन्वेषण निम्न श्रेणी के अधिकारी द्वारा किया जाना चाहा गया है यद्यपि राज्य सरकार द्वारा प्रथम परंतुक के अंतर्गत प्राधिकृत किया गया है – उमेश कुमार के मामले में लिया गया दृष्टिकोण गलत है और उलट दिया गया। (अशोक कुमार जैन वि. सेंट्रल ब्यूरो ऑफ इन्वेस्टिगेशन) (DB)...2629

भ्रष्टाचार निवारण अधिनियम (1988 का 49), धारा 19 – मंजूरी – आवेदक का पहले ही पद का कार्यभार समाप्त हो गया था अर्थात एसपीएसआईडीसी के निदेशक

which was alleged to have been abused by him when the charge sheet was filed - No sanction is required. [Ajoy Achary Vs. State Bureau of Investigation, Bhopal] (DB)...*147

Prevention of Corruption Act (49 of 1988), Section 19 - Sanction - Govt. of India issued guidelines to investigating agencies that while holding different posts on transfer of promotion, a civil servant can not be treated as holding different offices within the meaning of relevant sections of P.C. Act - Held - Interpretation of various decisions given by Ministry can not be accepted in view of the observation made in the case of Prakash Singh Badal. [Ajoy Achary Vs. State Bureau of Investigation, Bhopal] (DB)...*147

Prevention of Corruption Act (49 of 1988), Section 19 - Sanction - Merely because sanction order was drafted by the investigating agency was not sufficient to vitiate the sanction order - Even if a contrary view is taken, the validity of the consequent proceedings would remain unaffected as none of the defects has occasioned a failure of justice. [Kailash Kumar Rohitas Vs. State of M.P.] (DB)...2498

Prevention of Food Adulteration Act (37 of 1954), Section 7(v) r/w Section 16(1)(a), Prevention of Food Adulteration Rules 1955 - Rule 32(a) - Food Inspector purchased the sample of 450 gm of 'Vital' Pure Refined Cooking Oil (Soya Oil) from open tin of 10 Kg. for the purpose of examination - Sample was divided into three parts and were sealed and one sample was sent to State Food Laboratory - Report of Public Analyst that sample contravenes the Rule 32(a) and the sample was mis-branded -To ascertain whether the provisions of Rule 32(a) of the Rules are violated he sought an inquiry from the Public Analyst, which was not answered by him - Held - Prosecution has failed to establish the case against the petitioner-accused beyond reasonable doubt - Accused discharged, prior to the stage of charge. [Nemichand Vs. State of M.P.] ...2896

Prevention of Food Adulteration Act (37 of 1954), Section 13(2) - Delay in prosecution - Complaint filed after 7 months and 18 days - Accused/applicant though present in Court did not file application u/s 13(2) of the Act for re-examination of the sample by Central Food Laboratory - Held - Delay caused in filing of complaint clearly deprives

का कार्यभार, जिसका अभिकथित रुप से उसके द्वारा दुरुपयोग किया गया था जब आरोप पत्र प्रस्तुत किया गया था – मंजूरी की कोई आवश्यकता नहीं। (अजॉय आचार्य वि. स्टेट ब्यूरो ऑफ इन्वेस्टिगेशन, भोपाल) (DB)...*147

भ्रष्टाचार निवारण अधिनियम (1988 का 49), धारा 19 – मंजूरी – भारत सरकार ने जाँच एजेंसियों को मार्गदर्शक सिद्धांत जारी किये कि स्थानातंरण अथवा पदोन्नति पर भिन्न पदों को धारण करते समय सिविल कर्मचारी को पी.सी. अधिनियम की सुसंगत धाराओं के अर्थान्तर्गत भिन्न पद धारण करना नहीं माना जा सकता – अभिनिर्धारित – मंत्रालय द्वारा दिये गये विभिन्न निर्णयों के निर्वचन को प्रकाश सिंह बादल के प्रकरण में दिये गये संप्रेक्षण को दृष्टिगत रखते हुये स्वीकार नहीं किया जा सकता। (अजॉय आचार्य वि. स्टेट ब्यूरो ऑफ इन्वेस्टिगेशन, भोपाल) (DB)...*147

भ्रष्टाचार निवारण अधिनियम (1988 का 49), धारा 19 – मंजूरी – मात्र इसलिए कि मंजूरी आदेश जांच एजेंसी द्वारा ड्राफ्ट किया गया, मंजूरी आदेश को दूषित करने के लिए पर्याप्त नहीं था – यदि विरोधी दृष्टिकोण भी लिया जाए, परिणामिक कार्यवाहियों की वैधता अप्रभावित रहेगी क्योंकि किसी भी त्रुटिवश न्याय की हानि नहीं हुई है। (कैलाश कुमार रोहितास वि. म.प्र. राज्य) (DB)...2498

खाद्य अपमिश्रण निवारण अधिनियम (1954 का 37), धारा 7(v)सहपठित धारा 16 (1)(ए), खाद्य अपमिश्रण निवारण नियम 1955 – नियम 32(ए) – खाद्य निरीक्षक ने परीक्षण हेतु 10 कि.ग्रा. के खुले टिन से 450 ग्रा. 'वाईटल' शुद्ध रिफाइंड कुकिंग ऑयल (सोया तेल) का नमूना क्रय किया – नमूना तीन भागों में विभाजित किया गया तथा मुहरबंद किया गया और एक नमूना राज्य खाद्य प्रयोगशाला भेजा गया – लोक विश्लेषक की रिपोर्ट कि नमूना नियम 32(ए) का उल्लंघन करता है और नमूना मिथ्या छापवाली है – यह सुनिश्चित करने के लिए कि क्या नियम 32(ए) के उपबंधों का उल्लंघन हुआ है उसने लोक विश्लेषक से जांच की मांग की जिसका जवाब उसने नहीं दिया – अभिनिर्धारित – अभियोजन याची–अभियुक्त के विरुद्ध संदेह से परे प्रकरण स्थापित करने में असफल रहा है – अभियुक्त आरोपित करने के प्रक्रम से पूर्व उन्मुक्त किया गया। (नेमीचंद वि. म.प्र. राज्य) ...2896

खाद्य अपमिश्रण निवारण अधिनियम (1954 का 37), धारा 13(2) – अभियोजन में विलम्ब – 7 महिने और 18 दिनों के पश्चात शिकायत प्रस्तुत की गई – यद्यपि अभियुक्त/आवेदक न्यायालय में उपस्थित था किन्तु उसने केन्द्रीय खाद्य प्रयोगशाला द्वारा नमूने का पुनः परीक्षण किये जाने हेतु अधिनियम की धारा 13(2) के अंतर्गत आवेदन प्रस्तुत नहीं किया – अभिनिर्धारित – शिकायत प्रस्तुत करने में कारित

the accused of his valuable right - He could not be convicted for the offence of adulteration - Appeal allowed. [Mohd. Baitulla Vs. State of M.P.] ...2607

Prevention of Food Adulteration Rules 1955 - Rule 32(a) - See - **Prevention of Food Adulteration Act, 1954, Section 7(v) r/w Section 16(1)(a), [Nemichand Vs. State of M.P.] ...2896**

Public Premises (Eviction of Unauthorised Occupants) Act (40 of 1971), Section 2(g) - Public Premise - **Any premise which is in the possession for the time being with the Government of India or its authority would be a 'public premises' and any person who without any authority occupies the said premises would be an 'unauthorized occupant'. [Ramcharan Vs. Airport Authority of India] ...2770**

Public Services (Promotion) Rules, M.P. 2002 - See - **Service Law [Virendra Kumar Swarnkar Vs. Madhya Pradesh State Agricultural Marketing Board] ...2743**

Registration Act (16 of 1908), Section 57(5), Evidence Act (1 of 1872), Sections 64, 65(e) &(f) - Certified copy of the sale deed - **Can be taken on record by the Courts even in the absence of laying any foundation in that respect or having obtained prior permission to adduce secondary evidence in this regard. [Jamuna Prasad Vs. Shivnandan]...*137**

Registration Act (16 of 1908), Section 57(5), Evidence Act (1 of 1872), Sections 67 & 68 - **Plaintiffs produced the certified copy of the sale deed which was taken on record - Plaintiff did not examine any person including the witnesses to the sale to prove the document - On the contrary, the vendor, who was examined as DW 4, categorically denied the execution of the sale deed as well as his signatures thereon - He was also not confronted with the signature in the sale deed for the purpose of proving his signature in the sale deed - Plaintiffs have failed to prove the document, i.e. proving the fact that it was executed, signed and executed by the vendor. [Jamuna Prasad Vs. Shivnandan]...*137**

Registration Act (16 of 1908), Section 69 - Power of Superintendence - **Power of Superintendence does not include power to cancel the earlier registered document or modify any entries in the index - As soon as the Registrar register the documents presented to him for registration the function of performance for such document**

विलंब अभियुक्त को अपने मूल्यवान अधिकार से स्पष्टतः वंचित करता है –उसे अपमिश्रण के अपराध के लिए दोषसिद्ध नहीं किया जा सकता – अपील मंजूर। (मोहम्मद बैतुल्ला वि. म.प्र. राज्य) 2607

खाद्य अपमिश्रण निवारण नियम 1955 – नियम 32(ए) – देखें – खाद्य अपमिश्रण निवारण अधिनियम, 1954, धारा 7(v)सहपठित धारा 16 (1)(ए), (नेमीचंद वि. म.प्र. राज्य) 2896

सरकारी स्थान (अप्राधिकृत अधिभोगियों की बेदखली) अधिनियम (1971 का 40), धारा 2(जी) – सरकारी स्थान – कोई स्थान जो कुछ समय के लिये भारत सरकार या उसके प्राधिकारी के कब्जे में है, 'सरकारी स्थान' होगा और कोई व्यक्ति जो बिना किसी प्राधिकार के उक्त स्थान का अधिभोग करता है वह 'अप्राधिकृत अधिभोगी' होगा। (रामचरण वि. एयरपोर्ट अथॉरिटी ऑफ इण्ड़िया) ...2770

लोक सेवा (पदोन्नति) नियम, म.प्र. 2002 – देखें – सेवा विधि (वीरेन्द्र कुमार स्वर्णकार वि. एम.पी. स्टेट एग्रीकल्चरल मार्केटिंग बोर्ड़) 2743

रजिस्ट्रीकरण अधिनियम (1908 का 16), धारा 57(5), साक्ष्य अधिनियम (1872 का 1), धाराएँ 64, 65(ई) व (एफ) – विक्रय पत्र की प्रमाणित प्रति – न्यायालयों द्वारा अभिलेख पर ली जा सकती है, इस संबंध में कोई आधार प्रस्तुत नहीं किये जाने के बावजूद या इस संबंध में द्वितीय साक्ष्य देने की पूर्वानुमति अभिप्राप्त नहीं किये जाने के बावजूद। (जमुना प्रसाद वि. शिवनंदन) ...*137

रजिस्ट्रीकरण अधिनियम (1908 का 16), धारा 57(5), साक्ष्य अधिनियम (1872 का 1), धाराएँ 67 व 68 – वादीगण ने विक्रय पत्र की प्रमाणित प्रति प्रस्तुत की जिसे अभिलेख पर लिया गया – दस्तावेज साबित करने के लिए वादी ने विक्रय के साक्षियों के एवं किसी अन्य व्यक्ति का परीक्षण नहीं किया – इसके विपरीत, विक्रेता जिसका डीडब्लू 4 के रुप में परीक्षण किया गया था, उसने स्पष्ट रुप से विक्रय के निष्पादन तथा उस पर उसके हस्ताक्षर को अस्वीकार किया है – विक्रय पत्र पर उसके हस्ताक्षर साबित करने हेतु उसे विक्रय पत्र में उसके हस्ताक्षर का सामना नहीं कराया गया – वादीगण दस्तावेज साबित करने में असफल रहे अर्थात यह साबित करने में असफल रहे कि उसे निष्पादित, हस्ताक्षारित तथा विक्रेता द्वारा निष्पादित किया गया था। (जमुना प्रसाद वि. शिवनंदन) ...*137

रजिस्ट्रीकरण अधिनियम (1908 का 16), धारा 69 – अधीक्षण की शक्ति – अधीक्षण की शक्ति में पूर्ववर्ती रजिस्ट्रीकृत दस्तावेज निरस्त करने की शक्ति या अनुक्रमणिका में किसी प्रविष्टी को उपातंरित करने की शक्ति समाविष्ट नहीं है – जैसे ही रजिस्ट्रार उसके समक्ष रजिस्ट्रेशन हेतु प्रस्तुत दस्तावेजों को पंजीबद्ध

produced before him is over and thereafter become a functus officio. [Satya Pal Anand Vs. State of M.P.] (DB)...2401

Representation of the People Act (43 of 1951), Section 77 - Expenditure - Pleadings in the election petition as to the expenses incurred by return candidate per vehicle per day and the total number of vehicles used by him were not the material facts and therefore, it can not be said that by themselves they proved that he had incurred in an expenditure exceeding the prescribed limit. [Doman Singh Nagpure Vs. Pradeep Jaiswal] ...2793

Representation of the People Act (43 of 1951), Sections 83, 86, 87 & 123 - See -Civil Procedure Code, 1908, Order VII Rule 11, [Doman Singh Nagpure Vs. Pradeep Jaiswal] ...2793

Resjudicata - Writ Appeal - Earlier dismissal of appeal of the selected candidates in limine and by a non-speaking order, can not be used against the appellant Bank either as a binding precedent or on the principle of res judicata - Present appeal is maintainable and needs to be considered on merits. [Satpura Narmada Kshetriya Gramin Bank Vs. A.K. Chaturvedi] (DB)...*142

Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act (33 of 1989), Section 3(1)(x) - Main cause of dispute among both the parties was entry of Ox in the field of the appellant/accused - No evidence to show that the appellant intentionally insulted or intimidated the son of complainant with intent to humiliate him because he belonged to 'Baiga' tribe - Ingredients u/s 3(1)(x) of the Act could not be proved - Appellant acquitted. [Ram Bahadur Singh Vs. State of M.P.]...2553

Service Law - Back Wages - Charge of bribe and corruption could not be established to the hilt - However, needle of suspicion is against him -Petitioner liable to be re-instated - Not entitled for back wages. [Suresh Chand Upadhyay Vs. Union of India] ...3049

Service Law - Benefit of promotional post - Petitioner filed petition challenging his supersession - Petition was allowed and was given promotion to the post of Joint Director w.e.f. 1993 - He was given further promotion to the post of Director w.e.f. 1998 by order dated 29.5.2009 - Petitioner had already retired in 2003 - Order mentioned that Petitioner will be entitled for salary of promotional post only after giving joining

करता है, उसके समक्ष ऐसे दस्तावेज के संपादन का कार्य समाप्त होता है और तत्पश्चात पदकार्य निवृत्त हो जाता है। (सत्य पाल आनन्द वि. म.प्र. राज्य) (DB)...2401

लोक प्रतिनिधित्व अधिनियम (1951 का 43), धारा 77 – व्यय – चुनाव याचिका में निर्वाचित अभ्यर्थी द्वारा प्रतिदिन, प्रति वाहन पर किये गये व्यय तथा उसके द्वारा इस्तेमाल की गयी वाहनों की संख्या संबंधी अभिवचन महत्वपूर्ण तथ्य नहीं थे अतएव, यह नहीं कहा जा सकता कि उसके द्वारा ही उन्होंने यह सिद्ध कर दिया कि उन्होंने निर्धारित सीमा से अधिक व्यय किया। (डोमन सिंह नागपुरे वि. प्रदीप जयसवाल) 2793

लोक प्रतिनिधित्व अधिनियम (1951 का 43), धाराएँ 83, 86, 87 व 123 – देखें – सिविल प्रक्रिया संहिता, 1908, आदेश VII नियम 11, (डोमन सिंह नागपुरे वि. प्रदीप जयसवाल) 2793

पूर्व न्याय – रिट अपील – चयनित अभ्यर्थियों की पूर्वतर अपील की आरंभ में ही और कारण विहीन आदेश द्वारा खारिजी को या तो पूर्व निर्णय के रुप में या पूर्व न्याय के सिद्धांत पर अपीलार्थी बैंक के विरुद्ध उपयोग नहीं किया जा सकता – वर्तमान अपील पोषणीय है और गुण–दोषों पर इसका विचार किये जाने की आवश्यकता है। (सतपुड़ा नर्मदा क्षेत्रीय ग्रामीण बैंक वि. ए.के. चतुर्वेदी) (DB)...*142

अनुसूचित जाति और अनुसूचित जनजाति (अत्याचार निवारण) अधिनियम (1989 का 33), धारा 3(1)(x) – दोनों पक्षकारों के मध्य विवाद का मुख्य कारण, अपीलार्थी/अभियुक्त के खेत में बैल का प्रवेश था – यह दर्शाने के लिए कोई साक्ष्य नहीं कि अपीलार्थी ने शिकायतकर्ता के पुत्र को वैगा जनजाति का सदस्य होने के कारण, अपमानित करने के आशय के साथ उसे साशय अपमानित या अभित्रासित किया – अधिनियम की धारा 3(1)(x) के अंतर्गत घटकों को साबित नहीं किया जा सका है – अपीलार्थी दोषमुक्त। (राम बहादुर सिंह वि. म.प्र. राज्य) 2553

सेवा विधि – पिछला वेतन – रिश्वत और भ्रष्टाचार के आरोप पूर्णतः स्थापित नहीं किये जा सके हैं – किन्तु संदेह की सूई उसकी ओर है – याची बहाल किये जाने योग्य – पिछले वेतन के लिये हकदार नहीं। (सुरेश चन्द उपाध्याय वि. यूनियन ऑफ इंडिया) 3049

सेवा विधि – पदोन्नति के पद का लाभ – याची ने अपने अधिक्रमण को चुनौती देते हुए याचिका प्रस्तुत की – याचिका मंजूर की गई तथा संयुक्त निदेशक के पद पर 1993 से प्रभावी पदोन्नति प्रदान की गई – और आगे आदेश दि. 29.05.2009 द्वारा उसे निदेशक के पद पर 1998 से प्रभावी पदोन्नति दी गई – याची 2003 में पहले ही सेवानिवृत्त हो चुका है – आदेश में उल्लिखित था कि याची पदोन्नति के

on the promotional post - Respondents fully aware that petitioner has already retired and is not possible for him to give joining on promotional post - No fault can be attributed to petitioner for not giving him timely promotion - Petitioner was vigilant and respondent had not properly dealt with the claim of the petitioner - Petitioner entitled for benefit of pay of promotional post w.e.f. 1998 - He is entitled for arrears of pay with 9% interest p.a. [H.P. Upadhyaya (Dr.) Vs. State of M.P.]...2342

Service Law - Casual Employee - If an employee is working against a regular post in a regular nature of work and is a full time employee not engaged for any particular season or intermittently, he will not be a daily wages employee but would come in the category of casual employee. [Surendra Saraf Vs. Dr. Hari Singh Gaur Vishwavidyalaya] ...3037

Service Law - Causal Employee - Petitioners working against work of a regular post continuously for last more than 5 to 10 years - Their work is of regular nature - They are not engaged intermittently nor are they part time employees - In note sheets and pay bills prepared by respondents, the petitioners are shown to be working against regular post - Held - Even though petitioners are categorized as 'daily wages employees', there is no reason for denying benefit to the petitioners - Even on the principle of "equal pay for equal work", petitioners are entitled to the benefit claimed for, i.e. at par with other casual employees - Respondents can not discriminate with them. [Surendra Saraf Vs. Dr. Hari Singh Gaur Vishwavidyalaya] ...3037

Service Law - Civil Services (Classification Control and Appeal) Rules, M.P. 1966, Rule 10 - Respondent was charge-sheeted for major misconduct but the minor penalty was imposed - In view of the circular dated 13.01.2005, he was entitled for full salary of the entire period of suspension. [State of M.P. Vs. Shailendra] (DB)...2315

Service Law - Compulsory Retirement - Committee constituted to scrutinise the case of respondent/petitioner relied on a report of enquiry conducted behind the back of respondent/petitioner - No opportunity of hearing whatsoever was given to the respondent/petitioner in that enquiry and a report was given with respect to certain conducts of the respondent/petitioner - Order of compulsory retirement can not be sustained. [Moulana Azad National Institute of Technology Vs. Ajit Narayan] (DB)...2694

पद के वेतन का हकदार केवल पदोन्नति पद पर कार्यभार ग्रहण करने के पश्चात होगा – प्रत्यर्थीगण को पूर्णतः जानकारी थी कि याची पहले ही सेवानिवृत्त हो चुका है और पदोन्नति पद पर कार्यभार ग्रहण करना उसके लिए संभव नहीं है – समय पर पदोन्नति नहीं दिये जाने में याची की कोई गलती नहीं – याची सतर्क था और प्रत्यर्थीगण ने याची के दावे पर उचित कार्यवाही नहीं की – याची 1998 से प्रभावी पदोन्नति पद के वेतन के लाभ के लिए हकदार – वह 9 प्रतिशत प्रतिवर्ष ब्याज के साथ वेतन के बकाया हेतु हकदार है। (एच.पी. उपाध्याय (डॉ.) वि. म.प्र. राज्य)....2342

सेवा विधि – आकस्मिक कर्मचारी – यदि कोई कर्मचारी नियमित स्वरूप के कार्य में नियमित पद पर कार्यरत है और पूर्णकालीन कर्मचारी है जो किसी विशिष्ट अवधि के लिए अथवा आंतरायिक रूप से नियुक्त नही किया गया है, वह दैनिक वेतन कर्मचारी नही है किन्तु वह आकस्मिक कर्मचारी की श्रेणी में आएगा। (सुरेन्द्र सराफ वि. डॉ. हरी सिंह गौर विश्वविद्यालय) 3037

सेवा विधि – आकस्मिक कर्मचारी – याचीगण पिछले 5 से 10 वर्षों से अधिक की अवधि से निरंतर रूप से नियमित पद पर कार्यरत – उनका कार्य नियमित स्वरूप का है – वे आंतरायिक रूप से नियुक्त नही, न ही वे अंशकालीन कर्मचारी है – प्रत्यर्थीगण द्वारा तैयार किये गये नोट शीट एवं वेतन पत्र में याचीगण का नियमित पद पर कार्यरत होना दर्शाया गया – अभिनिर्धारित – यद्यपि याचीगण को 'दैनिक वेतन कर्मचारी' के रूप में वर्गीकृत किया गया तथापि याचीगण को लाभ से वंचित करने का कोई कारण नही है – 'समान कार्य के लिए समान वेतन' के सिद्धांत पर भी याचीगण दावा किये गये लाभों के हकदार हैं अर्थात् आकस्मिक कर्मचारियों के समतुल्य – प्रत्यर्थीगण उनके साथ भेदभाव नही कर सकते। (सुरेन्द्र सराफ वि. डॉ. हरी सिंह गौर विश्वविद्यालय) 3037

सेवा विधि –सिविल सेवा (वर्गीकरण, नियंत्रण और अपील) नियम म.प्र.,1966, नियम 10, – प्रत्यर्थी को घोर कदाचार के लिए आरोपित किया गया परंतु लघु शास्ति अधिरोपित की गई – परिपत्र दि. 13.01.2005 को दृष्टिगत रखते हुए, निलंबन की संपूर्ण अवधि का पूर्ण वेतन पाने के लिए वह हकदार था। (म.प्र. राज्य वि. शैलेन्द्र) (DB)...2315

सेवा विधि – अनिवार्य सेवानिवृत्ति – प्रत्यर्थी/याची के मामले की संविक्षा करने के लिये गठित की गयी समिति ने प्रत्यर्थी/याची की पीठ पीछे की गयी जांच के प्रतिवेदन पर विश्वास किया – उस जांच में प्रत्यर्थी/याची को सुनवाई का कोई अवसर नहीं दिया गया था और प्रत्यर्थी/याची के कतिपय आचरण के संबंध में प्रतिवेदन दिया गया था – अनिवार्य सेवानिवृत्ति का आदेश कायम नहीं रखा जा सकता। (मौलाना आजाद नेशनल इंस्टीट्यूट ऑफ टेक्नॉलाजी वि. अजीत नारायण) (DB)...2694

Service Law - Compulsory retirement - Employees (employed in M.P. Road Transport Corporation) who completed 20 years of service or 50 years of age were compulsory retired by Corporation taking recourse to the direction of State Government in purported exercise of power u/s 34 of Road Transport Corporation Act 1950 adopted the circular No. C-3-24/2000/3/1 dated 22.08.2000, which lays down the procedure to be followed when a Government Servant is to be compulsory retired on his completion of 20 years of service or on attaining 50 years of age either under Fundamental Rule 56 or under Rule 42 of the M.P. Civil Service (Pension) Rules 1976 - Held - Determination of service of an employee of the Corporation by way of pre-mature retirement, except by way of punishment, has not been provided either in the M.P.S.R.T.C. Employees Service Regulations 1950 or in the Standard Standing Orders - Action of the respondents Corporation in pre-mature retiring its employees in public interest also not in consonance with the provisions contained in the M.P. Industrial Relation Act 1961 - Action of the respondent Corporation can not be given the stamp of approval - The action is held to be without any authority/sanction of law, as such is void ab-initio. [Bhagwat Singh Thakur Vs. State of M.P.] ...2434

Service Law - Date of Birth - Correction - Entries in Service book were filled by the Petitioner - Column pertaining to date of birth was left vacant by him - When opportunity was given by department to submit proof of date of birth, Petitioner conceded that department may proceed as per record available - Department after considering the papers of insurance in which the petitioner had mentioned his date of birth to be in year 1935 - Subsequent claim of the petitioner that his date of birth is 1930 as per janam kundli and school certificate recently issued by Head Master not reliable - Petition dismissed. [Shankar Lal Agrawal Vs. District Shahkari Kendriya Bank Maryadit] (DB)...3000

Service Law - Delay in enquiry - Charge-sheet issued to the petitioner on 16.04.1994 in respect of an incident which took place on 24.03.1994, the enquiry report was submitted on 06.03.1997 - The respondent instead of taking action thereupon within a reasonable time sat over the same for about seven years, when suddenly on 22.11.2003, i.e. just seven months before his retirement, issued a show cause notice and culminated it into a minor penalty vide impugned order dated

सेवा विधि – अनिवार्य सेवानिवृत्ति – कर्मचारी (म.प्र. राज्य सड़क परिवहन निगम में कार्यरत) जिन्होंने 20 वर्ष की सेवा अथवा 50 वर्ष की आयु पूर्ण की है उन्हें निगम द्वारा अनिवार्य सेवानिवृत्त किया गया, सड़क परिवहन निगम अधिनियम 1950 की धारा 34 के अंतर्गत शक्ति के प्रयोग में राज्य सरकार के निर्देश का अवलंब लेकर परिपत्र क्र. सी–3–24/2000/3/1 दि. 22.08.2000 को अंगीकृत करते हुये जिसमें मूलभूत नियम 56 या म.प्र. सिविल सेवा (पेन्शन) नियम 1976 के अंतर्गत किसी सरकारी कर्मचारी को उसके 20 वर्ष की सेवा अथवा 50 वर्ष की आयु प्राप्त करने पर अनिवार्य सेवानिवृत्त करने की अनुसरणीय प्रक्रिया अधिकथित है – अभिनिर्धारित – शास्ति के रुप में छोड़कर समय पूर्व सेवानिवृत्ति के द्वारा निगम के कर्मचारी की सेवा का निर्धारण न तो एमपीएसआरटीसी कर्मचारी सेवा विनियम 1950 में और न ही मानक स्थाई आदेशों में उपबंधित है – लोक हित में अपने कर्मचारियों को समय पूर्व सेवानिवृत्त करने की प्रत्यर्थी निगम की कार्यवाही, म.प्र. औद्योगिक संबंध अधिनियम 1961 में अंतर्विष्ट उपबंधों के भी अनुरुप नहीं – प्रत्यर्थी निगम की कार्यवाही का अनुमोदन नहीं किया जा सकता – कार्यवाही को बिना किसी प्राधिकार/विधि की मंजूरी के होने की धारणा की गई इसलिए प्रारंभ से शून्य है। (भगवत सिंह ठाकुर वि. म.प्र. राज्य) 2434

सेवा विधि – जन्म तिथि – सुधार – सेवा पुस्तिका में प्रविष्टियां याची द्वारा भरी गयी थी – उसके द्वारा जन्मतिथि में संबंधित स्तंभ रिक्त छोड़ा गया – जब जन्मतिथि का सबूत प्रस्तुत करने हेतु विभाग द्वारा अवसर दिया गया, तब याची ने स्वीकृति दी कि उपलब्ध अभिलेख के अनुसार विभाग कार्यवाही कर सकता है – विभाग ने बीमा के उन दस्तावेजों को विचार में लेने के पश्चात् जिसमें याची ने अपनी जन्मतिथि सन् 1935 में होने का उल्लेख किया था – याची का पश्चात्वर्ती दावा कि जन्म कुंडली तथा मुख्याध्यापक द्वारा हाल में जारी किये गये शाला प्रमाणपत्र के अनुसार उसकी जन्मतिथि 1930 है, विश्वसनीय नही है – याचिका खारिज। (शंकरलाल अग्रवाल वि. जिला सहकारी केन्द्रीय बैंक मर्यादित)(DB)...3000

सेवा विधि – जांच में विलंब – 24.03.1994 को घटित घटना के संबंध में याची को 16.04.1994 को आरोप पत्र जारी किया गया, 06.03.1997 को जांच रिपोर्ट प्रस्तुत की गई – प्रत्यर्थी ने उस पर उचित समय पर कार्यवाही करने के बजाये करीब सात वर्षों तक कुछ नहीं किया और अचानक 22.11.2003 अर्थात उसकी सेवा निवृत्ति के सात माह पूर्व, कारण बताओ नोटिस जारी कर आक्षेपित आदेश दिनांक 23.01.1994 द्वारा लघु शास्ति के साथ समापन किया – कोई स्पष्टीकरण नहीं कि वे कौन सी परिस्थितियां रहीं जिसने प्रत्यर्थीगण को जांच रिपोर्ट पर सात वर्षों तक

23.01.1994 - No explanation as to what were the circumstances which prevented respondents from taking an action on the enquiry report for about seven years - The delay in enquiry caused great prejudice to the petitioner as because of the same he suffered from being considered for higher pay scale and the proper fixation of pension - Held - The impugned order deserves to be set aside - Petition allowed. [Jagdish Prasad Vs. M.P. State Electricity Board] ...2719

Service Law - Departmental Enquiry - Civil Services (Classification, Control and Appeal) Rules, M.P., 1966, Rule 14 - Non-supply of copy of documents - On 22.12.1995 and 23.01.1996 documents in 39 pages and 51 documents were supplied to the petitioner - Petitioner not able to point out the specific documents which were not supplied to him as a result of which prejudice is caused to him and further as to how the same could materially affect the out come of the enquiry - Held - Grievance of petitioner that the relevant documents were not supplied or were supplied after the statements of witnesses were recorded is not substantiated. [S.B. Bhargava Vs. State of M.P.] (DB)...2425

Service Law - Departmental Enquiry - Civil Services (Classification, Control and Appeal) Rules, M.P., 1966, Rule 14 - Non-supply of copy of statements - Material collected during the course of preliminary enquiry not relied upon by the enquiry officer in the departmental enquiry - It was not necessary to supply the copy of the statements of the witnesses recorded during the course of the preliminary enquiry. [S.B. Bhargava Vs. State of M.P.] (DB)...2425

Service Law - Departmental Enquiry - Compulsory retirement - Petitioner, working as a constable in CISF was charge-sheeted on ground that he had permitted his sister-in-law to stay alongwith his family in the Government quarter allotted to him without obtaining prior permission from the concerned authorities and introduced her to a constable with the intention of establishing a matrimonial relationship - After enquiry report a punishment of compulsory retirement was imposed upon the petitioner - Held - Rule 8 of the House Rent and City Compensatory allowance Rules 'sister-in-law' has specifically been mentioned in Rule 8(iii) as a close relative who can live in the Government quarter alongwith a Government servant - Act of petitioner in permitting his sister-in-law to stay with him, does not fall foul of any

कार्यवाही करने से रोका – जांच में विलंब से याची को बहुत हानि हुई है क्योंकि इससे उसे उच्च वेतन मान हेतु विचार में नहीं लिया गया और पेंशन का उचित निर्धारण नहीं किया गया – अभिनिर्धारित – आक्षेपित आदेश अपास्त किये जाने योग्य – याचिका मंजूर। (जगदीश प्रसाद वि. एम.पी. स्टेट इलेक्ट्रिसिटी बोर्ड) ... 2719

सेवा विधि – विभागीय जांच – सिविल सेवा (वर्गीकरण, नियंत्रण और अपील) नियम, म.प्र., 1966 नियम 14 – दस्तावेजों की प्रति का असंदाय – 22.12.1995 तथा 23.01.1996 को 39 पृष्ठों में दस्तावेज तथा 51 दस्तावेज याची को प्रदाय किये गये – याची उन विनिर्दिष्ट दस्तावेजों को इंगित करने में सक्षम नहीं जो उसे प्रदाय नहीं किये गये, जिसके फलस्वरुप उसे हानि कारित हुई और आगे यह कि वह किस प्रकार जांच के नतीजों को तात्विक रुप से प्रभावित कर सकते हैं – अभिनिर्धारित – याची की शिकायत कि सुसंगत दस्तावेज प्रदाय नहीं किये गये अथवा साक्षियों के कथन अभिलिखित किये जाने के पश्चात प्रदाय किये गये सिद्ध नहीं है। (एस.बी. भार्गव वि. म.प्र. राज्य) (DB)...2425

सेवा विधि – विभागीय जांच – सिविल सेवा (वर्गीकरण, नियंत्रण और अपील) नियम, म.प्र., 1966 नियम 14 – कथनों की प्रति का असंदाय – विभागीय जांच में जांचकर्ता अधिकारी द्वारा प्रारंभिक जांच के दौरान एकत्रित सामग्री पर विश्वास नहीं किया गया – प्रारंभिक जांच की कार्यवाही के दौरान अभिलिखित किये गये साक्षियों के कथनों की प्रति उपलब्ध कराना आवश्यक नहीं था। (एस.बी. भार्गव वि. म.प्र. राज्य) (DB)...2425

सेवा विधि – विभागीय जांच – अनिवार्य सेवानिवृत्ति – सीआईएसएफ में आरक्षक के पद पर कार्यरत याची को इस आधार पर आरोपित किया गया कि उसने संबंधित प्राधिकारियों से पूर्वानुमति अभिप्राप्त किये बिना अपनी साली को अपने परिवार के साथ उसे आवंटित किये गये सरकारी क्वार्टर में रहने की अनुमति दी और वैवाहिक संबंध स्थापित करने के उद्देश्य से उसे एक आरक्षक से परिचय कराया – जांच रिपोर्ट के पश्चात याची पर अनिवार्य सेवानिवृत्ति की शास्ति अधिरोपित की गई – अभिनिर्धारित – मकान किराया और नगर भत्ता नियम के नियम 8, नियम 8(iii) में 'साली' को करीबी रिश्तेदार के रुप में विनिर्दिष्ट रुप से उल्लिखित किया गया है, जो सरकारी कर्मचारी के साथ सरकारी क्वार्टर में रह सकती है – अपनी साली को अपने साथ रहने की अनुमति देने का याची का कृत्य, प्रत्यर्थी द्वारा अथवा किसी आचरण नियमों द्वारा जारी किये गये किसी अनुदेशों के

of the instructions issued by the respondents or any of the conduct rules and, therefore, does not amount to a misconduct under the provisions of the Act and the Rules - Order of imposition of punishment upon the petitioner can not be sustained - Petitioner directed to be reinstated. [Padam Singh Shakya Vs. Union of India] ...*126

Service Law - Departmental Enquiry -Denial of legal assistance - Charges levelled against the petitioner were not of complicated nature - Petitioner also not able to show any prejudice caused to him on account of denial of assistance of legal practitioner or judicial officer - No fault can be found with the departmental enquiry proceeding. [S.B. Bhargava Vs. State of M.P.] (DB)...2425

Service Law - Determination of Seniority - For determination of seniority of the officers who were recommended on the same date, age is the only valid and fair basis - Their seniority should be decided on the basis of age of the candidates who have been recommended. [D.P. Das Vs. Union of India] (SC)...2657

Service Law - Disciplinary Enquiry - Punishment - Petitioner as apparent is guilty of charges of dereliction of duty as Court Moharrir, and of being in drunken state while attending the district office - Past conduct of the petitioner was also found to be not congenial for a disciplined force - Removal from service, can not be said to be disproportionate. [R.K. S. Gautam Vs. State of M.P.] ...2715

Service Law - Disciplinary Proceedings - Charges of Corruption - The charge of bribe and corruption are quasi judicial in nature which has civil and criminal consequences - Such grave charge is required to be proved beyond any shadow of doubt and to the hilt and it can not be proved on mere probabilities -Even in Departmental Enquiry, suspicion can not take place of proof. [Suresh Chand Upadhyay Vs. Union of India], ...3049

Service Law - Disciplinary Proceedings - Non-speaking punishment and revising order - Non-speaking punishment and revising orders are cryptic and passed without application of mind. [Suresh Chand Upadhyay Vs. Union of India] ...3049

Service Law - Disciplinary Proceedings - Non-supply of documents - Documents desired by delinquent were not provided - Witnesses were

साथ छल नहीं है, इसलिए अधिनियम तथा नियमों के उपबंधों के अंतर्गत अवचार की कोटि में नहीं आता – याची पर शास्ति के अधिरोपण का आदेश कायम नहीं रखा जा सकता – याची को बहाल करने के लिए निर्देशित किया गया। (पदम सिंह शाक्य वि. यूनियन ऑफ इंडिया) ...*126

सेवा विधि – विभागीय जांच – विधिक सहायता नकारना – याची के विरुद्ध लगाये गये आरोप जटिल प्रकृति के नहीं थे – याची यह दर्शाने में भी अक्षम कि उसे विधिक व्यवसायी अथवा न्यायिक अधिकारी की सहायता देने से इंकार किये जाने के कारण उसे कोई हानि कारित हुई है – विभागीय जांच की कार्यवाही में कोई त्रुटि नहीं पायी जा सकती। (एस.बी. मार्गव वि. म.प्र. राज्य) (DB)...2425

सेवा विधि – ज्येष्ठता का निर्धारण – अधिकारी जिनकी समान तिथि पर सिफारिश की जाती है, उनकी ज्येष्ठता के निर्धारण हेतु केवल आयु ही वैध एवं उचित आधार है – उनकी ज्येष्ठता का निर्धारण सिफारिश किये गये अभ्यर्थियों की आयु के आधार पर किया जाना चाहिए। (डी.पी. दास वि. यूनियन ऑफ इण्ड़िया) (SC)...2657

सेवा विधि – अनुशासनिक जांच – शास्ति – याची प्रकट रुप से एवं न्यायालय मोहर्रिर के रुप में कर्तव्य की उपेक्षा जिला कार्यालय में उपस्थिति के समय नशे की स्थिति में होने के आरोपों का दोषी है – याची का पूर्व आचरण भी अनुशासित बल के लिए अनुकूल नहीं पाया गया – सेवा से हटाया जाना, अननुपातिक नहीं कहा जा सकता। (आर.के.एस. गौतम वि. म.प्र. राज्य) 2715

सेवा विधि – अनुशासनिक कार्यवाही – भ्रष्टाचार के आरोप – रिश्वत और भ्रष्टाचार के आरोप न्यायिककल्प प्रकृति के हैं जिसके सिविल एवं दाण्डिक परिणाम होते हैं – ऐसे गंभीर आरोप को संदेह की किसी छाया से परे और पूर्णतः साबित किया जाना अपेक्षित है और इसे मात्र संभावनाओं पर साबित नहीं किया जा सकता – विभागीय जाँच में भी संदेह, साक्ष्य का स्थान नहीं ले सकता। (सुरेश चन्द उपाध्याय वि. यूनियन ऑफ इंडिया) ...3049

सेवा विधि – अनुशासनिक कार्यवाही – कारण विहीन शास्ति तथा पुनरीक्षण आदेश – कारण विहीन शास्ति तथा पुनरीक्षण आदेश अस्पष्ट है और मस्तिष्क का प्रयोग किये बिना पारित किये गये हैं। (सुरेश चन्द उपाध्याय वि. यूनियन ऑफ इंडिया) 3049

सेवा विधि – अनुशासनिक कार्यवाही – दस्तावेज प्रदाय नहीं किया जाना – अपचारी द्वारा चाहे गये दस्तावेज उपलब्ध नहीं कराये गये – साक्षियों को भी समन

also not summoned - Held - This alone would not vitiate the enquiry unless it is established as to how prejudice is caused to the petitioner. [Suresh Chand Upadhyay Vs. Union of India] ...3049

Service Law - Disciplinary Proceedings - Non-Supply of Enquiry Report - Mere non-supply of enquiry report will not vitiate the enquiry - Enquiry Report was provided to the petitioner along with punishment order - Petitioner failed to show how non-supply has caused prejudice to him - Enquiry not vitiated on this ground. [Suresh Chand Upadhyay Vs. Union of India] ...3049

Service Law - Family Pension - Husband of petitioner retired on 30.06.1988 and died on 22.09.88 - On 22.09.1995, Punjab National Bank (Employees') Pension Regulation 1995 notified - Petitioner could not apply and comply other conditions necessary for pension within stipulated time and when she applied on 16.01.97 the application was turned down on the ground that proposal was not given within stipulated time - Held - Petitioner had no information about coming in vogue of Pension Regulations, therefore, she can not be deprived of the benefit of her legitimate right despite that the petition has been filed in the year 2004 - Petition allowed. [Sumanlata Gupta (Smt.) Vs. Chairman-Cum-Managing Director, Panjab National Bank, New Delhi] ...2420

Service Law - House Rent Allowance - HRA is a special allowance prescribed under a scheme made by the State to grant benefit to such employees who are not allotted the Government accommodation - Scheme of HRA is introduced to grant some benefit to those employees, who are living in their own houses and are working for the State - Though the allowance has not been specifically mentioned under Fundamental Rules or under other service Rules but the scheme is squarely applicable to all employees of the State - Respondents are directed to pay the HRA to the petitioner - Writ petition allowed. [Chunnilal Sen Vs. State of M.P.] ...2739

Service Law - Issuance of Charge Sheet on the recommendation of Lokayukt - At no point of time, the Competent Authority examined the recommendation of Lokayukt as required under Section 12(2) of Adhiniyam, 1981 - Competent Authority did not take an independent decision on the said recommendation as to whether the charge sheet is required to be issued to the appellant for initiating disciplinary

नहीं किया गया – अभिनिर्धारित – केवल इससे जाँच दूषित नहीं होगी जब तक कि यह स्थापित नहीं किया जाता कि याची को कैसे हानि कारित हुई है। (सुरेश चन्द उपाध्याय वि. यूनियन ऑफ इंडिया) 3049

सेवा विधि – अनुशासनिक कार्यवाही – जाँच प्रतिवेदन प्रदाय नहीं किया जाना – जाँच प्रतिवेदन को प्रदाय नहीं किये जाने मात्र से जाँच दूषित नहीं होगी – जाँच प्रतिवेदन शास्ति के आदेश के साथ याची को प्रदान किया गया – याची यह दर्शाने में असफल रहा कि प्रदाय नहीं किये जाने से उसे कैसे हानि कारित हुई – इस आधार पर जाँच दूषित नहीं होती। (सुरेश चन्द उपाध्याय वि. यूनियन ऑफ इंडिया) 3049

सेवा विधि – परिवार पेंशन – याची का पति 30.06.1988 को सेवानिवृत्त हुआ और 22.09.88 को उसकी मृत्यु हो गई – 22.09.1995 को पंजाब नेशनल बैंक (कर्मचारी) पेंशन विनियमन 1995 अधिसूचित – याची निर्धारित समय के भीतर आवेदन नहीं कर पायी तथा पेंशन के लिए आवश्यक अन्य शर्तों का अनुपालन नहीं कर सकी और जब उसने 16.01.97 को आवेदन दिया, आवेदन इस आधार पर खारिज कर दिया गया कि प्रस्ताव को निर्धारित समय के भीतर नहीं दिया गया था – अभिनिर्धारित – याची को पेंशन विनियमन के प्रभावी होने की जानकारी नहीं थी इसलिए उसे उसके वैध अधिकार के लाभ से वंचित नहीं किया जा सकता, बावजूद इसके कि याचिका वर्ष 2004 में प्रस्तुत की गई है – याचिका मंजूर। (सुमनलता गुप्ता (श्रीमति) वि. चेयरमेन–कम–मेनेजिंग डायरेक्टर, पंजाब नेशनल बैंक, न्यू देहली)...2420

सेवा विधि – गृह भाड़ा भत्ता – एचआरए एक विशेष भत्ता है जिसे राज्य सरकार द्वारा योजना के अंतर्गत ऐसे कर्मचारियों को लाभ प्रदान करने हेतु विहित किया गया है जिन्हें सरकारी स्थान का आवंटन नहीं किया गया है – एचआरए की योजना उन कर्मचारियों को कुछ लाभ प्रदान करने के लिए पुरःस्थापित की गयी है जो अपने स्वयं के मकानों में रह रहे हैं और राज्य के लिये कार्य कर रहे हैं – यद्यपि मूलभूत नियम के अंतर्गत या अन्य सेवा नियमों के अंतर्गत भत्ता विनिर्दिष्ट रुप से उल्लिखित नहीं है किन्तु योजना पूरी तरह से राज्य के सभी कर्मचारियों को लागू होती है – याची को एचआरए का भुगतान करने के लिए प्रत्यर्थियों को निदेशित किया गया – रिट याचिका मंजूर। (चुन्नीलाल सेन वि. म.प्र. राज्य) 2739

सेवा विधि – लोकायुक्त की सिफारिश पर आरोप पत्र जारी करना – सक्षम प्राधिकारी ने कभी लोकायुक्त की सिफारिश का परीक्षण नहीं किया जो कि अधिनियम 1981 की धारा 12(2) के अंतर्गत अपेक्षित है – सक्षम प्राधिकारी ने उक्त सिफारिश पर इस संबंध में स्वतंत्र निर्णय नहीं लिया कि क्या अपीलार्थी को उसके विरुद्ध अनुशासनिक कार्यवाही करने के लिए आरोप पत्र जारी करना अपेक्षित है –

proceedings against him - Merely on the basis of letter received from Lokayukt Organization, the State Govt. mechanically issued the charge sheet - Charge sheet quashed with liberty to Competent Authority to take fresh decision after examining the report received from Lokayukt. [Dharmendra Vs. State of M.P.] (DB)...2681

Service Law - Order of Termination - Suppression of pendency of criminal case - On the date of filing of attestation, petitioner was facing criminal trial - Pendency of criminal trial was suppressed by the Petitioner in attestation form - Held - Petitioner never had a clear intention and fair conduct to disclose his involvement in criminal case - Such conduct is unbecoming of a public servant - As the petitioner had concealed and suppressed the fact of pendency of criminal case, termination of his services on this ground does not call for interference - Petition dismissed. [Bhagwat Prasad @ Mewalal @ Mewaram Vs. State of M.P.] (DB)...3058

Service Law - Powers of appellate authority - Service of the respondent was terminated by the appellant bank after a departmental enquiry - Appellate authority directed reinstatement of the employee without any back wages - Employee did not prefer any appeal or cross objection against the denial of back wages - The denial of back wages became final - Granting of back wages (by Writ Court) was beyond the jurisdiction. [District Cooperative Central Bank Ltd., Satna Vs. Sunderlal] (DB)...2324

Service Law - Promotion - Appellant on basis of recommendation of the Departmental Promotion Committee, was promoted on ad hoc basis on the post of Executive Engineer - Later on, he was reverted on the basis that the post of Executive Engineer was required to be filled in by a candidate belonging to the reserved category - Held - The only sanctioned post of Executive Engineer in the set up can not be earmarked for reserved category candidate as the same would amount to 100% reservation, which is violative of Article 16(4) of the Constitution -Writ Appeal allowed. [D.K. Kuraria Vs. M.P. Rajya Matsya Vikas Nigam] (DB)...2690

Service Law - Public Examination - Written test held by the appellant for promotion of employees from clerical cadre to Officer Junior Management Grade Scale-I (OJM-I) - Written test held for

मात्र लोकायुक्त संगठन से प्राप्त पत्र के आधार पर राज्य सरकार ने यांत्रिक रुप से आरोप पत्र जारी किया – सक्षम प्राधिकारी को लोकायुक्त से प्राप्त रिपोर्ट का परीक्षण करने के पश्चात पुनः निर्णय करने की स्वतंत्रता के साथ आरोप पत्र अभिखंडित। (धर्मेंद्र वि. म.प्र. राज्य) (DB)...2681

सेवा विधि – सेवा समाप्ति का आदेश – लंबित दाण्डिक प्रकरण का छिपाव – साक्ष्यांकन प्रस्तुत करने के दिनांक को याची दाण्डिक विचारण का सामना कर रहा था – साक्ष्यांकन पारूप में याची ने दाण्डिक विचारण लंबित होने का छिपाव किया – अभिनिर्धारित – दाण्डिक प्रकरण में उपने अंतर्वलित होने को प्रकट करने का याची का कोई स्पष्ट आशय एवं उचित आचरण कभी नहीं था – ऐसा आचरण लोक सेवक के लिए अनुचित है – चूंकि याची ने लंबित दाण्डिक प्रकरण के तथ्य का छिपाव एवं दमन किया, इस आधार पर उसकी सेवा समाप्ति में हस्तक्षेप अपेक्षित नहीं – याचिका खारिज। (भगवत प्रसाद उर्फ मेवालाल उर्फ मेवाराम वि. म.प्र. राज्य) (DB)...3058

सेवा विधि – अपीलीय प्राधिकारी की शक्तियां – अपीलार्थी बैंक ने विभागीय जांच के उपरांत प्रत्यर्थी की सेवायें समाप्त की – अपीलीय प्राधिकारी ने कर्मचारी को बिना किसी पूर्व वेतन के बहाली का निर्देश दिया – कर्मचारी ने पूर्व वेतन के प्रत्याख्यान के विरुद्ध कोई अपील या प्रत्याक्षेप प्रस्तुत नहीं किया – पूर्व वेतन का प्रत्याख्यान अंतिम बना – पूर्व वेतन प्रदान करना रिट न्यायालय की अधिकारिता के बाहर था। (डिस्ट्रिक्ट को–ऑपरेटिव सेंट्रल बैंक लि., सतना वि. सुंदरलाल)(DB)...2324

सेवा विधि – पदोन्नति – विभागीय पदोन्नति समिति की सिफारिश के आधार पर अपीलार्थी को तदर्थ रुप से कार्यपालन यंत्री के पद पर पदोन्नत किया गया – बाद में, उसे इस आधार पर पदावनत किया गया कि कार्यपालन यंत्री का पद आरक्षित श्रेणी के अभ्यर्थी द्वारा भरा जाना अपेक्षित था – अभिनिर्धारित – स्थापना में कार्यपालन यंत्री के एकमात्र स्वीकृत पद को आरक्षित श्रेणी के अभ्यर्थी हेतु चुना नहीं जा सकता क्योंकि यह 100 प्रतिशत आरक्षण की कोटि में आयेगा जो कि संविधान के अनुच्छेद 16(4) का अतिलंघन है – रिट अपील मंजूर। (डी.के. कुरारिया वि. एम.पी. राज्य मत्स्य विकास निगम) (DB)...2690

सेवा विधि – लोक परीक्षा – अपीलार्थी द्वारा लिपिकीय वर्ग से अधिकारी कनिष्ठ प्रबंधकीय श्रेणी स्केल– I (ओजेएम– I) पर पदोन्नति हेतु लिखित परीक्षा ली गयी – सरगुजा क्षेत्रीय बैंक के लिये लिखित परीक्षा अंबिकापुर में प्रातः 10.00 बजे से 11.

Sarguja Kshetriya Gramin Bank at Ambikapur, at 10.00 am to 11.15 am while the written test of Satpura Narmada Kshetriya Gramin Bank was held at Gwalior Centre at 1.00pm to 2.15 pm - IBPS, an outside agency engaged by the both Bank for conducting the written test - Both the question paper of English language were same for both these banks and 19 questions of the second test paper (Banking Law, practice and procedure) were also same -Held - It can not be said that there was any leakage of question paper merely because the written test for promotion was held for both the Banks on the same day but at different times. [Satpura Narmada Kshetriya Gramin Bank Vs. A.K. Chaturvedi] (DB)...*142

Service Law - Public Services (Promotion) Rules, M.P. 2002 - Promotion - There is no impediment for promotion to an employee who is inflicted with a minor punishment which came to an end much before the D.P.C. - The rule no where provides that such employee can be treated as "unsuitable" for promotion. [Virendra Kumar Swarnkar Vs. Madhya Pradesh State Agricultural Marketing Board] ...2743

Service Law - Recruitment - Qualification - Advertisement issued for recruitment of Line Attendant on contractual basis - Meter Readers challenged the prescribed qualification on the ground that although they perform the work similar to that of Line Attendants but a different qualification is prescribed as a result of which their right to seek engagement on contract basis is being denied - Held - Scheme under which appointment is to be made has not been challenged - Work performed by Meter Readers is different from that of Line Attendants - Work performed by line attendant includes certain other technical work over and above that of meter reading - In absence of violation of any statutory rule or constitutional provision, the Court can not interfere with the essential qualification prescribed for such technical work by competent technical authorities - Petition dismissed. [Ganesh Khare Vs. Principal Secretary, State of M.P.] ...3002

Service Law - Recruitment - Weightage of past service - Meter Readers who fulfill the educational qualification for recruitment to the post of line attendant are entitled to 10% weightage due to work done by them provided they have worked for not less than 3 years . [Ganesh Khare Vs. Principal Secretary, State of M.P.] ...3002

15 तक ली गयी जबकि सतपुड़ा नर्मदा क्षेत्रीय ग्रामीण बैंक की लिखित परीक्षा ग्वालियर केन्द्र पर दोपहर 1.00 बजे से 2.15 बजे तक ली गयी – दोनों बैंकों द्वारा लिखित परीक्षा के परिचालन हेतु आईबीपीएस, एक बाहरी एजेंसी को कार्य सौंपा गया – दोनों बैंक के अंग्रेजी भाषा के दोनों प्रश्न पत्र समान थे और द्वितीय प्रश्न पत्र (बैंकिंग विधि, पद्धति और प्रक्रिया) के 19 प्रश्न भी एक समान थे – अभिनिर्धारित – मात्र इसलिये कि दोनों बैंकों के लिये पदोन्नति हेतु लिखित परीक्षा एक ही दिन किन्तु भिन्न समय पर ली गयी थी, यह नहीं कहा जा सकता कि प्रश्न पत्र का कोई प्रकटन हुआ था । (सतपुड़ा नर्मदा क्षेत्रीय ग्रामीण बैंक वि. ए.के. चतुर्वेदी) (DB)...*142

सेवा विधि – लोक सेवा (पदोन्नति) नियम, म.प्र. 2002 – पदोन्नति – ऐसे कर्मचारी की पदोन्नति हेतु कोई बाधा नहीं जिस पर लघु शास्ति अधिरोपित की गयी जो डी.पी.सी. के काफी समय पूर्व समाप्त हो गयी थी – नियम कहीं भी उपबंधित नहीं करते कि ऐसे कर्मचारी को पदोन्नति हेतु 'अनुपयुक्त' माना जा सकता है। (वीरेन्द्र कुमार स्वर्णकार वि. एम.पी. स्टेट एग्रीकल्चरल मार्केटिंग बोर्ड) 2743

सेवा विधि – भर्ती – अर्हता – संविदा आधार पर लाईन अटेंडेन्ट की भर्ती हेतु विज्ञापन जारी किया गया – मीटर रीडरों (वाचकों) ने विहित अर्हता को इस आधार पर चुनौती दी कि यद्यपि उनका कार्य लाईन अटेंडेन्ट के समान ही है किन्तु भिन्न अर्हता विहित की गयी है जिसके परिणाम स्वरूप संविदा आधार पर काम चाहने के अधिकार से उन्हें वंचित किया जा रहा है – अभिनिर्धारित – स्कीम जिसके अंतर्गत नियुक्ति की जानी है को चुनौती नही दी गई है – मीटर रीडरों द्वारा किये जाने वाला कार्य, लाईन अटेंडेन्ट के कार्य से भिन्न है – लाईन अटेंडेन्ट द्वारा किये जाने वाले कार्य में मीटर रीडिंग के कार्य के अतिरिक्त कतिपय अन्य तकनीकी कार्य समाविष्ट है – किसी कानूनी नियम या संवैधानिक उपबंध के उल्लंघन के अभाव में न्यायालय, सक्षम तकनीकी प्राधिकारियों द्वारा ऐसे तकनीकी कार्य हेतु विहित अनिवार्य अर्हता के साथ हस्तक्षेप नही कर सकता – याचिका खारिज। (गनेश खरे वि. प्रिंसिपल सेक्रेटरी, म.प्र. राज्य) 3002

सेवा विधि – भर्ती – पूर्व मे दी गयी सेवा की वरीयता – मीटर रीडर जो लाईन अटेंडेन्ट के पद पर भर्ती हेतु शैक्षणिक अर्हता की पूर्ति करते हैं वे उनके द्वारा किये गये कार्य के कारण 10 प्रतिशत वरीयता के हकदार है परंतु तब जब उन्होनें 3 वर्ष से अधिक कार्य किया है। (गनेश खरे वि. प्रिंसिपल सेक्रेटरी, म.प्र. राज्य) 3002

Service Law - Seniority - Seniority is an incidence of service and where the service rules prescribe the method of its computation, it is squarely governed by such rules - In absence of a provision, ordinarily the length of service is taken into account. [D.P. Das Vs. Union of India] (SC)...2657

Service Law - Service condition - Effect of in enactment of Central University Act - Petitioners working against posts classified under category III & IV and being paid wages at the rate notified by State Government - On 01.05.2008 the Executive Council of University exercising powers under Section 24 of M.P. Vishwavidyalaya Adhiniyam 1973 resolved that all daily wages and muster roll employees working in the University be granted the minimum of the pay scale and allowance against the post on which they are discharging the duties - After this resolution the Central University Act 2009 came into force w.e.f. 20.03.2009 - On 17.07.2009, the Vice Chancellor of the University passed an order granting minimum of the pay scale alongwith 1/30th of the Dearness Allowance to each of the petitioners - Subsequently, when this order was withdrawn the petitioner approached the Court - Held - Once the Executive Council took a decision on 01.05.2008 for granting benefit to the petitioners, the same becomes a service condition of the petitioners and by virtue of Section 4(d) of the Act of 2009 the terms and conditions of appointment which were existing on 01.05.2008 i.e. prior to 20th March 2009 could not be changed - The University which came into existence after 20th March 2009, under law was duty bound to protect the right of the petitioners which accrued to them by virtue of decision taken by the Executive Council on 01.05.2008 - Respondents have committed an error in refusing to grant the aforesaid benefit. [Surendra Saraf Vs. Dr. Hari Singh Gaur Vishwavidyalaya] ...3037

Service Law - Superannuation - Petitioner working as stenographer in the establishment of the respondent No.1, M.P.A.K.V.N., completed 58 years on 31.03.2010 and, therefore, he was proposed to be superannuated from service with effect from 31.03.2010 - In Employees Service Rules, 1994-95 framed by the M.P.A.K.V.N., no specific provisions specifying the age of superannuation is provided - Petitioner alleging that he is entitled to continue up to the age of 60 years which is the age of superannuation

सेवा विधि – ज्येष्ठता – ज्येष्ठता सेवा का क्रम है और जहां सेवा नियम उसकी संगणना की पद्धति विहित करते हैं, वह पूरी तरह से ऐसे नियमों द्वारा शासित होती है – उपबंध के अभाव में, सामान्यतः सेवा की अवधि को विचार में लिया जाता है। (डी.पी. दास वि. यूनियन ऑफ इण्डिया) (SC)...2657

सेवा विधि – सेवा शर्त – केन्द्रीय विश्वविद्यालय अधिनियम की अधिनियमिति में इसका प्रभाव – याची III एवं IV श्रेणी के अंतर्गत वर्गीकृत पदों पर कार्यरत और उन्हें राज्य सरकार द्वारा अधिसूचित दर पर वेतन दिया जा रहा था – 01.05.2008 को विश्वविद्यालय की कार्यकारिणी परिषद् ने म.प्र. विश्वविद्यालय अधिनियम 1973 की धारा 24 के अंतर्गत शक्तियों के प्रयोग में यह संकल्प लिया कि विश्वविद्यालय में कार्यरत सभी दैनिक वेतन तथा मस्टर रोल कर्मचारियों को उस पद का न्यूनतम वेतनमान एवं भत्तें प्रदान किये जाये जिस पद पर वे अपने कर्तव्यों का निर्वहन कर रहे हैं – इस संकल्प के पश्चात् केन्द्रीय विश्वविद्यालय अधिनियम 2009, दिनांक 20.03.2009 से प्रभावी रूप से लागू हुआ – 17.07.2009 को विश्वविद्यालय के कुलपति ने प्रत्येक याची को मंहगाई भत्ते के 1/30 के साथ न्यूनतम वेतनमान प्रदान करने का आदेश पारित किया – तत्पश्चात्, जब यह आदेश वापस लिया गया तब याची न्यायालय के समक्ष आया – अभिनिर्धारित – एक बार जब कार्यकारिणी परिषद् ने याचीगण को लाभ प्रदान करने का निर्णय 01.05.2008 को लिया, वह याचीगण की सेवा शर्त बन जाता है और अधिनियम 2009 की धारा 4 (डी) के आधार पर नियुक्ति की शर्तें जो 01.05.2008 अर्थात् 20 मार्च 2009 से पहले विद्यमान थी उन्हें बदला नही जा सकता – विश्वविद्यालय जो 20 मार्च 2009 के पश्चात् अस्तित्व में आये, वे विधि अंतर्गत याचीगण के उन अधिकारों का संरक्षण करने के लिए बाध्य थे जो कार्यकारिणी परिषद् के निर्णय दिनांक 01.05.2008 के द्वारा उन्हें प्रोद्भूत हुए है – उपरोक्त लाभ प्रदान करने से इन्कार करने में प्रत्यर्थीगण ने भूल कारित की है। (सुरेन्द्र सराफ वि. डॉ. हरी सिंह गौर विश्वविद्यालय) 3037

सेवा विधि – अधिवर्षिता – आशुलिपिक के रूप में प्रत्यर्थी क्र.1 एम.पी.ए.के.व्ही.एन. की स्थापना मे कार्यरत याची ने 31.03.2010 को 58 वर्ष पूर्ण किए और इसलिए, उसे 31.03.2010 से प्रभावी सेवानिवृत्ति प्रस्तावित की गई – एम.पी.ए.के.व्ही.एन. द्वारा विरचित कर्मचारी सेवा नियम 1994 – 95 में अधिवर्षिता की आयु भी विनिर्दिष्टित करने वाले कोई विनिर्दिष्ट उपबंध उपबंधित नही – याची का अभिकथन कि वह 60 वर्ष की आयु तक कार्यरत रहने के लिए हकदार है जो कि राज्य सरकार के कर्मचारियों हेतु निहित की गई अधिवर्षिता की आयु है – अभिनिर्धारित – प्रत्यर्थी कंपनी के कर्मचारियों की अधिवर्षिता की आयु 58 वर्ष रही है और यद्यपि उसे बढ़ाये

prescribed for the employees of the State Government - Held - Age of superannuation of the employees of the respondent-company has throughout been 58 years and though the issue of enhancement was raised, it was duly considered and rejected in the meeting of the Coordination Committee - Managing Directors of the M.P.A.K.V.Ns. have also taken a clear decision in this regard - Age of superannuation in respect of employees of the respondent-company is 58 years - Petition dismissed. [T.S.N. Nair Vs. M.P. Audyogik Kendra Vikas Nigam Ltd., Bhopal] ...3065

Service Law - Termination of Services **- Petitioner applied for post of 'Aganwadi' suppressing the fact that her husband was employed as Assistant Teacher and secured her appointment - Later on, she also took advantage of her experience on the post of 'Aganwadi' worker at the time of her selection to the post of 'Samvida Shala Shikshak' - Termination of petitioner in view of instructions dated 27.05.1996 issued by the State Government can not be said to be either discriminatory, arbitrary or violative of Article 14 and 16 of the Constitution of India. [Basanti Suryawanshi (Smt.) Vs. State of M.P.] (DB)...2727**

Service Law- Termination on basis of conviction **- Certified Standing Orders Clause 24.1 & 26.8 - Services of the petitioner (An employee of S.E.C.L.) were terminated by the impugned order for the reason that he was convicted for an offence u/s 147, 149, 323/149, IPC - Held - Offence for which the petitioner was convicted does not lead to conclusion that the conduct of the petitioner was 'inherently base, vile, depraved or having any connection showing depravity', as could be termed as crime involving moral turpitude, as would warrant a dismissal from service - Termination quashed - Petition allowed. [R.P. Dwivedi Vs. S.E.C.L] ...2973**

Service Law **- Work Charged and Contingency Paid Employees Pension Rules M.P. 1979 - Family Pension - The services of muster roll employee/daily wager can not be taken into account for the purpose of computing qualifying service for grant of family pension - Writ appeal dismissed. [Kala Bai Prajapati (Smt.) Vs. State of M.P.] (DB)...2319**

Service Law - Writ Petition **- Non impleadment of necessary party -Effect - Respondent being aware of the fact that the respondent No.4**

जाने की बात उठाई गई थी उस पर सम्यक् रूप से विचार किया गया था और समन्वय समिति की बैठक मे उसे अस्वीकार किया गया था – एम.पी.ए.के.व्ही.एनएस. के प्रबंध निदेशकों ने भी इस संबंध मे स्पष्ट निर्णय लिया था – प्रत्यर्थी कंपनी के कर्मचारियों के संबंध में अधिवर्षिता की आयु 58 वर्ष है – याचिका खारिज। (टी.एस. एन. नायर वि. म.प्र. औद्योगिक केन्द्र विकास निगम लि., भोपाल) 3065

सेवा विधि – सेवा समाप्ति – याची ने इस तथ्य का छिपाव करके कि उसका पति सहायक शिक्षक के रुप में नियुक्त था, आंगनवाड़ी के पद हेतु आवेदन किया और अपनी नियुक्ति प्राप्त की – बाद में, उसने संविदा शाला शिक्षक के पद पर अपने चयन् के समय अपने आंगनवाड़ी सेविका के पद के अनुभव का लाभ भी लिया – राज्य सरकार द्वारा जारी निर्देश दिनांक 27.05. 1996 को दृष्टिगत रखते हुये याची की सेवा समाप्ति न तो भेदमूलक, मनमानी है और न ही भारत के संविधान के अनुच्छेद 14 व 16 का अतिलंघन है। (बसंती सूर्यवंशी (श्रीमती) वि. म.प्र. राज्य) (DB)...2727

सेवा विधि – दोषसिद्धि के आधार पर सेवा समाप्ति – प्रमाणित स्थाई आदेश खंड 24.1 व 26.8 – आक्षेपित आदेश द्वारा याची (एसईसीएल का कर्मचारी) की सेवाऐं इस कारण समाप्त की गयी कि उसे आईपीसी की धारा 147, 149, 323/149 के अंतर्गत अपराधों के लिए दोषसिद्ध किया गया था – अभिनिर्धारित – अपराध जिसके लिए याची को दोषसिद्ध किया गया है उससे यह निष्कर्ष नहीं निकलता कि याची का आचरण 'अंतर्निहित रुप से अयोग्य, दुष्ट, कलुषित था अथवा दुराचरण दर्शाने से उसका कोई संबंध था', जिससे कि उसे नैतिक अधमता का अपराध कहा जा सके जो सेवा से हटाये जाने का उचित कारण होता – सेवा समाप्ति अभिखंडित – याचिका मंजूर। (आर.पी. द्विवेदी वि. एस.ई.सी.एल.) 2973

सेवा विधि – कार्यभारित तथा आकस्मिकता निधि कर्मचारी पेंशन नियम, म.प्र. 1979 – परिवार पेंशन – मस्टर रोल कर्मचारी/दैनिक वेतन भोगी की सेवाओं को, परिवार पेंशन प्रदान करने के लिए अर्हकारी सेवा की गणना के प्रयोजन हेतु विचार में नहीं लिया जा सकता – रिट अपील खारिज। (कलाबाई प्रजापति (श्रीमति) वि. म.प्र. राज्य) (DB)...2319

सेवा विधि – रिट याचिका – आवश्यक पक्षकार को पक्षकार नहीं बनाया जाना – प्रभाव – प्रत्यर्थी को इस तथ्य की जानकारी होते हुये कि प्रत्यर्थी क्र. 4 का पहले

was already selected and appointed on the same post, did not consider it necessary to implead the selected candidate as a respondent in the writ petition - Held - Without the impleadment of the said person as a party, no effective relief could have been granted to the respondent No.1 - Appeal partly allowed. [Moulana Azad National Institute of Technology Vs. Ajit Narayan] (DB)...2694

Specific Relief Act (47 of 1963), Section 5 - Recovery of Possession - Plaintiff having better possessory title was dispossessed by the defendants having no better title than him - He can sue for the restoration of possession. [Pratap Singh Vs. Mangal Khan] ...2806

Specific Relief Act (47 of 1963), Sections 16 & 20 - Readyness & Willingness - Plaintiff deposed that he was ever ready for registry and even today he is ready - He further deposed that during the period of four months as stipulated in agreement defendant sent a letter Ex. P/2 to him and Ex. P/3 to his agent (PW 2) - P.W. 2 supported the version of plaintiff and deposed that he also wrote a letter to defendant and her husband for execution of sale deed and even he visited their place at Allahabad for this purpose -Considering the letters Ex. P/2, P/3 and Ex. P/4 written by the husband of defendant No. 1, inference can be drawn that before execution of sale deed and registry, defendant No. 1 has to prepare the document like Reen-pusthika and same was got prepared through PW2, mediator/commission agent - Executant of agreement/defendant No.1 though filed written statement of total denial of execution of agreement to sell but she did not appear before the Court to contradict the evidence of plaintiff - There was continuous correspondence between plaintiff and defendant through her husband an advocate by profession - Held - In these circumstances, it can not be said that plaintiff was not ready and willing to perform his part of the contract. [Surendra Kumar Agarwal Vs. Narayan Prasad Agarwal] ...*143

Specific Relief Act (47 of 1963), Section 34 - Further Relief - If in some revenue proceedings an order has been passed to evict the plaintiffs, unless and until the same is challenged by the plaintiffs and relief is sought for its quashment, the suit is hit u/s 34 of the Act. [Rashid Khan Vs. State of M.P.] ...2801

ही चयन हो गया था और उसी पद पर नियुक्त किया गया था, रिट याचिका में प्रत्यर्थी के रुप में चयनित अभ्यर्थी को पक्षकार बनाना आवश्यक नहीं समझा – अभिनिर्धारित – उक्त व्यक्ति को पक्षकार बनाये बिना प्रत्यर्थी क्र. 1 को प्रभावकारी अनुतोष प्रदान नहीं किया जा सकता था – अपील अंशतः मंजूर। (मौलाना आजाद नेशनल इंस्टीट्यूट ऑफ टेक्नॉलाजी वि. अजीत नारायण) (DB)...2694

विनिर्दिष्ट अनुतोष अधिनियम (1963 का 47), धारा 5 – कब्जे का वापस लिया जाना – बेहतर कब्जा विषयक हक रखने वाले याची को प्रतिवादियों द्वारा बेकब्जा कर दिया गया जिनका उससे बेहतर हक नहीं था – वह कब्जा वापस किये जाने के लिए मुकदमा कर सकता है। (प्रताप सिंह वि. मंगल खान) 2806

विनिर्दिष्ट अनुतोष अधिनियम (1963 का 47), धाराएँ 16 व 20 – तैयार और रजामंद – वादी ने कथन दिया कि वह रजिस्ट्री करने के लिये हमेशा तैयार था और आगे भी तैयार है – उसने आगे कथन दिया कि चार महिनों की अवधि के दौरान जैसा कि अनुबंध में नियत है प्रतिवादी ने उसे पत्र प्रदर्श पी/2 भेजा और उसके एजेंट (अ.सा. 2) को प्रदर्श पी/3 भेजा – अ.सा. 2 ने वादी के कथन का समर्थन किया और यह कथन दिया कि उसने भी प्रतिवादी एवं उसके पति को विक्रय पत्र के निष्पादन हेतु पत्र लिखा और इस प्रयोजन हेतु वह उनके स्थान इलाहाबाद भी गया – प्रतिवादी क्र. 1 के पति द्वारा लिखे गये प्रदर्श पी/2, प्रदर्श पी/3 एवं प्रदर्श पी/4 पर विचार करने पर यह निष्कर्ष निकाला जा सकता है कि विक्रय पत्र के निष्पादन एवं रजिस्ट्री से पहले प्रत्यर्थी क्र. 1 को ऋण पुस्तिका जैसे दस्तावेज बनाने थे और उन्हें पी.डब्ल्यू. 2 मध्यस्थ/कमीशन एजेंट के द्वारा बनवाया गया था – अनुबंध के निष्पादक/प्रतिवादी क्र. 1 ने यद्यपि विक्रय करार के निष्पादन को पूर्णतः अस्वीकार करते हुये लिखित कथन प्रस्तुत किया किन्तु वह न्यायालय के समक्ष वादी की साक्ष्य के खंडन हेतु उपस्थित नहीं हुयी – वादी एवं प्रतिवादी के पति जो कि एक अधिवक्ता है के जरिये प्रतिवादी का लगातार पत्राचार हुआ था – अभिनिर्धारित – इन परिस्थितियों में, यह नहीं कहा जा सकता कि वादी संविदा के अपने पक्ष का पालन करने के लिये तैयार और रजामंद नहीं था। (सुरेन्द्र कुमार अग्रवाल वि. नारायण प्रसाद अग्रवाल) ...*143

विनिर्दिष्ट अनुतोष अधिनियम (1963 का 47), धारा 34 – अतिरिक्त अनुतोष – यदि किसी राजस्व कार्यवाही में वादीगण को बेदखल करने के लिए आदेश पारित किया गया है, जब तक कि वादीगण द्वारा उसे चुनौती नहीं दी जाती और उसे अभिखंडित करने हेतु अनुतोष नहीं चाहा जाता, वाद अधिनियम की धारा 34 के अंतर्गत प्रस्तुत। (राशिद खान वि. म.प्र. राज्य) ...2801

Specific Relief Act (47 of 1963), Section 38 - Permanent Injunction - State Government admitting the possession of plaintiff for 12 years prior to the date of the filing of the suit - From the record it is proved that from 1956-57 to 1963-64 the suit property has been recorded in the name of 'T' - Defendant-State Government has not filed any document in order to show when the suit property came in the ownership of State or when the Bhumiswami rights of 'T' were extinguished - Held - Appellate Court rightly granted the decree of permanent injunction in favour of respondent/plaintiff, holding him not to be a trespasser on the Government land. [State of M.P. Vs. Mangilal] ...3106

Specific Relief Act (47 of 1963), Section 41 - Perpetual Injunction - Section lays down that when an injunction can not be granted - This section does not prohibit civil Court granting decree for perpetual injunction in the absence of the relief regarding declaration of title. [Municipal Council, Jaora Vs. Chand Khan] ...2493

Stamp Act (2 of 1899), Sections 29 & 48 - Recovery of Stamp Duty/ or Penalty - Society purchased the property from its owners by sale deed and subsequently sold it to the appellants - State has no authority to recover the shortage of stamp duty on the sale deed executed in favour of the Society or penalty therefor, from the subsequent purchasers/appellants. [Hemlata (Dr.) Vs. State of M.P.] (FB)...2672

State Bar Council of Madhya Pradesh Rules,1962, Rules 121,122-A, Advocate Act, (25 of 1961), Section 15 - Tenure and Removal of Chairman/Vice-Chairman/Treasurer- Validity of Rules - Rules 121 and 122-A of the Rules are not ultra vires of the provisions including the provisions of Section 15 of the Act and the amended rules have received the approval of the Bar Council of India - Rules would not be invalidated for want of issuance of any notification, as it is not the requirement in terms of Section 15(3) of the Act. [Pratap Chandra Mehta Vs. State Bar Council of M.P.] (SC)...*153

Sthaniya Kshetra Me Mal Ke Pravesh Par Kar Adhiniyam, M.P. 1976, Entry 14 of Schedule II - See - Commercial Tax Act, M.P. 1994, Entry 20(ii) of Part IV of Schedule [Cadila Health Care Ltd. Vs. Additional Commissioner, Commercial Tax] (DB)...2394

विनिर्दिष्ट अनुतोष अधिनियम (1963 का 47), धारा 38 – स्थाई व्यादेश – राज्य सरकार ने याची का वाद प्रस्तुती दिनांक के 12 वर्ष पूर्व से कब्जा होना स्वीकार किया – अभिलेख से यह साबित किया गया है कि 1956–57 से 1963–64 तक वाद सम्पत्ति 'टी' के नाम से अभिलिखित है – प्रतिवादी–राज्य सरकार ने यह दर्शाने के लिये कोई दस्तावेज प्रस्तुत नहीं किया कि वाद सम्पत्ति राज्य के स्वामित्व में कब आयी अथवा 'टी' के भू–स्वामी होने के अधिकार कब समाप्त किये गये – अभिनिर्धारित – अपीलीय न्यायालय ने उचित रुप से प्रत्यर्थी/वादी के पक्ष में उसे सरकारी भूमि पर अतिचारी नहीं मानते हुये स्थाई व्यादेश की डिक्री प्रदान की। (म.प्र. राज्य वि. मांगीलाल) 3106

विनिर्दिष्ट अनुतोष अधिनियम (1963 का 47), धारा 41 – शाश्वत व्यादेश – धारा में दिया गया है कि कब व्यादेश प्रदान नहीं किया जा सकता – यह धारा सिविल न्यायालय को स्वत्व की घोषणा संबंधी अनुतोष के अभाव में शाश्वत व्यादेश हेतु डिक्री प्रदान करने से नहीं रोकती। (म्यूनिसिपल काउंसिल, जावरा वि. चॉंद खान) 2493

स्टाम्प अधिनियम (1899 का 2), धाराएँ 29 व 48 – स्टाम्प शुल्क/या दण्ड की वसूली – विक्रय विलेख द्वारा सोसायटी ने सम्पत्ति उसके स्वामियों से क्रय की और तत्पश्चात अपीलार्थीगण को उसे विक्रय किया – राज्य को सोसायटी के पक्ष में निष्पादित विक्रय विलेख पर स्टाम्प शुल्क की कमी पश्चातवर्ती क्रेता/अपीलार्थीगण से वसूलने का कोई प्राधिकार नहीं। (हेमलता (डॉ.) वि. म.प्र. राज्य)(FB)...2672

राज्य अधिवक्ता परिषद नियम, मध्यप्रदेश 1962, नियम 121, 122–ए, अधिवक्ता अधिनियम (1961 का 25), धारा 15 – अध्यक्ष/उपाध्यक्ष/कोषाध्यक्ष का कार्यकाल और हटाया जाना – नियमों की विधि मान्यता – नियमों के नियम 121 व 122–ए, उपबंधों के अधिकारातीत नहीं जिसमें अधिनियम की धारा 15 के उपबंध सम्मिलित हैं और संशोधित नियमों को भारतीय अधिवक्ता परिषद का अनुमोदन प्राप्त हुआ है – किसी अधिसूचना को जारी न किये जाने से नियम अविधिमान्य नहीं हो जाते क्योंकि, यह अधिनियम की धारा 15(3) की शर्तों में अपेक्षित नहीं है। (प्रताप चन्द्र मेहता वि. स्टेट बार कांउसिल ऑफ एम.पी.) (SC)...*153

स्थानीय क्षेत्र में माल के प्रवेश पर कर अधिनियम, म.प्र. 1976, अनुसूची *II* की प्रविष्टि 14 – देखें – वाणिज्यिक कर अधिनियम, म.प्र. 1994, अनुसूची के भाग IV की प्रविष्टि 20(ii), (केडीला हेल्थ केयर लि. वि. एडीशनल कमिश्नर, कमर्शियल टेक्स) (DB)...2394

Succession Act (39 of 1925), Section 63, Evidence Act (1 of 1872), Section 68 -Will-Will is to be duly proved in accordance with Section 63 of Act, 1925 and Section 68 of Act, 1872 - All the attending circumstances creating doubt must be made clear so as to satisfy conscience of the Court that the will was duly executed by testator. [Devkaran Vs. Rameshwar] ...3135

Succession Act, Indian, (39 of 1925), Section 63(c), Evidence Act (1 of 1872), Section 68 - Proof of Will - Will executed by father in favor of his son - Execution of will admitted by wife and other children (except one) of the Executant - Held - Their admission is to be considered for holding that will has been executed by executant - In absence of any evidence to the effect that Executant was of unsound mind due to ill health or old age at the time of execution of will, it can not be said that findings arrived at by the Courts below are perverse. [Asharfi Devi (Smt.) Vs. Hari Prasad] ...*121

Tender - Fresh Tender Notice - First N.I.T was floated for supply of one drill machine - Second N.I.T. was floated for supply of two drill machines - First N.I.T. not being concluded and having been merged with second N.I.T. automatically stood cancelled - Authority inviting offer can withdraw the invitation even after receipt of offer so long as it is not accepted. [L.M.P. Precision Engineering Co. Pvt. Ltd. Vs. Union of India] (DB)...2347

Tender - Performance Guarantee Clause - Petitioner in the past had supplied 6 machines out of which 5 machines had failed in achieving their target of 83% within a period of 12 months - Incorporation of performance guarantee clause in N.I.T. is to achieve the best quality machines which are having proven performance so that the production of coal does not suffer - Looking to the object and purpose of incorporation of aforesaid condition, the same by no stretch of imagination can either be said to be arbitrary or unreasonable. [L.M.P. Precision Engineering Co. Pvt. Ltd. Vs. Union of India] (DB)...2347

Trade Unions Act (16 of 1926), Section 11 - Registrar de-recognised and cancelled the registration of the Trade Union of the appellant - Order was assailed by appellant-Union by filing first appeal u/s 11 of the Act - Appeal was dismissed by Industrial Court - Second appeal is

उत्तराधिकार अधिनियम (1925 का 39), धारा 63, साक्ष्य अधिनियम (1872 का 1), धारा 68 – वसीयतनामा – वसीयत को अधिनियम 1925 की धारा 63 और अधिनियम 1872 की धारा 68 के अनुसार सम्यक रुप से साबित किया जाना चाहिये – संदेह पैदा करने वाली सभी उपस्थित परिस्थतियों को स्पष्ट करना चाहिये जिससे कि न्यायालय की अंतश्चेतना संतुष्ट हो कि वसीयत को वसीयतकर्ता द्वारा सम्यक रुप से निष्पादित किया गया था। (देवकरण वि. रामेश्वर) 3135

उत्तराधिकार अधिनियम भारतीय, (1925 का 39), धारा 63(सी), साक्ष्य अधिनियम (1872 का 1), धारा 68 –वसीयतनामे का सबूत – पिता द्वारा पुत्र के पक्ष में वसीयतनामा निष्पदित किया गया – वसीयतनामे का निष्पादन निष्पादिती की पत्नी तथा अन्य संतानों द्वारा (एक के अलावा) स्वीकार किया गया – अभिनिर्धारित – उनकी स्वीकृति को विचार में लेना चाहिए यह धारणा करने हेतु कि वसीयतनामें का निष्पादन, निष्पादिती द्वारा किया गया है – इस आशय की किसी साक्ष्य के अभाव में कि वसीयतनामा निष्पादित करते समय निष्पादिती अस्वस्थ्यता अथवा वृद्धत्व के कारण चित्त विकृति से ग्रसित था, यह नहीं कहा जा सकता कि निचले न्यायालयों द्वारा निकाले गये निष्कर्ष अनुचित है। (अशर्फी देवी (श्रीमति) वि. हरी प्रसाद)...*121

निविदा – नयी निविदा नोटिस – प्रथम निविदा आमंत्रण नोटिस एक बेधन यंत्र (ड्रिल मशीन) की संपूर्ति के लिए निकाली गयी – द्वितीय निविदा आमंत्रण नोटिस, दो ड्रिल मशीनों की संपूर्ति के लिए निकाली गयी – प्रथम निविदा आमंत्रण नोटिस समाप्त नहीं की गई और द्वितीय निविदा आमंत्रण नोटिस में विलीन की गयी, अपने आप निरस्त हो गयी – प्रस्थापना आमंत्रित करने वाला प्राधिकारी, प्रस्थापना प्राप्ति के बाद भी आमंत्रण वापस ले सकता है जब तक कि उसे स्वीकार नहीं किया जाता।(एल.एम. पी. प्रिसिश्न इंजीनियरिग कं. प्रा. लि. वि. यूनियन ऑफ इंडिया) (DB)...2347

निविदा – संपादन प्रत्याभूति खंड – पूर्व में याची ने 6 मशीनें प्रदाय की जिसमें से 5 मशीनें, 83 प्रतिशत का उनका लक्ष्य 12 महिनों की अवधि के भीतर प्राप्त करने में असफल रही – निविदा आमंत्रण नोटिस में संपादन प्रत्याभूति खंड को सम्मिलित करने के पीछे सर्वोत्तम क्वालिटी की मशीनें प्राप्त करना है जिसकी कुशलता साबित की गई है जिससे कि कोयले का उत्पादन प्रभावित ना हो – उपरोक्त शर्तों को सम्मिलित करने के उद्देश्य एवं प्रयोजन को देखते हुए, उसे कल्पना से परे, मनमाना या अयुक्तियुक्त नहीं कहा जा सकता। (एल.एम.पी. प्रिसिश्न इंजीनियरिग कं. प्रा. लि. वि. यूनियन ऑफ इंडिया) (DB)...2347

व्यवसाय संघ अधिनियम (1926 का 16), धारा 11 – रजिस्ट्रार ने अपीलार्थी के व्यवसाय संघ के रजिस्ट्रीकरण की मान्यता को रद्ध एवं निरस्त किया – अपीलार्थी संघ द्वारा अधिनियम की धारा 11 के अंतर्गत प्रथम अपील प्रस्तुत कर आदेश को चुनौती दी गयी – औद्योगिक न्यायालय द्वारा अपील खारिज की गयी – अधिनियम की धारा 11 राज्य संशोधन के अंतर्गत, उच्च न्यायालय के समक्ष द्वितीय अपील

not permissible before the High Court under the State Amendment to Section 11 of the Act. [Rastriya Soot Mill Mazdoor Sangh Vs. Registrar, Vyavsayik, Sangh M.P.] ...2491

Trade Unions Act (16 of 1926), Chapter IIIA - Jurisdiction under -Registrar, Trade Unions, Madhya Pradesh had no jurisdiction to invoke the provisions of Chapter IIIA of the Trade Unions Act, 1926 in respect of the industry viz., the mining industry and the cement industry, which are governed by the provisions of Industrial Disputes Act, 1947 - Impugned order quashed. [Kymore Cement Majdoor Congress (INTUC) Vs. Registrar Office of Registrar Trade Unions Bhopal] ...*139

Transfer of Property Act (4 of 1882), Section 3 - Decree - Actionable Claim - Decree does not fall within the ambit of 'actionable claim.' [Devkinandan Vs. State of M.P.] ...2416

Transfer of Property Act (4 of 1882), Section 53-A (Proviso) - Bonafide Purchaser - Defendants No. 2 to 4 pleaded that Defendant No. 1 executed agreement to sell in their favour on 13.10.1983, however defendant DW1 admitted that Khasra number written on the basis of original Reen-pusthika which he got from defendant No. 1/the executant - As per the correspondence between agent PW2 and husband of defendant No. 1, the original Reen-pusthika was prepared in the year 1985 as mentioned in letter dated 03.08.85 - Held - It reveals that this document (agreement dated 13.10.1983) was prepared antedated - Sale deed executed in favour of appellants/defendants No. 2 to 4 appears to be collusive and defendants No. 2 to 4 are not appear to be bonafide purchasers of the disputed land. [Surendra Kumar Agarwal Vs. Narayan Prasad Agarwal] ...*143

Transfer of Property Act (4 of 1882), Section 100 - Charge - Liability to pay itself does not create a "charge" over the property - A charge can be created only in two ways, namely (i) by act of parties i.e. by contract or (ii) by operation of law. [Hemlata (Dr.) Vs. State of M.P.] (FB)...2672

Transfer of Property Act (4 of 1882), Section 136 - Purchase of decree by counsel - Counsel for the decree holders purchased the decree and his application for substitution of his name in place of original decree holders was allowed by the execution Court - Held - The decree

अनुज्ञेय नहीं। (राष्ट्रीय सूत मिल मजदूर संघ वि. रजिस्ट्रार, व्यावसायिक संघ, एम.पी.) 2491

व्यवसाय संघ अधिनियम (1926 का 16), अध्याय *III*ए – के अंतर्गत अधिकारिता – रजिस्ट्रार, व्यवसाय संघ मध्य प्रदेश को औद्योगिक विवाद अधिनियम 1947 के उपबंधों द्वारा शासित उद्योग अर्थात खनन उद्योग एवं सीमेंट उद्योग के संबंध में व्यवसाय संघ अधिनियम 1926 के अध्याय IIIए के उपबंधों का अवलंब लेने की कोई अधिकारिता नहीं – आक्षेपित आदेश अभिखंडित। (कैमोर सीमेंट मजदूर कांग्रेस (आईएनटीयूसी) वि. रजिस्ट्रार, ऑफिस ऑफ रजिस्ट्रार ट्रेड यूनियन, भोपाल) ...*139

सम्पत्ति अन्तरण अधिनियम (1882 का 4), धारा 3 – डिक्री – अनुयोज्य दावा – डिक्री अनुयोज्य दावा की परिधी में नहीं आती। (देवकीनन्दन वि. म.प्र. राज्य) 2416

सम्पत्ति अन्तरण अधिनियम (1882 का 4), धारा 53–ए(परंतुक) – सद्भाविक क्रेता – प्रतिवादी क्र. 2 से 4 ने अभिवाक् किया कि प्रतिवादी क्र. 1 ने उनके पक्ष में विक्रय का करार 13.10.1983 को निष्पादित किया, अपितु, प्रतिवादी डी.डब्ल्यू. 1 ने स्वीकार किया कि खसरा नंबर मूल ऋण पुस्तिका के आधार पर लिखा गया जिसे उसने प्रतिवादी क्र .1/निष्पादिता से प्राप्त किया था – एजेंट पी.डब्ल्यू. 2 तथा प्रतिवादी क्र. 1 के पति के मध्य पत्राचार के अनुसार मूल ऋण पुस्तिका वर्ष 1985 को तैयार की गयी थी जैसा कि पत्र दिनांक 03.08.1985 में वर्णित है – अभिनिर्धारित – यह प्रकट करता है कि यह दस्तावेज (करार दि. 13.10.1983) पूर्व दिनांक को तैयार किया गया था – अपीलार्थी/प्रत्यर्थी क्र. 2 से 4 के पक्ष में निष्पादित विक्रय पत्र दुस्संधिपूर्ण प्रतीत होता है और प्रतिवादी क्र. 2 से 4 विवादित भूमि के सद्भाविक क्रेता प्रतीत नहीं होते हैं। (सुरेन्द्र कुमार अग्रवाल वि. नारायण प्रसाद अग्रवाल) ...*143

सम्पत्ति अन्तरण अधिनियम (1882 का 4), धारा 100 – भार – संदाय का दायित्व अपने आप सम्पत्ति पर भार निर्माण नहीं करता – भार केवल दो प्रकार से निर्मित किया जा सकता है, अर्थात (i) पक्षकारों के कार्य द्वारा अर्थात संविदा द्वारा, या (ii) विधि के प्रवर्तन द्वारा। (हेमलता (डॉ.) वि. म.प्र. राज्य) (FB)...2672

सम्पत्ति अन्तरण अधिनियम (1882 का 4), धारा 136 – अधिवक्ता द्वारा डिक्री क्रय की जाना – डिक्रीदारों के अधिवक्ता ने डिक्री क्रय की और मूल डिक्रीदारों के स्थान पर उसके नाम के प्रतिस्थापन हेतु उसका आवेदन, निष्पादन न्यायालय द्वारा मंजूर किया गया – अभिनिर्धारित – डिक्री न तो 'शेयर' है न ही 'हित' अथवा

is neither a 'share' nor 'interest' or 'actionable claim', it does not fall within the four corners of Section 136 of the Act - No legal error in passing the impugned order - Petition dismissed. [Devkinandan Vs. State of M.P.] ...2416

Uchcha Nyayalaya (Khand Nyaypeeth Ko Appeal) Adhiniyam, M.P. 2005 (14 of 2006), Section 2(1) - See - Constitution, Article 226, [Mohd. Imran Siddique Vs. State of M.P.] (DB)... 2699

Vishwavidyalaya Adhiniyam, M.P. (22 of 1973), Section 24 - Power of Executive Council - There is nothing in Adhiniyam which warrants that a decision taken by the Executive council has to be approved by the State Government. [Surendra Saraf Vs. Dr. Hari Singh Gaur Vishwavidyalaya] ...3037

WORDS AND PHRASES

Direction - Direction is in the nature of a command or authoritative instruction which contemplates the performance of certain duty or act by a person upon whom it has been issued - Direction should be specific, simple, clear and just and proper depending upon the facts and circumstances of the case but it should not be vague or sweeping. [Arun Kumar Aggarwal Vs. State of M.P.] (SC)...2951

"Fraud" means and includes any of the following acts committed by a party to a contract, or with his connivance, or by his agent, with intent to deceive another party thereto or his agent, or to induce him to enter into the contract : (1) the suggestion, as a fact, of that which is not true by one who does not believe it to be true (2) the active concealment of a fact by one having knowledge or belief of the fact (3) a promise made without intention of performing it (4) any other act fitted to deceive (5) any such act or omission as the law specially declares to be fraudulent. [Jagdish Prasad Vs. Sangamlal] ...3071

Penalty and damages - Penalty is a sum of money so stipulated in terrorem, and liquidated damages are a genuine pre-estimate of damages - Whether a particular stipulation in a contract is in the nature of penalty has to be determined against the background of various relevant factors such as character of transaction and its special nature - Relative situation of parties and rights and obligations accruing from

'अनुयोज्य दावा', वह अधिनियम की धारा 136 की परिधि के भीतर नहीं आती – आक्षेपित आदेश पारित करने में कोई विधिक त्रुटि नहीं – याचिका खारिज। (देवकीनन्दन वि. म.प्र. राज्य) 2416

उच्च न्यायालय (खण्ड न्यायपीठ को अपील) अधिनियम, म.प्र., 2005 (2006 का 14), धारा 2(1) – देखें – संविधान, अनुच्छेद 226, (मो. इमरान सिद्दकी वि. म.प्र. राज्य) (DB)...2699

विश्वविद्यालय अधिनियम, म.प्र. (1973 का 22), धारा 24 – कार्यकारिणी परिषद की शक्ति – अधिनियम में ऐसा कुछ नही कि कार्यकारिणी परिषद के निर्णय को राज्य सरकार का अनुमोदन आवश्यक होगा। (सुरेन्द्र सराफ वि. डॉ. हरी सिंह गौर विश्वविद्यालय) 3037

शब्द और वाक्यांश

निदेश – निदेश, समादेश अथवा प्राधिकृत अनुदेश के स्वरुप का है जो ऐसे व्यक्ति द्वारा कतिपय कर्तव्य अथवा कार्य का संपादन अनुध्यात करता है जिसे वह जारी किया गया है – निदेश, मामले के तथ्यों एवं परिस्थितियों पर आधारित होते हुये विनिर्दिष्ट, सरल, स्पष्ट और न्यायसंगत एवं उचित होना चाहिये किंतु वह अस्पष्ट एवं विस्तृत नहीं होना चाहिये। (अरूण कुमार अग्रवाल वि. म.प्र. राज्य) (SC)...2951

"कपट" का अर्थ है और इसमें समाविष्ट है, संविदा के पक्षकार द्वारा या उसकी मौनानुमति से या उसके अभिकर्ता द्वारा उसके अन्य पक्षकार या उसके अभिकर्ता को भ्रमित करने के आशय के साथ अथवा उसे संविदा के लिये उत्प्रेरण के लिये गये निम्न में से कोई कृत्यः (1) तथ्य के रुप में सुझाव जो सत्य नहीं, उसके द्वारा जिसका वह तथ्य सत्य होने पर विश्वास नहीं (2) तथ्य का सक्रिय छिपाव उसके द्वारा जिसे तथ्य की जानकारी एवं विश्वास है (3) पालन करने के आशय के बिना दिया गया वचन (4) प्रवंचना युक्त कोई अन्य कार्य (5) कोई ऐसा कार्य या लोप जिसे विधि विशिष्ट रुप से कपटपूर्ण घोषित करती है। (जगदीश प्रसाद वि. संगमलाल)...3071

शास्ति और क्षतिपूर्ति – टेरोरेम में ठहरायी गयी राशि का कुल योग शास्ति है और नुकसानी का वास्तविक पूर्वानुमान, परिनिर्धारित क्षतिपूर्ति है – क्या संविदा में कोई विशिष्ट शर्त शास्ति के स्वरुप की है इसका निर्धारण विभिन्न सुसंगत तत्वों के परिप्रेक्ष्य में किया जाना चाहिये जैसे कि संव्यवहार का प्रकार एवं उसका विशेष स्वरुप – पक्षकारों की संबंधित स्थिति और सामान्य विधि के अंतर्गत ऐसे संव्यवहार से उत्पन्न होने वाले अधिकार एवं दायित्व तथा संविदा में विशिष्ट स्थिति समाविष्ट

such transaction under general law and intention of the parties incorporating in the contract the particular situation which is contended to be penal in nature. [Sanghvi Foods Private Ltd. (M/s.) Vs. M.P. Electricity Board] ...*154

Work Charged and Contingency Paid Employees, Pension Rules M.P. 1979, Rule 2(h)& (b) - Entitlement of Pension - Petitioner was never engaged as a contingency or a work charged employee nor was he recruited in accordance with the procedure prescribed under the M.P. Work Charged Contingency Paid Employees Recruitment and Conditions of Service Rules of 1977 - He does not fall within the definition of work charged employee or contingency paid employee nor can he be categorized as a permanent employee - He is not entitled to any pension. [Rambahu Vishwakarma Vs. State of M.P.] ...2789

Work Charged and Contingency Paid Employees Pension Rules M.P. 1979 - See - Service Law [Kala Bai Prajapati (Smt.) Vs. State of M.P.] (DB)...2319

Workmen's Compensation Act (8 of 1923), Sections 3(5) & 19, Civil Procedure Code (5 of 1908), Section 9 - Jurisdiction of Civil Court - Suit for compensation for injury sustained by plaintiff during the course and business of duty - Civil Court was having jurisdiction and if claimant has chosen the forum of Civil Court, it can not be said that his claim is not maintainable in the Civil Court and is maintainable only under Compensation Act. [Jairam Vs. Jaswant Singh alias Fakirchand]...2464

Workmen's Compensation Act (8 of 1923), Section 4A - Date from which interest is payable - On the date of incident, F.I.R. was lodged , M.L.C. was performed and claim form was submitted to the insurance company through employer - Admittedly the liability of employer is indemnified by insurance company - No amount was paid by the insurance company within a month - In absence of payment of compensation within one month, the interest as specified under Section 4(A)(3)(a) of the Act, shall be payable by Insurance Company - Interest on the amount of compensation shall be payable after one month from the date of accident @ 12% per annum till its realization. [National Insurance Company Ltd. Vs. Ramesh Kumar Burman] ...3112

करने में पक्षकारों का आशय जिसे दांडिक स्वरुप का होने का तर्क किया गया है। (संघवी फुड्स प्रा. लि. (मे.) वि. म.प्र. इलेक्ट्रिसिटी बोर्ड) ...*154

कार्यभारित तथा आकस्मिकता निधि कर्मचारी पेंशन नियम म.प्र. 1979, नियम 2(एच) व (बी) – पेंशन की हकदारी – याची कभी भी आकस्मिक अथवा कार्यभारित कर्मचारी के रुप में नियुक्त नहीं था, न ही उसकी भर्ती म.प्र. कार्यभारित आकस्मिकता निधि कर्मचारी भर्ती तथा सेवा शर्तें नियम 1977 के अंतर्गत विहित प्रक्रिया के अनुसार की गयी थी – वह कार्यभारित कर्मचारी या आकस्मिकता निधि कर्मचारी की परिभाषा के भीतर नहीं आता, न ही उसे स्थायी कर्मचारी के रुप में वर्गीकृत किया जा सकता है – वह किसी पेंशन का हकदार नहीं। (रामभाउ विश्वकर्मा वि. म.प्र. राज्य) 2789

कार्यभारित तथा आकस्मिकता निधि कर्मचारी पेंशन नियम, म.प्र. 1979 – देखें – सेवा विधि (कलाबाई प्रजापति (श्रीमति) वि. म.प्र. राज्य) (DB)...2319

कर्मकार प्रतिकर अधिनियम (1923 का 8), धाराएँ 3(5), व 19, सिविल प्रक्रिया संहिता (1908 का 5), धारा 9 – सिविल न्यायालय की अधिकारिता – याची को अपने कर्तव्य के अनुक्रम तथा कार्य के दौरान कारित हुई क्षति के लिए प्रतिकर हेतु वाद – सिविल न्यायालय को अधिकारिता थी और यदि दावाकर्ता ने सिविल न्यायालय का वादमंच पसंद किया है, तब यह नहीं कहा जा सकता कि उसका दावा सिविल न्यायालय में पोषणीय नहीं है और केवल प्रतिकर अधिनियम के अंतर्गत पोषणीय है। (जयराम वि. जसवंत सिंह उर्फ फकीरचंद्र) 2464

कर्मकार प्रतिकर अधिनियम, (1923 का 8), धारा 4ए – तिथि, जब से ब्याज देय होगा – घटना दिनांक को एफ.आई.आर. दर्ज की गयी, एमएलसी किया गया और नियोक्ता के जरिए बीमा कम्पनी का दावा प्रारूप प्रस्तुत किया गया – स्वीकृत रूप से नियोक्ता के दायित्व को बीमा कम्पनी द्वारा क्षतिपूरित किया जाता है – बीमा कम्पनी द्वारा एक माह के भीतर कोई रकम संदाय नही की गयी – एक माह के भीतर प्रतिकर का भुगतान नही किये जाने से बीमा कम्पनी द्वारा ब्याज देय होगा जैसा कि अधिनियम की धारा 4(ए)(3)(ए) के अंतर्गत विनिर्दिष्ट है – दुर्घटना दिनांक के एक माह बाद से 12 प्रतिशत प्रतिवर्ष क्षतिपूर्ति की रकम पर ब्याज उसके भुगतान तक देय होगा। (नेशनल इंश्योरेन्स कम्पनी लि. वि. रमेश कुमार बर्मन) 3112

Workmen's Compensation Act (8 of 1923), Section 4(c)(i) Part -II of Schedule I - Permanent Partial Disability **- Non examination of Doctor- Respondent suffered amputation of left thumb and index finger of left hand became unworkable due to injuries sustained by him - Such injuries falls at serial No. 5 and 27 of Part II of Schedule I of Act - In case of permanent partial disablement resulted from injury under Section 4(c)(i) of the Act, the statement of medical practitioner assessing the loss of earning capacity not required - Statement of Medical Practitioner to record a finding with respect to loss of earning capacity comparable to injuries is necessary only when the injuries of the injured falls under Section 4(c)(ii). [National Insurance Company Ltd. Vs. Ramesh Kumar Burman] ...3112**

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कर्मकार प्रतिकर अधिनियम, (1923 का 8), धारा 4(सी)(i) अनुसूची I का भाग – II – स्थायी आंशिक निःशक्तता – चिकित्सक का परीक्षण नहीं किया जाना – प्रत्यर्थी को आयी चोटों के कारण उसके बांये हांथ की तर्जनी अनुपयोगी हो गयी तथा उसे बांये अंगूठे का अंगोच्छेदन सहना पड़ा – ऐसी क्षतियां अधिनियम की अनुसूची I के भाग II के अनुकमांक 5 व 27 में आती है – अधिनियम की धारा 4(सी)(i) के अंतर्गत क्षति के परिणामस्वरूप स्थायी आंशिक निःशक्तता के मामले में उपार्जन क्षमता की हानि का निर्धारिण करने वाले चिकित्सक का कथन आवश्यक नहीं – क्षतियों की तुलना में उपार्जन क्षमता की हानि के संबंध में निष्कर्ष अभिलिखित करने के लिए चिकित्सक का कथन केवल तब आवश्यक है जब आहूत की क्षतियां धारा 4(सी)(ii) के अंतर्गत आती है। (नेशनल इंश्योरेन्स कम्पनी लि. वि. रमेश कुमार बर्मन) 3112

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Farewell



Justice Smt. Sushma Shrivastva

Born on November 12, 1949. After completing M.A., LL.B, joined Judicial Service on 18-07-1972. Worked as Civil Judge, Class-11 Bhopal, Ujjain and Sagar. Promoted as Civil Judge, Class-1 in December 1983. Worked as Additional Chief Judicial Magistrate at Jabalpur and Indore in the years 1987-1988. Promoted in July 1988 and worked as Additional District and Sessions Judge Jabalpur, Bhopal and Sehore till 1996. Worked as Special Judge (SC/ST Act) at Raisen and Indore from February 1996 to May 1999. Worked as District Judge Datia, Khandwa, Mandsaur and Indore from May 1999 till elevation.

Elevated as Additional Judge of Madhya Pradesh High Court on 15-05-2006, took oath as Permanent Judge on 25-11-2008, and demitted Office on 11-11-2011.

We wish Her Lordship a healthy, happy and prosperous life.

Hon'ble Mr. Justice Ajit Singh, bids farewell to the demitting Judge:–

We have assembled here to bid an affectionate farewell to Hon'ble Mrs. Justice Sushma Shrivastava on the eve of her demitting office as Judge of this prestigious High Court of Madhya Pradesh.

Mrs. Justice Sushma Shrivastava was born on 12th of November, 1949. After completing her M.A., LL.B., she joined judicial service on 18th July, 1972 as Civil Judge Class-II. Thereafter due to her merit and knowledge of law she got regular promotions and was ultimately promoted as District Judge in the year 1988. During her tenure as a Judicial Officer, she was posted at Bhopal, Ujjain, Sagar, Jabalpur, Indore, Sehore, Raisen, Datia, Khandwa, Mandsaur etc.

Recognizing her merit, she was appointed as an Additional Judge of the Madhya Pradesh High Court or 15th May, 2006 and thereafter as Permanent Judge or 25th November, 2008.

During her tenure as Judge of the Madhya Pradesh High Court, Mrs. Justice Sushma Shrivastava has decided large number of civil and criminal cases with equal proficiency. Her number of judgments reported in law journals and recorded in judicial files demonstrate her deep knowledge of law.

Mrs. Justice Sushma Shrivastava has respect for everyone, be it Judges or lawyers. Because of her legal acumen, Mrs. Justice Shrivastava earned respect both from the Bench and the Bar. Mrs. Justice Shrivastava shall always be remembered as a Judge whose actions were just, rational and reasonable. She is gracious and polite.

Today is 11.11.2011. A day which comes once in century. It is stated to be auspicious for all. I, therefore, on behalf of the Judges of this Court and on my behalf, wish Mrs. Justice Sushma Shrivastava and Mr.Shrivastava happiness peace and good health.

Shri Naman Nagrath Addl. Advocate General, bids farewell:–

This unique day of three eleven witnesses yet another memorable moment in the history of this Court when Hon'ble Justice Smt. Sushma Shrivastava demits her Office after very long and satisfying career in judiciary spanning over nearly four decades. Born on 12/11/1949, and after completing her Master's Degree and Law, Hon'ble Justice Sushma Shrivastava joined judicial services in July 1972 as a Civil Judge Class II at Bhopal. She worked as a Civil Judge at various places including Ujjain, Sagar and Jabalpur and was promoted as ACJM in year 1986. Thereafter in July 1988, Lordship was promoted as ADJ and worked at Jabalpur, Bhopal and Sehore in that capacity. In her long career, Lordship also worked as Addl. Welfare Commissioner, Bhopal Gas Rahat and as also Special Judge. In the year 1999, Lordship was promoted as District and Sessions Judge and worked in that capacity at Datia, Khandwa, Mandsaur and Indore. Eventually, Lordship was elevated as Hon'ble Judge of this Court on 15/5/06 and since thereafter has been discharging her duties in this high Office.

Hon'ble Justice Smt. Sushma Shrivastava has been known to be one of the very few lady Judges for her fearless and clear approach in deciding cases. Today, your Lordship is relinquishing this high Office after having adorned it for over 39 years with uprightness and dignity. Throughout the career as a judicial officer and eventually as a Judge of this Court, your Lordship has been just, fair and upright. Your Lordship's approach towards the cases was marked with desire to do justice as per law, but with human approach. Outside the Court also, your Lordship has been known to be a simple lady with strong conviction. During tenure as a Judge of this Court, Lordship decided several cases, mainly on criminal, civil and constitutional side. It is often said that a Judge is himself put to a trial after he assumes Office and till the time he demits that Office. Performing the duties as Judge is a difficult task and, I must say that your Lordship has honourably acquitted herself in discharge of her duties on demitting this Office.

I, on behalf of State Govt., Law Offices of the State, on behalf of Advocate General and on my own behalf wish your Lordship a healthy and a happy future life which is equally satisfying as your Lordship's past long and satisfying tenure as Judge has been.

Shri Anil Khare, President, M. P. High Court Bar Association, Jabalpur, bids farewell:–

It is said that, it is only in the agony of parting do we look into the depth of love. Today we have all assembled here to bid adieu to Hon'ble Justice Mrs. Sushma Shrivastava when she is demitting the office on 12th November 2011.

These are times when silence is more potent than speech, when words seem too thin, tame and poor to express our thoughts and feelings, but I stand here on behalf of the M.P. High Court Bar Association to discharge the pious duty cast upon me.

Though the professional profile of My Lord is well known to all of us but to put it briefly on record, I state that My Lord Hon'ble Mrs. Sushma Shrivastava was born on 12th November 1949. After obtaining the degree in Law, she joined the judicial services on 18th July, 1972 and since then, there was no looking back. My Lord functioned as District and Sessions Judge at Datia, Khandwa, Mandsaur and Indore. As a District and Sessions Judge, she displayed the qualities of true leadership and exhibited her legal acumen through her orders and judgment. While functioning as a District and Sessions Judge, her relations with the Bar were cordial.

My Lord was elevated as an Additional Judge of this prestigious High Court on 15-05-2006 and thereafter took oath as a permanent judge on 25-11-2008. As a judge of this Court, My Lord displayed her firm conviction and commitment towards the rule of law which emanated from the gamut of experience that she acquired during her voyage from one legal harbour to another.

The proverb says that all good things come to an end and so has the tenure of My Lord Hon'ble Mrs. Justice Sushma Shrivastava but we hope and trust that this in fact would be a beginning of a new journey. My Lord would continue to serve the down trodden with her vast knowledge and ability, which she acquired during her tenure as a Judge.

The Love, affection and whishes of the Bar Association can be expressed in the following words.

May song birds serenade your every step along the way.

May a rainbow run beside you in a sky that's always blue.

And may happiness fill your heart each day your whole life through.

At the end of the day, I say that we will miss you.

I, on behalf of the Madhya Pradesh High Court Bar Association avail this opportunity to express my gratitude for My Lords concern for the Bar Association. I wish you good health and success in future, I pray that the goodness of almighty be showered upon you and your family.

Shri T. S. Ruprah, President, High Court Advocates' Bar Association, Jabalpur bids, farewell:–

Hon'ble Mrs. Justice Sushma Shrivastava Ji, this is a parting moment as far as Your Lordships' office as a Judge is concerned. You are demitting the Judge's Office today. This is the day when the Bar, expresses itself on the achievements of a Judge. It is only on this day that the Law of Contempt recedes into background, even when a Judge is being praised on her face, because Judges on all other occasions do not permit any one to praise them in the open Courts.

Your Lordship was selected in the M.P. Judicial Service and joined as Civil Judge in the year 1972. Because of Your Lordship's legal acumen and experience as the District and Sessions Judge of this state, your Lordship soon earned a name as one of the most impartial and bold Judges in the Higher Judicial Services.

On the 15th May 2006, we all witnessed one of the finest lady Judges being elevated to this Hon'ble Court from the State's Higher Judicial Services. Your Lordship has been impartial and patient in hearing compassimale and prompt in deciding the cases. As My Lord has been blessed with a firm conviction and polite disposition, the members of the Bar will always remember My Lord with fond memories for the warmth and responsiveness displayed by My Lord. It is your Lordship's great quality of remaining undisturbed and calm and not losing your temperament even for a moment, though provoked otherwise. Your Lordship would be missed by each and every one one of us, as your Lordship has always been extremely courteous to everyone and gave equal treatment to Senior and Junior members of the Bar.

I, on behalf of all the members of the High Court Advocates' Bar Association and on my own behalf wish your Lordship a long active happy and healthy life, and keep yourself engaged in the service of the society.

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3)

Shri Adarsh Muni Trivedi, Member, M.P. State Bar Council bids farewell:-

We all have assembled here to bid heart felt farewell to Your Lordship Hon'ble Justice Smt Sushma Shrivastava. Today is a special day, the 11th day, 11th month and 11th year of this century. This synchronic figure of '11' is synonymous to syncretic ideas, combining different beliefs, hopes and principles into 'one', which is symbolic to 'Perfection'.

Your Lordship was born on 12th November 1949 and did your M.A. and LL.B.. Your Lordship started your Judicial voyage on 18th July 1972. Your efforts and attempts paved the ways to opportunities and opportunities paved the way to credentials. The credentials paved the way to excellence and the excellence paved the way to perfection. Your success to achieve the perfection is the sum of hard efforts repeated day in and day out. You were appointed as Civil Judge Class-I w.e.f. 10th December 1983, as C.J.M. w.e.f. 19th September 1986, promoted to Higher Judicial Service w.e.f. 18th July 1988as officiating District Judge, granted Selection Grade Scale w.e.f. 28th August 1995 and granted Super Time Scale w.e.f. 1st July 2001. during this first phase of your Judicial tenure you gained vivid experience serving at different important places like Jabalpur, Bhopal, Indore, Ujjain, Sagar, Sehore, Raisen, Datia,Khandwa and Mandsaur.

Your Lordship were elevated as Additional Judge of this Hon'ble Court on 15th May 2006 and took oath as permanent Judge on 25th November 2008. so this month of November has always been significant to you. In his poem on the significance of the month of November, Sir Walter Scott wrote:-

"November's sky is chill and drear

November's leaf is red and sear."

This November has become chill, dreary and searing for the Members of Bar because of your Lordship's demission from this high office of a Judge of this Hon'ble Court. Really the November's sky is chill and drear and November's leaf is red and sear.

Your Lordship adorned the high wreathy pedestal of Justice like a fresh breeze to the portals of this High Court and have completed this mission perfectly to carry forward through a rugged voyage with its sharp and strange turns and stormy high waves. The Sanskrit word 'Sushma' means 'the inexplicable beauty' of the nature, which captivates the human mind:-

'बिखरी 'सुषमा' प्रकृति आज श्रृंगारित है।
धराए अवनि सम्पूर्ण सृष्टि समुवासित है।।'

In the words of great sage Valmiki:-

'स दृष्ट्वा सूर्यसंकाशं ज्वलन्तमिव तेजसा'

[Valmiki Ramayan]

Your Lordship have through-out maintained this transcendental joy flows spontaneously in your entire tenure. Your Lordship have kept promises for securing and serving the larger cause of humanity by imparting land-mark decisions in civil, criminal as well as on constitutional sides.

Emily Dickinson says:-

"If I can stop one heart from breaking, I shall not live in vain. If, I can ease one life the aching, or cool one pain, or help one fainting Robin unto his nest again, I shall not live in vain"

By qualitative Judgments your Lordship have stopped many many hearts from breaking, eased the aching lives of a large number of people who knocked the doors of this great temple of Justice and called their pains and plights and restored the nests of several fainting birds.

Mencious says:-

"The great is who does not lose is child's heart"

Your Lordship, by your Judgments, you have created a new Judicials language and translated it into actions by making the constitutional values approximate to something of an instrument for social change and to realise the dreams of social revolution that the Constitution has promised to the 'People of India'.

Justice Jackson of U.S.A. in case of 'Massachusetts Vs. U.S. [333 US 611] has ruled:-

"I see no reason why I should be consciously wrong today because I was unconsciously wrong tomorrow".

Your Lordship have kept the spirit of the law as a powerful weapon to disarm the unrighteous strong against a righteous weak. You have exercised the outstanding creative power of the law as an evolving process by its amenability to innovation. Your Lordship have proved yourself seeming to be an intellectual power house, sanguine, human dynamo and powerful opponent to the tyranny of the hypocrisy of the contemporary society.

Mark Twain, once said:-

"It is by goodness of the god that in our country we have those three unspeakably precious things; freedom of speech, freedom of conscience and the prudence, never to practice either of them".

But your Lordship, by your awareness preserved these precious freedoms and fortunately enough belied the prudence of never practising either of them. Dispensing of justice is the relative, not an absolute value.

Justice Frank Furter says:-

"It is the quality of Justice which will establish the court in the confidence of people and it is the confidence of people which the ultimate reliance of court".

-Solon, a great Greek Jurist Said:-

"Justice can be achieved only when those who do not suffer injustice would be as much outraged as those who have suffered injustice."

At this juncture, I want to express the enshrined feelings of the entire bar of the state of Madhya Pradesh towards the wisdom of Your Lordship. As a Judge in your entire tenure you have particularly been noted for marshalling of facts in excellent manner, marvelous preparations, logical analysis and masterly exposition of Law. No less note-worthy have been Your Lordship's ever smiling lotus face, pleasing Court-manners, grace of a goddess and your own 'Sushma' scattered over the entire campus of this High Court.

Kathopnishad exhorts :-

'उत्तिष्ठत् जाग्रत प्राप्य वरान्निबोधतं
क्षुरस्य धारा निश्चिता दुरत्यया
दुर्ग पथस्तत्कदयो वदन्ति।।'

[Kathopnishad-I iii 14]

[Arise, awake, and approaching great souls, receive instructions from them. The wise say that the road is difficult to tread; it is like treading on the sharp edge of a razor]

Your Lordship have treaded successfully on the sharp edge of the razor by elevating 'yourself by heights of the beauty of 'self'. Your Lordship have left an indeliable stamp of scholarship, learning, impartiality, judiciousness and morality, which are symptomatic of functional excellence on the golden pages of the History of this great High Court, which we shall always remember for ages.

Kautilya, in his "Arthshastra" Says:-

"The fragrance of flowers spreads only in the direction of the wind, but the goodness of a person spreads in all directions."

We wish you a great success in your future life and pray god to shower his all blessings upon you so that your "Sushma" shall spread over the entire society.

"जीवेद् शरदः शतम्।।"

Long live encompassing one hundred more Novembers.

Shri O.P. Namdeo, Central Government Counsel, bids farewell:–

My Lords we have assembled today to bid farewell to Hon'ble Justice Smt. Sushma Shrivastava on the ocasion of demitting her Office as Judge of this Hon'ble Court.

The virtues, values and achievements of Hon'ble Justice Smt. Sushma Shrivastava has been extensively narrated by my previous speakers which I need not repeat buti would like to add that the Journey of Judicial carrier of Hon'ble Justice Smt. Sushma Shrivastava right from Civil Judge Class II to Judge of this Hon'ble Court has been very Successful and it will be source of inspiration to the Judicial Officers who have opted to serve the Judicial field.

The spotless performance in the Judicial Arena of her Lordship is per excellence that while discharging the duties in dispensation of Justice your Lordship has delivered several remarkable Judgments on Civil, Criminal and Constitutional matters.

That on this moment of parting away on behalf of Union of India, Assistant Solicitor General, my colleagues representing the Central Government and my own behalf we offer felicitations and wish Your Lordship a happy, healthy and prosperous life .

Shri Rajendra Tiwari, President Senior Advocates Council, bids farewell:–

After a long association of about 39 years with the administration of Justice both at district and High Court levels, Your lordship Justice Mrs. Sushma Shrivastava will demit your office as the Judge of this Court on 12/11/2011. It is a mentionable feat acquired in one's life time.

Madam, your career started with the appointment as a Civil Judge Class-II in 1972 and was marked by timely promotion and appointment on higher posts.

You had performed the duties of your office with undisturbed calmness and poise. The atmosphere of your lordship's court was absolute congenial and submission friendly.

Wilson Woodrow made an observation in a speech "One cool judgment is worth a thousand hasty counsels. The thing to be supplied is light and not heat" Madam whether you sat as a single judge or as a member constituting a division, this was in particular, seen and felt that arguments were heard with patience and without emanation of heat on any issue.

We, on behalf of Senior Council, congratulate you for completing your 39 years long journey in the judiciary and pray to the almighty to bestow on you and members of your family good health and long life in future.

Farewell speech delivered by Hon'ble Smt.Justice Sushma Shrivastva:–

By God's grace and His incessant blessings, I have completed the long journey of 39 years of my judicial career with utmost satisfaction. I am content that I attained what I longed for. I am certainly grateful to all the members of legal fraternity and other officials, who assisted and co-operated me in discharging my official functions during this long span of time. I am equally grateful to all the esteemed Judges of this prestigious court for their cordial and congenial attitude during my tenure as Judge of this court. I must acknowledge that I owe great indebtedness to all the members of my family, especially to my husband, my son, my sons-in-law, my daughters and daughter-in-law, who always stood by me in my difficult moments and lent me moral support at every step.

I should not fail to express my thanks to all the learned speakers of today, especially Hon'ble Mr. Justice Ajit Singh, for exposition of noble

thoughts and words of appreciation about me. My heartfelt thanks to all the learned senior and junior members of the Bar, members of the Registry, members of my personal staff both at my office and residence, as also to Protocol Officers, and other officials of various sections of the High Court for rendering their assistance and co-operation from time to time.

My special thanks to Dr. A.C. Sonkar for his readily available medical advice and assistance during my stay at Jabalpur.

With thanks to each and everyone present here, I take leave of you all.

Thank you.



Justice Smt. Indrani Datta

Born on November 16, 1949. Did B.Sc and L.L.B. in the year 1971-72. Joined legal service as Civil Judge Class II in Raipur in the year 1975. Thereafter worked as Chief Judicial Magistrate, Raipur. From the year 1997 to 2000 worked as Special Judge, Dewas. From August 2000 to May 2002 as Special Judge SC, ST and Narcotics, Indore. From the year 2002 to 2005 as Presiding Judge, Family Court, Indore. From the year 2005 to 2006 as Presiding Judge, Family Court, Bhopal. From the year 2006 served as District and Sessions Judge, Vidisha till elevation.

Elevated as Judge of Madhya Pradesh High Court on 02-07-2008 and demitted Office on 15-11-2011.

We wish Her Lordship a healthy, happy and prosperous life.

Hon'ble Mr. Justice Rakesh Saksena, bids farewell to the demitting Judge:–

Today, we have assembled here to felicitate farewell ovation to Hon'ble Smt. Justice Indrani Datta, who is demitting the office today after rendering her valuable services to this prestigious constitutional office of Indian Judiciary. I can observe the gloomy faces of all of us reflecting the pain of her parting from us.

To recount, Justice Datta was born on 16th November, 1949 and after schooling, she completed her graduation in Science and took B.Sc. Degree. She obtained LL.B. Degree in 1972 and stood in order of merit throughout. Under the able guidance of her father, who was also a District Judge, she joined the Judicial Services in 1975 as Civil Judge Class II at Raipur. Thereafter, she also served as Chief Judicial Magistrate at Raipur. From 1997 to 2000, she was appointed as Special Judge at Indore. In 2002, she was appointed as Presiding Judge, Family Court. Thereafter, in 2006, she was appointed as District & Sessions Judge, Vidisha, from where, looking to the ability, judicial approach, deep knowledge of law and her overall performances, she was elevated as Judge of High Court of M.P. on 2nd July, 2008 and , posted at Gwalior Bench.

The judicial approach of Justice Datta is excellent and is well known to all of you. As a Judge of this court. Justice Datta rendered a number of land-mark judgments having far reaching implications. She is well known for her sound knowledge of law and the legal acumen. She is uncompromising, firm and unbending when it comes to upholding the rule of law and independence of judiciary. She has maintained highest standards of judicial conduct and behaviour. Patient and dignified, she never lost her cool even in the face of unjustified provocation and maintained a strong sense of firmness. She has a very pleasing personality. All those who have had an opportunity of coming into close contact of her, have held her in high esteem and regard, because of her simplicity, modesty and integrity. **Once Late Justice R.S. Pathak, Former Chief Justice of India used a nice metaphor when asked to him how he would like to be remembered as a Judge, he told with becoming humility:-**

> **"Every Judge when he leaves the court must satisfy himself that he has left a little brick of his own making in that great institution."** and its needless to say here that Justice Datta's contribution has been instrumental to this institution.

Friends, one should admire when love and skill work together and expect a masterpiece and this has been proved by Her Lordship while endeavouring the justice. Polite and courteous, she makes the lawyers, appearing before her, feel at home and come out with their best in the course of arguments. Invincible independence, originality of thought, a firm belief in ideals and uniqueness in expressions are the hallmark of her personality as a Judge. She is a rare combination of perfection with patience, Judge with gentleness, modesty with dignity and firmness with kindness. We shall sum up the personality of Justice Datta with the words of Sir James Barrie that **" Those who bring sunshine to the lives of others, can not remain away from it"** she always remained committed to the philosophy of social justice. No doubt the Court is a human laboratory. In a democratic society where the constitutional approach is of welfare state, the Court has to discharge its firnctions for the public welfare with a view to render public service and undoubtedly Justice Datta has proved her worth in rendering her services as a Judge to this Society.

I and my brother judges of the Bench, congratulate Her Lordship for her successful judicial career. Parting is always painful and so is it today. On the eve of her demitting the office of the Judge of the High Court, we all wish her every success and long life with the best health and hanoiness in all times to come.

Shri J. P. Mishra, Member, State Bar Council of M.P., bids farewell:–

Your Lordship Hon'ble Justice Smt. Indrani Datta is completing her tenure as judge today.

Hon'ble Justice Smt. Indrani Datta born on 16th November, 1949. Joined judicial Services as Civil Judge Class-II on 08.09.1975, thereafter promoted as Civil Judge Class-I, C.J.M., Additional District Judge and District Judge.

During her tenure as Judicial Officer, she was posted in various District like Raipur, Rajnand Goan, Bilaspur, Durg, Harda, Seoni. Dewas. Indore, Bhopal, Vidisha. etc. thereafter elevated as Additional Judge of the High Court of Madhya Pradesh on 1st July,2008. and permanent Judge on 15.01.2010.

Hon'ble Justice Smt Indrani Datta in her tenure of judicial services

assured of a patient hearing, earnest attention to the submissions made and courteous behavior. Her Judgments are backed by forceful logic. Her approach to the cases is with absolute clarity of thought. Some of such Judgments are landmarks in the judicial system.

I, on behalf of myself and on behalf of State Bar Council of Madhya Pradesh wish Your Lord ship long, happy, healthy & prosperous life.

Shri Ankur Mody, Asstt. Solicitor General of India, bids farewell:–

We have gathered here to give farewell to Hon'ble Justice Smt. Indrani Datta.

Smt. Indrani Datta was born on 16th Nov. 1949. She completed her graduation in Science and took BSC degree. She obtained LLB degree in 1972 and stood in order of merit. She joined judiciary in 1975 as Civil Judge Class II at Raipur. From 1997 to 2000 she was appointed as special judge, Dewas. Thereafter she was appointed as Special Judge SC, ST & Narcotics, at Indore. In 2002 She was appointed as Presiding Judge, family court. In 2006 she was appointed as District and Session Judge which post she held till her elevation as Judge of the High Court of M.P.1st July 2008 she was appointed as High Court Judge till date.

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I wish her all the best on behalf of UOI and myself for the future life.

Farewell Speech delivered by Hon'ble Smt. Justice Indrani Datta:–

I am very much grateful for the kind words and sentiments expressed by you on the occasion of my demitting office as a Judge of the High Court.

First of all, I am extremely thankful to Almighty God for showering blessings on me due to which, I could complete more than 36 years of service in the field of law. I bow to my father late Shri A.G.Gandhe who retired as a District Judge Claims Tribunal. He was a source of inspiration for me. He was very pious, sincere and industrious. He used to tell me that a Judge has to be sincere, honest, impartial, fearless and hard worker. As per his guidence, I performed my duties and tried to do justice and justice only. He desired that I should be a Judge of High Court and I am very glad that his

desire has been fulfilled by me with heaven's blessings. It was dream of my beloved mother also. I am delighted to see that her dream has come true. I am very happy that she saw me working as a Judge of High Court. My mother is my moral support and I am very lucky to have her blessings. I am very thankful to my son Abhijit who is my strength. I am also thankful to my daughter in law Anushka, brothers Shri Vikas and Dr. Shashank for cooperating with me in every walk of my life. Without their cooperation and support, I could not have completed this long Journey as a Judge.

It is a matter of great achievement and satisfaction for any Judge to retire after successful tenure. An honourable retirement is like passing a final examination successfully. With the feeling of complete satisfaction, I am putting down the reins today and ***bidding adieu*** to you all. I have joined as a Civil Judge in September, 1975 and after completion of 33 years as a Judicial Officer and then three years and near about five months as a High Court Judge; I am demitting the office today. I do not know how this long journey of almost 36 years and near about five months, I have travelled in such a short span of time. During this period in the field of law, I was posted at various places of State in different capacities. I got full support, cooperation and assistance of Members of Bar at all places where I was posted. I cannot forget the Members of Bar at Vidisha for their fullest cooperation during my tenure as a District Judge there. I am thankful to them from the bottom of my heart. I came and joined as a Judge of this High Court on 2nd July, 2008. At that time Gwalior was totally a strange city for me and Gwalior Bar Members were strangers to me but soon I found that the Members of Gwalior Bar are very cooperative, intellectual and laborious. I am lucky that each member of Bar here helped me for discharging my duties effectively and efficiently. I will never forget the assistance given to me in Administration of Justice by Government Advocates Ku. Nutan Saxena, Smt. Sangeeta Pachauri, and V.K.Sharma and Penal Lawyers deputed to the court from time to time. I extend my good wishes to the Members of Bar at Gwalior.

I express my gratitude to the former Chief Justice Shri A.K.Patnaik now the Judge of Apex Court and Members of Collegeum. I am also highly obliged to the Administrative Judge Shri S.K.Gangele, former Administrative Judge Shri A.K.Shrivastava and brother Justice S.N.Aggrawal, Justice A.K.Sharma, Justice Brij Kishore Dube, Justice G.D.Saxena, Justice Sujoy Paul and Justice Sheel Nagu for their cooperation. I am thankful to Brother Justice Rakesh Kumar Saksena and Justice Jitendra Kumar Maheshwari for their gracious presence on this occasion. I am also thankful

to the Principal Registrar and other members of Registry who were always helpful to me. I am also thankful to my personal staff Shri R.K.Sharma Private Secretary, Shri Madhu Soodan Prasad Personal Assistant, Smt. Vandana Verma Personal Assistant, Shri M.K.Barik Stenographer, Shri Hariom Sharma Reader and Shri Ram Singh Kushwah Jamadar who performed their duties efficiently and sincerely. I am thankful to Dr. Chaturvedi and Dr. R.K. Sharma who were always ready to extend their assistance.

In the end, I wish all of you to have grand success in life. I thank you all with full gratitude. Let the glory of institution last long.

NOTES OF CASES SECTION

Short Note

**(146)*

Before Mr. Justice Sanjay Yadav

W.P. No. 4909/2010 (Jabalpur) decided on 5 August, 2011

A.K. THAKUR & anr. ...Petitioners

Vs.

FOOD CORPORATION OF INDIA & ors. ...Respondents

Constitution, Article 14 & 16 - Discrimination **- Petitioners/ employees of FCI were governed by Central Dearness Allowance Pattern - Payment of gratuity to CDA employees is as per the provisions of Payment of Gratuity Act whereas to employees of Industrial Dearness Allowance are governed by recommendations of pay commission - Employees under CDA pattern can not claim benefit of gratuity limit of 10 lacs from 01.01.2006 as employees under IDA pattern have got as the employees of CDA pattern are governed by the provisions of Payment of Gratuity Act and the employees under CDA Pattern are class apart from IDA pattern - There was an opportunity to the petitioners to opt for IDA pattern, but the same was not availed - Now they can not turn around and say that they are treated differently than the IDA pattern employees - Petition dismissed.**

संविधान, अनुच्छेद 14 व 16 – विभेद – याचीगण एफसीआई के कर्मचारी केन्द्रीय मंहगाई भत्ता पैटर्न द्वारा शासित थे – सीडीए के कर्मचारियों को उपदान का संदाय, उपदान संदाय अधिनियम के उपबंधों के अनुसार होता है जबकि औद्योगिक मंहगाई भत्ता के कर्मचारी को उपदान का संदाय वेतन आयोग की सिफारिशों द्वारा शासित होता है – सीडीए पैटर्न के अंतर्गत कर्मचारी, 01.01.2006 से 10 लाख की उपदान सीमा के लाभ जो कि आईडीए पैटर्न के कर्मचारियों को मिला है, का दावा नहीं कर सकते क्योंकि सीडीए पैटर्न के कर्मचारी उपदान संदाय अधिनियम के उपबंधों द्वारा शासित है और सीडीए पैटर्न के कर्मचारी, आईडीए पैटर्न से भिन्न श्रेणी में आते हैं – याचीगण को आईडीए पैटर्न के विकल्प का अवसर था परंतु उसका अवलंब नहीं लिया गया – अब वे पलटकर यह नहीं कह सकते कि उनके साथ, आईडीए पैटर्न कर्मचारियों से अलग व्यवहार किया जा रहा है – याचिका खारिज।

Cases referred :

(2010) 11 SCC 213, (2010) 3 SCC 786, AIR 1976 SC 2345.

Petitioner in person.

Sanjay Patel, for the respondent No.1.

O.P. Namdeo, for the respondents No. 2 to 5.

NOTES OF CASES SECTION

Short Note (DB)
**(147)*
Before Mr. Justice Rakesh Saksena & Mr. Justice M.A. Siddiqui
Cr. Rev. No. 1422/2008 (Jabalpur) decided on 29 August, 2011

AJOY ACHARYA ...Applicant
Vs.
STATE BUREAU OF INVESTIGATION, BHOPAL ...Non-applicant

A. Prevention of Corruption Act (49 of 1988), Section 13(1)(d) **- Cabinet in meeting dated 28.01.1994 decided to stop MPSIDC from financing the industries any further - MPSIDC in its meeting dated 31.01.1994 resolved to stop the financial assistance - MPSIDC thereafter resolved in its meeting dated 19.04.1995 to extend Inter Corporate Deposits - Applicant was present in the cabinet meeting and also in the meeting dated 31.01.1994 and 19.04.1995 - He knew fully well that Cabinet categorically issued directions for discontinuance of Financial Assistance, yet, as a Director, Applicant, by abusing his post in connivance of others, co-operated in passing the resolution about IDC - No investment, advancement of loan or deposits ought to have been made by the Directors except with the prior permission of the State Govt.**

क. भ्रष्टाचार निवारण अधिनियम (1988 का 49), धारा 13(1)(डी) – मंत्रिमंडल ने दिनांक 28.01.1994 की मीटिंग में उद्योगों को और आगे वित्त देने से एमपीएसआईडीसी को रोकने का निर्णय लिया – एमपीएसआईडीसी ने अपनी मीटिंग दिनांक 31.01.1994 में वित्तीय सहायता रोकने का संकल्प पारित किया – तत्पश्चात एमपीएसआईडीसी ने अपनी मीटिंग दिनांक 19.04.1995 में अंतर निगम जमा राशियों को बढ़ाने का निश्चय किया – मंत्रिमंडल की मीटिंग में आवेदक उपस्थित था तथा मीटिंग दिनांक 31.01.1994 व 19.04.1995 में भी उपस्थित था – उसे भलीभांति ज्ञात था कि मंत्रिमंडल ने वित्तीय सहायता रोके जाने हेतु स्पष्ट रुप से निदेश जारी किये फिर भी निदेशक के रुप में आवेदक ने अपने पद का दुरुपयोग करते हुये अन्य व्यक्तियों की मौनानुमति से आईडीसी के बारे में संकल्प पारित करने में सहयोग दिया – राज्य सरकार की पूर्वानुमति के बगैर निदेशकों द्वारा किसी निवेश, ऋण अथवा जमा राशियों का अग्रसरण नहीं किया जाना चाहिये था।

B. Penal Code (45 of 1860), Section 120 B - Conspiracy **- If some steps are resorted to by one or two of the conspirators without the knowledge of the others it will not affect the culpability of those others when they are associated with the object of Conspiracy - Merely**

because Company Secretary is not prosecuted, it would not exonerate the applicant of his conduct of allowing the agenda to be in meeting dated 19.04.1995.

ख. दण्ड संहिता (1860 का 45), धारा 120बी – षड्यंत्र – यदि एक या दो षड्यंत्रकारियों द्वारा अन्य की जानकारी के बिना किन्ही उपायों का आश्रय लिया जाता है, इससे उन अन्य व्यक्तियों की दोषिता प्रभावित नहीं होगी, जब वे षड्यंत्र के उद्देश्य के साथ सहभागी हैं – मात्र इसलिये कि कम्पनी सेक्रेटरी को अभियोजित नहीं किया गया, आवेदक का मीटिंग दिनांक 19.04.1995 के एजेंडा को मंजूर करने का उसका आचरण माफ नहीं किया जायेगा।

C. Prevention of Corruption Act (49 of 1988), Section 19 - Sanction - **Govt. of India issued guidelines to investigating agencies that while holding different posts on transfer of promotion, a civil servant can not be treated as holding different offices within the meaning of relevant sections of P.C. Act - Held - Interpretation of various decisions given by Ministry can not be accepted in view of the observation made in the case of Prakash Singh Badal.**

ग. भ्रष्टाचार निवारण अधिनियम (1988 का 49), धारा 19 – मंजूरी – भारत सरकार ने जाँच एजेंसियों को मार्गदर्शक सिद्धांत जारी किये कि स्थानातंरण अथवा पदोन्नति पर भिन्न पदों को धारण करते समय सिविल कर्मचारी को पी.सी. अधिनियम की सुसंगत धाराओं के अर्थान्तर्गत भिन्न पद धारण करना नहीं माना जा सकता – अभिनिर्धारित – मंत्रालय द्वारा दिये गये विभिन्न निर्णयों के निर्वचन को प्रकाश सिंह बादल के प्रकरण में दिये गये संप्रेक्षण को दृष्टिगत रखते हुये स्वीकार नहीं किया जा सकता।

D. Prevention of Corruption Act, (49 of 1988), Section 19 - Sanction - **Applicant already ceased to hold the office i.e., Director of MPSIDC, which was alleged to have been abused by him when the charge sheet was filed - No sanction is required.**

घ. भ्रष्टाचार निवारण अधिनियम (1988 का 49), धारा 19 – मंजूरी – आवेदक का पहले ही पद का कार्यभार समाप्त हो गया था अर्थात एमपीएसआईडीसी के निदेशक का कार्यभार, जिसका अभिकथित रुप से उसके द्वारा दुरुपयोग किया गया था जब आरोप पत्र प्रस्तुत किया गया था – मंजूरी की कोई आवश्यकता नहीं।

The Order of the Court was delivered by : RAKESH SAKSENA, J.:

Cases referred :

(2007) 1 SCC 1, AIR 1971 SC 885, AIR 1977 SC 2433, (2007) 5 SCC

403, (2009) 8 SCC 617, (2007) 1 SCC 45, AIR 1984 SC 684, (1984) 2 SCC 183, (2007) 9 SCC 539, (1998) 5 SCC 9, 2000 CrLJ 1767, (1972) 3 SCC 89, (2004) 13 SCC 767.

Amit Prasad, for the applicant.
S.K. Rai, GA for the non-applicant/State.

Short Note (DB)
****(148)***

Before Mr. Justice Krishn Kumar Lahoti & Mrs. Justice Vimla Jain

F.A. No. 243/2010 (Jabalpur) decided on 23 September, 2011

AMITA PATHAK (SMT.) ...Appellant
Vs.
S.SHIV PRASAD ...Respondent

Hindu Marriage Act (25 of 1955), Section 13(1)(a) - Divorce - Cruelty **- Respondent did not have any sexual intercourse with the appellant - This amounts to mental cruelty, apart from this there is ample evidence that the respondent treated the appellant with cruelty - Mere smiling faces in photographs can not disprove cruelty - Appellant has successfully proved the ground of cruelty and she is entitled for a decree of divorce - Appeal allowed.**

हिन्दू विवाह अधिनियम (1955 का 25), धारा 13(1)(ए)– विवाह विच्छेद – क्रूरता – प्रत्यर्थी ने अपीलार्थी के साथ कोई लैंगिक संभोग नहीं किया – यह मानसिक क्रूरता की कोटि मे आता है, इसके अतिरिक्त इसकी व्यापक साक्ष्य है कि प्रत्यर्थी, अपीलार्थी के साथ क्रूरता का व्यवहार करता था – मात्र फोटो में मुस्कुराते चेहरे क्रूरता को नासाबित नही कर सकते – अपीलार्थी ने क्रूरता के आधार को सफलतापूर्वक साबित किया है और वह विवाह विच्छेद की डिक्री के लिये हकदार है – अपील मंजूर।

The Judgment of the Court was delivered by : VIMLA JAIN J.

Cases referred :

AIR 1975 SC 1534, AIR 2011 RAJ. 107, AIR 1981 DELHI 53, AIR 1982 DELHI 240, AIR 1994 SC 710, AIR 2009 P & H 33.

Sameer Seth, for the appellant.
None for the respondent.

NOTES OF CASES SECTION

Short Note (DB)
****(149)***

Before Mr. Justice S.N. Aggarwal & Mr. Justice Sheel Nagu
Company Appeal No. 1/2010 (Gwalior) decided on 21 September, 2011

BHASKAR PUBLICATION & ALLIED INDUSTRIES PVT. LTD. & ors. ...Appellants
Vs.
SMT. KISHORI DEVI AGRAWAL & ors. ...Respondents

A. Companies (Amendment) Act, (31 of 1988), Section 68 - Transitional Provision - Restoration of Company Petition - **Company Petition filed prior to coming into force of Amendment Act, 1988 however was dismissed in default for non-prosecution vide Court's order dated 07.09.2005 - Held - Expression disposed off contained in Section 68 necessarily implies that a petition was required to be disposed of by adjudicating the rival contentions of the parties on merits - It is first principle that the Court which had dismissed the petition in default for non-prosecution alone is competent to deal with its restoration - Company Petition was rightly restored by Company Judge.**

क. कम्पनी (संशोधन) अधिनियम, (1988 का 31), धारा 68 – अंतःकालीन उपबंध – कम्पनी याचिका का पुनःस्थापन – कम्पनी याचिका, संशोधन अधिनियम, 1988 लागू होने से पूर्व प्रस्तुत की गयी अपितु न्यायालय के आदेश दिनांक 07.09.2005 द्वारा, अभियोजन न करने के व्यतिक्रम में खारिज की गयी – अभिनिर्धारित – धारा 68 में अंतर्विष्ट अभिव्यक्ति 'निपटारा किया गया' आवश्यक रुप से विवक्षित करता है कि याचिका का निपटारा पक्षकारों के विरोधी तर्कों को गुणदोषों पर न्यायनिर्णित करके किया जाना अपेक्षित था – यह प्रथम सिद्धांत है कि जिस न्यायालय ने अभियोजन न करने के व्यतिक्रम में याचिका खारिज की है केवल वही उसके पुनःस्थापन का निपटारा करने के लिये सक्षम है – कम्पनी याचिका को कम्पनी जज द्वारा उचित रुप से पुनः स्थापित किया गया।

B. High Court Rules, M.P. 2008 - Chapter 5 - Powers, Duties and Functions of Registrar - **High Court directed the Petitioner to pay Process Fee within a week otherwise, the petition shall be liable to be dismissed without reference to the Court - Section 148 of C.P.C. gives sufficient powers to the Court to extend time given by it earlier - Registrar instead of listing the case before the Court chose to dismiss the petition by his order dated 28.06.2006 - Order passed by Registrar is without jurisdiction and can only be termed as an error of the Court - Even if no application for restoration of petition is filed, still it was**

the duty of the Court to rectify its mistake in exercise of its suo moto powers - Order passed by Registrar is non-est.

क. उच्च न्यायालय नियम, म.प्र. 2008 – अध्याय 5 – रजिस्ट्रार, की शक्तियां, कर्तव्य और कार्य – उच्च न्यायालय ने याची को निदेशित किया कि एक सप्ताह के भीतर प्रोसेस शुल्क अदा करे अन्यथा याचिका न्यायालय को निर्दिष्ट किये बिना खारिज किये जाने योग्य होगी – सि.प्र.सं. की धारा 148 न्यायालय को उसके द्वारा पूर्व में दी गई अवधि को बढ़ाने की पर्याप्त शक्तियां प्रदान करती है – रजिस्ट्रार ने प्रकरण न्यायालय के समक्ष लगाने के बजाए अपने आदेश दिनांक 28.06.2006 द्वारा याचिका खारिज की – रजिस्ट्रार द्वारा पारित आदेश बिना अधिकारिता के हैं और इसे केवल न्यायालय की भूल कहा जा सकता है – याचिका को पुनः स्थापित करने हेतु यद्यपि कोई आवेदन प्रस्तुत नहीं किया गया तथापि अपनी स्वप्रेरणा की शक्तियों के प्रयोग में अपनी गलती सुधारना न्यायालय का कर्तव्य था – रजिस्ट्रार द्वारा पारित आदेश शून्य है।

The Judgment of the Court was delivered by : **S.N. AGGARWAL , J.**

Cases referred :

AIR 1956 SC 213, AIR 1990 SC 7371, 1994 (79) Company Cases 53, 123 (2005) DLT 114, AIR 2000 Delhi 377, (2003) 3 SCC 272.

U.K. Chaudhary with *Srishti Singh & Nitin Agrawal,* for the appellants.
Prashant Chandra with *Sameer Shrivastava,* for the respondent No.1.
Sunil Kumar Jain, for the respondent No.2.
None, for the respondents No. 3 & 4.

Short Note

****(150)***

Before Mrs. Justice Vimla Jain

Cr. A. No. 255/1996 (Jabalpur) decided on 11 October, 2011

GULAB ...Appellant

Vs.

STATE OF M.P. ...Respondent

Penal Code (45 of 1860), Section 376 - Rape - False implication - **Prosecutrix was minor and unmarried girl - It can not be presumed that prosecutrix would make a false allegation of rape against the appellant at the cost of her honour and dignity and would risk her future life - Parents of the victim would not concoct a false case against the appellant for the sake of modesty, honour and reputation of their minor daughter of tender age - Appeal dismissed.**

दण्ड संहिता (1860 का 45), धारा 376 – बलात्कार – झूठा आरोप – अभियोक्त्रि अप्राप्तवय तथा अविवाहित बालिका – यह उपधारणा नही की जा सकती कि अभियोक्त्रि अपनी मान मर्यादा की कीमत पर अपीलार्थी के विरूद्ध बलात्कार का मिथ्या आरोप लगायेगी और अपना भविष्य खतरे में डालेगी – पीड़िता के माता–पिता अपनी कोमल आयु की अप्राप्तवय पुत्री की शालीनता, सम्मान एवं प्रतिष्ठा के हितार्थ, अपीलार्थी के विरूद्ध झूठा मामला कूटरचित नहीं करेंगे – अपील खारिज।

Cases referred :

(1998) 7 SCC 177, AIR 2009 SC 2292, (1991) 3 SCC 627, 2001CRLJ 487, 2005 AIR SCW 6009, (2004) 8 SCC 153, (1996) 1 SCC 490.

N.P. Dubey, for the appellant.

Sudesh Verma, G.A. for the respondent/State.

Short Note (DB)

****(151)***

Before Mr.Sushil Harkauli, Acting Chief Justice &
Mr. Justice K.K. Trivedi

W.P. No. 10189/2011 (Jabalpur) decided on 29 August, 2011

GYANESH SHARMA ...Petitioner

Vs.

STATE OF M.P. & ors. ...Respondents

National Security Act (65 of 1980), Section 3(2) - Preventive Detention **- Petitioner had let out a premises to one M/s Hind Dairy Food Products against whom it is alleged that it is involved in manufacturing adulterated Ghee - Held - There is nothing on record relating to the relationship of Petitioner with functioning of M/s Hind Dairy Food Products - He is only owner of premises which is let out to said M/s Hind Dairy Food Products - A landlord can not be made responsible for an act of tenant - No rebuttal of allegations that the material facts, documents and pronouncement of judgment in favour of petitioner granting him acquittal in criminal cases were not brought to the notice of detaining authority - There was no occasion to pass any order of preventive detention - Petition allowed.**

राष्ट्रीय सुरक्षा अधिनियम (1980 का 65), धारा 3(2) – निवारक निरोध – याची ने मेसर्स हिन्द डेयरी फूड प्रोडक्ट्स को स्थान भाड़े पर दिया जिसके विरुद्ध यह अभिकथन है कि वह मिलावटी घी के उत्पादन में शामिल था – अभिनिर्धारित – मेसर्स हिन्द डेयरी फूड प्रोडक्ट्स के कार्य के साथ याची के संबंध के बारे में अभिलेख पर कुछ नहीं – वह मेसर्स हिन्द डेयरी फूड प्रोडक्ट्स को भाड़े पर दिये

गये स्थान का केवल स्वामी है – अभिधारी के कृत्य के लिये भू–स्वामी को उत्तरदायी नहीं ठहराया जा सकता – इन अभिकथनों का खंडन नहीं किया गया कि तात्विक तथ्य, दस्तावेज एवं दाण्डिक प्रकरणों में दोषमुक्ति प्रदान करने वाला याची के पक्ष में घोषित किया गया निर्णय, निरोध प्राधिकारी की जानकारी में नहीं लाया गया – निवारक निरोध के किसी आदेश को पारित करने का मामला नहीं था – याचिका मंजूर।

The Order of the Court was delivered by : **K.K. TRIVEDI J.**

Cases referred :

1992 Suppl.(1) SCC 496, AIR 2009 SC 628, (1979) 1 SCC 222, (1975) 4 SCC 598, W.P. No. 12015/2009 decided on 14.12.2009.

Vikas Pahava with *Abhishek Arjariya & Yogesh Chaturvedi,* for the petitioner.

Vijay Pandey, Dy. AG for the respondents.

Short Note

****(152)***

Before Mr. Justice G.D. Saxena

Cr. Rev. No. 613/2006 (Gwalior) decided on 26 September, 2011

O.T.G. GLOBAL FINANCE LTD. COMPANY & ors. ...Applicants

Vs.

MOHAN MANDELIA & anr. ...Non-applicants

***A. Negotiable Instruments Act (26 of 1881), Section 141 - Offences by Company* - Appellant No. 2 is the signatory of the cheque and appellant No.3 is the Managing Director of the Company - Both the persons by virtue of their position are vicariously liable for the offence committed by appellant No.1/Company.**

क. परक्राम्य लिखत अधिनियम (1881 का 26), धारा 141 – कम्पनी द्वारा अपराध – अपीलार्थी क्र. 2 चेक का हस्ताक्षरकर्ता है और अपीलार्थी क्र. 3 कम्पनी का प्रबंध निदेशक है – दोनों व्यक्ति अपने पद की हैसियत से, अपीलार्थी क्र. 1/कम्पनी द्वारा कारित अपराध के लिये प्रतिनिधिक रुप से दायी है।

B. Criminal Procedure Code, 1973 (2 of 1974), Section 320 - Application for compromise - Application for compromise filed after the pronouncement of judgment - Application is not maintainable as the Court is no more seisin over the case.

ख. दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 320 – समझौते के लिए

आवेदन – समझौते के लिये आवेदन निर्णय की घोषणा के पश्चात प्रस्तुत किया गया – आवेदन पोषणीय नहीं है क्योंकि मामला अब न्यायालय के अधीन नहीं है।

Cases referred :

2003 CrLJ 3135, 1(1996) BC 155, (2005) 1 SCC 115, 1996 CrLJ. 2619, 2001 CrLJ NOC 109 (Orissa), (2004) 13 SCC 374, (2006) 6 SCC 39, AIR 1961 SC 1361, AIR 1987 AP 139, (2008) 4 SCC 54, (2009) 1 SCC 492, (2002) 7 SCC 541, AIR 1953 Madras 840, DCR 475, DCR 705, (1984) 4 SCC 352, (1970) 3 SCC 491, DCR 481, 1(2002) BC 221, (2006) 6 SCC 532, (2007) 6 SCC 528, 2007 CrLJ NOC 529, (1987) 2 SCC 354, (2001) 4 SCC 759, 2005(1) MPHT 5, 2000 DoCh.(Mad.) 1070, 1995 CrLJ 2306, AIR 1998 SC 2327, 2010 AIR SCW1508, AIR 1988 SC 1128, 2011 AIR SCW 4175, AIR 2001 SC 567, 2001 AIR SCW 184, (2010) 1 SCC 798, AIR 1979 SC 87.

Nandita Dubey, for the applicants No. 1 & 2.
S.K. Shrivastava, for the applicant No.3.
Prashant Sharma, for the non-applicant No.1.
R.K. Shrivastava, PL for the non-applicant No.2/State.

Short Note (SC)
****(153)***

Before Mr. Justice Dr. B.S. Chauhan & Mr. Justice Swatanter Kumar
Civil Appeal No. 6482/2011 decided on 9 August, 2011

PRATAP CHANDRA MEHTA ...Appellant
Vs.
STATE BAR COUNCIL OF M.P. & ors. ...Respondents

A. Interpretation of Statutes - Language of Statute - **Language of the statute has to be examined before giving a provision an extensive meaning - Court would be justified in giving the provision a purposive construction to perpetuate the object of the Act, while ensuring that such rules framed are within the field circumscribed by the Parent Act.**

क. कानूनों का निर्वचन – कानून की भाषा – उपबंध को व्यापक अर्थ देने से पूर्व कानून की भाषा का परीक्षण करना होगा – अधिनियम के उद्देश्य को शाश्वत करने के लिये उपबंध को प्रयोजनात्मक अर्थान्वयन देना न्यायालय के लिये न्यायोचित होगा, यह सुनिश्चित करते हुये कि ऐसे विरचित किये गये नियम मूल अधिनियम द्वारा परिमित क्षेत्र के भीतर है।

B. State Bar Council of Madhya Pradesh Rules,1962, Rules 121,122-A, Advocate Act, (25 of 1961), Section 15 - **Tenure and Removal of Chairman/Vice-Chairman/Treasurer- Validity of Rules - Rules 121**

and 122-A of the Rules are not ultra vires of the provisions including the provisions of Section 15 of the Act and the amended rules have received the approval of the Bar Council of India - Rules would not be invalidated for want of issuance of any notification, as it is not the requirement in terms of Section 15(3) of the Act.

ख. राज्य अधिवक्ता परिषद नियम, मध्यप्रदेश 1962, नियम 121, 122–ए, अधिवक्ता अधिनियम (1961 का 25), धारा 15 – अध्यक्ष/उपाध्यक्ष/कोषाध्यक्ष का कार्यकाल और हटाया जाना – नियमों की विधि मान्यता – नियमों के नियम 121 व 122–ए, उपबंधों के अधिकारातीत नहीं जिसमें अधिनियम की धारा 15 के उपबंध सम्मिलित हैं और संशोधित नियमों को भारतीय अधिवक्ता परिषद का अनुमोदन प्राप्त हुआ है – किसी अधिसूचना को जारी न किये जाने से नियम अविधिमान्य नहीं हो जाते क्योंकि, यह अधिनियम की धारा 15(3) की शर्तों में अपेक्षित नहीं है।

The Judgment of the Court was delivered by : SWATANTER KUMAR, J.

Cases referred :

AIR 1968 SC 888, (1992) 4 SCC 80, AIR (39) 1952 SC 64, (1988) 2 SCC 351, (2000) 3 SCC 40, (2009) 15 SCC 570, (1998) 1 SCC 680, AIR 1975 Del 200, JT 2011 (5) 19, (1974) 2 SCC 706, JT 2010(5) 640.

Short Note

****(154)***

Before Mr. Justice A.K. Shrivastava

F.A. No. 103/1996 (Indore) decided on 7 May, 2011

SANGHVI FOODS PRIVATE LTD. (M/S) ...Appellant

Vs.

MADHYA PRADESH ELECTRICITY BOARD ...Respondent

A. Evidence Act (1 of 1872), Sections 91, 103, 114(g) - **Plaintiff is consumer of Electricity Board for supply of electricity upto the extent of 308 KVA - Plaintiff required additional energy of 277 KVA - Supplementary agreement was executed - Number of letters were sent by Plaintiff for supply of additional energy - However, plaintiff started consuming additional electricity using its existing meter - Penalty was imposed by the Board for consuming additional electricity - Held - Plaintiff did not file the original agreement - Contention of the plaintiff that no condition for realization of penalty was embodied in additional agreement can not be accepted as original agreement was not filed - Document is in power and control of plaintiff and the burden of proof**

was on plaintiff and it was for him to produce the original agreement - Plaintiff was also required to plead and prove the terms and conditions of earlier agreement - Appeal dismissed.

क. साक्ष्य अधिनियम (1872 का 1), धाराएँ 91, 103, 114(जी) – वादी 308 केव्हीए की सीमा तक विद्युत प्रदाय के लिये विद्युत मंडल का उपभोक्ता है – वादी को 277 केव्हीए अतिरिक्त बिजली की आवश्यकता थी – अनुपूरक करार निष्पादित किया गया – अतिरिक्त बिजली प्रदाय किये जाने हेतु वादी ने कई पत्र भेजे – अतएव, वादी ने अस्तित्वमान मीटर का उपयोग करते हुये अतिरिक्त बिजली का उपभोग आरंभ किया – अतिरिक्त बिजली का उपभोग करने के कारण विद्युत मंडल ने शास्ति अधिरोपित की – अभिनिर्धारित – वादी ने मूल करार प्रस्तुत नहीं किया – वादी का तर्क कि अतिरिक्त करार में शास्ति की वसूली की कोई शर्त सम्मिलित नहीं थी, को स्वीकार नहीं किया जा सकता क्योंकि मूल करार प्रस्तुत नहीं किया गया – दस्तावेज, वादी की शक्ति एवं नियंत्रण में है और सबूत का भार वादी पर था और उसे ही मूल करार प्रस्तुत करना था – पूर्ववर्ती करार की शर्तों का अभिवाक् करना और साबित करना भी वादी से अपेक्षित था – अपील खारिज।

***B. Evidence Act (1 of 1872), Section 92 - Exclusion of oral evidence* - Plaintiff did not file the original agreement - Penalty imposed can not be said to be in contravention of Section 92 of the Act.**

ख. साक्ष्य अधिनियम (1872 का 1), धारा 92 – मौखिक साक्ष्य का अपवर्जन – वादी ने मूल करार प्रस्तुत नहीं किया – अधिरोपित शास्ति को अधिनियम की धारा 92 का उल्लंघन नहीं कहा जा सकता।

***C. Words and Phrases - Penalty and damages* - Penalty is a sum of money so stipulated in terrorem, and liquidated damages are a genuine pre-estimate of damages - Whether a particular stipulation in a contract is in the nature of penalty has to be determined against the background of various relevant factors such as character of transaction and its special nature - Relative situation of parties and rights and obligations accruing from such transaction under general law and intention of the parties incorporating in the contract the particular situation which is contended to be penal in nature.**

ग. शब्द और वाक्यांश – शास्ति और क्षतिपूर्ति – टेरोरेम में ठहरायी गयी राशि का कुल योग शास्ति है और नुकसानी का वास्तविक पूर्वानुमान, परिनिर्धारित क्षतिपूर्ति है – क्या संविदा में कोई विशिष्ट शर्त शास्ति के स्वरुप की है इसका निर्धारण विभिन्न सुसंगत तत्वों के परिप्रेक्ष्य में किया जाना चाहिये जैसे कि संव्यवहार का प्रकार एवं उसका विशेष स्वरुप – पक्षकारों की संबंधित स्थिति और सामान्य विधि के अंतर्गत ऐसे संव्यवहार से उत्पन्न होने वाले अधिकार एवं दायित्व तथा

संविदा में विशिष्ट स्थिति समाविष्ट करने में पक्षकारों का आशय जिसे दांडिक स्वरुप का होने का तर्क किया गया है।

***D. Electricity Act, (9 of 1910), Section 22-B, Electricity (Supply) Act, (54 of 1948) - Penalty* - Demand of higher charges/tariff for electricity consumed beyond legally fixed limit is a reasonable deterrent measure providing an appropriate sanction not as harsh as disconnection of electricity supply.**

घ. विद्युत अधिनियम (1910 का 9), धारा 22–बी, विद्युत (प्रदाय) अधिनियम (1948 का 54) – शास्ति – विधितः नियत सीमा से परे बिजली का उपभोग किये जाने के लिये उच्चतर प्रभार/टेरिफ की मांग युक्तियुक्त भयोपरतिकारक उपाय है जिसमें समुचित अनुशास्ति उपबंधित है परंतु जो विद्युत प्रदाय के विच्छेद सी कठोर नहीं।

Cases referred :.

1988 MPJR 124 (SC), AIR 1968 SC 1413, AIR 1970 SC 2025, AIR 1970 SC 839.

S.C. Bagadia with *Dharmendra Jain,* for the appellant.
L.R. Bhatnagar, for the respondent.

Short Note (DB)
****(155)***
Before Mr. Justice Ajit Singh & Mr. Justice Sanjay Yadav
W.P. No. 11692/2005(S) (Jabalpur) decided on 11 August, 2011

SANJAY PRATAP SINGH ...Petitioner
Vs.
THE SECRETARY, KRISHI UPAJ MANDI SAMITI
& anr. ...Respondents

***Industrial Disputes Act (14 of 1947), Sections 2(oo) & 25F - Retrenchment* - Petitioner who was initially appointed on 13.03.1996 continued to serve without any break and served for more than 240 days in one calendar year preceding his termination - Held - Petitioner was therefore entitled for protection u/s 25F of the Act before his services could be terminated.**

Petitioner was engaged on daily wages, initially for a period of 89 days by order dated 13.03.1996 - Services of the petitioner was continued even after the expiry of initial 89 days without any break till the year, 2000 when his services were dispensed

with - In pursuance to order passed by this Court, service record of the petitioner was scrutinized, whereupon it was found that he was engaged without following a due procedure - Consequent thereupon an order dated 25.07.2000 was passed, whereby, the petitioner was terminated from services - Petitioner raised an industrial dispute.

Labour Court after considering the statement of claim and counter claim as well as evidence on record held that since initial appointment of the petitioner was for 89 days which was extended from time to time, the termination of his services can not be construed as retrenchment and non adherence to provision contained u/s 25F of the Act does not vitiates the order.

Labour Court was not justified in holding that termination of the petitioner on the ground that his initial appointment was for 89 days and he was not appointed after following due procedure, is not a retrenchment.

औद्योगिक विवाद अधिनियम (1947 का 14), धाराएँ 2(00) व 25एफ – छंटनी – याची जिसे 13.03.1996 को प्रारंभिक रुप से नियुक्त किया गया था उसने बिना किसी खंडता के सेवाऐं जारी रखी और उसकी सेवा समाप्ति से पूर्ववर्ती एक कलेण्डर वर्ष में 240 दिनों से अधिक के लिये सेवाऐं दी – अभिनिर्धारित – इसलिये याची की सेवा समाप्त किये जाने पूर्व वह अधिनियम की धारा 25एफ के अंतर्गत संरक्षण के लिये हकदार था।

The Order of the Court was delivered by : **SANJAY YADAV, J.:**

Cases referred :

(1990) 3 SCC 682, (2011) 6 SCC 584.

Sanjay Verma, for the petitioner.

None, for the respondents.

Short Note
**(156)*
Before Mr. Justice Alok Aradhe
W.P. No. 4197/2009 (Jabalpur) decided on 19 May, 2011

SHIN-ETSU CHEMICAL CO. LTD. ...Petitioner
Vs.
VINDHYA TELELINKS LTD., & ors. ...Respondents

A. Constitution, Articles 226, 227 - Distinction - **Powers under Article 226 and 227 are distinct, separate and operate in different fields - High Court under Article 226 quashes or annuls an order or proceedings but in exercise of power under Article 227 High Court apart from annulling the proceeding, can also substitute the impugned order by order which the inferior Tribunal should have made - However power should be exercised sparingly only to keep the subordinate Courts and Tribunals within the bounds of their authority and to see that they obey the law.**

क. संविधान, अनुच्छेद 226, 227 – भिन्नता – अनुच्छेद 226 व 227 के अंतर्गत शक्तियां भिन्न एवं पृथक हैं और भिन्न क्षेत्रों में प्रवर्तित होते हैं – अनुच्छेद 226 के अंतर्गत उच्च न्यायालय आदेश अथवा कार्यवाही अभिखंडित एवं बातिल कर सकता है परंतु अनुच्छेद 227 के अंतर्गत शक्ति का प्रयोग करते हुये उच्च न्यायालय कार्यवाही बातिल करने के अलावा ऐसे आदेश द्वारा आक्षेपित आदेश को भी प्रतिस्थापित कर सकता है जिसे अधीनस्थ अधिकरण द्वारा दिया जाना चाहिये था – तथापि, शक्ति का प्रयोग, कृशता से केवल अधीनस्थ न्यायालयों एवं अधिकरणों को उनकी प्राधिकारिता की सीमा के भीतर रखने के लिये और यह देखने के लिये कि उनके द्वारा विधि का पालन किया जा रहा है, किया जाना चाहिये।

B. Civil Procedure Code (5 of 1908), Order 41 Rule 22 - Cross objection - **Respondent/defendant in an appeal, without filing cross objection can attack an adverse finding upon which a decree in part has been passed for the purposes of sustaining the decree - Filing of cross objection is purely optional and not mandatory - However, respondents in their replies to the memo of appeal supported the order of the Trial Court - They neither assailed the findings recorded by Trial Court nor raised any grievance before appellate Court - In absence of any grievance made by respondents, the petitioner could not be put to a disadvantageous position - Remand of case by Appellate Court not proper.**

ख. सिविल प्रक्रिया संहिता (1908 का 5), आदेश 41 नियम 22 – प्रत्याक्षेप – प्रत्यर्थी/प्रतिवादी अपील में प्रत्याक्षेप प्रस्तुत किये बिना, डिक्री को कायम रखने हेतु प्रतिकूल निष्कर्ष का विरोध कर सकता है, जिस पर डिक्री भागतः पारित की गयी है – प्रत्याक्षेप प्रस्तुत करना शुद्ध रुप से वैकल्पिक है और न कि आज्ञापक – अपितु प्रत्यर्थीगण ने अपील के मेमो के अपने प्रतिउत्तर में विचारण न्यायालय के आदेश का समर्थन किया है – उन्होंने न तो विचारण न्यायालय द्वारा अभिलिखित निष्कर्षों पर आक्षेप लिया है और न ही अपीली न्यायालय के समक्ष कोई शिकायत उठायी – प्रत्यर्थीगण द्वारा किसी शिकायत के अभाव में याची को अहित की स्थिति में नहीं रखा जा सकता – अपीली न्यायालय द्वारा प्रकरण का प्रतिप्रेषण उचित नहीं।

C. Contract Act (9 of 1872), Section 16 - Contract - Undue influence - **Respondents alleged that contract was null and void on account of undue influence - Respondents alleged that since the petitioner is the only supplier of Preform and therefore there was inequality of bargaining power as the respondents had made large investment were solely dependent upon petition for supply of Preform - Held - Contract in question is a commercial contract - Contract was acted upon between the parties and the respondents had received 18 shipments - Respondents having entered into contract and having derived benefit under agreement can not be permitted to approbate or reprobate - Respondents are stopped from denying the validity or the binding effect of the Contract.**

ग. संविदा अधिनियम (1872 का 9), धारा 16 – संविदा – असम्यक असर – प्रत्यर्थीगण का अभिकथन कि संविदा असम्यक असर के कारण अकृत एवं शून्य थी – प्रत्यर्थीगण का अभिकथन कि चूंकि याची 'प्रीफार्म' का एकमात्र प्रदायकर्ता है और इसलिये सौदा करने की शक्ति की असमानता थी क्योंकि प्रत्यर्थीगण ने बड़ा निवेश किया था और 'प्रीफार्म' के प्रदाय हेतु पूर्णतः याची पर निर्भर थे – अभिनिर्धारित – प्रश्नगत संविदा, वाणिज्यिक संविदा है – पक्षकारों के मध्य संविदा पर कार्य किया गया और प्रत्यर्थीगण ने 18 लदान प्राप्त की – संविदा करने और अनुबंध के अंतर्गत लाभ प्राप्त करने के कारण प्रत्यर्थीगण को अनुमोदित अथवा अस्वीकृत करने की अनुज्ञा नहीं दी जा सकती – संविदा की वैधता या बाध्यकारी प्रभाव को अस्वीकार करने से प्रत्यर्थीगण को रोका गया।

D. Contract - **Whether Bank which had issued guarantee is necessary party - Bank issuing a guarantee is not concerned with the underlying contract between the parties to the contract - The duty of the bank under the performance guarantee is created by the documents itself - Bank can not be termed as necessary party to the dispute - Dispute is not tripartite and hence arbitration clause would apply.**

ग. संविदा – क्या बैंक जिसने प्रत्याभूति जारी की है वह आवश्यक पक्षकार है – प्रत्याभूति जारी करने वाली बैंक संविदा के पक्षकारों के मध्य अंतर्निहित संविदा से संबद्ध नहीं होती – पालन की प्रत्याभूति के अंतर्गत बैंक का कर्तव्य, दस्तावेजों द्वारा ही निर्माण होता है – बैंक को विवाद के आवश्यक पक्षकार होना नहीं माना जा सकता – विवाद त्रिपक्षीय नहीं है अतः माध्यस्थम खंड लागू होगा।

E. Arbitration Clause - **An arbitration clause is a collateral term in the contract which relates to resolution of disputes and not performance - Even if performance of contract comes to an end on account of repudiation, frustration or breach of contract, the arbitration clause would survive for the purpose of resolution of the disputes.**

घ. माध्यस्थम खंड – माध्यस्थम खंड संविदा में सांपार्श्विक शर्त है जो विवादों के निराकरण से संबंधित है और न कि पालन से – यदि प्रत्याख्यान, विफलीकरण या संविदा के भंग हो जाने के कारण संविदा का पालन समाप्त हो जाता है तब भी विवादों के निराकरण के प्रयोजन हेतु माध्यस्थम खंड जीवित रहेगा।

Cases referred :

(2005) 7 SCC 234, (2003) 9 SCC 606, 128(2006) DLT 764, 113(2004) DLT 189, (2008) 5 SCC 711, (2001) 6 SCC 356, (2007) 5 SCC 692, (2000) 4 SCC 272, (1996) 1 SCC 735, (2007) 8 SCC 110, AIR 2005 Delhi 173, (2003) 6 SCC 675, (2010) 8 SCC 546, (2010) 8 SCC 329, AIR 1960 SC 744, (2003) 5 SCC 531, (2011) 1 SCC 320, (2010) 5 SCC 306, (1963) 3 SCR 183, (1960) 1 SCR 493, AIR 1955 SC 233, 1986(Suppl) 401, (2003) 6 SCC 641, AIR 1999 SC 3571, 1972 MPLJ 805, AIR 1986 SC 1571, (1949) All ER 980, AIR 1996 SC 2367, (2007) 5 SCC 692, (2000) 4 SCC 272.

Dhruv Mehta with *Arindam Ghosh, Ashish Verma & Shashank Verma,* for the petitioner.

Dushyant Dave with *Narendra Sharma, Aniruddh Deshmukh, Malika Gahlot & Vikram Singh,* for the respondents.

Short Note (DB)

****(157)***

Before Mr. Justice R.C. Mishra & Mrs. Justice Vimla Jain

Cr. Rev. No. 649/2008 (Jabalpur) decided on 1 October, 2011

STATE OF M.P. ...Applicant

Vs.

DEEPAK SURANA & ors. ...Non-applicants

A. Penal Code (45 of 1860), Section 120B - Conspiracy - **There is no difference between the mode of proof of the offence of conspiracy**

and that of any other offence - It can be established by direct evidence or by circumstantial evidence - Section 10 of Evidence Act introduces the doctrine of agency and if the conditions laid down therein are satisfied, the act done by one is admissible against the co-conspirators.

क. दण्ड संहिता (1860 का 45), धारा 120बी – षडयंत्र – षडयंत्र के अपराध की साक्ष्य का ढंग और किसी अन्य अपराध की साक्ष्य के ढंग के बीच कोई अंतर नहीं – इसे प्रत्यक्ष साक्ष्य अथवा परिस्थितिजन्य साक्ष्य द्वारा स्थापित किया जा सकता है – साक्ष्य अधिनियम की धारा 10 एजेंसी के सिद्धांत को पुरःस्थापित करती है और यदि उसमें प्रतिपादित शर्तों की संतुष्टि होती है, तक एक द्वारा किया गया कार्य सह–षडयंत्रकारियों के विरुद्ध ग्राह्य होगा।

***B. Prevention of Corruption Act (49 of 1988), Section 13(1)(d) - Misconduct* - Respondents knowing full well that the acquisition of land by T.I.T. has attained finality and there was no provision for release of the lands in the corresponding Act, appointed co-accused as their attorneys and also executed agreement to sell reflecting their knowledge about the dispute and authorized the proposed purchasers to get the lands anyhow released and to alienate the same to any person - Respondents are prima facie guilty of commission of offence - Order discharging them set aside.**

ख. भ्रष्टाचार निवारण अधिनियम (1988 का 49), धारा 13(1)(डी) – अवचार – प्रत्यर्थीगण ने यह भलिभांति जानते हुये कि टी.आई.टी. द्वारा भूमि का अर्जन अंतिमता प्राप्त कर चुका है और तत्संबंधी अधिनियम में भूमि की मुक्ति हेतु कोई उपबंध नहीं था, सह–अभियुक्त को अपने मुख्त्यार के रुप में नियुक्त किया तथा विवाद के बारे में अपनी जानकारी प्रकट करते हुये विक्रय करार भी निष्पादित किया और प्रस्तावित क्रेता को किसी प्रकार भूमि मुक्त करवाने के लिये एवं भूमि किसी अन्य व्यक्ति को संक्रामित करने के लिये प्राधिकृत किया – प्रत्यर्थीगण प्रथम दृष्ट्या अपराध कारित करने के दोषी हैं – उन्हें मुक्त करने का आदेश अपास्त।

***C. Prevention of Corruption Act (49 of 1988), Section 13(1)(d) - Misconduct - Minister* - Minister holds public office though he gets constitutional status and performs functions under the Constitution, law or executive policy - The Acts done and duties performed are public acts or duties as the holder of public office - He owes certain accountability for the acts done or duties performed in a democratic society governed by rule of law.**

ग. भ्रष्टाचार निवारण अधिनियम (1988 का 49), धारा 13(1)(डी) – अवचार – मंत्री – मंत्री लोक पद धारण करता है यद्यपि उसे संवैधानिक प्रतिष्ठा प्राप्त होती

है और संविधान, विधि अथवा कार्यपालिक नीति के अंतर्गत कार्य संपादित करता है – किये गये कार्य तथा कर्तव्यों का निर्वहन लोक पद धारक के रुप में लोक कार्य अथवा कर्तव्य है – वह विधि के नियमों द्वारा शासित लोकतांत्रिक समाज में किये गये कार्य एवं कर्तव्य पालन के लिये कतिपय उत्तरदायी होता है।

D. ***Penal Code (45 of 1860), Section 37*** **- Where several acts are done so as to result together in the commission of an offence, the doing of any one of them with intention to co-operate in the offence makes the actor liable to be punished for the commission of the offence.**

घ. दण्ड संहिता (1860 का 45), धारा 37 – जब पृथक–पृथक कार्य किये गये जो एक साथ किसी अपराध को फलीभूत करते हैं, अपराध में सहयोग के आशय के साथ उसमें से किसी एक कार्य का किया जाना उसके कर्ता को अपराध कारित करने के लिये दंडित किये जाने योग्य बनाता है।

E. ***Criminal Procedure Code, 1973 (2 of 1974), Section 227 - Framing of Charges*** **- Even a strong suspicion leading to presumption as to possibility as against certainty makes out a case for framing of charge - Trial judge is required to record reasons only if he decides to discharge the accused.**

ङ. दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 227 – आरोपों को विरचित करना – निश्चितता के विरुद्ध, संभावना की उपधारणा की ओर ले जाने वाला प्रबल संदेह भी आरोप विरचित किये जाने का मामला बनाता है – विचारण न्यायाधीश को केवल तभी कारण अभिलेख करना अपेक्षित है यदि वह अभियुक्त को मुक्त करने का निश्चय करता है।

F. ***Criminal Procedure Code, 1973 (2 of 1974), Sections 154 & 227*** **- Non-mentioning of name in F.I.R. - Non-mentioning of name in F.I.R. is no ground to reject the outcome of the investigation.**

च. दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धाराएँ 154 व 227 – एफ. आई.आर. में नाम उल्लिखित नही किया जाना – एफ.आई.आर. में नाम उल्लिखित नहीं किया जाना, जांच के परिणाम को अस्वीकार करने का आधार नहीं है।

G. ***Criminal Procedure Code, 1973 (2 of 1974), Section 227 - Production of material by accused*** **- Materials/documents furnished by the accused could not have been considered at the stage of framing of charge.**

छ. दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 227 – अभियुक्त द्वारा सामग्री को प्रस्तुत किया जाना – अभियुक्त द्वारा प्रस्तुत की गयी सामग्री/दस्तावेजों को आरोप विरचित किये जाने के प्रक्रम पर विचार में नहीं लिया जा सकता था।

The Order of the Court was delivered by : **R.C. MISHRA, J.:**

Cases referred :

(1986) 2 SCC 716, (2004) 11 SCC 317, (2007) 5 SCC 403, AIR 1957 SC 340, AIR 1965 SC 682, AIR 2009 SC 3077, (1997) 1 SCC 35, 2000(3) MPHT 172, 2003 Cr.L.J. 2616, 1952 Cr.L.J. 797, (2000) 1 SCC 722, AIR 1996 SC 1744, AIR 1979 SC 366, AIR 1990 SC 1962, AIR 2002 SC 564, AIR 1938 Nagpur 394, AIR 1972 SC 545, AIR 1977 SC 1489, AIR 2004 Madras 313, AIR 1955 SC 468, AIR 1970 SC 706, AIR 2009 SC 1527, AIR 2009 SC 1013, AIR 2005 SC 359, AIR 2009 SC 976, (1996) 9 SCC 766, ILR 2008 MP 404.

Aditya Adhikari, Spl. PP for the applicant.

A.M. Mathur with *H.S. Dubey & Manoj Shrimal,* for the non-applicants.

Short Note

****(158)***

Before Mr. Justice R.S. Jha

W.P. No. 7622/2005(S) (Jabalpur) decided on 8 November, 2011

UMAKANT DWIVEDI ... Petitioner

Vs.

STATE OF M.P. & anr. ...Restpondents

A. Civil Services (Classification, Control & Appeal) Rules, M.P. 1966 - Rule 14 - Penalties - Compulsory Retirement **- Petitioner compulsorily retired on demand of illegal gratification, making illegal recovery from villagers and misappropriation of Govt. fund - Officers who conducted fact finding enquiry were examined in Departmental Enquiry however, villagers who were examined during fact finding enquiry were neither summoned as witnesses nor were examined by enquiry officer - There is no evidence direct or indirect whatsoever to the effect that the petitioner personally demanded any money or illegal gratification from any of villagers/complainants - Rule 14 provides that disciplinary authority should prove and establish the charges against the petitioner in departmental enquiry and not to record a finding on the basis of a fact finding/preliminary enquiry - Making fact finding inquiry as basis for recording finding against petitioner is apparently in derogation of and contrary to the procedure prescribed by rule 14 - Petition allowed.**

क. सिविल सेवा (वर्गीकरण, नियंत्रण और अपील) नियम, म.प्र. 1966 – नियम 14 – शास्ति – अनिवार्य सेवानिवृत्ति – याची को अवैध परितोषण की मांग,

ग्रामीणों से अवैध वसूली और सरकारी निधि के दुर्विनियोजन के कारण अनिवार्य सेवानिवृत्ति दी गयी – अधिकारी जिन्होनें तथ्य का पता लगाने की जांच की थी उनका विभागीय जांच में परीक्षण किया गया, किन्तु, तथ्य का पता लगाने की जांच के दौरान जिन ग्रामीणों का परीक्षण किया गया उन्हे न तो साक्षियों के रूप में समन किया गया न ही जांच अधिकारी द्वारा उनका परीक्षण किया गया – किसी प्रकार की कोई प्रत्यक्ष या अप्रत्यक्ष साक्ष्य नही कि याची ने व्यक्तिगत रूप से किसी ग्रामीण/शिकायतकर्ता से रूपये या अवैध परितोषण की कोई मांग की – नियम 14 उपबंधित करता है कि विभागीय जांच में अनुशासनिक प्राधिकारी को याची के विरुद्ध लगे आरोपों को साबित एवं स्थापित करना चाहिए – तथ्य का पता लगाने की जांच को याची के विरुद्ध निष्कर्ष अभिलिखित करने हेतु आधार बनाना प्रकट रूप से नियम 14 द्वारा विहित प्रकिया का उदाहरण एवं उसके विपरीत है – याचिका मंजूर।

***B. Constitution - Article 311 - Opportunity of Hearing - Examination of witnesses* - Principles of Natural Justice require that all the witnesses in the departmental enquiry shall be examined in the presence of delinquent who shall be given an opportunity to cross-examine them.**

ख. संविधान – अनुच्छेद 311 – सुनवाई का अवसर – साक्षियों का परीक्षण – नैसर्गिक न्याय के सिद्धांत की अपेक्षा है कि विभागीय जांच में सभी साक्षियों का परीक्षण अपचारी की उपस्थिति में किया जायेगा जिसे उनका प्रतिपरीक्षण करने का अवसर दिया जायेगा।

Cases referred :

(1999) 7 SCC 739, (2001) 1 SCC 182, AIR 1963 SC 375, AIR 1999 SC 677, (2006) 4 SCC 348, 1989 MPLJ 530.

Manoj Chaturvedi, for the petitioner.

S.M. Lal, G.A. for the respondents.

I.L.R. [2011] M. P., 2929

SUPREME COURT OF INDIA

Before Mr. Justice J.M. Panchal, Mr. Justice Deepak Verma & Mr. Justice Dr. B.S. Chauhan

Civil Appeal No. 6229/2011 decided on 2 August, 2011

STATE OF M.P. & anr. ...Appellants

Vs.

MEDHA PATKAR & ors. ...Respondents

***Land Acquisition Act (1 of 1894), Sections 4, 6 - Acquisition of land for Construction of Canal* - Canal Affected Persons - Canal affected persons can not be put at par with the submergence affected persons - However, State agreed to give more benefit to canal affected persons by shifting the date of notification under Section 4 from the date of its actual notification to the date of judgment in this case - L.A.O. accordingly directed to reconsider the market value of canal affected persons as if notification under Section 4 has been issued on 02.08.2011 and make supplementary awards in accordance with provisions of Act, 1894 - Such concession extended by State would be over and above the interim relief granted by the Court vide order dated 05.05.2010.** (Paras 18 to 20)

भूमि अर्जन अधिनियम (1894 का 1), धाराएँ 4, 6 – नहर के निर्माण हेतु भूमि का अर्जन – नहर से प्रभावित व्यक्ति – नहर से प्रभावित व्यक्तियों को जलमग्नावस्था से प्रभावित व्यक्तियों के समतुल्य नहीं माना जा सकता – तथापि, राज्य उसकी अधिसूचना के वास्तविक दिनांक के बदले इस मामले के निर्णय के दिनांक को धारा 4 के अंतर्गत अधिसूचना का दिनांक करके नहर से प्रभावित व्यक्तियों को अधिक लाभ देने के लिये सहमत हुआ – धारा 4 के अंतर्गत अधिसूचना को 02.08.2011 को जारी किया जाना मानते हुये नहर प्रभावित व्यक्तियों के बाजार मूल्य का पुनर्विचार करने के लिये तथा अधिनियम 1894 के उपबंधों के अनुसार अनुपूरक अवार्ड देने के लिये भूमि अर्जन अधिकारी को तद्नुसार निदेशित किया गया – राज्य द्वारा दी गई ऐसी रियायत, न्यायालय के आदेश दिनांक 05.05.2010 द्वारा प्रदान किये गये अंतरिम अनुतोष के अतिरिक्त होगी।

Cases referred :

(2000) 10 SCC 664, AIR 2011 SC 1989.

JUDGMENT

The Judgment of the Court was delivered by **DR. B.S. CHAUHAN, J. :–** Leave granted.

2. This appeal has been preferred by the State of Madhya Pradesh and instrumentality of the State against the judgment and order dated 11.11.2009 in Writ Petition (C) No.6056 of 2009 of the High Court of Madhya Pradesh at Jabalpur, whereby the High Court has restrained the State of Madhya Pradesh or any other statutory authority of further acquisition of land or for any excavation or any construction of the canal network for the command areas of the Indira Sagar and Omkareshwar projects till the Command Area Development plans (hereinafter called CAD Plans) submitted to the Government of India, Ministry of Environment and Forest (hereinafter called MoEF) are scrutinized by the committee of experts and clearance is granted by the said Ministry. The appellant-State Government has further been directed to provide rehabilitation and resettlement benefits under the Rehabilitation and Resettlement Policy (hereinafter called R&R Policy) for Narmada Valley Projects to the canal affected persons/families of Indira Sagar and Omkareshwar projects and the Narmada Control Authority (hereinafter called NCA) has been directed to ensure implementation of the aforesaid directions.

3. The facts and circumstances giving rise to this appeal are:

A. That after completing the procedure prescribed for establishment of dams and irrigation projects, the project reports for Indira Sagar and Omkareshwar projects were prepared and submitted for clearance. The environmental clearance for Indira Sagar project was granted by MoEF on 24.6.1987 by an administrative order. The Planning Commission also approved investment to be made in Indira Sagar project on 6.9.1989.

B. The R & R Policy of 1989 was introduced by the State of Madhya Pradesh for the oustees of submerged area in Narmada Valley projects. Land acquisition proceedings were initiated in year 1991 for canal construction under Indira Sagar project. A comprehensive CAD plans for Omkareshwar project were sent to MoEF for clearance. Environment Impact Assessment and Environment Management Plan reports were also submitted for Omkareshwar project to MoEF which also contained the R & R plan for the affected persons of the Omkareshwar project. It provided that the persons whose land was to be acquired for establishment of canals were not to be included in R & R plans.

C. The Ministry of Welfare, Government of India accorded

clearance to the R & R plan of Omkareshwar project on 8.10.1993. Similarly, by an administrative order environmental clearance for Omkareshwar project was granted by MoEF on 13.10.1993.

D. The MoEF issued statutory notification under Section 3(2) of Environment (Protection) Act, 1986 (hereinafter called the Act 1986) read with Rule 5(3) of the Environment (Protection) Rules 1986 requiring environmental clearance for development of project on 27.1.1994. The canal construction in Indira Sagar project started on 30.5.1999. The NVDD vide order dated 14.8.2000 amended the definition of "Displaced person" adding in clause 1(a) the following words:

".....or is required for the project-related canal construction and construction of the Government Project Colony."

The Planning Commission granted approval in respect of Omkareshwar project on 15.5.2001. The R & R policy stood materially changed vide amendment dated 1.9.2003 as from the definition of "displaced person" the words "which is required for project related construction of canals or the Government project colony" stood deleted.

The Amendment to the Rehabilitation Policy was made by the Narmada Control Board (NCB) on the recommendation of the NVDA on 2.7.2003 as per Business Rules of Narmada Control Board Part II Special Procedure for Emergency Sanction and not under the Government of Madhya Pradeh Business Rules.

E. The dam construction of Indira Sagar project stood completed in year 2005 and the High Court, in a pending litigation, permitted the State of Madhya Pradesh to raise water level of Indira Sagar Dam upto 260 meter against the full reservoir level of 262.13 meters vide order dated 8.9.2006. The High Court further clarified that NCA had no role to play regarding the Indira Sagar project i.e. intra-State project as its role was confined to inter-State Project, i.e. Sardar Sarovar Project.

F. The Omkareshwar dam stood completed in year 2007. In order to set up canals, land acquisition proceedings were initiated in year 2009 and in some cases after conclusion of the proceedings, compensation under the provisions of Land Acquisition Act, 1894

(hereinafter called the Act 1894) has been paid. However, in some cases acquisition proceedings are still in progress.

G. The respondents preferred Writ Petition (C) No.6056 of 2009 before the High Court of Madhya Pradesh at Jabalpur on 18.6.2009 challenging the acquisition of land for excavation of canals; execution, excavation and construction of canal on various grounds, inter-alia; the CAD Plans had not been submitted by the State and not approved by the MoEF; there had been no compliance of Panchayats (Extension of Scheduled Areas) Act, 1996 (hereinafter called PESA Act) which required consultation with office bearers of Panchayats before initiation of land acquisition proceedings; the canal affected persons were also entitled for the full benefit of R & R Policy including the allotment of land in lieu of the land acquired as per R & R policy, which had not been provided for.

H. The State of M.P., appellant herein contested the case contending that land acquisition proceedings could not be challenged at a belated stage i.e. after dispossession of the tenure holders; authorities had submitted the CAD Plans and acted on the same after being approved by the MoEF. Canal affected person could not be treated at par with an oustee of the submerged area of the dam, rather he would be given benefit as per the policy prescribed for such a class of persons.

4. The High Court after considering the rival submissions held as under:

(I) The CAD Plans of Indira Sagar and Omkareshwar projects were required to be prepared and submitted to the authority entrusted with the responsibility of monitoring, planning and implementation of environmental safeguards and this was to be done before the commencement of the canals so that such authority could ensure that the environmental safeguards and mitigative measures had been properly planned and could be implemented pari passu with the construction of the canal project.

(II) If land is acquired and excavated before preparation and submission of CAD Plans to such monitoring authority, environmental safeguards could not be implemented pari passu with the construction of canal project. Rather, if the main canals and branch canals are

constructed without keeping in mind the environmental requirements then there may be immense problem of water logging and salinity disturbing the environmental plans and the authority entrusted to ensure the environmental safeguards may not be able to reverse the acquisition of land.

(III) There was an intelligible differentia in making the classification between the oustees of submerged areas of dam and canals but have no rationale nexus with the object to achieve so far as the rehabilitation was concerned. Thus, the persons affected by canal work were entitled to the same benefit as that of submergence affected persons.

(IV) In view of the provisions of Sections 3 and 4(i) of PESA Act, the State Legislature was not competent to make any law under Part IX of the Constitution of India inconsistent with the basic features of the Gram Sabha or Panchayats at the appropriate level requiring consultation for land acquisition in the scheduled area for the development projects. Therefore, it was not permissible for the court to issue direction to the authorities to consult Gram Sabha before acquisition of land.

(V) Challenge to the acquisition of land could not be entertained at a belated stage as the possession of the land had been taken long back.

(VI) The clearance from MoEF requires the agents to monitor the environmental protection measures.

In view of the above, the High Court issued directions as explained in para 2 hereinabove. Hence, this appeal.

5. Shri T.R. Andhyarujina, learned senior counsel appearing for the appellants has submitted that CAD Plans have been submitted by the authorities from time to time to the ministries of the Central Government and have got the clearances and the work had been executed giving strict adherence to those clearances. Even at present, the revised CAD Plans have been submitted and are being considered by the Expert Committee of the MoEF, wherein the respondent-Ms. Medha Patkar has also been heard. As voluminous documents have been submitted by her and this Court had been issuing directions from time to time, the MoEF has yet to take the final decision. The State authorities are bound to proceed in accordance with the final decision taken by the MoEF

and in case the CAD Plans are not found to be appropriate or complete and the MoEF issues certain directions or asks for some variations etc. the State Government would proceed accordingly. Therefore, according to Mr. Andhyarujina, the issue of submission and clearance of CAD Plans should not be decided at this stage by the court. It is further submitted by Mr. Andhyarujina that in case a party is aggrieved by the order to be passed by MoEF, it would be open to it to challenge the said order before the appropriate forum.

So far as the issue of rehabilitation is concerned, it has been canvassed on behalf of the State that question of putting the canal affected persons at par with submergence affected persons does not arise. This Court in *Narmada Bachao Andolan v. Union of India & Ors.*, (2000) 10 SCC 664, (hereinafter called "Narmada Bachao Andolan I") has categorically held that both classes are different and cannot be put on equal footings. The canal affected people may rather be benefited because of the canals while the submergence affected persons may suffer permanently or temporarily. Therefore, to that effect, the High Court was not justified in issuing direction to treat both the classes at par.

6. On the other hand, Ms. Medha Patkar, respondent-in-person and Mr. Sanjay Parikh, learned counsel for the respondents have submitted that there is no difference in the sufferings of the persons, whether they are submergence affected persons or canal affected persons. No rationale nexus can be found to treat them differently. Therefore, the High Court's finding to that extent does not require any interference. The CAD Plans submitted by the State authorities are not complete and are being examined by the Expert Committee of the MoEF. Therefore, the High Court has rightly directed the authority not to proceed with excavation or establishment of canals etc. The facts of the case do not warrant any interference by this Court. Appeal lacks merit and is liable to be dismissed.

7. We have considered the rival submissions made by learned counsel for the parties and perused the record.

8. Though, a large number of issues have been agitated before the High Court and dealt with, some of them have not been agitated before us. The issue of consultation with the Gram Sabha or Panchayats before acquisition of land and validity of the acquisition proceedings had been dealt with by the High Court against the writ petitioners and the same has not been challenged before us. Thus, only two issues survive, i.e. submission of CAD Plans before

the MoEF and requirements of its clearance; and entitlement of the canal affected persons.

9. So far as the first issue is concerned, this Court vide order dated 25.2.2010 after taking note of the directions issued by the High Court and in view of the fact that the CAD Plans etc. were being considered by the Expert Committee of the MoEF and for many years excavation and construction of canal work and acquisition of land for that purpose had been done to a great extent and the High Court order brought the same to a standstill, passed the following order:

> *"In the above circumstances, excavation or construction of the canal work and acquisition of land may go on for the time being, however, it would be subject to approval of the MoEF of the revised plans submitted on 16th October, 2009. The State would be at liberty to file further details regarding the Command Area Development Plans to the MoEF and if such details regarding the Command Area Development Plans are filed, the same may be referred to the Expert Committee for consideration. The Expert Committee to take a decision within a period of six weeks and as soon as the Report is available to MoEF, the MoEF to take decision within a further period of four weeks thereafter."*

10. Mr. Mohan Jain, learned Additional Solicitor General appearing for the MoEF has supported the case of the State contending that the State authorities had always been submitting the CAD Plans from time to time and the same had also been cleared by the statutory authorities. References have been made to the decision dated 10.2.2011 taken by Dr. Pandey's Committee on CAD Plans and all other subsequent decisions taken on 29th/30th April, 2011 on the CAD Plans submitted by the State Government. Mr. Jain assured the Court that the decisions would be taken by the MoEF strictly in accordance with law considering the report of the Expert Committee. Time is being taken in view of the order dated 11.5.2011 passed by this Court directing MoEF to proceed with the draft minutes prepared by the Environment Appraisal Committee after providing the opportunity of personal hearing to the writ petitioner-Ms. Medha Patkar. Though the hearing stood concluded, a large number of documents submitted by Ms. Patkar yet require to be considered. The final decision shall be taken within 4 weeks.

11. While considering the reliefs, which could be given to the canal affected persons, this court on 5.5.2010 passed the following order :

> *"The State of Madhya Pradesh shall consider the "hardship cases"; those cases wherein land of a Khatedar is in excess of 60% or above is acquired for canal, those affected parties may be given land as far as possible in the near vicinity or in the canal command area of the project and if it is not possible, the land may be given from the Land Bank. The Khatedars who have already received compensation, should return the Government 50% of the compensation amount already taken by them as land value and the remaining amount may be refunded to the Government in 20 interest free annual installments. If the Khatedars are not willing to take land from the land bank, they may be given the compensation as per the present market value plus 30% solatium thereof. Those who are not coming in the category of hardship cases, compensation is to be paid under the Land Acquisition Act with 30% solatium.*
>
> *Any grievance in respect of these affected parties may be placed before the Grievance Redressal Authority for Narmada Water Basin Project which has been set up by the State Government. Land Bank should, as far as possible, give cultivable land and also basic infrastructure such as school, primary health centre, communication facilities etc. shall be provided."*

12. While entertaining I.A. No.9 of 2011, on 21.7.2011 the aforesaid order was modified as under:

> *"50% of the cash compensation already received by the Khatedars have to be refunded to the Government as land value of land allotted and the remaining cost of the land will be paid in 20 interest free annual installments."*

While hearing the matter, this court further clarified the order dated 5.5.2010 to the extent that 30% solatium as mentioned in the order dated 5.5.2010 meant as provided under the Act 1894 and not over and above the same to make it 60%.

Therefore, the question remains as what are the other reliefs that can be

granted to the canal affected persons and as to whether they can be put at par with the oustees of submergence area.

13. The Narmada Water Dispute Tribunal Award 1979 defined 'oustee' as well as provided for rehabilitation:

> **"Oustee-**An "Oustee shall mean any person who since at least one year prior to the date of publication of the notification under section 4 of the Act, has been ordinarily residing or cultivating land or carrying on any trade, occupation or calling or working for gain in the area likely to be **submerged** permanently or temporarily."
>
> **Provision for Rehabilitation:** According to the present estimates the number of oustee families would be 7,366 spread over 173 villages in Madhya Pradesh, 467 families spread over 27 villages in Maharashtra. Gujarat shall establish rehabilitation villages in Gujarat in the irrigation command of the Sardar Sarovar Project on the norms hereinafter mentioned for rehabilitation of the families who are willing to migrate to Gujarat. For oustee families who are unwilling to migrate to Gujarat, Gujarat shall pay to Madhya Pradesh and Maharashtra the cost, charges and expenses for establishment of such villages in their respective territories on the norms as hereinafter provided."

Thus, it is evident from the above that the definition of 'oustee' does not take within its ambit the "canal affected person". However, the said award does not apply to the present projects as it was meant only for Inter-State projects like Sardar Sarovar Project.

14. So far as the Indira Sagar Project is concerned, it was given clearance on 24.6.1987 and did not have any specific direction for rehabilitation. Similarly, for Omkareshwar Project, clearance was granted on 13.10.1993 and part (vii) thereof, provided that the rehabilitation programme would be extended to landless labourers and **people affected due to canal** by identifying and allocating suitable land "as permissible".

The words "as permissible" have been interpreted by this Court in *Narmada Bachao Andolan v. State of M.P.*, AIR 2011 SC 1989, that addition of such terms while granting clearance did not create a right in favour of such persons as the rehabilitation is to be made in accordance with the terms of R & R Policy. Thus, we do not see any reason to reconsider the issue afresh.

15. The general R & R Policy of the State of Madhya Pradesh defines 'displaced person' in para 1.1 as a person in an area likely to come under submergence because of project or **which is required by the project.** The R & R Policy was amended by the State of Madhya Pradesh on 14.8.2000 which included the persons whose land was likely to come under submergence or was required **for the project related canal construction.**

16. This Court in *Narmada Bachao Andolan* I (supra) considered a similar issue, but made the distinction between canal affected persons and persons affected by submergence in para 169 which reads as under:

> *"Dealing with the contention of the petitioners that there will be 23,500 canal-affected families and they should be treated on a par with the oustees in the submergence area, the respondents have broadly submitted that there is a basic difference in the impacts of the projects in the upstream submergence area and its impacts in the beneficiary zone of the command area. While people, who were oustees from the submergence zone, required resettlement and rehabilitation, on the other hand, most of the people falling under the command area were in fact beneficiaries of the projects and their remaining land would now get relocated with the construction of the canal leading to greater agricultural output. We agree with this view and that is why, in the award of the Tribunal, the State of Gujarat was not required to give to the canal-affected people the same relief which was required to be given to the oustees of the submergence area."* *(Emphasis added)*

17. In view of the above, the State of Madhya Pradesh amended R & R Policy on 1.9.2003 deleting the words "which is required for project related constructions of canal or government project colony." Thus, in view of the above, the State of M.P. does not give the same R & R package to the canal affected persons as those affected by submergence.

18. This Court has taken a view that the canal affected persons cannot be put at par with the submergence affected persons, thus, it is not possible for the court to put the canal affected persons at par with the submergence affected persons.

In view of the fact-situation, it was not permissible for the High Court to take a view contrary to the view taken by this Court, particularly, when the

High Court came to the conclusion that there was a reasonable differentia between the two.

19. Be that as it may, this Court vide an interim order dated 5.5.2010 has also taken care of "hardship cases" in canal affected areas. Mr. Andhyarujina, learned senior counsel appearing for the State has graciously agreed that in order to give more benefit to canal affected persons, the court may award some more benefits. The State has suggested that in order to achieve the purpose, date of Section 4 Notification in all the cases, irrespective of the actual date of Section 4 Notification in relation to all canal affected persons be shifted (postponed) to the date of this judgment and direct to re-determine the market value according to the provisions of the Act 1894 as early as possible making the supplementary awards and giving the opportunity to such oustees further for filing reference under Section 18 of the Act 1894.

20. The State has come forward with most appropriate and valuable suggestion, thus, we accept the same. In view of the above, Land Acquisition Collector is directed to reconsider the market value of canal affected persons as if Section 4 Notification in respect of the same has been issued on date, i.e. 2.8.2011 and make the supplementary Awards in accordance with the provisions of the Act 1894. Such concession extended by the State would be over and above the relief granted by this Court vide order dated 5.5.2010 as clarified/modified subsequently, as explained hereinabove and it is further clarified that further canal work would be subject to clearance/direction which may be given by MoEF.

21. In view of the above, appeal stands disposed of. No order as to costs.

Appeal disposed of.

I.L.R. [2011] M. P., 2939

SUPREME COURT OF INDIA

Before Mr. Justice Aftab Alam & Mr. Justice R.M. Lodha

Civil Appeal No. 1709/2007 decided on 18 August, 2011

STATE BANK OF INDIA & anr. ...Appellants

Vs.

M/S EMMSONS INTERNATIONAL LTD. & anr. ...Respondents

A. ***Banking - Guarantee - Letter of Credit*** **- A draft accompanying documents must be in strict accord with the letter of credit - If**

the documents presented comply with the terms of credit, the issuing bank must honuor its obligation in accordance with the terms of credit. (Para 13)

क. बैंकिंग – प्रत्याभूति – प्रत्यय पत्र – दस्तावेजों के साथ का ड्राफ्ट, सम्यक रुप से प्रत्यय पत्र के अनुरुप होना चाहिये – यदि प्रस्तुत किये गये दस्तावेज क्रेडिट की शर्तों का अनुपालन करते हैं, तब निर्गामी बैंक को क्रेडिट की शर्तानुसार अपने दायित्व का सम्मान करना चाहिये।

B. Civil Procedure Code (5 of 1908), Section 96 - First Appeal **- Where the first appellate Court reverses the judgment of the Trial Court, it is required to consider all the issues of law and fact - As High Court had not considered the issue No. 5, therefore, the judgment and decree of High Court is set aside and First Appeal is restored for re-hearing and fresh decision.** (Paras 26 & 27)

ख. सिविल प्रक्रिया संहिता (1908 का 5), धारा 96 – प्रथम अपील – जब प्रथम अपीलीय न्यायालय, विचारण न्यायालय के निर्णय को पलट देता है, उसे विधि एवं तथ्य के सभी विवाद्यकों को विचार में लेना चाहिये – चूंकि उच्च न्यायालय ने विवाद्यक क्र. 5 पर विचार नहीं किया इसलिये, उच्च न्यायालय का निर्णय एवं डिक्री अपास्त तथा प्रथम अपील पुनः सुनवाई एवं पुनः निर्णय हेतु पुनः स्थापित।

Cases referred :

(1981) 2 SCC 766, (1973) AC 279, (2001) 3 SCC 179, (2001) 4 SCC 756, (2005) 10 SCC 243, (2005) 12 SCC 303, (2007) 4 SCC 163.

JUDGMENT

The Judgment of the Court was delivered by **R.M. Lodha, J.** :–This civil appeal, by special leave, is from the judgment and decree of the Madhya Pradesh High Court whereby the Division Bench of that Court allowed the first appeal of the present 1st respondent—M/s. Emmsons International Ltd.—and set aside the judgment and decree of the trial court (First Additional District Judge, Bhopal) and decreed the 1st respondent's monetary claim.

2. Unialkem Fertilizers Limited—2nd respondent in this appeal (hereinafter referred to as 'the buyer') placed a purchase order on M/s. Emmsons International Limited (hereinafter referred to as 'the seller') for supply of 2000 MT of Syrian Rock Phosphate at the rate of Rs. 2100/-per metric ton for an aggregate amount of Rs. 43,86,411/-. The payment terms provided 'against 180 days issuance of letter of credit'. On June 18, 1997, at the

request of the buyer, a letter of credit for Rs. 43,86,411/-was established by the appellant No. 1 — State Bank of India, Industrial Finance Branch, Bhopal (hereinafter referred to as 'the issuing bank') in favour of the seller; the appellant No. 2 — State Bank of India, New Delhi Main Branch, New Delhi being the advising Bank. The seller supplied the material vide sale invoice, high seas delivery, bills of lading, etc. and the buyer is said to have accepted the documents.

3. The letter of credit established by the issuing bank, inter alia, made the following stipulations:

> " . . . . . THIS DOCUMENTARY CREDIT WHICH IS AVAILABLE **BY NEGOTIATION OF YOUR DRAFT AT 180 DAYS** FROM DESPATCH DRAWN FOR 100.00% OF INVOICE VALUE ON UNIALKEM FERTILIZERS LTD., E-5 PLOT NO. 4, RAVI SHANKAR NAGAR, BHOPAL, 462 016 BEARING THE CLAUSE "DRAWN UNDER DOCUMENTARY CREDIT NO. 0192097 LC000087 OF STATE BANK OF INDIA, INDUSTRIAL FINANCE BRANCH, GR. FLOOR, L.H.O. PREMISES, HOSHANGABAD ROAD, BHOPAL – 462 011 (INDIA)." **ACCOMPANIED BY DOCUMENTS LISTED IN ATTACHED SHEET (S)** EVIDENCING DISPATCH OF GOODS AS PER THE ATTACHED SHEETS.
>
> FOR LIST OF REQUIRED DOCUMENTS, MERCHANDISE DESCRIPTION AND OTHER INSTRUCTIONS PLEASE SEE **THE ATTACHED CONTINUATION SHEETS WHICH FORM AN INTEGRAL PART OF THIS CREDIT.**
>
> SHIPMENT FROM : SYRIA TO KANDLA, INDIA
>
> SHIPMENT TERMS : CIF
>
> PARTIAL SHIPMENT : ALLOWED
>
> TRANSSHIPMENT : NOT ALLOWED
>
> INSTRUCTION TO THE ADVISING BANK:
>
> - ALL BANK CHARGES (OTHER THAN ISSUING BANK CHARGES) ARE FOR ACCOUNT OF BENEFICIARY.

- **DISCREPANT DOCUMENTS TO BE SENT STRICTLY ON COLLECTION BASIS.**
- ALL DOCUMENTS TO INDICATE L/C NO.0192097 LC 000087 AND DATE 18/06/97.
- NEGOTIATIONS UNDER THIS CREDIT ARE RESTRICTED TO STATE BANK OF INDIA, NEW DELHI, MAIN BRANCH, 11, SANSAD MARG, POST BOX NO. 430, NEW DELHI – 110 001.
- **EXCEPT IN SO FAR AS OTHERWISE EXPRESSELY STATED THIS DOCUMENTARY CREDIT IS SUBJECT TO THE UNIFORM CUSTOMS AND PRACTICES FOR DOCUMENTARY CREDITS (UCP) (1993 REVISION) OF THE INTERNATIONAL CHAMBERS OF COMMERCE (PUBLICATION NO. 500)**

WE HEREBY ENGAGE WITH DRAWERS AND/OR BONAFIDE HOLDERS THAT **DRAFT DRAWN AND NEGOTIATED IN CONFORMITY WITH THE TERMS OF THIS CREDIT WILL BE DULY HONOURED ON PRESENTATION AND** THAT DRAFTS ACCEPTED WITHIN THE TERMS OF THIS CREDIT WILL BE DULY HONOURED AT MATURITY. THE AMOUNT OF EACH DRAFT MUST BE ENDORSED ON THE REVERSE OF THIS CREDIT BY THE NEGOTIATION BANK....." *(Emphasis supplied by us)*

4. The terms of Letter of Credit were amended on June 23, 1997 to the following effect :

"AT THE REQUEST OF THE APPLICANT UNIALKEM FERTILIZERS LTD., E-5 PLOT NO. 4, RAVI SHANKAR NAGAR, BHOPAL – 462 016. WE HAVE TODAY AMENDED OUR CAPTIONED LETTER OF CREDIT AS UNDER :

FIRST PAGE OF LETTER OF CREDIT LINE SECOND TO READ AS : NEGOTIATION OF YOUR DRAFT AT 180 DAYS FROM THE DATE OF DELIVERY ORDER DATED 18/06/97 INSTEAD OF EXISTING PLEASE MAKE THE FOLLOWING

AMENDMENTS TO ATTACHED SHEET NO. 1 OF L/C POINT NO. 01 TO BE DELETED POINT NO. 02 TO BE DELETED **POINT NO. 04 TO READ AS COPY OF CERTIFICATE OF SYRIAN ORIGIN ISSUED BY CHAMBER OF COMMERCE INSTEAD OF EXISTING. POINT NO. 05 TO READ AS COPY OF CERTIFICATE OF QUALITY AND QUANTITY ISSUED BY CHAMBER OF COMMERCE** INSTEAD OF EXISITING POINT NO. 12 TO READ AS DRAFT DRAWN UNDER THIS LETTER OF CREDIT ARE NEGOTIABLE BY THE STATE BANK OF INDIA, MAIN BRANCH, NEW DELHI AND ORIENTAL BANK OF COMMERCE, OVERSEAS BANK, NEHRU PLACE, NEW DELHI ALSO INSTEAD OF EXISTING.

ALL OTHER TERMS AND CONDITIONS REMAIN UNCHANGED." (Emphasis supplied by us)

5. On July 8, 1997, the issuing bank received negotiated documents under the letter of credit from Oriental Bank of Commerce (hereinafter to be referred as 'negotiating bank') for payment. On that day itself, the issuing bank pointed out the following discrepancies to the negotiating bank :

(i) certificate from the negotiating bank mentioning all the terms of credit have not been furnished;

(ii) the certificate of Syrian Origin is not issued by Chamber of Commerce.

The issuing bank, thus, advised the negotiating bank to rectify the discrepancies within seven days of submission of documents.

6. Thereafter, between July 10, 1997 and February 7, 1998, the correspondence ensued through telegrams and letters between the negotiating bank and the issuing bank. According to the negotiating bank, the discrepancies notified by the issuing bank were rectified and the documents complied with the requirement of the credit. On the other hand, the issuing bank continued to insist that the documents were discrepant; the documents presented were not acceptable to it and it was holding the documents on collection basis at the risk and responsibility of the negotiating bank.

7. It was then that the seller brought an action by way of a summary suit

for a decree in the sum of Rs. 63,74,356/-(principal amount of Rs. 43,86,411/-and interest of Rs. 19,87,945/-) together with the interest at the rate of 18 per cent per annum from the date of the suit to the date of decree and thereafter the interest at the same rate on decretal amount till realization against the issuing bank and the advising bank. The buyer was impleaded as a formal party.

8. The issuing bank (defendant no. 1) made an application for leave to defend which was granted by the trial court. The issuing bank then filed written statement justifying its action of not honouring the credit on diverse grounds, namely; (i) the certificate of origin issued by Chamber of Commerce was different from the certificate of origin dated March 30, 1997 issued by the supplier of the material; (ii) neither the description of goods nor the quantity or weight matched with each other in the above documents; (iii) the certificate of origin has been issued in favour of MMTC and not in favour of the seller; (iv) at the request of the negotiating bank, the documents were retained by it but only on collection basis in order to remit the amount after collecting the same from the buyer and (v) it has acted in accord with Uniform Customs and Practice for Documentary Credits (for short, ' UCP500').

9. On the pleadings of the parties, the trial court framed the following five issues :

"Issue No. 1.	Whether respondent Nos. 1 & 2 have dishonoured the documents relating to the "letter of credit" against the rules and practice?
Issue No. 2.	Whether applicant is eligible to get Rupees 43,86,411/-and 18 percent interest p.a. over it from respondent Nos. 1 & 2 on the basis of letter of credit given by them?
Issue No. 3.	Assistance and expenses?
Issue No. 4	Whether respondent is eligible to get Rs.14,258/- as handling/collection fee from applicant?
Issue No. 5.	Whether applicant has accepted the encashment of bill and document on collection basis? "

It may be noted that trial court has referred to the seller as applicant and the issuing bank (defendant no. 1) and the advising bank (defendant no. 2) as respondent nos. 1 and 2 respectively.

10. The parties tendered oral as well as documentary evidence in support of their respective case.

11. The trial court after viewing the evidence and hearing the arguments held that the issuing bank has properly dishonoured the documents relating to the letter of credit and the seller was not entitled to get any amount or interest from the issuing bank and the advising bank on the basis of that letter of credit. The trial court has also concluded that seller accepted the encashment of bill and document on collection basis. In light of these findings, the trial court vide its decision dated February 4, 2002 dismissed the seller's claim.

12. The seller filed first appeal against the judgment and decree of the trial court before the High Court of Madhya Pradesh. As noted above, the Division Bench of that Court allowed the seller's appeal and granted a decree to the seller as prayed in the suit.

13. The legal position appears to be fairly well-settled that a draft with accompanying documents must be in strict accord with the letter of credit. If the documents presented comply with the terms of the credit, the issuing bank must honour its obligation in accordance with the terms of credit. In *United Commercial Bank v. Bank of India and others*, (1981) 2 SCC 766, this Court referred to few decided cases of the English Courts, Halsbury's Laws of England and also couple of books on the subject by eminent authors—Davis' Law Relating To Commercial Letters of Credit, 2nd Edn. (at page 76) and Paget's Law of Banking, 8th Edn. (at page 648)—and it was held that the documents tendered by the seller must comply with the terms of the letter of credit and that the banker owes a duty to the buyer to ensure that the buyer's instructions relative to the documents against which the letter of credit is to be honoured are complied with. It was stated that the description of the goods in the relative bill of lading must be the same as the description in the letter of credit, that is, the goods themselves must in each case be described in identical terms, even though the goods differently described in the two documents are, in fact, the same. The Court reiterated, ' . . . . . a bank issuing or confirming a letter of credit is not concerned with the underlying contract between the buyer and seller. Duties of a bank under a letter of credit are created by the document itself, but in any case it has the power and is subject to the limitations which are given or imposed by it, in the absence of the appropriate provisions in the letter of credit'.

14. Where the customer of bank instructs the bank to open a credit, the bank acts at its peril if it departs from the precise terms of the mandate.

15. Lord Diplock in *Commercial Banking Co. of Sydney Ltd. v. Jalsard Pty. Ltd.* 2 (1973) AC 279, stated at page 286 of the Report that the issuing banker and his correspondent bank have to make decisions as to whether a document which has been tendered by the seller complies with the requirements of a credit.

16. It needs no emphasis that a contract is concluded between the issuing bank and the seller no sooner the bank issues the credit and communicates it to the seller. Under an irrevocable credit the issuing bank gives an unequivocal and binding undertaking to the seller that it will pay against documents/bills drawn in compliance with the terms of credit.

17. The relevant clauses of Articles 13, 14 and 19 of UCP 500 read as under:

"Article 13.

Standard for Examination of Documents

a Banks must examine all documents stipulated in the Credit with reasonable care, to ascertain whether or not they appear, on their face, to be in compliance with the terms and conditions of the Credit. Compliance of the stipulated documents on their face with the terms and conditions of the Credit, shall be determined by international standard banking practice as reflected in these Articles. Documents which appear on their face to be inconsistent with one another will be considered as not appearing on their face to be in compliance with the terms and conditions of the Credit.

Documents not stipulated in the Credit will not be examined by banks. If they receive such documents, they shall return them to the presenter or pass them on without responsibility.

b The Issuing Bank, the Confirming Bank, if any, or a Nominated Bank acting on their behalf, shall each have a reasonable time, not to exceed seven banking days

following the day of receipt of the documents, to examine the documents and determine whether to take up or refuse the documents and to inform the party from which it received the documents accordingly.

c .....

Article 14.

Discrepant Documents and Notice

a .....

b Upon receipt of the documents the Issuing Bank and/or Confirming Bank, if any, or a Nominated Bank acting on their behalf, must determine on the basis of the documents alone whether or not they appear on their face to be in compliance with the terms and conditions of the Credit. If the documents appear on their face not to be in compliance with the terms and conditions of the Credit, such banks may refuse to take up the documents.

c If the Issuing Bank determines that the documents appear on their face not to be in compliance with the terms and conditions of the Credit, it may in its sole judgement approach the Applicant for a waiver of the discrepancy(ies). This does not, however, extend the period mentioned in sub. Article 13 (b).

d . i. .....

ii. Such notice must state all discrepancies in respect of which the bank refuses the documents and must also state whether it is holding the documents at the disposal of, or is returning them to, the presenter.

iii. .....

e If the Issuing Bank and/or Confirming Bank, if any, fails to act in accordance with the provisions of this Article and/or fails to hold the documents at the disposal of, or return them to the presenter, the Issuing Bank and/or Confirming Bank, if any, shall be precluded from claiming

that the documents are not in compliance with the terms and conditions of the Credit.

f .....

Article 19.

Bank-to-Bank Reimbursement Arrangements

a .....

b Issuing Banks shall not require a Claiming Bank to supply a certificate of compliance with the terms and conditions of the Credit to the Reimbursing Bank.

c .....

d .....

e ....."

18. In light of the above legal position, we heard Mr. R.K. Sanghi, learned counsel for the appellants and Mr. Shyam Divan, learned senior counsel for the 1st respondent for some time. In the course of hearing, however, it transpired that the High Court in its judgment that runs into 56 foolscap pages while reversing the judgment of the trial court, has not at all adverted to issue no. 5 framed by the trial court nor it considered or upset the finding of the trial court on that issue.

19. Mr. Shyam Divan, learned senior counsel for the seller-1st respondent fairly stated that the finding on issue no. 5 recorded by the trial court has not at all been considered in the impugned judgment although, he strenuously urged that once the discrepancies on the basis of which the issuing bank refused the documents were rectified and the time allowed for encashment had expired, the issuing bank was obliged to honour the letter of credit and the case set up by the issuing bank that the seller had accepted the encashment of bill and document on collection basis was false and frivolous.

20. Having regard to the controversy set up by the parties in the course of trial, in our view, it cannot be said that issue no. 5 is immaterial or finding of the trial court on that issue is inconsequential. The High Court was hearing the first appeal and, as a first appellate court it ought to have considered and addressed itself to all the issues of fact and law before setting aside the judgment of the trial court. The judgment of the High Court suffers from a

grave error as it ignored and overlooked the finding of the trial court on issue no. 5 that the seller accepted the encashment of bill and document on collection basis. The High Court was required to address itself to issue no. 5 which surely had bearing on the final outcome of the case.

21. In *Santosh Hazari v. Purushottam Tiwari (Deceased) by L.Rs.*, (2001) 3 SCC 179 this Court held (at pages 188-189) as under :

> ".....The appellate court has jurisdiction to reverse or affirm the findings of the trial court. First appeal is a valuable right of the parties and unless restricted by law, the whole case is therein open for rehearing both on questions of fact and law. The judgment of the appellate court must, therefore, reflect its conscious application of mind and record findings supported by reasons, on all the issues arising along with the contentions put forth, and pressed by the parties for decision of the appellate court. ... while reversing a finding of fact the appellate court must come into close quarters with the reasoning assigned by the trial court and then assign its own reasons for arriving at a different finding. This would satisfy the court hearing a further appeal that the first appellate court had discharged the duty expected of it....."

22. The above view has been followed by a 3-Judge Bench decision of this Court in *Madhukar and Others v. Sangram and Others*, (2001) 4 SCC 756 wherein it was reiterated that sitting as a court of first appeal, it is the duty of the High Court to deal with all the issues and the evidence led by the parties before recording its findings.

23. In the case of *H.K.N. Swami v. Irshad Basith (Dead) by LRs.*, (2005) 10 SCC 243 this Court (at pages 243-244) stated as under :

> "The first appeal has to be decided on facts as well as on law. In the first appeal parties have the right to be heard both on questions of law as also on facts and the first appellate court is required to address itself to all issues and decide the case by giving reasons. Unfortunately, the High Court, in the present case has not recorded any finding either on facts or on law. Sitting as the first appellate court it was the duty of the High Court to deal with all the issues and the evidence led by the parties before recording the finding regarding title.....".

24. Again in *Jagannath v. Arulappa and Another,*(2005) 12 SCC 303 while considering the scope of Section 96 of the Code of Civil Procedure, 1908, this Court (at pages 303-304) observed as follows :

> "2. A court of first appeal can reappreciate the entire evidence and come to a different conclusion. In the present case, we find that the High Court has not adverted to many of the findings which had been recorded by the trial court. For instance, while dismissing the suits filed by the respondents, the trial court had recorded a finding on Issue 5 that the defendant-appellant had taken actual possession of the suit properties in Execution Petition No. 137 of 1980 arising out of OS No. 224 of 1978. Without reversing this finding, the High Court simply allowed the appeals and decreed the suits filed by the plaintiff-respondents in toto. Similarly, there are other issues on which findings recorded by the trial court have not been set aside by the High Court. The points involved in the appeals before the High Court required a deeper consideration of the findings recorded by the trial court as well as the evidence and the pleadings on record."

25. The decided cases of this Court in *Jagannath* and *H.K.N. Swami* were noticed by this Court in a later decision in the case of *Chinthamani Ammal v. Nandagopal Gounder and Another,* (2007) 4 SCC 163.

26. In our view, the High Court failed to follow the fundamental rule governing the exercise of its jurisdiction under Section 96 of the Code of Civil Procedure, 1908 that where the first appellate court reverses the judgment of the trial court, it is required to consider all the issues of law and fact. This flaw vitiates the entire judgment of the High Court. The judgment of the High Court, therefore, cannot be sustained.

27. For the above reasons, we accept the appeal, set aside the impugned judgment of the High Court and restore First Appeal No. 225 of 2002 for re-hearing and fresh decision. All contentions of the parties are kept open to be agitated at the time of the hearing of the first appeal. No order as to costs.

Order accordingly.

I.L.R. [2011] M. P., 2951

SUPREME COURT OF INDIA

Before Mr. Justice G.S. Singhvi & Mr. Justice H.L. Dattu

Criminal Appeal No. 1706 -1708/2011 decided on 2 September, 2011

ARUN KUMAR AGGARWAL ...Appellant

Vs.

STATE OF M.P. & ors. ...Respondents

A. ***Words and Phrases - Direction*** **- Direction is in the nature of a command or authoritative instruction which contemplates the performance of certain duty or act by a person upon whom it has been issued - Direction should be specific, simple, clear and just and proper depending upon the facts and circumstances of the case but it should not be vague or sweeping.** (Para 20)

क. शब्द और वाक्यांश – निदेश – निदेश, समादेश अथवा प्राधिकृत अनुदेश के स्वरुप का है जो ऐसे व्यक्ति द्वारा कतिपय कर्तव्य अथवा कार्य का संपादन अनुध्यात करता है जिसे वह जारी किया गया है – निदेश, मामले के तथ्यों एवं परिस्थितियों पर आधारित होते हुये विनिर्दिष्ट, सरल, स्पष्ट और न्यायसंगत एवं उचित होना चाहिये किंतु वह अस्पष्ट एवं विस्तृत नहीं होना चाहिये।

B. ***Maxim - Obitur Dictum*** **- Obitur dictum is a mere observation or remark made by the Court by way of aside while deciding the actual issue before it - Mere casual statement or observation which is not relevant, pertinent or essential to decide the issue in hand does not form the part of judgment of the Court and have no authoritative value - These casual remarks are considered or treated as beyond the ambit of the authoritative or operative part of judgment.** (Para 31)

ख. सूत्र – इतरोक्ति – इतरोक्ति, न्यायालय द्वारा उसके समक्ष वास्तविक विवाद्यक का निर्धारण करते समय अलग से दिये गये मात्र संप्रेक्षण एवं टिप्पणी है – मात्र आकस्मिक कथन अथवा संप्रेक्षण जो प्रश्नगत विवाद्यक को अधिनिर्णीत करने के लिये सुसंगत, योग्य एवं आवश्यक नहीं है, न्यायालय के निर्णय का भाग नहीं बनते और उसका कोई प्रमाणिक मूल्य नहीं है – यह आकस्मिक टिप्पणियां निर्णय के प्रमाणिक एवं प्रवर्तित होने वाले भाग की परिधि से परे होना माना या समझा जायेगा।

C. ***Prevention of Corruption Act (49 of 1988), Sections 13(1)(d),& 19, Criminal Procedure Code, 1973 (2 of 1974), Section 173(8) - Final Report*** **- Investigating agency filed Khatma Report stating no case is made out - Trial Court refused to accept final report and**

observed "therefore, matter may be taken up seeking necessary sanction to prosecute the accused persons and for further action, case be registered in the criminal case diary" - This order is in the nature of obiter dictum amounting to expression of his personal view - High Court erred in setting aside the proceedings by considering and treating this observation as direction of the Court - Order of High Court set aside and order of Trial Court restored. (Para 33)

ग. भ्रष्टाचार निवारण अधिनियम (1988 का 49), धाराएँ 13(1)(डी), व 19, दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 173(8) – अंतिम प्रतिवेदन – कोई मामला नहीं बनने का कथन करते हुये अन्वेषण एजेंसी ने खात्मा प्रतिवेदन प्रस्तुत किया – विचारण न्यायालय ने अंतिम प्रतिवेदन अस्वीकार किया और संप्रेक्षण दिया कि "इसलिये अभियुक्त व्यक्तियों को अभियोजित करने तथा आगे कार्यवाही करने के लिये आवश्यक मंजूरी चाहते हुये मामले की सुनवाई की जा सकती है, दाण्डिक केस डायरी में मामला पंजीबद्ध किया जाये" – यह आदेश इतरोक्ति के स्वरुप का है जो उसके व्यक्तिगत दृष्टिकोण को अभिव्यक्त करता है – संप्रेक्षण को न्यायालय का निदेश मानते हुये उच्च न्यायालय ने कार्यवाहियां अपास्त करने में भूल की – उच्च न्यायालय का आदेश अपास्त तथा विचारण न्यायालय का आदेश पुनःस्थापित।

Cases referred :

AIR 1968 SC 117, AIR 1997 SC 3400, 1953 SCR 126, (1964) 6 SCR 411, (1979) 4 SCC 282, (1985) 4 SCC 628, (1995) 1 SCC 391, (2003) 7 SCC 197, (2006) 5 SCC 167, (2007) 7 SCC 555.

JUDGMENT

The Judgment of the Court was delivered by **H.L. DATTU, J. :**–Leave granted.

2. These appeals, by special leave, are directed against the Judgment and Order dated 22.4.2009 passed by the High Court of Madhya Pradesh in Criminal Revision No. 821 of 2005, Criminal Revision Petition No. 966 of 2005 and Criminal Case No. 3403 of 2005, whereby the High Court has allowed the revision application and inter alia quashed the Order dated 26.4.2005 in case diary of Crime No. 165 of 2002 passed by the First Additional Sessions Judge and Special Judge, Katni (hereinafter referred to as "learned Special Judge").

3. The brief factual matrix relating to this appeal is as follows: The respondent no. 2, Shri. Raghav Chandra, who is a Commissioner of M.P. Housing Board, Bhopal along with respondent no. 3, Shri. Shahjad Khan, posted as the then Collector, Katni, Jabalpur and respondent no. 4, Shri.

Ram Meshram, posted as the Land Acquisition Officer, M.P. Housing Board, Bhopal, whilst, discharging their functions, had allegedly entered into conspiracy and made a secret plot with Shri. B.D. Gautam, the Director of Olphert Company and, subsequently, purchased the land belonging to Olphert Company at higher rates for the M.P. Housing Board, thereby, caused a financial loss of over ₹ 4 Crores to the Government. The appellant reported this alleged transaction of purchase of land by the M.P. Housing Board, alleging financial loss to the Government, to the Lokayukta, Bhopal. Subsequently, the Special Police Establishment (Lokayukta), Jabalpur (hereinafter referred to as "the Lokayukta Police") registered an FIR No. 165 of 2002 against accused respondent nos. 2 to 4, as the alleged act or conduct of the accused respondents, all working as Government Servants, amounts to an offence under Section 13 (1-d) and 13(2) of the Prevention of Corruption Act, 1988 (hereinafter referred to as "the PCA") and Section 120-B of the Indian Penal Code (hereinafter referred to as "the IPC"). Accordingly a Criminal Case No. 165 of 2002 was registered against respondent nos. 2 to 4 in the Court of learned Special Judge. However, the sanction of the Government was necessary as mandated by Section 19 of the PCA in order to prosecute the said accused respondents. Acting upon the complaint of the appellant, the Lokayukta Police, after conducting the investigation, had exonerated respondent nos. 2 to 4 of all the charges leveled against them and submitted final closure report, under Section 169 of the Criminal Procedure Code (hereinafter referred to as "the Cr. P.C."), to the learned Special Judge, Katni as no case had been made out to prosecute respondents. Thereafter, the learned Special Judge, Katni after hearing the respondents, appreciating the evidence on record and perusing the case diary, had rejected the closure report vide his Order dated 26.4.2005. The operative portion of the order dated 26.4.2005 passed by the learned Special Judge is extracted below:

> "31. In this way from above record produced, even prima facie, it is evident that the accused had made secrete plot (durabhi sandhi) with Shri B.D. Gautam the Director of Olphert Company with conspiracy and purchased land of Olphert Company on higher rate and caused financial loss over four crores to the Government which there are sufficient grounds for taking cognizance against the accused persons.
>
> 32. Accused person Shri Raghav Chandra is posted as Commissioner of M.P. Housing Board and Shri Ram Meshram is posted as Land

Acquiring Officer in M.P. Housing Board and Shri Shahjaad Khan while remaining posted as Collector, all above accused persons working as Government servant, while discharging their government duties, committed above crime-under section 19 of Anti Corruption Act 1988, it is necessary to obtain sanction to prosecute Government Servant U/S 13 of Anti-Corruption Act. Therefore matter may be taken up seeking necessary sanction to prosecute the accused persons Raghav Chandra, Shri Ram Meshram and Shahjaad Khan to prosecute them under Section 13 (1-d), 13 (2) Anti Corruption Act and under Section 120-B I.P.C. and for necessary further action, case be registered in the criminal case diary."

4. Aggrieved by the above observation, respondent nos. 2 to 4 preferred Criminal Revision Petitions under Section 482 of the Cr.P.C. before the High Court. The High Court allowed the revision petitions and quashed the Order dated 26.4.2005 of the learned Special Judge on the ground that the Order of the learned Special Judge is illegal and without jurisdiction, in view of the decision of this Court in *Abhinandan Jha v. Dinesh Mishra,* AIR 1968 SC 117, as the Magistrate cannot impinge upon the jurisdiction of the police by directing them to change their opinion when the closure report had been submitted by the police under Section 169 of the Cr.P.C. The reliance is also placed on the observation made by this Court in the case of *Mansukh Lal Vithaldas Chauhan v. State of Gujarat* AIR 1997 SC 3400 wherein it is observed that:

"19. Since the validity of "Sanction" depends on the applicability of mind by the sanctioning authority of the facts of the case as also the material and evidence collected during investigation it necessarily follows that the sanctioning authority has to apply its own independent mind for the generation of genuine satisfaction whether prosecution has to be sanctioned or not. The mind of the sanctioning authority should not be under pressure from any quarter nor should any external force be acting upon it to take a decision one way or the other. Since the discretion to grant or not to grant sanction vests absolutely in the sanctioning authority, its discretion should be shown to have not been affected by any extraneous consideration. It is shown that the sanctioning authority was unable to apply its independent mind for any reason whatsoever or was under an obligation or compulsion or constraint to grant the sanction, the order will be bad for the reason that the discretion of the authority

"not to sanction" was taken away and it was compelled to act mechanically to sanction the prosecution."

5. Being aggrieved, the appellant is before us in this appeal.

6. The issue involved in the present appeal for our consideration is: Whether the High Court is justified in treating the operative portion of the Order of the learned Special Judge as a direction issued to the sanctioning authority to sanction the prosecution of the accused respondent Nos. 2 to 4.

7. We have heard the learned counsel for the parties to the lis and perused the record.

8. The learned counsel for the appellant submits that the Special Judge, vide his Order dated 26.4.2005, refused to accept the closure report submitted before him by the Lokayukta Police as he found it to be not reasonable and finally rejected it. The other portion of the Order, wherein the learned Special Judge observed particularly about the initiation of Challan proceedings, is a mere observation or passing remark. In other words, the learned counsel submits that this portion of the Order, dealing with Challan proceedings, can, at the most, be treated as expression of his personal opinion. He further submits that wholistic reading of this Order clearly suggests that the learned Special Judge's remark pertaining to Challan proceedings is in the nature of mere obiter dicta and could not qualify to be treated as a direction of the Court even by any stretch of imagination. The learned counsel contends that the Order of the learned Special Judge cannot be treated as direction issued to the sanctioning authority to prosecute the respondents as this Order nowhere addresses sanctioning authority and moreover, nowhere directs sanctioning authority to do any affirmative action or abstain from doing anything. Therefore, the High Court is not justified in quashing the Order of the learned Special Judge and treating it to be a direction issued to the sanctioning authority to prosecute the accused respondent nos.2 to 4.

9. Per contra, the learned counsel for the respondents submits that the Order of the learned Special Judge is in the nature of command and amounts to a direction to the sanctioning authority to prosecute respondent nos. 2 to 4. Therefore, this Order of the learned Special Judge is illegal and without jurisdiction. The learned counsel further supported the impugned Order and Judgment of the High Court.

10. We have heard the learned counsel for the parties before us. The short

point in issue before us is based on the nature of the Order passed by the learned Special Judge whether it amounts to a direction issued by the Court to the concerned authority or mere observation of the Court.

11. We will first discuss the nature and scope of the expression 'direction' issued by the Court. This Court in *Rameshwar Bhartia v. The State of Assam,* 1953 SCR 126 whilst distinguishing the expression 'Sanction' from the 'Direction', for the purpose of initiating the prosecution has held:

> *"15. But where a prosecution is directed, it means that the authority who gives the direction is satisfied in his own mind that the case must be initiated. Sanction is in the nature of a permission, while a direction is in the nature of a command."*
> *(Emphasis supplied).*

12. In *Income Tax Officer, A-Ward, Sitapur v. Murlidhar Bhagwan Das, Lakhimpur kheri,* (1964) 6 SCR 411, this Court has observed that the expression "direction" cannot be construed in vacuum, but must be collated to the directions which the Assistant Appellate Commissioner can give under Section 31 of the Indian Income Tax Act, 1922.

13. This Court in *Rajinder Nath v. CIT,* (1979) 4 SCC 282, while considering the meaning of expression 'finding' and 'direction', occurring in Section 153(3)(ii) of the Income Tax Act, 1961, has held:

> *"11. ... As regards the expression "direction" in Section 153(3)(ii) of the Act, it is now well settled that it must be an express direction necessary for the disposal of the case before the authority or court. It must also be a direction which the authority or court is empowered to give while deciding the case before it. The expressions "finding" and "direction" in Section 153(3)(ii) of the Act must be accordingly confined."*
> *(Emphasis supplied).*

14. In *Kanhiya Lal Omar v. R.K. Trivedi & Ors.,* (1985) 4 SCC 628, this Court has observed that "A direction may mean an order issued to a particular individual or a precept which many may have to follow. It may be a specific or a general order."

15. In *Giani Devender Singh v. Union of India,* (1995) 1 SCC 391, this Court, whilst considering the direction issued by the High Court in a Public

Interest Litigation, has observed that the directions should not be vague, sweeping or affected by sarcasm which are not capable of being implemented. It should be specific, just and proper in the facts and circumstances of the case. This Court further held:

> *"10. It appears to us that when the High Court was not in a position to precisely discern what was the complaint alleged by the petitioner and when the High Court was of the view that the prayer made by the petitioner was absurd and it also held that the officers who were alleged to have been carrying on nefarious activities were more imaginary than real, the direction in general and sweeping terms to sack erring officers (whomsoever they may be) and overhaul the administration by recruiting only conscientious and devoted people like the petitioner in order to satisfy the vanity of the petitioner, should not have been made. If the High Court intends to pass an order on an application presented before it by treating it as a public interest litigation, the High Court must precisely indicate the allegations or the statements contained in such petition relating to public interest litigation and should indicate how public interest was involved and only after ascertaining the correctness of the allegation, should give specific direction as may deem just and proper in the facts of the case.*
>
> *11. It appears to us that the application was disposed of by the Division Bench of Madhya Pradesh High Court in a lighter vein and the order dated 27-2-1992 is couched in veiled sarcasm. Such course of action, to say the least, is not desirable and the High Court should not have issued mandate in general and sweeping terms which were not intended to be implemented and were not capable of being implemented because of utter vagueness of the mandate and of its inherent absurdity."*
>
> *(Emphasis supplied)*

16. The Blacks Law Dictionary (9th ed. 2009) defines the term 'Direction' as an order; an instruction on how to proceed.

17. The meaning of expression "Direction" has been discussed in Corpus Juris Secundum, Vol. 26A, at pg. 955-956 as thus:

"The word "direction" is of common usage, and is defined as meaning the act of governing, ordering, or ruling; the act of directing, authority to direct as circumstances may require; guidance; management; superintendence; "prescription;" also a command, an instruction, an order, an order prescribed, either verbally or written, or indicated by acts; that which is imposed by directing, a guiding or authoritative instruction; information as to method."

18. According to P. Ramanatha Aiyar, Advanced Law Lexicon (3rd ed. 2005) the word 'Direction' means: address of letter, order or instruction as to what one has to do. A direction may serve to direct to places as well as to persons. Direction contains most of instruction in it and should be followed. It is necessary to direct those who are unable to act for themselves. Directions given to servants must be clear, simple and precise.

19. According to the Words and Phrases, Permanent Edition, Vol. 12A, the term 'Direction' means a guiding or authoritative instruction, prescription, order, command.

20. To sum up, the direction issued by the Court is in the nature of a command or authoritative instruction which contemplates the performance of certain duty or act by a person upon whom it has been issued. The direction should be specific, simple, clear and just and proper depending upon the facts and circumstances of the case but it should not be vague or sweeping.

21. At this stage, it is pertinent to consider the nature and scope of a mere observation or obiter dictum in the Order of the Court. The expression obiter dicta or dicta has been discussed in American Jurisprudence 2d, Vol. 20, at pg. 437 as thus:

"74. –Dicta

Ordinarily, a court will decide only the questions necessary for determining the particular case presented. But once a court acquires jurisdiction, all material questions are open for its decision; it may properly decided all questions so involved, even though it is not absolutely essential to the result that all should be decided. It may, for instance, determine the question of the constitutionality of a statute, although it is not absolutely necessary to the disposition of the case, if the issue of constitutionality is involved in the suit

and its settlement is of public importance. An expression in an opinion which is not necessary to support the decision reached by the court is dictum or obiter dictum.

"Dictum" or "obiter dictum: is distinguished from the "holding of the court in that the so- called "law of the case" does not extend to mere dicta, and mere dicta are not binding under the doctrine of stare decisis,

As applied to a particular opinion, the question of whether or not a certain part thereof is or is not a mere dictum is sometimes a matter of argument. And while the terms "dictum" and "obiter dictum" are generally used synonymously with regard to expressions in an opinion which are not necessary to support the decision, in connection with the doctrine of stare decisis, a distinction has been drawn between mere obiter and "judicial dicta," the latter being an expression of opinion on a point deliberately passed upon by the court. " (Emphasis supplied)

Further at pg. 525 and 526, the effect of dictum has been discussed:

"190. Decision on legal point; effect of dictum

... In applying the doctrine of stare decisis, a distinction is made between a holding and a dictum. Generally stare decisis does not attach to such parts of an opinion of a court which are mere dicta. The reason for distinguishing a dictum from a holding has been said to be that a question actually before the court and decided by it is investigated with care and considered in its full extent, whereas other principles, although considered in their relation to the case decided, are seldom completely investigated as to their possible bearing on other cases. Nevertheless courts have sometimes given dicta the same effect as holdings, particularly where "judicial dicta" as distinguished from "obiter dicta" are involved."

22. According to P. Ramanatha Aiyar, Advanced Law Lexicon (3rd ed. 2005), the expression "observation" means a view, reflection; remark; statement; observed truth or facts; remarks in speech or writing in reference to something observed.

23. The Wharton's Law Lexicon (14th Ed. 1993) defines term 'obiter dictum' as an opinion not necessary to a judgment; an observation as to the law made by a judge in the course of a case; but not necessary to its decision, and therefore of no binding effect; often called as obiter dictum, ; a remark by the way.

24. The Blacks Law Dictionary, (9th ed, 2009) defines term 'obiter dictum' as a judicial comment made while delivering a judicial opinion, but one that is unnecessary to the decision in the case and therefore not precedential (although it may be considered persuasive). — Often shortened to dictum or, less commonly, obiter. "Strictly speaking an 'obiter dictum' is a remark made or opinion expressed by a judge, in his decision upon a cause, 'by the way' — that is, incidentally or collaterally, and not directly upon the question before the court; or it is any statement of law enunciated by the judge or court merely by way of illustration, argument, analogy, or suggestion.... In the common speech of lawyers, all such extrajudicial expressions of legal opinion are referred to as 'dicta,' or 'obiter dicta,' these two terms being used interchangeably."

25. The Word and Phrases, Permanent Edition, Vol. 29 defines the expression 'obiter dicta' or 'dicta' thus:

> *"Dicta are opinions of a judge which do not embody the resolution or determination of the court, and made without argument or full consideration of the point, are not the professed deliberate determinations of the judge himself; obiter dicta are opinions uttered by the way, not upon the point or question pending, as if turning aside for the time from the main topic of the case to collateral subjects; It is mere observation by a judge on a legal question suggested by the case before him, but not arising in such a manner as to require decision by him; "Obiter dictum" is made as argument or illustration, as pertinent to other cases as to the one on hand, and which may enlighten or convince, but which in no sense are a part of the judgment in the particular issue, not binding as a precedent, but entitled to receive the respect due to the opinion of the judge who utters them; Discussion in an opinion of principles of law which are not pertinent, relevant, or essential to determination of issues before court is "obiter dictum"*

26. The concept of "Dicta" has also been considered in Corpus Juris Secundum, Vol. 21, at pg. 309-12 as thus:

"190. Dicta

a. In General

A Dictum is an opinion expressed by a court, but which, not being necessarily involved in the case, lacks the force of an adjudication; an opinion expressed by a judge on a point not necessarily arising in the case; a statement or holding in an opinion not responsive to any issue and noty necessary to the decision of the case; an opinion expressed on a point in which the judicial mind is not directed to the precise question necessary to be determined to fix the rights of the parties; or an opinion of a judge which does not embody the resolution or determination of the court, and made without argument, or full consideration of the point, not the professed deliberate determination of the judge himself. The term "dictum" is generally used as an abbreviation of "obiter dictum" which means a remark or opinion uttered by the way.

Such an expression or opinion, as a general rule, is not binding as authority or precedent within the stare decisis rule, even on courts inferior to the court from which such expression emanated, no matter how often it may be repeated. This general rule is particularly applicable where there are prior decisions to the contrary of the statement regarded as dictum; where the statement is declared, on rehearing, to be dictum; where the dictum is on a question which the court expressly states that it does not decide; or where it is contrary to statute and would produce an inequitable result. It has also been held that a dictum is not the "law of the case," nor res judicata."

27. The concept of "Dicta" has been discussed in Halsbury's Laws of England, Fourth Edition (Reissue), Vol. 26, para. 574 as thus:

"574. Dicta. Statements which are not necessary to the decision, which go beyond the occasion and lay down a rule that it is unnecessary for the purpose in hand are generally termed "dicta". They have no binding authority on another court,

although they may have some persuasive efficacy. Mere passing remarks of a judge are known as "obiter dicta", whilst considered enunciations of the judge's opinion on a point not arising for decision, and so not part of the ratio decidendi, have been termed "judicial dicta". A third type of dictum may consist in a statement by a judge as to what has been done in other cases which have not been reported.

... Practice notes, being directions given without argument, do not have binding judicial effect. Interlocutory observations by members of a court during argument, while of persuasive weight, are not judicial pronouncements and do not decide anything."

28. In *Municipal Corporation of Delhi v. Gurnam Kaur,* (1989) 1 SCC 101 and *Divisional Controller, KSRTC v. Mahadeva Shetty,* (2003) 7 SCC 197, this Court has observed that "Mere casual expressions carry no weight at all. Not every passing expression of a judge, however eminent, can be treated as an ex cathedra statement, having the weight of authority."

29. In *State of Haryana v. Ranbir,* (2006) 5 SCC 167, this Court has discussed the concept of the obiter dictum thus:

"A decision, it is well settled, is an authority for what it decides and not what can logically be deduced therefrom. The distinction between a dicta and obiter is well known. Obiter dicta is more or less presumably unnecessary to the decision. It may be an expression of a viewpoint or sentiments which has no binding effect. See ADM, Jabalpur v. Shivakant Shukla. It is also well settled that the statements which are not part of the ratio decidendi constitute obiter dicta and are not authoritative. (See Divisional Controller, KSRTC v. Mahadeva Shetty)"

30. In *Girnar Traders v. State of Maharashtra,* (2007) 7 SCC 555, this Court has held:

"Thus, observations of the Court did not relate to any of the legal questions arising in the case and, accordingly, cannot be considered as the part of ratio decidendi. Hence, in light of the aforementioned judicial pronouncements, which have well settled the proposition that only the ratio decidendi can act as

the binding or authoritative precedent, it is clear that the reliance placed on mere general observations or casual expressions of the Court, is not of much avail to the respondents."

31. In view of above, it is well settled that obiter dictum is a mere observation or remark made by the court by way of aside while deciding the actual issue before it. The mere casual statement or observation which is not relevant, pertinent or essential to decide the issue in hand does not form the part of the judgment of the Court and have no authoritative value. The expression of the personal view or opinion of the Judge is just a casual remark made whilst deviating from answering the actual issues pending before the Court. These casual remarks are considered or treated as beyond the ambit of the authoritative or operative part of the judgment.

32. In the facts and circumstances of the present case, we are of the opinion that the refusal of the learned Special Judge, vide its Order dated 26.4.2005, to accept the final closure report submitted by Lokayukta Police is the only ratio decidendi of the Order. The other part of the Order which deals with the initiation of Challan proceedings cannot be treated as the direction issued by the learned Special Judge. The relevant portion of the Order of the learned Special Judge dealing with Challan Proceeding reads as *"Therefore matter may be taken up seeking necessary sanction to prosecute the accused persons Raghav Chandra, Shri Ram Meshram and Shahjaad Khan to prosecute them under Section 13 (1-d), 13 (2) Anti Corruption Act and under Section 120-B I.P.C and for necessary further action, case be registered in the criminal case diary."* The wordings of this Order clearly suggest that it is not in the nature of the command or authoritative instruction. This Order is also not specific or clear in order to direct or address any authority or body to perform any act or duty. Therefore, by no stretch of imagination, this Order can be considered or treated as the direction issued by the learned Special Judge. The wholistic reading of this Order leads to only one conclusion, that is, it is in the nature of 'Obiter Dictum' or mere passing remark made by the learned Special Judge, which only amounts to expression of his personal view. Therefore, this portion of the Order dealing with Challan proceeding, is neither relevant, pertinent nor essential, while deciding the actual issues which were before the learned Special Judge and hence, cannot be treated as the part of the Judgment of the learned Special Judge.

33. In the light of the above discussion, we are of the opinion that, the portion of the Order of the learned Special Judge which deals with the Challan proceedings is a mere observation or remark made by way of aside. In view of this, the High Court had grossly erred in considering and treating this mere observation of the learned Special Judge as the direction of the Court. Therefore, there was no occasion for the High Court to interfere with the Order of the learned Special Judge.

34. In the result, the appeals are allowed. The impugned Order and Judgment of the High Court in Criminal Revision No. 821 of 2005, Criminal Revision Petition No. 966 of 2005 and Criminal Case No. 3403 of 2005 dated 22.4.2009 is set aside. We restore the Order of the learned Special Judge dated 26.4.2005.

35. We direct the respondents to comply with the order passed by the Trial Court within two months from this date.

Appeal allowed.

I.L.R. [2011] M. P., 2964

WRIT APPEAL

Before Mr. Justice S.N. Aggarwal & Mr. Justice Anil Sharma

W.A. No. 480/2009 (Gwalior) decided on 3 November, 2011

RAM KUMAR SHARMA ...Appellant

Vs.

STATE OF M.P.& ors. ...Respondents

***Arms Act (54 of 1959), Section 14 - Refusal of licenses* - Licensing Authority can refuse to grant arms license to a person tried for serious criminal offences though acquitted by extending benefit of doubt.**

(Para 10)

आयुध अधिनियम (1959 का 54), धारा 14 – लाईसेंस का नामंजूर किया जाना – लाईसेंसिंग प्राधिकारी, गंभीर दाण्डिक अपराधों के लिए विचारण किये गये व्यक्ति को आयुध लाईसेंस प्रदान करने से इंकार कर सकता है यद्यपि उसे संदेह का लाभ देते हुए दोषमुक्त किया गया था।

Cases referred :

AIR 1968 ALLAH. 383, AIR 1993 ALLAH. 291, 2009 (1) MPLJ 540, 2010 (5) ADJ 279, 1994 (2) VIBHA 135.

K.N. Gupta with *Anmol Khedkar,* for the appellant

Vivek Khedkar, Dy. A.G. for the respondents.

JUDGMENT

The Judgment of the Court was delivered by **S.N. AGGARWAL, J.** :–This is an intra court appeal filed by the appellant aggrieved by the impugned order of the learned Single Judge in W.P.No.3525/2008, whereby his writ petition in relation to refusal to grant arms licence by the respondents has been dismissed.

2. Briefly stated the facts of the case giving rise to this appeal are that the appellant had made an application to the licensing authority on or around 2006 for grant of an arms licence to possess pistol/revolver to him. The request of the appellant for grant of licence was declined by the licensing authority vide order dated 21st June 2006, aggrieved wherefrom the apellant had preferred an appeal being Appeal (Arms) No.30/06 before the Commissioner Chambal Division, Morena, which appeal was dismissed by the appellate authority vide order dated 17th September 2006 and the order of licensing authority refusing to grant arms licence to the appellant was affirmed. After the appeal of the appellant was dismissed by the appellate authority, the appellant had preferred a writ petition before this court being W.P.No.5209/06 and in that writ petition, learned Single Judge of this court vide order dated 4th November 2006 remanded the case to the appellate authority for a fresh decision on merits, as the appellant's appeal was dismissed by the appellate authority earlier on the ground of limitation. Pursuant to the order passed by the learned Single judge of this court dated 4th November 2006 in W.P.No-5209/06, the appellate authority decided the appeal afresh and vide its order dated 11th July 2007 remanded the case back to the licensing authority for fresh decision on merits of the case. Pursuant to the said remand order by the appellate authority, the licensing authority vide its order dated 30th January 2008 (Annexure P/2 at page 20 of the appeal paper book) again rejected the request of the appellant for grant of arms licence to him and aggrieved from the said order of the licensing authority, the appellant filed an appeal before the appellate authority being Appeal No.21/08 (Arms), which was dismissed on merits by the appellate authority. The appellant still being not satisfied challenged the order of the licensing authority and also that of the appellate authority by filing a writ petition being W.P.No.3525/08, which has been dismissed by the learned Single Judge vide order dated 22nd October 2009 that has been impugned in the present appeal.

3. We have heard Shri K.N.Gupta, learned senior counsel appearing on behalf of the appellant and Shri Vivek Khedkar, learned Dy.Advocate General appearing on behalf of the respondents/State. We have also perused the record and the appeal paper book.

4. Shri K.N.Gupta, learned senior counsel appearing on behalf of the appellant has placed reliance on certain judgments and with the aid of those judgments he has argued that the appellant could not have been denied arms licence only because of registration of criminal cases against him. The judgments on which reliance is placed by the learned senior counsel for the appellant have been taken into account and shall be discussed hereinafter. At this stage we feel it suffice to mention that none of the judgments on which reliance is placed by the counsel for the appellant is of any consequence or apply to the facts and circumstances of the present case for reasons to follow hereinafter.

5. Sections 13 and 14 of the Arms Act, 1959 are relevant for considering grant or refusal of arms licence. These sections read as under :-

> "**13. Grant of licences.**-(1) An application for the grant of a licence under Chapter II shall be made to the licensing authority and shall be in such form, contain such particulars and be accompanied by such fee, if any, as may be prescribed.
>
> (2) On receipt of an application, the licensing authority shall call for the report of the officer in charge of the nearest police station on that application, and such officer shall send his report within the prescribed time.
>
> (2A) The licensing authority, after such inquiry, if any, as it may consider necessary, and after considering the report received under sub-section (2), shall, subject to the other provisions of this Chapter, by order in writing either grant the licence or refuse to grant the same;
>
> Provided that where the officer in charge of the nearest police station does not send his report on the application within the prescribed time, the licensing authority may, if it deems fit, make such order, after the expiry of the prescribed time, without further waiting for that report.
>
> (3) The licensing authority shall grant-

(a) a licence under section 3 where the licence is required -

(i) by a citizen of India in respect of a smooth bore gun having a barrel of not less than twenty inches in length to be used for protection or sport or in respect of a muzzle loading gun to be used for bona fide crop protection :

Provided that where having regard to the circumstances of any case, the licensing authority is satisfied that a muzzle loading gun will not be sufficient for crop protection, the licensing authority may grant a licence in respect of any other smooth bore gun as aforesaid for such protection; or

(ii) in respect of a point 22 bore rifle or an air rifle to be used for target practice by a member of a rifle club or rifle association licenced or recognised by the Central Government.

(b) a licence under section 3 in any other case or a licence under section 4, section 5, section 6, section 10 or section 12, if the licensing authority is satisfied that the person by whom the licence is required has a good reason for obtaining the same.

14. Refusal of licences.-(1) Notwithstanding anything in section 13, licensing authority shall refuse to grant-

(a) a licence under section 3, section 4 or section 5 where such licence is required in respect of any prohibited arms or prohibited ammunition;

(b) a licence in any other case under Chapter II,-

(i) where such licence is required by a person whom the licensing authority has reason to believe-

(1) to be prohibited by this Act or by any other law for the time being in force from acquiring, having in his possession or carrying any arms or ammunition, or

(2) to be of unsound mind, or

(3) to be for any reason unfit for a licence under this Act; or

(ii) where the licensing authority deems it necessary for the security of the public peace or for public safety to refuse to grant such licence.

(2) The licensing authority shall not refuse to grant any licence to any person merely on the ground that such person does not own or possess sufficient property.

(3) Where the licensing authority refuses to grant a licence to any person it shall record in writing the reasons for such refusal and furnish to that person on demand a brief statement of the same unless in any case the licensing authority is of the opinion that it will not be in the public interest to furnish such statement."

6. A plain reading of Section 14 (1) (b) (i) (3) would show that the licensing authority can refuse grant of arms licence to a person who applies for such licence in case if in his opinion the person concerned is unfit for a licence for any reason. Section 13 (2) of the Arms Act referred above makes it obligatory upon the licensing authority to call for the report of the officer in charge of the nearest police station on the application made by a person for grant of arms licence and shall take the said report into consideration before granting or refusing the arms licence.

7. The learned senior counsel appearing on behalf of the appellant has placed reliance on the following judgments :

(i) *State of U.P. Vs. Jaswant Singh Sarna,* AIR 1968 Allahabad 383,

(ii) *Ganesh Chandra Bhatt Vs. District Magistrate,* AIR 1993 Allahabad 291,

(iii) *Mahendra Singh Bhadauria Vs. State of M.P.,* 2009 (1) MPLJ 540,

(iv) *Wasim Ahmad Vs. State of U.P.,* 2010(5)ADJ 279, and

(v) *Pancham Singh Vs. State of M.P.,* 1994 (2) VIBHA 135.

8. In our opinion, none of the above judgments is applicable to the facts of the present case. In *Jaswant Singh Sarna's case* (supra), the Division Bench

of the Allahabad High Court has held that Section 13 of the Arms Act, 1959 recognises right of a citizen of India to an arms licence. In the opinion of the Division Bench of Allahabad High Court, it is obligatory upon the licensing authority not to refuse an arms licence arbitrarily if conditions specified in Section 13 for grant of licence are specified. Division Bench has further held that a licensing authority under the Arms Act, 1959 acts in quasijudicial and not in admmistrative capacity and therefore is under an obligation to give a hearing to the person concerned before passing any order either granting or refusing the arms licence. In the present case, the judgment of Allahabad High Court in *Jaswant Singh Sarna's case* (supra) does not apply because upon perusal of the impugned order of the licensing authority at page 20 of the appeal paper book, we find that the licensing authority has given cogent reasons for refusal to grant arms licence in its order with which we are in complete agreement. Furthermore it may be noted on a perusal of the impugned order of the licensing authority that the hearing as required under the law was given by the licensing authority to the appellant before passing the said order and therefore it can not be said that licence was refused to him in violation of principles of natural justice.

9. Shri K.N.Gupta, learned senior counsel appearing on behalf of the appellant has placed reliance on paras 75, 76 and 80 of the Single Bench judgment of the Allahabad High Court in *Ganesh Chandra Bhatt's case* (supra) and relying thereupon, he has argued that the licensing authority can not refuse grant of arms licence unless there is a danger to public peace or safety. In our view, this Single Bench judgment of the Allahabad High Court in *Ganesh Chandra Bhatt's case* (supra) has no application to the facts of the present case because in this case licence has not been refused to the appellant on the ground of public peace or safety. Licence has been denied to him for other cogent reasons mentioned in the impugned order of the licensing authority.

10. The judgments in *Mahendra Singh Bhadauria's case* (supra) & also in the case of *Pancham Singh* (supra), are the judgments both delivered by the Single Bench of this court. In both these judgments, it has been held that merely registration of a criminal case, against a person who applies for grant of arms licence, can not be a ground for refusal of licence to him. In our view none of these judgments are applicable to the facts of the present case because in those cases the criminal cases registered against the person concerned were of petty nature whereas in the present case the criminal cases for which the appellant was tried were of serious nature as are mentioned in the impugned

order of the licensing authority. The arguments of the learned senior counsel that the appellant could not have been denied arms licence because he has been acquitted in all the criminal case registered against him, in our opinion, is of no consequence. We are of the view that acquittal of the appellant in the criminal cases does not give him a complete clean chit in those cases. His acquittal in the criminal cases mentioned in the impugned order of the licensing authority was by extending him benefit of doubt. The very fact that the appellant was tried for heinous crimes in as many as three criminal cases shows his criminal propensity to commit crime and our view in this regard is fortified by finding contained in the impugned order of the licensing authority as one of the reasons for refusing him arms licence that he was made to surender arms licence under the orders of the High Court of Rajasthan and this fact is not disputed before us by the learned senior counsel appearing on behalf of the appellant. Hence in our view the appellant can not be permitted to derive any advantage out of the aforementioned Single Bench judgments of this court, wherein it was held that mere registration of criminal cases against the person concerned could not be a ground for refusing him an arms licence.

11. The judgment of Single Bench of Allahabad High Court in *Wasim Ahamad's case* (supra), wherein it is held that a person can not be refused arms licence because his need was not found genuine by the licensing authority, also has no application to the facts of the present case. In the present case, licensing authority has not refused arms licence to the appellant because his need was not found genuine. In fact what has been held by the learned Single Bench of Allahabad High Court in *Wasim Ahamad's case* (surpra) is based upon statutory provisions contained in Section 14 (2) of the Arms Act, 1959 extracted herein above, wherein it has been provided that a licensing authority shall not refuse grant of arms licence to any person merely on the ground that such person does not own or possess sufficient property. We agree with the view taken by the learned Single Judge in W*asim Ahamad's case* (supra) that it does not lie in the realm of the licensing authority to go into the arena as to whether the need of a person who applied for grant of arms licence is genuine or not. The licensing authority is expected to exercise its discretion within the bounds of law, for which specific provisions are made in Sections 13 and 14 of the Arms Act, 1959.

12. In the present case, we find that the licensing authority has given sufficient and adequate reasons for refusing to grant arms licence to the appellant and they are broadly characterized as under :-

(i) Withholding of vital information by him in the application form about three criminal cases in which he had faced trial. It may be noted that the appellant, at the time of hearing before the licensing authority, had pleaded bona fide mistake in not disclosing the criminal cases in his application form. The mistake in this regard on the part of the appellant was not found bona fide by the licensing authority and we do not find any fault in the view on this aspect taken by it.

(ii) The appellant had faced trial for three criminal cases of serious nature i.e. (i) Crime No. 108/90 under Section 307 IPC, (ii) Crime No. 191/90 under Sections, 147, 148, 149, 323 IPC and (iii) Crime No.208/93 under Sections 147, 148, 149, 294 and 506-B IPC, Police Station Ambah.

(iii) Surrender of arms licence by the appellant pursuant to the orders passed by the Rajasthan High Court.

13. Upon giving our anxious consideration to all the pros and cons of the submissions made by the learned senior counsel for the appellant, we hardly find any merit in this appeal calling for our interference in the impugned order of the learned Single Judge. This appeal, therefore, fails and is hereby dismissed but with no order as to costs.

Appeal dismissed.

I.L.R. [2011] M. P., 2971

WRIT APPEAL

Before Mr. Sushil Harkauli, Acting Chief Justice &
Mr. Justice K.K.Trivedi

W.A. No.1207/2009 (Jabalpur) decided on 4 November, 2011

STATE OF M.P. & ors. ... Appellants

Vs.

V.K. SHRIVAS ... Respondent

High Court Rules, M.P. 2008 - Rule 4(12) - Part Heard Case **- It is open to the Bench/Judge who has heard the case to mark a case as part heard if the Bench/Judge feels that it/he has devoted sufficient**

time in hearing - If the case has not been marked part-heard, it would not be proper for counsel to suggest to other bench/judge that the case be sent to another Bench/Judge by orally saying that the case was actually part-heard by other Bench/Judge -This procedure may result in bench hunting on the part of litigants - Matter directed to be listed before appropriate bench as per roster. (Paras 3 & 4)

उच्च न्यायालय नियम, म.प्र. 2008 – नियम 4 (12) – आंशिक रूप से सुना गया प्रकरण (पार्ट हर्ड केस) – जिस न्यायपीठ/न्यायाधीश ने प्रकरण सुना हो, वह उस प्रकरण को आंशिक रूप से सुना गया प्रकरण चिन्हांकित कर सकता है यदि उस न्यायपीठ/न्यायाधीश की भावना है कि उसने सुनवाई में पर्याप्त समय अर्पित किया है – यदि प्रकरण आंशिक रूप से सुना गया प्रकरण (पार्ट हर्ड) चिह्नांकित नही किया गया है तब अधिवक्ता के लिए अन्य न्यायपीठ/न्यायाधीश को यह सुझाव देना उचित नही होगा कि प्रकरण अन्य न्यायपीठ/न्यायाधीश को प्रेषित किया जाये, मौखिक रूप से यह कहकर कि प्रकरण वास्तविक रूप से अन्य न्यायपीठ/न्यायाधीश द्वारा आंशिक रूप से सुना गया था – इस प्रकिया के परिणाम स्वरूप मुकदमेबाजों की ओर से 'बेंच हंटिंग' हो सकती है – रोस्टर के अनुसार समुचित न्यायपीठ के समक्ष मामला सूचीबद्ध करने के लिए निदेशित किया गया।

ORDER

The Order of the Court was delivered by **SUSHIL HARKAULI, AG. C. J.** :–We have heard learned counsel for the parties.

On 22.9.2011 the following order was passed in this case:-

"Annx. A/7 refers to a letter dated 14.4.1988, which contains the impression of the circular of the Government of India dated 15.12.1982, which was created in the mind of the author of the letter dated 14.4.1988. In our opinion, the matter should not be decided on the basis of that impression instead of examining the original circular dated 15.12.1982.

In the circumstances, as prayed, two weeks' time is allowed for filing a copy of the said circular dated 15.12.1982.

As prayed, list on 13.10.2011."

2. Thereafter on 13.10.2011 the matter went before another Bench, where it was stated by one of the learned Counsel that the matter was part heard-heard with this Bench and accordingly that Bench directed the matter to be placed before this Bench.

3. Whenever a case is heard by a Bench or a Judge and if the Bench/ Judge feels that it/he devoted sufficient time in hearing and by marking the case as part-heard time would be saved at the next hearing, it is open to that Bench/Judge to mark the case as part-heard. If it is not marked part-heard by the Bench/Judge, then at the time when the case is being adjourned, normally counsel for the parties should request to mark that case as part-heard on the same ground it would help in saving the time of the Court at the next hearing, and it is for the Bench/Judge to consider the submission along with such other circumstances as may appear to be relevant, and to decide whether to mark that case as part heard or not.

4. But if the case has not been marked part-heard, it would not be proper for counsel to suggest to the other Bench/Judge (which would obviously not be aware or what transpired at the previous occasion before another Bench/ Judge) that the case be sent to another Bench/Judge by orally saying that the case was actually part-heard by the other Bench/Judge.

5. If we fail to observe this procedure, it may result in Bench-hunting on the part of litigants on wrong premise.

6. Accordingly, we decline to treat this matter to be part heard.

Office is directed to list this case before appropriate Bench as per roaster.

Order accordingly.

I.L.R. [2011] M. P., 2973

WRIT PETITION

Before Mr. Justice Sanjay Yadav

W.P. No. 13773/2005(S) (Jabalpur) decided on 19 July, 2011

R.P. DWIVEDI ...Petitioner

Vs.

S.E.C.L. ...Respondent

Service Law- Termination on basis of conviction - Certified Standing Orders Clause 24.1 & 26.8 **- Services of the petitioner (An employee of S.E.C.L.) were terminated by the impugned order for the reason that he was convicted for an offence u/s 147, 149, 323/149, IPC - Held - Offence for which the petitioner was convicted does not lead to conclusion that the conduct of the petitioner was 'inherently base, vile,**

depraved or having any connection showing depravity', as could be termed as crime involving moral turpitude, as would warrant a dismissal from service - Termination quashed - Petition allowed. (Paras 6, 14 & 15)

सेवा विधि – दोषसिद्धि के आधार पर सेवा समाप्ति – प्रमाणित स्थाई आदेश खंड 24.1 व 26.8 – आक्षेपित आदेश द्वारा याची (एसईसीएल का कर्मचारी) की सेवाऐं इस कारण समाप्त की गयी कि उसे आईपीसी की धारा 147, 149, 323/149 के अंतर्गत अपराधों के लिए दोषसिद्ध किया गया था – अभिनिर्धारित – अपराध जिसके लिए याची को दोषसिद्ध किया गया है उससे यह निष्कर्ष नहीं निकलता कि याची का आचरण 'अंतर्निहित रुप से अयोग्य, दुष्ट, कलुषित था अथवा दुराचरण दर्शाने से उसका कोई संबंध था', जिससे कि उसे नैतिक अधमता का अपराध कहा जा सके जो सेवा से हटाये जाने का उचित कारण होता – सेवा समाप्ति अभिखंडित – याचिका मंजूर।

Cases referred :

AIR 2008, SC 1300, AIR 1985 SC 772, (1996) 4 SCC 17, (1997) 4 SCC 1, AIR 1959 ALL. 71, (2010) 8 SCC 573.

Umakant Sharma with *U.P. Singh,* for the petitioner.

Anoop Nair, for the respondent.

O R D E R

SANJAY YADAV, J. :– Heard.

Short question involved in this petition under Article 226 of the Constitution of India is whether a conviction for an offence under Section 147, 149, 323/149 I.P.C would tantamount to a "moral turpitude" leading to termination of service.

2. Facts wherefrom the question emanates briefly are that, the petitioner was initially appointed as General Mazdoor in 1975 (on 23.7.1975). He was promoted as Tub Munshi on 1.1.1978 and as Mining Sardar on 1.1.1987. The petitioner was made Senior Mining Sardar Grade B from 1.1.1995 and Mining Sardar Grade A Production cum Safety Assistant Grade A in the year 2001. Keeping in view the services rendered, petitioner was awarded with "Johilla Samman".

3. That, complaint was lodged against the petitioner by one Mathura Prasad a terminated employee of State Forest Department, which led to registration of offence under Sections 147, 149, 323/149 IPC.

4. Trial led therein led to passing of order dated 28.3.2005; whereby the petitioner was convicted for an offence under Section 147/149 IPC for six

months R.I, under Section 323/149 IPC for six months R.I and Rs.500/- cost. The sentence was; however, suspended and the petitioner was given the benefit of probation on his depositing Rs.10,000/-. The petitioner preferred an appeal against the said conviction whereon by order dated 27.4.2005 Additional Sessions Judge, Umariya enlarged him on bail. The conviction of the petitioner led to issue of show cause notice on 23/25.6.2005; whereby, the petitioner was called upon to explain as to why because of his conviction he be not terminated from services. The said show cause notice was purportedly in consonance with clause 24.1 read with clause 26.8 of the certified standing orders.

5. These provisions stipulates

> "24.1 For terminating the services of permanent workman having less than 1 year of continuous service notice of one month is writing with reasons for wages in lieu thereof shall be given by the employer.:
>
> Provided that no such notice shall be required to be given when the services of the workman are terminated on account of misconduct established in accordance with the Standing orders."
>
> Clause 26 of the certified standing orders lays down the instances of "Acts of Misconduct" whereof clause 26.8 stipulates "Conviction in any court of law for any criminal offence involving moral turpitude".

6. Subsequently in pursuance to said show cause notice, the services of the petitioner were terminated by the impugned order for the reason that he was convicted for an offence under Section 147, 149, 323/149 IPC.

7. Challenging the order of termination, it is contended by learned counsel for the petitioner that the termination of service since could only have been if the conviction was for a criminal offence involving moral turpitude and since the petitioner was not convicted of such an offence the termination order is ipso facto bad.

8. To substantiate this submission that an offence under Sections 147, 149, 323/149 IPC does not tantamount to an offence involving moral turpitude, learned counsel for the petitioner has placed reliance on the decision in *State of Madhya Pradesh and others v. Hazarilal* (AIR 2008 SC 1300) as also the decision in *Shankar Das v. Union of India* (AIR 1985 SC 772).

9. Countering the submission put-forth on behalf of the petitioner, learned counsel for the respondents have to urge that the petitioner having been convicted for an offence under Sections 147, 149, 323/149 IPC was issued a show cause notice in pursuance to provisions contained under certified standing orders as to why for the said conviction his services be not terminated. It is contended that conviction for an offence under Sections 147, 149, 323/149 IPC since involves a criminal offence involving'moral turpitude, his services were rightly terminated being in consonance with the provisions contained under clause 24.1 read with clause 26.8 of the certified standing orders.

10. Heard learned counsel for the parties and perused the material on record.

11. The question which crops up for consideration is as to whether a conviction for an offence under Sections 147, 149, 323/149 IPC would tantamount to "a crime involving moral turpitude". The expression 'moral turpitude' was elaborately considered in *Pavan Kumar v. State of Haryana and another* [(1996) 4 SCC 17] wherein paragraph 12 it is observed "Moral turpitude" is an expression which is used in legal as also societal parlance to describe conduct which is inherently base, vile, depraved or having any connection showing depravity....."

12. In *Allahabad Bank and another v. Deepk Kumar Bhola* [(1997) 4 SCC 1] it was observed in paragraph 8 "What is an offence involving "moral turpitude" must depend upon the facts of each case. .....". In the said case reliance was placed on *Baleshwar Singh v. District Magistrate and Collector* (AIR 1959 All. 71) wherein in respect of expression moral turpitude it is observed:

> "The expression 'moral turpitude' is not defined any where. But it means anything done contrary to justice, honesty, modesty or good morals. It implies depravity and wickedness of character or disposition of the person charged with the particular conduct. Every false statement made by a person may not be moral turpitude, but it would be so if it discloses vileness or depravity in the doing of any private and social duty which a person owes to his fellowmen or to the society in general. If therefore the individual charged with a certain conduct owes a duty, either to another individual or to the society in general, to act in a specific manner or not to so act and he still acts contrary to it and does so knowingly, his conduct must be

held to be due to vileness and depravity. It will be contrary to accepted customary rule and duty between man and man."

Recently in *Sushil Kumar Singhal v. Regional Manager, Punjab National Bank* [(2010) 8 SCC 573] it is observed:

25. In view of the above, it is evident that moral turpitude means anything contrary to honesty, modesty or good morals. It means vileness and depravity. In fact, the conviction of a person in a crime involving moral turpitude impeaches his credibility as he has been found to have indulged in shameful, wicked, and base activities.

Question is whether the conviction for an offence under Sections 147, 149, 323/149 IPC would be criminal offence involving moral turpitude. Section 147 stipulates:

"147. Punishment for rioting.-Whoever is guilty of rioting, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both."

Section 149 stipulates:

"Section 149. Every member of unlawful assembly guilty of offence committed in prosecution of common object.-

If an offence is committed by any member of an unlawful assembly in prosecution of the common object of that assembly, or such as the members or that assembly knew to be likely to be committed in prosecution of that object, every person who, at the time of the committing of that offence, is a member of the same assembly, is guilty of that offence

Section 323 stipulates:

"323. Punishment for voluntarily causing hurt.- Whoever, except in the case provided for by section 334, voluntarily causes hurt, shall be punished with imprisonment of either description for a term which may extent to one year, or with fine which may extend to one thousand rupees, or with both."

14. The offences under aforesaid provisions are triable by a Magistrate and if found guilty the punishment for an offence under Section 147 is two years imprisonment or fine or both. Whereas; for an offence under Section 323

punishment is imprisonment for one year and fine of Rs.1000/- or both. It is the voluntary causing of hurt which lead to conviction under Section 323 and if such offence is committed by any member of an unlawful assembly that he invites punishment under Section 147 and 149 IPC. The offence for which the petitioner has been convicted does not lead to conclusion that the conduct of the petitioner was "inherently base, vile, depraved or having any connection showing depravity", as could be termed as crime involving moral turpitude, as would warrant a dismissal from service.

15. In view whereof the order of termination cannot be given the stamp of approval. The same is hereby quashed. The respondents are directed to reinstate the petitioner if otherwise he has not attained the age of superannuation; however, in the given facts of the present case the petitioner shall not be entitled for the back-wages as it is the conduct of the petitioner which has led the respondent Management to take an action.

Petition is allowed to the extent above. No costs.

Petition allowed.

I.L.R. [2011] M. P., 2978
WRIT PETITION
Before Mr. S.R. Alam, Chief Justice & Mr. Justice Alok Aradhe
W.P. No. 14852/2008 (Jabalpur) decided on 1 August, 2011

DRIVE INDIA DOT CO. LTD.(M/S) ...Petitioner
Vs.
STATE OF M.P. & ors. ...Respondents

***Commercial Tax Act, M.P. 1994 (5 of 1995), Entry 49 of Schedule II* - Mobile handsets are covered under entry 49 of Schedule II of the Act and excisable to levy for entry tax at the rate of 1% and the Commissioner u/s 70 of the M.P. VAT Act 2002, has power to make an order determining the rate of tax.** (Para 9)

वाणिज्यिक कर अधिनियम, म.प्र. 1994 (1995 का 5), अधिसूचना II की प्रविष्टि 49 – मोबाईल हैंडसेट अधिनियम की अनुसूची II की प्रविष्टि 49 के अंतर्गत समाविष्ट है तथा 1 प्रतिशत की दर से प्रवेश कर हेतु उत्पाद–शुल्क के उद्ग्रहण किये जाने योग्य है और म.प्र. वैट अधिनियम 2002 की धारा 70 के अंतर्गत आयुक्त को कर की दर का निर्धारण करने वाला आदेश देने की शक्ति है।

Cases referred :

7 STC 99, 1961(12) STJ 286, 2001(34) VKN 99, 1999 (115) STJ 591, (1996) 2 SCC 428, (2003) 4 SCC 601, (2008) 7 SCC 663, AIR 1962 SC 159, AIR 1978 SC 449, AIR 1993 SC 2328, (2008) 10 SCC 556.

H.S. Shrivastava with *Sandesh Jain,* for the petitioner.

Kumaresh Pathak, Dy. A.G. for the respondents.

ORDER

The Order of the Court was delivered by **ALOK ARADHE, J. :**–The petitioner in instant writ petition has challenged the validity of circular dated 27.1.2007 (Annexure P-1) issued by Commissioner, Commercial Tax, M.P. by which instructions have been issued to assessing officers in the State of M.P. to the effect that mobile handset is a type of wireless reception instrument and apparatus and, therefore, would fall within entry 49 of Schedule II of the M.P. Sthaniya Kshetra Me Mal Ke Pravesh Par Kar Adhiniyam, 1976 (hereinafter referred to as 'the Act'). The petitioner has also assailed the validity of the order of assessment dated 25.6.2007 (Annexure P-2) and order dated 29.4.2008 (Annexure P-4) passed in revision by the Additional Commissioner, Commercial Tax by which the order of assessing authority has been upheld.

2. Facts giving rise to filing of the instant petition, briefly stated, are that the petitioner is a dealer and imports cellular phones from outside the country. The petitioner filed the return claiming the tax payable as nil, on the ground that goods i.e. mobile handset is covered by entry 1 of Schedule III of the M.P. Commercial Tax Act, 1994. The Commissioner, Commercial Tax, M.P. issued a circular dated 27.1.2007 instructing all the assessing officers that entry tax is not being charged on mobile handsets treating them as covered under entry 1 of Schedule III, whereas the mobile handsets are only a kind of wireless reception instrument and apparatus and, therefore, are covered by entry 49 of Schedule II and taxable at the rate of 1%. Accordingly, all assessing officers were directed to examine the cases afresh to see whether the entry tax has been levied on such goods or not and to take appropriate action.

3. The respondent No.4 on the basis of the aforesaid circular assessed the petitioner to entry tax for a period from 20.12.2004 to 31.3.2005. The assessing officer vide order dated 25.6.2007 (Annexure P-2) held that mobile handset is also a kind of wireless reception instrument and apparatus and, therefore, the same is covered under entry 49 of Schedule II of M.P.

Commercial Tax Act, 1994. Being aggrieved by the aforesaid order of assessment the petitioner preferred a revision before Additional Commissioner of Commercial Tax. However, Additional Commissioner vide order dated 29.4.2008 (Annexure P-4) affirmed the order passed by assessing officer.

4. The question which arises for consideration in the instant writ petition is whether the mobile handset would fall under entry 1 of Schedule III or entry 49 or entry 53 of the Schedule II of the M.P. Commercial Tax Act, 1994 so as to attract the levy of tax at the rate of 1% under the Act.

5. Shri H.S. Shrivastava, learned senior counsel for the petitioner submitted that mobile handset cannot be held to be covered under entry 49 of Schedule II and cannot be treated as wireless reception instrument and apparatus. Our attention was drawn to the distinction between wireless reception instrument and cellular phone while referring to the written submission filed before the revisional authority. It has been argued that wireless reception instrument can be operated without sim, whereas in order to operate cellular phone, a sim has to be inserted in the handset. The entry with regard to wireless reception instrument was incorporated in the statute, when the mobile was not in use 15 to 20 years ago whereas cellular phone has been introduced just 7 to 8 years ago. Learned senior counsel has submitted that entries in taxing statute have to be given their common parlance meaning. For the aforesaid proposition he has placed reliance on decisions reported in 7 STC 99, 1961 (12) STJ 286, 2001 (34) VKN 99, 1999 (115) STJ 591. It is also submitted that entries 49 and 53 of List II existed on the statute book since 1999 however, from 1999 till 2007 assessing officers in the State of M.P. have been treating mobile handset as falling under Schedule III. Even Commissioner in his circular does not mention that mobile handsets fall under entry 53 of Schedule II. It was also pointed out that circular dated 27.1.2007 has been issued by the Commissioner, Commercial Tax in exercise of powers under Section 70 of the M.P. VAT Act, 2002. It is further submitted that the assessing officer is a quasi judicial authority and cannot pass an order of assessment on the basis of dictates of a superior officer. The order of assessment as well as order passed in revision are perverse, arbitrary and are bad in law.

6. On the other hand, Shri Kumaresh Pathak, learned Deputy Advocate General has submitted that that entry 49 in Schedule II of M.P. Commercial Tax Act, 1994 is wide enough to include mobile handset, alternatively, it would fall under entry 53 being electronic and electrical goods. It has been

further submitted that rate of tax under both the entries i.e. entry 49 and entry 53 is the same.

7. At this stage, it would be appropriate to reproduce the relevant entry :

> *"49. Wireless reception instruments and apparatus radios & radio gramophone, television, VCR, VCP, tape recorders, transistors and parts and accessories thereof."*

8. It is well settled rule of statutory interpretation that the Court is free to apply current meaning of statute to present day conditions. [See: (1996) 2 SCC 428, (2003) 4 SCC 601 and (2008) 7 SCC 663] It is equally well settled in law that general words are construed to include new inventions and technological advantages not known at the time when the Act was passed. It has accordingly been held that telephone is telegraph within the meaning of that word in Telegraphs Act, 1863 and 1869 although telephone was not invented in 1869 [See: *Senior Electric Inspector v. Laxminarayan Chopra,* AIR 1962 SC 159 and *Vishnu Agencies (Pvt.) Ltd. V. Comercial Tax Officer,* AIR 1978 SC 449] . Following the same principle it has been held by Supreme Court in *Laxmi Video theatres v. State of Harayana,* AIR 1993 SC 2328 that definition of 'cinematograph' contained in Section 2(e) of the Cinematograph Act, 1952 and in Cinema Regulation Acts enacted by the States in 1952 will cover video cassette recorders/players developed in 1970s for representation of motion pictures on a television screen. [See principles of Statutory Interpretation by Justice G.P. Singh, 12th Edition 2010, pg. 254-255] We may also refer to following relevant extract from page 257 of the aforesaid book:

> *"When a comparatively modern device and equipment was becoming in vogue at the time when the Act was enacted, there can be no difficulty in holding that general words used in the Act will cover such device and equipment. Thus 'notice in writing' required by Section 138 of the Negotiable Instrument Act, 1881, which was inserted in 1968 when Facsimile (Fax) had become (sic come in) vogue was held to include notice transmitted by Fax."*

9. In *Tata Teleservices Limited vs. Bharat Sanchar Nigam Limited and others,* (2008) 10 SCC 556 the Supreme Court had an occasion to deal with the issue namely - a fixed service provided through wireless local loop, whose

operation was not confined to subscriber's premises, could be treated as Mobile service. It was held that since services provided through "Walky" extended beyond the subscribers premises, it was a mobile service. It was further held that wireless is a term used to describe telecommunications in which electromagnetic waves carry the signal over the communication path. It has further been held that the common examples of wireless equipments in use today include cellular phone, pagers, global positioning of system, cordless telephone sets, etc. In view of the aforesaid enunciation of law by Supreme Court and in view of the fact that a comparative modern device and equipment namely mobile handset was coming in vogue at the time when the M.P. Commercial Tax Act, 1994 was enacted, there is no difficulty in holding that general words used in entry 49 (wireless reception instruments and apparatus) would cover mobile handsets. In view of the preceding analysis, we hold that mobile handsets are covered under entry 49 of Schedule II of M.P. Commercial Tax Act, 1994 and excisable to levy for entry tax at the rate of 1%. For the aforementioned, reasons the contention raised by learned senior counsel that entries have to be given their common parlance meaning and, therefore, the mobile handsets cannot be treated as wireless reception instruments and apparatus, does not deserve acceptance.

10. So far as contention of learned senior counsel for the petitioner with regard to circular dated 27.1.2007 is concerned, in this context, we may reproduce relevant extract of Section 70 of the M.P. VAT Act, 2002 :

> *"70. Determination of disputed questions. - (1) The Commissioner, -*
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> *(i) either on his own motion on any question in respect of the rate of tax on any goods may, at any time; or*
>
> *(ii) if any question is raised by a dealer in respect of the rate of tax on any goods shall, within six months from the date of receipt of the application made by the dealer for this purpose in the prescribed manner and on payment of such fee as may be prescribed.*

15. Thus from perusal of sub-section (1) of Section 70 it is apparent that Commissioner either on his own motion on any question in respect of the rate of tax on any goods or if any question is raised by dealer in respect of the rate of tax on any goods, shall within six months from the date of receipt of the application made by dealer, make an order determining the rate of tax on such

goods. Thus, under Section 70 of the M.P. VAT Act, 2002 the Commissioner has power to make an order determining the rate of tax. From perusal of circular dated 27.1.2007 it is apparent that it has not been issued because there was some dispute with regard to rate of tax on goods in question. Therefore, the contention of learned senior counsel that circular dated 27.1.2007 has been issued under Section 70 of the M.P. VAT Act, 2002 cannot be accepted. For yet another reason, the aforesaid contention cannot be accepted, because the rate of tax under entry 49 as well as entry 53 is the same. Even assuming for the sake of argument that mobile handsets cannot be treated as wireless reception instruments and apparatus then also it would be covered under expression electronic and electrical goods under entry 53 of List II of the Act and the rate of tax under both the entries is the same.

16. For the aforesaid reasons, we do not find any merit in the instant writ petition. Accordingly the same is dismissed. However there shall be no order as to costs.

Petition dismissed.

I.L.R. [2011] M. P., 2983
WRIT PETITION
Before Mr. Justice Sushil Harkauli & Mr. Justice U.C. Maheshwari
W.P. No. 14548/2008 (Jabalpur) decided on 03 August, 2011

SATYAPAL ANAND ...Petitioner
Vs.
THE PUNJABI HOUSING COOPERATIVE SOCIETY LTD. & ors. ...Respondents

A. Constitution - Article 226 & 227 - Remedy under - **Petition being filed against the order of the Tribunal and its subordinate Courts constituted under the Societies Act could be entertained under the superintendence of power of this Court enumerated under Article 227 only and not under Article 226.** (Para 6)

क. संविधान – अनुच्छेद 226 व 227 – के अन्तर्गत उपचार – सोसाइटी अधिनियम के अंतर्गत गणित अधिकरण एवं उसके अधीनस्थ न्यायालयों के आदेश के विरुद्ध याचिका दायर किये जाने से उसे केवल अनुच्छेद 227 के अंतर्गत प्रमाणित इस न्यायालय की अधीक्षण की शक्ति के अंतर्गत ग्रहण किया जा सकता है और न कि अनुच्छेद 226 के अंतर्गत।

***B. Cooperative Societies Act, M.P. 1960 (17 of 1961), Section 67, Civil Procedure Code (5 of 1908), Order XL - Appointment of Receiver* - Pendency of any litigation before any forum prescribed under the Cooperative Societies Act, the party has a right to approach such court with the application for appointment of the Receiver - But such application could be considered and adjudicated by such court keeping in view the scheme provided under Section 67 of the Societies Act and under Order 40 of the CPC and the settled propositions of law in that regard.** (Paras 8, 9)

ख. सहकारी सोसाइटी अधिनियम, म.प्र. 1960 (1961 का 17), धारा 67, सिविल प्रक्रिया संहिता (1908 का 5) आदेश XL – रिसीवर की नियुक्ति – सरकारी सोसाइटी अधिनियम के अंतर्गत विहित किसी मंच के समक्ष प्रस्तुत कोई मुकदमा लंबित होने पर पक्षकार को ऐसे न्यायालय के समक्ष रिसीवर की नियुक्ति हेतु आवेदन प्रस्तुत करने का अधिकार है – किन्तु ऐसे न्यायालय द्वारा ऐसे आवेदन पर विचार एवं न्यायनिर्णयन सोसाइटी अधिनियम की धारा 67 तथा सि.प्र.सं. के आदेश 40 के अंतर्गत एवं इस संबंध में विधि की सुस्थापित प्रतिपादनाओं के अंतर्गत उपबंधित योजना को दृष्टिगत रखते हुए किया जा सकता है।

***C. Constitution - Article 227* - Application of the petitioner was not considered by the Dy. Registrar in accordance with law and the prescribed procedure and the settled propositions of the law - The Joint Registrar of Cooperative Society or the Tribunal had no option except to set aside the order passed by the Dy. Registrar and send back the matter again to trial Court to decide the application afresh in accordance with prescribed procedure - Impugned order is not found faulted - Petition dismissed.** (Paras 8, 9 & 12)

ग. संविधान – अनुच्छेद 227 – याची के आवेदन का डिप्टी रजिस्ट्रार द्वारा विधि के अनुसार तथा विहित प्रक्रिया एवं विधि की सुस्थापित प्रतिपादनाओं के अनुसार विचार नहीं किया गया – सहकारी सोसाइटी या अधिकरण के संयुक्त रजिस्ट्रार के पास डिप्टी रजिस्ट्रार के द्वारा पारित आदेश अपास्त करने तथा विहित प्रक्रिया के अनुसार आवेदन पर पुनः विनिश्चय हेतु विचारण न्यायालय को मामला पुनः वापिस भेजने के अलावा कोई विकल्प नहीं – आक्षेपित आदेश दोषयुक्त नहीं पाया गया – याचिका खारिज।

Case referred :

1973 MPLJ 941.

Petitioner in person.

Ashok Lalwani, for the respondents.

ORDER

The Order of the Court was delivered by **U.C. MAHESHWARI, J.** :–The petitioner – applicant has directed this petition under Article 226 of the Constitution of India challenging the tenability and sustainability of order dated 22.11.2008 passed by the M.P. State Co-operative Tribunal, Bhopal (in short "the Tribunal") dismissing his Second Appeal No. 207/08 treating to be a revision under Section 77 (14) of the M.P. State Cooperative Societies Act 1960, (in short "the Societies Act") affirming with some observations the order dated 18.11.08 passed by the Joint Registrar, Co-operative Society, allowing the Revision of respondent no. 2 bearing No. 80-A 98/07-08, whereby setting aside the orders dated 4.2.08, 18.2.08 and 25.3.08 passed by Dy. Registrar, Cooperative Society in Miscellaneous Case No. 15/07 remitted back the case again to Dy. Registrar with a direction to decide the application of the petitioner filed under Section 67 of the Societies Act, r/w under Order 40 Rule 1 of the CPC afresh.

2. The facts giving rise to this petition in short are that respondent no. 1-Society by executing a sale deed dated 22.2.1962 through its office bearer alloted the plot bearing no. 7-B, Panjabi bagh, Bhopal with possession to Smt. Veerawali, (since deceased) the mother of the petitioner and such sale deed was duly registered on 30.3.1962 with the Sub Registrar, Bhopal. Subsequent to such allotment the office bearer of the respondent no. 1, contrary to the right of said Veerawali and the petitioner, unilaterally executed and got registered an extinguished deed dated 9.8.01. On the strength of such deed the respondent no. 1 through its office bearer executed and registered the sale deed with consideration on dated 21.4.04 in favour of respondent no. 2 who on her turn by executing the registered sale deed dated 11.7.06 with consideration sold out such plot to respondent nos. 4 and 5. According to the case of the petitioner the sale deed executed in favour of her mother could not be deemed to be cancelled on the strength of above mentioned extinguished deed. As the same was got executed and registered by practicing fraud with the rights and title of Veerawali and after her death, of the petitioner. On coming to know about such fraud, the petitioner filed dispute in this regard before the court of Dy. Registrar of Cooperative Society under Section 64 of the Societies Act. In pendency of the same, such court by issuing ad interim injunction dated 1.2.06 restrained the respondent to make any construction over the disputed property. The same was approved by the appellate court, vide order dated 29.8.06. While approving such interim injunction the appellate

court also directed to the Dy. Registrar to conclude the trial and adjudicate the same upto the period ended on 29.11.06. Inspite that such dispute bearing Case No. 81/05 is still pending for adjudication.

3. In pendency of the aforesaid dispute the petitioner filed an application under Section 67 of the Societies Act, r/w Order 40, Rule 1 of the CPC with the prayer of appointment of the Receiver. Contending that respondent nos. 2 to 5 never acquired any title or the possession of the disputed property, the same was remained on the strength of the said sale deed 22.3.1962 with Smt. Veerawali and after her with the petitioner. But on dated 6.7.04 by committing the offence of trespass, respondent nos. 2, 4 and 5 put out the petitioner from the physical possession of the same. Such respondent did not have any right to remain or enjoy such property. With these averments, to protect the title and interest of the petitioner regarding disputed plot he filed the aforesaid application in the court of Dy. Registrar on dated 4.2.08.

4. After registering the petition as Miscellaneous Case No. M-15/07 an exparte order for appointment of the receiver for the disputed property was passed on the same day whereby Shri J.S. Gujral retired Sr. Cooperative Inspector was appointed as Receiver who withdrew his name from such appointment on dated 18.2.08, on which Shri N.K. Saxena, Adv was replaced as Receiver and was directed to take physical possession of the disputed plot. But subsequently by passing a bi- parte order dated 25.3.08 instead the physical possession, the Receiver was directed to take only symbolic possession of the property, on which the petitioner filed the Revision bearing No. 78/04/08-09 before the Joint Registrar with a prayer to set aside the aforesaid order dated 25.3.08 by maintaining the orders dated 4.2.08 and 18.2.08 directing the Receiver to take physical possession of the property while respondent no. 2 Manjeet Kour filed two different revisions with a prayer to set aside the entire proceedings of appointment of the Receiver and also the aforesaid interim orders dated 4.2.08 and 18.2.08 passed by the Dy. Registrar in such proceedings.

5. On consideration such revisions were adjudicated by the impugned order dated 18.11.08 whereby setting aside the aforesaid orders dated 4.2.08, 18.2.08 and 25.3.08, the case was remitted back to Dy. Registrar with a direction to decide the aforesaid applications afresh in accordance with law. On challenging such order by the petitioner in Second Appeal before the State Cooperative Tribunal, on consideration by treating such appeal to be a Revision

under Section 77 (14) of the Act, was dismissed by the impugned order and by affirming the order of the Joint Registrar the case has been remanded to the Dy Registrar with some additional directions to decide the application afresh. Hence the petitioner has come to this court with this petition.

6. We have heard at length to the petitioner in person and the counsel of the respondents. Having heard, after perusing the record, We are of the considered view that this petition being filed against the order of the Tribunal and its subordinate Courts constituted under the Societies Act could be entertained under the superintendence of power of this court enumerated under Article 227 only and not under Article 226 of the Constitution of India.

7. True it is that initially on filing the aforesaid application for appointment of Receiver by passing an exparte order some retired officer of the Cooperative Society was appointed as Receiver, vide order dated 4.2.08 with the directions to take physical possession of the disputed property. Subsequently on considering the prayer of such receiver permitting him to withdraw on 18.2.08 one Shri N.K. Saxena, Adv was appointed to be a Receiver with a direction to take physical possession of the property. Both the orders were passed exparte. After giving appearance on behalf of the respondents by passing bi-parte order dated 25.3.08 the Receiver was directed to take symbolic possession of the disputed property instead the physical possession of the same.

8. As per averments of the petition on the date of filing the application the petitioner was not in actual possession of the disputed property. According to his own case by committing the offence of criminal trespass, he was put out from the physical possession of the property by the respondents. Besides this at the instance of the petitioner dispute filed under Section 64 of the Societies Act bearing no. 81/05, is still pending in the competent court of the cooperative sector. In such circumstance, we are of the considered view that while pendency of any litigation before any forum prescribed under the Cooperative Societies Act, the party has a right to approach such court with the application for appointment of the Receiver. But such application could be considered and adjudicated by such court keeping in view the scheme provided under Section 67 of the Societies Act and under Order 40 of the CPC and the settled propositions of law in that regard.

9. The Tribunal as well as the Joint Registrar after appreciation of the available circumstances of the case have categorically held that the aforesaid

application of the petitioner was not considered by the Dy. Registrar in accordance with law and the prescribed procedure and the settled propositions of the law in this regard. After going through the aforesaid both the orders, we have not found any apparent error, illegality, irregularity or anything against the propriety of law in the same. On the contrary, same appears to be passed by the subordinate Tribunal and the Joint Registrar under the vested jurisdiction in them.

10. In view of the aforesaid discussion, this petition could not be allowed by invoking the writ jurisdiction vested in the Court under Article 227 of the Constitution of India.

11. Apart the above long before on arising the occasion the Single Bench of this Court in the matter of *Bal Vyasi Vs. Mahila Ujjala* reported in 1973, MPLJ, Page 941 has settled the principles for appointment of the Receiver, which are still covering such field. The same are as under:-

> **14.** Principles relating to appointment of receiver may now be recapitulated as under:-
>
> (1)Generally stated, the object of appointment of receiver is preservation of the subject matter of the litigation pending a judicial determination of the rights of the parties to it.
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> (2)The rule embodies in Order 40, rule 1, Civil Procedure Code empowers the Court to appoint a receiver whenever it appears to it to be just and convenient to do so. The language employed in the Rule leaves the matter to the discretion of the Court.
>
> (3)The Court has fullest jurisdiction in the matter of appointment of receiver, but the discretion cannot be exercised arbitrarily in an unregulated manner; it must be exercised judicially, cautiously and according to legal principles on a consideration of the whole of the circumstances of the case.
>
> (4)Appointment of receiver is recognized as one of the harshest remedies which the law provides for the enforcement of rights so that the jurisdiction must be exercised only in extreme cases.

(5)The Court does not, while considering the question whether a receiver should be appointed, arrive at any final decision on the merits of the case. Its aim is merely to preserve the status quo ante during litigation.

(6)Receiver cannot be appointed just because it is expedient or convenient to one of the parties to do so; nor merely because it will do no harm to do so.

(7)When a person is in bona fide possession of the property in dispute, his possession should not be disturbed by appointment of receiver unless there is some substantial ground for such interference, such as a well founded fear that the property in suit will be dissipated or other irreparable mischief may be done unless the Court appoints a receiver. The plaintiff must not only show a case of adverse and conflicting claims to property, he must further show some emergency or danger or loss demanding immediate action and, further the plaintiff's own right must be reasonably clear and free from doubt.

(8)Although the jurisdiction of the trial Court is the matter of appointment of a receiver is discretionary, that discretion is liable to interfere, if it is not in accordance with the principles on which the judicial discretion must be exercised.

12. Keeping in view the aforesaid principles also, on examining the orders of the Dy. Registrar appointing the Receiver and modifying such order, (at latter stage), that same is not found to be passed in accordance with such principles. So in such circumstance, the Joint Registrar of Cooperative Society or the Tribunal had no option except to set aside the order passed by the Dy. Registrar and send back the matter again to trial court to decide the application of the petitioner afresh in accordance with prescribed procedure. Thus, in such premises also the impugned order is not found faulted.

13. However, some of the observations made by the Tribunal in para 7 of its order on merits regarding the sale deed dated 6.7.04, while giving the direction to the trial court stating that "the Court of Dy. Registrar while considering the matter should also ensure that the second deed executed on

6.7.04 should also have a bearing in the matter and as long as this deed is not declared void by a competent court, the question of appointing a Receiver will not arise" do not appear to be proper and reasonable, hence the same is hereby omitted.

14. Although in the course of arguments, various case laws reported in different journals were cited by the petitioner but in the aforesaid circumstances, the same being distinguishable on facts and circumstances of the case at hand, are not helping to the petitioner.

15. In view of the aforesaid discussions, this petition being devoid of any merit is hereby dismissed with aforesaid observation. There shall be no order as to the costs.

Petition dismissed.

I.L.R. [2011] M. P., 2990
WRIT PETITION
Before Mr. Justice Ajit Singh & Mr. Justice Sanjay Yadav
W.P. No. 5566/1999 (Jabalpur) decided on 19 August, 2011

STATE OF M.P. ...Petitioner
Vs.
VATSALA RAO (SMT.) & ors. ...Respondents

Industrial Employment (Standing Orders) Rules, M.P. 1963, Rule 2(i) - Permanent Employee - **Workman does not satisfy the condition that she was appointed against a clear vacant post and the post on which she was said to have been appointed was sanctioned by the statutory authority and that her appointment was made by operating the regular mode of recruitment - No right accrued in her favour as would entitle her to be classified as permanent employee - Orders passed by Labour Court and Industrial Court, quashed.** (Para 27)

औद्योगिक नियोजन (स्थायी आदेश) नियम, म.प्र. 1963, नियम 2(i) – स्थाई कर्मचारी – कर्मचारी इस शर्त की तुष्टि नहीं करती कि उसे स्पष्ट रिक्त पद पर नियुक्ति दी गयी थी और जिस पद पर उसे कथित रुप से नियुक्ति दी गयी उसे कानूनी प्राधिकारी द्वारा मंजूरी दी गयी है और यह कि उसकी नियुक्ति नियमित भर्ती प्रक्रिया के प्रवर्तन द्वारा की गयी थी – उसे स्थाई कर्मचारी के रुप में वर्गीकृत करने के लिये उसके पक्ष में कोई अधिकार प्रोद्भूत नहीं होता – श्रम न्यायालय तथा औद्योगिक न्यायालय द्वारा पारित आदेश अभिखंडित।

Cases referred :

(2005) 1 SCC 639, (2006) 2 SCC 702, 1993 JLJ 55, 1999(1) MPLJ 467, (2005) 13 SCC 489, (2007) 1 SCC 575.

ORDER

The Order of the Court was delivered by: **SANJAY YADAV, J :-** This order shall govern final disposal of W.P. No. 5566/1999 - *State of M.P. v. Smt. Vatsala Rao and others* and W.P. No. 4010/2000 - *Smt. Vatsala Rao v. State of M.P. and another* as both these writ petitions under Article 227 of the Constitution of India are directed against the order dated 26.7.1999 passed by Industrial Court in Appeal No. 158/1995 and 159/1995 M.P.I.R. By said order the Industrial Court affirmed the order dated 20.6.1995 passed by Labour Court in Case No. 229/92/MPIR.

2. The case No. 229/92 MPIR before the Labour Court was an application preferred by the Workman (respondent in W.P. No. 5566/1999 and the petitioner in W.P. No. 4014/2000) under Section 31 (3) read with Section 61 of Madhya Pradesh Industrial Relation Act, 1960 (referred to as Act of 1960) for classifying her as copyist/typist w.e.f. 1.11.1983 from the date of her initial appointment.

3. The facts adverted to before the Labour Court was that having possessed the requisite qualification and experience/eligibility to be appointed to the post of copyist/typist, she filed an application submitting her candidature for the post of copyist on 6.11.1983. The said application was forwarded to the Sub Divisional Officer by the then Executive Engineer, Tilwara Left Bank Canal division Keolari district Seoni with an endorsement to consider her case for appointment on the post of copyist against a vacant post of Lower Division Clerk in the sub division. That, in pursuance to said recommendation the workmen was appointed on a clear and vacant post of copyist/ typist in the said division and was paid the wages of copyist. Subsequently thereafter four months her wages were reduced and she was paid the wages as an qualified labour on daily wages on the anvil that she has satisfactorily completed six months of service against the vacant post, the said application was preferred seeking permanent classification.

4. The claim put-forth by the workman was contested by the State Government (petitioner in W.P. No. 5566/1999 and W.P. No. 4014/2000) on the ground that the workman was never appointed against the vacant post

of copyist/typist and that she was engaged as a qualified labour and was paid wages accordingly. It was stated that the she worked as typist on her own will. Thus, the claim put-forth by the workman for being classified as permanent was contested by the State of Madhya Pradesh.

5. Documents were filed by the workman and evidence were led by respective parties before the Labour Court. The Labour Court on the basis of evidence brought on record passed an order on 20.6.1995 directing for permanent classification of the workman by drawing a presumption that she having satisfactorily worked for a period of six months against the vacant post of typist. However, the difference of wages for the post of copyist/typist and qualified labour from November 1983 were declined. Being aggrieved the State of Madhya Pradesh as well as the workman preferred an appeal under Section 65 of the Act of 1960 before the Industrial Court. Whereas the appeal preferred by the workman was against the non-grant of difference of wages since November 1983. The appeal preferred by the State Government and its functionary was against the order of permanent classification.

6. The Industrial Court by impugned order dated 26.7.1999 dismissed both the appeals. Being dissatisfied with the order both the parties are before us vide respective petitions.

7. It is contended by learned Government Advocate that the Courts below fell into patent error in ignoring the evidence on record that the workman was never engaged against the vacant post. On the contrary she was engaged on daily wages as qualified labour. It is contended that an intermittent work of typist being carried out by the workman will not entitle her to be treated as being appointed as typist against the vacant post of Lower Division Clerk. To substantiate his submission learned Government Advocate has led us through the evidence as well as documents filed before the Labour Court. It is contended that workman no doubt was engaged as a typist but the same was only for a period of two months. Subsequent thereafter when a decision was required to be taken to dispense her from service, an application was filed by the workman to the extent that she may be accommodated as qualified labour on daily-wages. It is urged that, considering the said application the workman was allowed to continue to work on daily-wage basis as qualified labour. It is contended that there being no sanctioned/vacant post of qualified labour, the conclusion arrived at by the Labour Court that the workman was appointed against a vacant post is patently erroneous.

8. Learned Govt. Advocate further submits that for a classification as a permanent employee under Standard Standing Orders it is incumbent upon the person to prove that he/she was appointed against the vacant post and has satisfactorily served for more than six months. To substantiate his submission learned Government Advocate places reliance on decision in *Mahendra Lal Jain and others v. Indore Development Authority & others* [(2005) 1 SCC 639, *M.P. Housing Board and another v. Manoj Shrivastava* [(2006) 2 SCC 702].

9. Countering the submissions put-forth on behalf of State of M.P., learned counsel appearing for respondent workman while not disputing the proposition of law as has been settled by a catena of decisions rendered by Supreme Court that unless shown to have been appointed against a clear vacant post an incumbent will not be entitled for the benefit of classification as permanent employee, has to submit that in the cases at hand there is no evidence on record as could be construed that the Labour Court has gone into the aspect of factum that when workman was initially appointed the same was not against the clear vacant post. It is urged that for that the matter may be remanded to be examined by the Labour Court.

10. Considered the rival submissions. Perused the record.

11. Exhibit P-1 was an application whereby the workman applied for appointment as Copyist on daily-wages. The application was addressed to the Executive Engineer, Tilwara Left Bank Canal Division Keolari district Sidhi. The Executive Engineer forwarded the same to the Divisional Engineer, Tilwara, Left Bank Canal sub division No. 4 Keolari to consider the applicant/workman for the post of Copyist on daily-wages against the vacant post of Lower Division Clerk in his sub-division. Exhibit P-3 dated 1.11.1991 indicates that on behalf of Executive Engineer, Sub Divisional Officer directed to make the payment of wages as per the post on which the workman was appointed. Exhibit P-4 and P-5 dated 22.1.1992 and 28.2.1992 are the work allotment orders.

12. Pertinent it would be to note that while engaging the workman on daily-wages as Typist neither applications were invited through employment exchange or through advertisement nor any procedure for recruitment was adhered to. It was simply on the basis of an application preferred by the workman and the recommendation of the Executive Engineer that the workman was engaged on daily wages. Apparently no right accrued in favour of such workman.

13. Subsequently by order dated 21.2.1992 the workman was informed of

her status being a qualified worker w.e.f. 1.4.1987. Consequent thereafter the workman has been paid the daily wages of qualified worker. The workman though by her letter dated 3.3.1992 (Ex. P-8) did raise an objection, the same was however, ruled out by letter dated 4.3.1992 (Ex. P-9) that the workman being engaged on daily wages cannot as a matter of right claim for wages of the post of Typist.

14. Thereafter, a dispute was raised before the Assistant Labour Commissioner that the workman being employed against the post of Typist was entitled for the said status as also the salary thereof. The claim was denied by the respondent management which led the workman to file an application before the Labour Court under Section 31 (3) read with Section 61 of the M.P. Industrial Relations Act, 1960 seeking the direction that she be classified as Typist from the date of her initial appointment, I.e., 1.11.1983 and the respondent management be directed to pay the regular pay scale of typist along with arrears from 1.11.1983.

15. The claim was controverted by the respondent management wherein it was stated that the workman was employed on daily-wages and the salary of the typist paid to her for a period of four months was due to error which was subsequently rectified. It was categorically stated that the workman was engaged only when the work was available as a qualified labour and was never engaged as Typist.

16. Evidence were adduced by the respective parties; wherein the applicant categorically admitted that she was not appointed through employment exchange but was engaged on daily wages w.e.f. 1.11.1983. It was stated

> " 2. मेरी नियुक्ती रोजगार कार्यालय के माध्यम से नहीं हुई है। पी–2 का प्रमाणपत्र मैने एस.डी.ओ. से मांगा था। पी–2 में दैनिक वेतनभोगी लिखा है। दिनांक 1.11.83 से विपक्षी के यहां दैनिक वेतनभोगी के पद पर कार्यरत थी। दैनिक वेतनभोगी कर्मचारी जब विभागीय को आवश्यकता होती है तब कार्य लिखा जाता है। यह कहना गलत है कि मैने विपक्षी के यहां काम नहीं किया है स्वतः कहा है कि 1.11.83 से लगातार कार्य कर रही हूं। मैं सन् 83 से विपक्षी के यहां कापिस्ट कम टायपिस्ट के पद पर कार्य कर रही हूं। पी–1 में कापिस्ट डेलीवेजेज बावत् आवेदन किया है। पी–3 में भी डेजीवेजेज बावत् दर्शाया गया है। पी–4 में भी 23.1.92 से मेरी ड्यूटी लगाई गई थी। 25.2.92 को पत्र अनुविभागीय अधिकारी ने मेरे संबंध में लिखा था। यह कहना गलत है कि मैने विपक्षी के यहां स्थायी श्रेणी के हैसियत से कार्य नहीं किया है। पे रोल के बावत् मैने कोई कागज पेश नहीं किये हैं क्योंकि वे विभाग के पास है। यह कहना

सही है कि दि. 21.2.92 24.2.92 एवं दिनांक 29.2.92 को विपक्षी ने श्रमिक के पद पर कार्य करने क लिए आदेशित किया है मैने श्रमिक के पद पर कार्य नहीं किया है। 1.11.83 को मैने विपक्ष के डिवीजन में टायपिस्ट कम कापिस्ट के पद पर कार्य करने गई थी। पी–6 का पत्र मुझे मिला था। 16.11.93 को मैने विपक्षी के यहां डेलीवेजेज कापिस्ट के कार्य के लिए आवेदन दिया था। यह कहना गलत है कि विपक्षी क्रं–4 ने 25.7.92 को काम नहीं निकाला है। यह कहना गलत है कि मैं स्वतः काम पर नहीं गई।

3. यह कहना गलत है कि मैने कुशल श्रमिक की हैसियत से काम नहीं किया है। पी–13 से पी–17 के परिपत्र शासन के द्वारा जारी हुये है। इन परिपत्र जारी होने तक मैने दैनिक वेतनभोगी कर्मचारी की हैसियत से कार्य किया है मुझे प्रतिमाह वेतन मिलता था रविवार का वेतन मिलता था। यह कहना गलत है कि मैने नियमित होने की पात्रता प्राप्त नहीं की है। "

17. The management witness in his evidence stated :-

" 1. प्रार्थनी ने हमारे यहॉ अर्थात विपक्षी के यहां दैनिक वेतन कापिस्ट के पद पर कार्य करने हेतु प्रर्थाना पत्र पेश किया है प्रदर्श पी 1, प्रार्थना पत्र है। पी 1, के प्रार्थनी पत्र में हमारे कार्यपालन यत्री ने एस.डी.ओ. इस अनुशंसा के साथ अग्रेशित किया कि प्रार्थनी को एल.डी.सी. के बेकेट पोस्ट विरूद्ध रखा जावे। प्रार्थनी को 1/12/83 से कापिस्ट के पद पर रख लिया था। प्रार्थनी ने एलडीसी के विरूद्ध में 2 महिने काम किया था एवं उसके बाद उसे निकाल रहे थे अतः प्रार्थनी के निवेदन पर उसे शिक्षित श्रमिक के पद पर नियुक्ति दे दी प्रार्थनी का वेतन डेलीवेजिश के हिसाब से था। प्रार्थनी का 84 एवं 85 मे गेफ रहा है जो लगभग 6–6 महीने का रहा है।

2. प्रार्थनी 1/2/84 से शिक्षित श्रमिक के पद पर कार्यरत रही है जब जब भी आई है उसे वेतन मिला है। प्रार्थनी को नौकरी से नहीं निकाला है। प्रार्थनी को बाद में साईड हेतु काम को भेजा था वह ओदश प्रदर्श पी 6, है। प्रार्थनी साइड पर काम हेतु नहीं गई। उसके बाद प्रार्थनी आज दिनांक तक कार्य में नहीं आई प्रार्थनी का विपक्षी ने कोई छटनी नहीं किया है।"

18. In cross-examination also he denies that the workman has been working continuously on the post of Copyist since 1.11.1983. The Labour Court by drawing a presumption that since the workman has worked for more than six months on a vacant post allowed the application classifying the workman as typist w.e.f. November 1983 and granted the difference of wages. However, in an appeal the appellate court modified the order passed by the Labour Court to the extent that the workman was denied the difference of wages from 1983 till 23.9.1992.

19. The workman as well as management is before us vide these petitions under Article 227 of the Constitution of India. The question is as to whether the Courts below were justified in classifying the workman as permanent typist in the given facts of the case.

20. Rule 2 (i) of Standard Standing Orders under Madhya Pradesh Industrial Employment (Standing Orders) Rules, 1963 provide for "Classification of Employees. (i) a 'permanent' employee is one who has completed six months' satisfactory service in a clear vacancy in one or more posts whether as a probationer or otherwise, or a person whose name has been entered in the must roll and who is given a ticket of permanent employee;

> Explanation.- In computing the period of six months the days on which employee was absent due to authorised leave, sickness, maternity leave, accident, lock out and strike (which are not illegal) or closure of the undertaking shall be included."

21. In *Vandana Singh (Smt.) v. Steel Authority of India Ltd. and another* (1993 JLJ 55) it was observed

> "32. Relevant definition extracted from clause (2) of M.P. Industrial Employment Standing Orders Rules, 1963 read as under :-
>
> 2. Classification of employees : - Employees shall be classified as (i)permanent, (ii) permanent seasonal, (iii) probationers, (iv) badlies, (v) apprentices, (vi) temporary :
>
> (i) A "permanent" employee is one who has complete 6 months" satisfactory service in a clear vacancy in one or more posts whether as a probationer or otherwise, or a person whose name has been entered in the muster roll and who is given a ticket of permanent employee"
>
> (vi) 'Temporary employee' means an employee who has been employed for work which is essentially of a temporary character, or who is temporarily employed as an additional employee in connection with the temporary increase in the work of a permanent nature, provided that in case such employee is required to work continuously for more than six months he shall be deemed to be a permanent employee, within the meaning of clause (i)above."
>
> Vide clause (i)to be a permanent employee, the employee should

have (a) completed six months " (b) satisfactory service; and (c) in a clear vacancy. If the proviso to clause (vi) is read in isolation, a temporary employee employed for work essentially of a temporary character would be deemed to have been confirmed with the status of a permanent employee without regard to the considerations whether the services were satisfactory or not and whether or not there was a clear vacancy. Such an interpretation would not only violate the celebrated rule of harmonious construction but would also lead to absurdity. Reference to clause (i)in the proviso to clause (vi) obliges the proviso being read with clause (i); meaning thereby that the temporary employee as defined under clause (vi) would remain a temporary employee without regard to the period of work done by him unless and until it is found that there was a clear vacancy available and he services of the employee were satisfactory. If this test is applied to the petitioner, she cannot be classified as " permanent", for there is no material available to hold that the petitioner's performance was satisfactory and there was a clear vacancy available."

22. The aforesid view has been affirmed by Full Bench of this Court in *Superintending Engineer, Public Works Department, Circle Gwalior v. Dev Prakash Shrivas, Gwalior and others* [1999 (1) MPLJ 467] wherein it is held

" 6. In the case of *State of M.P. and others v. Ram Prakash Sharma and others :* 1989 J.L.J. 36, this Court examined the provisions of the Industrial Employment (Standing Orders) Act, 1961 read with the rules of 1963 and held that the service conditions which have been incorporated as Annexure shall apply. Though another aspect was also considered whether a direct petition is maintainable or not without going to the Industrial Court, that aspect was discussed in greater detail. Specifically the applicability of sub-section (2) of section 2 did not arise in that case. Be that as it may, the fact remains that in view of our present opinion that Annexure which is Standard Standing Order will definitely govern the present Department also till a proper notification is issued under sub-section (2) of section 2 of the Act of 196.

Our attention was also invited to the decision of this Court in the

case of *Vandana Singh v. Steel Authority of India :* 1993 J.L.J. 55 whether question was with regard to articles 14, 16 and 39 (d) of the Constitution of India. There was a difference of opinion between members of the Division Bench. One learned Judge held that the incumbent was entitled for regularization and equal pay for equal work. The difference was whether he is entitled for equal pay for equal work when there was no permanent vacancy available. Another Hon. Judge held that in absence of permanent vacancy, no relief with regard to equal pay for equal work could be given. The view expressed by another learned Judge in that case appears to be well founded. This view appears to be in accordance with clause (2) of Standard Standing Orders which says that existence vacancy is must."

23. In *State of M.P. and others v. Onkar Prasad Patel* [(2005) 13 SCC 489 it is held that "6.....The applicant workman cannot be categorised as a permanent employee even though he may have completed six months' satisfactory service. The other requirement that the service was rendered in a clear vacancy in one or more posts was not established. The conditions are cumulative and are not independent of each other. That being the position, the Labour Court, the Industrial Court and the High Court were not justified in directing that the respondent workman was to be categorised as a permanent employee.

24. In *Mahendra L. Jain and others v. Indore Development Authority and others* [(2005) 1 SCC 639] the Supreme Court dwelling upon the case of sub engineer who was not appointed against a sanctioned post and his appointment was not in a regular mode, i.e. through employment exchange or by issuing any advertisement held that regularization in such cannot be claimed as a matter of right. It was observed that "an illegal appointment cannot be legalised by taking recourse to regularisation. What can be regularised is an irregularity and not an illegality." (paragraph 19). In the context as the present one it was observed:

"31. The Standing Orders governing the terms and conditions of service must be read subject to the constitutional limitations wherever applicable. Constitution being the suprema lex shall prevail over all other statutes. The only provision as regards recruitment of the employees is contained in Order 4 which merely provides that the

manager shall within a period of six months, lay down the procedure for recruitment of employees and notify it on the notice board on which Standing Orders are exhibited and shall send copy thereof to the Labour Commissioner. The matter relating to recruitment is governed by the 1973 Act and the 1987 Rules. In the absence of any specific directions contained in the Schedule appended to the Standing Orders, the statute and the statutory rules applicable to the employees of the respondent shall prevail."

25. In *M.P. Housing Board and another v. Manoj Shrivastava* [(2006) 2 SCC 702] it was held:

"8. A person with a view to obtain the status of a "permanent employee" must be appointed in terms of the statutory rules. It is not the case of the respondent that he was appointed against a vacant post which was duly sanctioned by the statutory authority or his appointment was made upon following the statutory law operating the field.

26. Please also see the decision in *State of Madhya Pradesh v. Lalit Kumar Verma* [(2007) 1 SCC 575].

27. In the case at hand the material as brought before the Labour Court does not satisfy the condition that the workman was appointed against a clear vacant post and the post on which she was said to have been appointed was sanctioned by the statutory authority and that her appointment was made by operating the regular mode of recruitment. Thus, no right accrued in her favour as would entitle her to be classified as permanent employee. The approach of the Labour Court and Industrial Court was apparently erroneous in holding the applicant to have acquired a permanent status having continuously worked for more than six months.

28. In view whereof we quash the orders dated 20.6.1995 passed by Labour Court in Case No. 229/92/MPIR and 26.7.1999 passed by the Industrial Court in Appeal No. 158/1995. In the result W.P. No. 5566/1999 is allowed; whereas, W.P. No. 4014/2000 is dismissed.

W.P. No. 5566/1999 is allowed.

I.L.R. [2011] M. P., 3000

WRIT PETITION

Before Mr. Justice Sanjay Yadav & Mr. Justice T.K.Kaushal

W.P.No.16976/2011 (Jabalpur) decided on 14 September, 2011

SHANKARLAL AGRAWAL ... Petitioner

Vs.

DISTRICT SHAHKARI KENDRIYA BANK MARYADIT ... Respondent.

Service Law - Date of Birth - Correction **- Entries in Service book were filled by the Petitioner - Column pertaining to date of birth was left vacant by him - When opportunity was given by department to submit proof of date of birth, Petitioner conceded that department may proceed as per record available - Department after considering the papers of insurance in which the petitioner had mentioned his date of birth to be in year 1935 - Subsequent claim of the petitioner that his date of birth is 1930 as per janam kundli and school certificate recently issued by Head Master not reliable - Petition dismissed.** (Para 8)

सेवा विधि – जन्म तिथि – सुधार – सेवा पुस्तिका में प्रविष्टियां याची द्वारा भरी गयी थी – उसके द्वारा जन्मतिथि में संबंधित स्तंभ रिक्त छोड़ा गया – जब जन्मतिथि का सबूत प्रस्तुत करने हेतु विभाग द्वारा अवसर दिया गया, तब याची ने स्वीकृति दी कि उपलब्ध अभिलेख के अनुसार विभाग कार्यवाही कर सकता है – विभाग ने बीमा के उन दस्तावेजों को विचार में लेने के पश्चात् जिसमें याची ने अपनी जन्मतिथि सन् 1935 में होने का उल्लेख किया था – याची का पश्चात्वर्ती दावा कि जन्म कुंडली तथा मुख्याध्यापक द्वारा हाल में जारी किये गये शाला प्रमाणपत्र के अनुसार उसकी जन्मतिथि 1930 है, विश्वसनीय नही है – याचिका खारिज।

Ankit Saxena, for the petitioner.

ORDER

The Order of the Court was delivered by:

T.K. KAUSHAL, J.:–This petition has been preferred under Article 227, Constitution of India seeking relief to set aside the order dated 21.6.2011 passed by State Cooperative Tribunal Bhopal in First Appeal No.154/2008, declining the claim of the petitioner in respect of alleged premature retirement.

2. Whether petitioner was born in the year 1935 or 1939 is the main cause of controversy highlighted in this petition.

3. Facts giving rise to this petition, in short are that, petitioner was working

as Samiti Prabandak in District Shahkari Kendriya Bank Maryadit, Raisen. Since entry of column No.4 of service book regarding date of birth of employee was left unfilled, vide letter dated 30.11.1994 of the bank (Annexure-P-3), the petitioner was asked to submit proof of his date of birth so his retirement can be further processed. Thereafter vide letter dated 9.3.1995 (Annexure-P-2) petitioner was held due for retirement w.e.f. 31.3.1995.

4. Since petitioner was claiming his birth to be in the year 1939, consequently retirement in the year 1997, the petitioner raised a service dispute under Section 55(2) of the M.P. Cooperative Societies Act, 1960 (in short as Act of 1960) before the Registrar. Claim of his date of birth to be in the year 1939 was based on Janam kundli, whereas vide letter dated 2.12.1994, petitioner responded to department to process for his retirement as per record available with them whatsoever. Department, after taking into account papers related to insurance of the petitioner in which he mentioned his date of birth to be in the year 1935, he was retired w.e.f. 31.3.1995.

5. Joint Registrar, vide order dated 28.6.2008, after having considered the evidence and submissions of the parties elaborately, decided the dispute accordingly and rejected the claim of the petitioner.

6. Vide impugned order dated 21.6.2011 passed by the tribunal in First Appeal No.154/2008, observing that Janam kundli like Annexure-P-5 and certificate issued by Head Master on 30.11.2007 stating that according to school record, date of birth of the petitioner is 25.2.1939 are not sufficient proof on their face value and dismissed the appeal.

7. In present petition, impugned order has been challenged on the grounds that order of retirement is illegal, arbitrary and bad in law being violative of the fundamental rights ensured in Articles 14 and 21 of the Constitution of India. Petitioner was permitted by the department to work two years more, after the age of alleged superannuation is also indicative of the fact that department was also not sure regarding date of birth of the petitioner to be in the year 1935.

8. On perusal of service book, it revealed that its entries were made by the petitioner on 3.10.1988. Why the column No.4 pertains to date of birth was left vacant is best known to him only. It may be, at the most, a gross negligence on the part of the department as to why such an important lapse had been ignored for years together. But on the part of the petitioner, this

omissions is not less than a mischief. Coupled with the fact, while department gave him an opportunity to submit proof of date of birth prior to passing an order of his retirement, petitioner conceded that the department may proceed as per the record available. While department has done so, petitioner came with a Janam kundli and certificate recently issued by Head Master, showing his date of birth in school record as 1939. On such conduct and documentary evidence, in our opinion, no reliance can be placed.

9. Courts below have rightly disapproved and discredited the claim of the petitioner in respect of his date of birth to be in the year 1939. In so far as, mention of date of birth in school record is concerned, law is clear that such original entries can be proved and can be believed by the evidence of author of the entries, not on the basis of a vague, unauthorized and unacceptable certificate issued in the year 2007. Position of evidential value of Janam kundli is also not at all better then aforesaid certificate.

10. In view of the given facts and circumstances of the case, no sanctity can be attached on both such documents submitted by the petitioner. Tribunal has considered all aspects of the matter in fair and proper manner. No interference, in our considered opinion, is called for.

11. Petition being devoid of substance, deserves to be and is hereby dismissed.

Petition dismissed.

I.L.R. [2011] M. P., 3002

WRIT PETITION

Before Mr. Justice Rajendra Menon

W.P. No. 12653/2010 (Jabalpur) decided on 21 September, 2011

GANESH KHARE ... Petitioner

Vs.

PRINCIPAL SECRETARY, STATE OF M.P. & ors. ... Respondents

A. ***Service Law - Recruitment - Qualification - Advertisement issued for recruitment of Line Attendant on contractual basis*** **- Meter Readers challenged the prescribed qualification on the ground that although they perform the work similar to that of Line Attendants but a different qualification is prescribed as a result of which their right to seek engagement on contract basis is being denied - Held - Scheme**

under which appointment is to be made has not been challenged - Work performed by Meter Readers is different from that of Line Attendants - Work performed by line attendant includes certain other technical work over and above that of meter reading - In absence of violation of any statutory rule or constitutional provision, the Court cannot interfere with the essential qualification prescribed for such technical work by competent technical authorities - Petition dismissed. (Paras 20, 21)

क. सेवा विधि – भर्ती – अर्हता – संविदा आधार पर लाईन अटेंडेन्ट की भर्ती हेतु विज्ञापन जारी किया गया – मीटर रीडरों (वाचकों) ने विहित अर्हता को इस आधार पर चुनौती दी कि यद्यपि उनका कार्य लाईन अटेंडेन्ट के समान ही है किन्तु भिन्न अर्हता विहित की गयी है जिसके परिणाम स्वरूप संविदा आधार पर काम चाहने के अधिकार से उन्हें वंचित किया जा रहा है – अभिनिर्धारित – स्कीम जिसके अंतर्गत नियुक्ति की जानी है को चुनौती नही दी गई है – मीटर रीडरों द्वारा किये जाने वाला कार्य, लाईन अटेंडेन्ट के कार्य से भिन्न है – लाईन अटेंडेन्ट द्वारा किये जाने वाले कार्य में मीटर रीडिंग के कार्य के अतिरिक्त कतिपय अन्य तकनीकी कार्य समाविष्ट है – किसी कानूनी नियम या संवैधानिक उपबंध के उल्लंघन के अभाव में न्यायालय, सक्षम तकनीकी प्राधिकारियों द्वारा ऐसे तकनीकी कार्य हेतु विहित अनिवार्य अर्हता के साथ हस्तक्षेप नही कर सकता – याचिका खारिज।

***B. Service Law - Recruitment - Weightage of past service* - Meter Readers who fulfill the educational qualification for recruitment to the post of line attendant are entitled to 10% weightage due to work done by them provided they have worked for not less than 3 years .** (Paras 25, 31)

ख. सेवा विधि – भर्ती – पूर्व मे दी गयी सेवा की वरीयता – मीटर रीडर जो लाईन अटेंडेन्ट के पद पर भर्ती हेतु शैक्षणिक अर्हता की पूर्ति करते हैं वे उनके द्वारा किये गये कार्य के कारण 10 प्रतिशत वरीयता के हकदार है परंतु तब जब उन्होनें 3 वर्ष से अधिक कार्य किया है।

Cases referred :

1980 MPLJ 8, 1999 MPLJ 466, AIR 1999 SC 1160, AIR 1983 SC 328, AIR 1984 SC 23, (2003) 6 SCC 416, 2009 (8) SCC 566, 2011 (130) FLR 337, AIR 1990 SC 371.

K.N. Pethia, Ashish Trivedi, Pradeep Naveriya, S.K. Dwivedi, Sourabh Sharma, Ashok Mishra, S.P. Mishra, R.K. Verma, Kailash Malviya, Alok Tapikar, P.Awasthi, V.K. Shukla, Ashok K. Mishra, Shahidullah Baig, Rajesh Soni, Rajesh Patel, Manish Trivedi, R.N. Tiwari, K.C. Ghildiyal, Nitesh Jain, Paresh Pareek, K.S. Rajput, R.L. Shukla & Rakesh Sharma, for the Petitioner.

Mukesh Kumar Agrawal, for the respondents.

ORDER

RAJENDRA MENON, J. :– This order shall govern the disposal of all the Writ Petitions mentioned above, in which common questions of fact and laws are involved.

2. For the sake of convenience, the facts stated and the material available in the record of Writ Petition Nos.12653/2010, 12582/2010, 12652/2010, 14198/2010 and 12694/2010 are being referred to in this order.

3. In Writ Petition No.12653/2010, the relief claimed by the petitioners in paragraph 7, of the writ petition, reads as under:

> "(i) The respondents be directed to fix the quota for departmental candidates in the recruitment process of Meter Readers/Line Attendant Class IV in the respondent-companies in pursuance of the recruitment notice annexed with this petition.
>
> (ii) The respondents be directed to treat the petitioners as departmental candidates and allow them to appear in the recruitment examination as departmental candidates.
>
> (iii) The respondent Companies be directed to fill up the vacancies first from the Meter Readers including the petitioner by selection as departmental candidates and if the vacancy remained, then only issue the direct recruitment notice.
>
> (iv) Any other relief which this Hon'ble Court finds the petitioner entitled to be also granted.
>
> (v) Cost of the petition."

During the course of hearing of this writ petition, Shri K.N. Pethia, learned counsel appearing for the petitioners, submitted that as far as prayer No.7(i) with regard to fixing the departmental quota for the petitioners are concerned, the said relief is not being pressed now.

4. Facts relevant for deciding the petitions indicate that petitioners in all these cases are presently service contractors engaged by the respondents, for the purpose of meter reading and distribution of bills. According to the

petitioners, they were initially appointed in the year 2000 as Meter Readers by the then existing M.P. State Electricity Board. Their initial appointment was on contract basis and the same was renewed from time to time. It is the case of the petitioners that even though in the respondents establishment various regular posts of Meter Readers and Class IV Technical posts were available, but with a view to avoid grant of regular service benefit to the employees like the petitioners, the novel method of contract appointment was initiated. The system of contract appointment continued for sometime and the petitioners worked as contract employees for various periods. Subsequently, it is stated that in the year 2008, the system of contract appointment itself was done away with and a different method of appointing the petitioners themselves as service contractors was brought into force and by an agreement entered for a period of one year the petitioners herein were given the service contract for the purpose of meter reading and distribution of bills. A copy of the contract is available in the record of each case and in Writ Petition No.12653/2010, it is available at page 69 of the paper book. The contract indicates that it was entered into on 31.12.2008 for a period of one year and the conditions of contract were stipulated therein, which mandated the contracting person to go to the premises of the customer, record the meter reading and do certain ancillary works, like checking of the meter, illegal connection and theft of electricity, certain incentive were also given for detecting theft and pointing out irregularities, if any, in the premises and for enhancing the collection of revenue. The arrangement had continued for sometime, but all of a sudden it seems that in the year 2009 a Notification was issued wherein it was indicated that henceforth service contract for the purpose of meter reading will be granted only to such persons, who are not beyond 40 years of age. As a result many of the persons, who were having the contract for meter reading were debarred from continuing with the contract. Aggrieved of the aforesaid action, a Union of the employees - M.P. Vidyut Meter Vachak Sangh, and certain other persons filed a writ petition before this Court being Writ Petition No.1110/2009. Apart from challenging the action of the respondents in restricting the contract to certain categories of persons on the basis of age criteria in these writ petitions, various other reliefs for regularization, grant of permanent status and various other benefits were claimed. Initially, an interim order was passed in one of the writ petitions being W.P.No.1110/2009 and finally all the writ petitions were decided by a common order passed on 28.6.2010, by a Division Bench of this Court. Copies of the order passed in the said writ petition is filed as Annexure R/3, in Writ Petition No.12653/2010, and the order reads as under:

"After arguing at some length, considering the objections raised by the employer, it is agreed that parties should approach the concerned Labour Court for redressal of the grievance. The Court has passed interim order in W.P.No.1110/2009. Following order is passed by this Court.

Parties as before.

Learned counsel for the petitioners submitted that the petitioners were engaged as Meter Readers on contract basis and they had worked for long time with the respondent/Board, but however, the respondents are not ready to renew the contract with the present petitioners under the garb that they have crossed the age of 40 years. The petitioners also submit that on 29.2.2008, the Additional Secretary, Madhya Pradesh Poorva Kshetra Vidyut Vitran Company Ltd. had issued a letter that the persons who have crossed the age of 40 years should not be continued as contractors for meter reading. The submission is that in case a person who is appointed on regular basis as a Meter Reader then until his retirement which is at age of 62 years, he can continue to work as Meter Reader, therefore, there is no intelligent different between contract Meter Reader who crossed the age of 40 years and person who is in the regular appointment as a contract Meter Reader. It is also submitted that on earlier occasions in Writ Appeal No.1273/2006 *(Mohan Lal Mishra Vs. Presiding Officer and Others)* and W.A.No.1154/2006 vide order dated 15.11.2006 this Court had issued directions to the respondents that until the regular appointment of the Meter Reader is made, the authorities of the MP State Electricity Board will make the offer for such engagement on contract basis to the said appellants. It is submitted that the respondents have invited candidature from the common public aging between 18 to 40 years for awarding the work on contract basis. Their submission is that if the respondents are not engaging the Meter Readers on regular basis then the petitioners are entitled to an offer from the respondent/Electricity Board.

Shri Nair, learned Senior Counsel for the respondents, on the other hand submitted that in accordance with Policy floated by the respondents, persons above 40 years of age are not to be offered contract for Meter Reading. His submission is that the respondents are entitled to frame their own terms and conditions for entering into a contract with a person and the petitioners cannot raise an objection to the same. It is also submitted that person who crossed the age of 40 years are not suitable or capable for doing the work in the field therefore the respondents are justified in proposing such terms.

However, he was unable to say anything about the Meter Readers who are appointed on regular basis and are to continue to work upto the age of 62 years.

Taking into consideration the totality of the circumstances, it is hereby directed that if the respondents are entering into a contract with any person to work as Meter Reader and are not making appointment on regular basis then the petitioners would be offered the contract first.

The petition is admitted for hearing.

It be listed for final hearing in due course.

Certified copy of this order must be supplied to the persons today itself.'

In the circumstances, for a period of one month the arrangement to continue. In the meantime, the Labour Court to make endeavour to decide the case of the employees, in case Labour Court decides the matter at an early date, the order to operate till that date.

The writ petition stands disposed of in the aforesaid terms. No costs."

It is common ground that in pursuance to the aforesaid order passed by the Division Bench, matters pertaining to the claim of the Meter Readers for regularization, grant of permanent status etc are pending before various Labour Courts throughout the State of MP and a final decision has not been taken yet. That being so, it is clear that the question pertaining to the benefit of

permanent status under the Standard Standing Orders formulated under the M.P. Industrial Employment (Standing Order) Rules, 1963, regularization in service and grant of other service benefits and the action of the respondents in granting contract employment or contract etc are pending consideration before the appropriate Labour Court throughout the State of MP.

5. In the meanwhile, when an advertisement - Annexure R/1 was issued calling for eligible candidates for engagement as Line Attendant on contract basis and when certain stipulation regarding age criteria and qualifications were prescribed in the said advertisement - Annexure R/1, all these petitions have been filed and relief claimed are identical in all these cases as is indicated hereinabove. It is the case of each of the petitioners, in these cases, that even though the work of a Meter Reader undertaken by them and the work to be performed by the Line Attendants to be appointed in pursuance to the advertisement - Annexure R/1 are identical, but a different qualification is prescribed for appointment as Line Attendant on contract basis as a result the petitioners' right to seek engagement on contract basis is being denied. That apart, as the age relaxation and benefit of past service rendered by the petitioners as Meter Readers are not being granted, these writ petitions have been filed.

6. In sum and substance, the contention of the petitioners in these writ petitions are:

(a) That, they should be granted appropriate age relaxation, keeping in view the work done by them as Meter Readers;

(b) Weightage of atleast 10% should be granted to them and after granting them complete relaxation in educational qualification, they should be permitted to participate in the process of selection.

Seeking the aforesaid relaxations in the matter of engagement as Line Attendants (contract), these writ petitions were filed.

7. While considering the claim of the petitioners in all these cases, an interim order was passed by this Court on 10.9.2010 directing the respondent Board to permit such of the petitioners, who fulfil the educational qualification notified in Annexure R/1. to participate in the process of selection after granting them age relaxation to the extent of work done by them as Meter Readers. In pursuance to the interim order passed by this Court, records indicate that

respondents issued a corrigendum vide Annexure R/2, modifying the advertisement Annexure R/1, and after granting complete age relaxation and providing for 10% reservation to Meter Readers, selection process has been conducted and such of the petitioners, who fulfil the qualification prescribed under Annexure R/1 have been permitted to participate in the selection process and such of them, who have qualified in the selection process, are being selected. Now, it is the grievance of the petitioners that after granting them proper age relaxation, weightage for the work done by them and without insisting upon the educational qualification as contemplated in the advertisement - Annexure R/1, the petitioners may be considered for appointment/engagement to the post of Line Attendant (contract).

8. During the course of hearing of these writ petitions, each of the petitioners represented by their counsel canvassed various contentions. As far as Writ Petition No.12653/2010 is concerned, it is argued that the so-called service contract entered into by the respondent with the petitioners is a paper arrangement to camouflage and deny benefit of regularization to the Meter Readers, contrary to the Standard Standing Orders applicable in the respondents' establishment. It is further stated that in accordance to the MP Industrial Employment (Standing Order) Rules, 1963, the petitioners have attained the status of permanent employees after completing six months of service and, therefore, they cannot be denied the benefit of a permanent employee within the meaning of the Standard Standing Orders. It is also argued that the contract of appointment is illegal. It amounts to unfair labour practice and benefit of regularization, pay scale and other service benefits at par with a regular employee are claimed on the ground that the action of the respondents amount to unfair labour practice and is illegal. In support of the averments made the following judgments were relied upon: *M.P. State Road Transport Corporation Vs. Heeralal,* 1980 MPLJ 8; *Superintending Engineer, PWD Vs. Ved Prakash and others,* 1999 MPLJ 466; *Assistant Engineer Vs. Presiding Officer and others,* Writ Petition No.4236/1999 decided on 1.7.2004; *Secretary, Haryana State Electricity Board Vs. Suresh and others,* AIR 1999 SC 1160; *Sanjit Roy Vs. State of Rajasthan,* AIR 1983 SC 328; *M/s Shining Tailors Vs. Industrial Tribunal,* AIR 1984 SC 23; *The Workmen of Food Corporation of India Vs. M/s Food Corporation of India; Trambak Rubber Industries Limited Vs. Nashik Workers Union and others,* (2003) 6 SCC 416; *Maharashtra State Road Transport Corporation and another Vs. Casteribe Rajya Parivahan Karmchari*

Sanghatana, 2009(8) SCC 566; *Secretary, MPEB Vs. Raja Bhaiya Thakur,* Writ Petition No.210/1999; *Devendra singh Vs. Municipal Council, Sanour,* 2011 (130) FLR 337; and, *Bhagwati Prasad Vs. Delhi Mineral Corporation,* AIR 1990 SC 371, to contend that the employees have attained the status of permanent employees under the Standard Standing Order, the rules and regulations framed under the Standing Order will prevail over all other provisions and accordingly prayer made is that the action of the respondents in denying regularization of the petitioners be interfered with.

9. Similar arguments were advanced by all the petitioners, but in Writ Petition No.12652/2010, apart from the aforesaid contentions advanced, an additional ground with regard to granting age relaxation to Scheduled Caste and Scheduled Tribe candidates at par with government circulars and rules were sought for. In Writ Petition No.14198/2010, the petitioners are Sub Station Operators, they are not Meter Readers, but they also claim similar benefit. In Writ Petition No.12694/2010, benefit identical in nature are claimed, but it is stated that age relaxation, weightage for the work done and insistence upon a particular qualification contrary to the qualifications to be possessed by a Meter Reader cannot be insisted upon.

10. In Writ Petition No.12582/2010, Shri Ashish Trivedi canvassed a different ground to the effect that Meter Readers and Line Attendants form two class and categories, therefore, by grouping them together and treating them alike for the purpose of granting contract of engagement, the respondents have violated the provisions of Article 14 of the Constitution and, therefore, the action is illegal.

11. In Writ Petition No.12694/2010, seeking regularization in service, learned counsel submitted that employees are entitled to regular pay scale, regular service benefits and all other benefits and various judgments with regard to the concept of regularization were cited.

12. Learned counsel for the petitioners accordingly submitted that the action of the respondents in treating the petitioners as contract employees and denying to them the benefit accruing to a regular employee is illegal, it amounts to exploitation of labour, unfair labour practice and the act is contrary to the statutory provisions such as Industrial Employment (Standing Order) Rules etc. Finally, they sought for a direction to permit them to participate in the process of selection initiated vide Annexure R/1 by granting them the benefit of age relaxation, relaxation in qualification and weightage for the work done by them.

13. Respondents represented by Shri Mukesh K. Agrawal have filed a detailed reply. The reply has been filed in Writ Petition No.12676/2010(S) and is adopted in each and every case. According to the respondents, initially the MP State Electricity Board was functioning. Subsequently, distribution companies and transmission companies have been created and the respondents are the said companies. It is indicated in the return that for the purpose of recruiting 2400 Line Attendants on contract basis, the process is initiated by respondent No.1 and the appointment is being made in accordance to a scheme formulated in this regard as is available at Annexure R/4. It is the case of the respondents that for the present as regular appointment to service on the post of Meter Readers and Line Attendants are not being undertaken, therefore, in accordance to a scheme approved by the competent authority of the State Government vide Annexure R/4 dated 3.8.2010, the present process is being initiated for appointing Line Attendants on contract basis. The qualifications are prescribed in the scheme - Annexure R/4, which contemplates that a candidate should be higher secondary pass i.e... 10th pass and should have a certificate issued by a recognized Industrial Training Institute or from any MPSCVT or NCVT in Electrician, Lineman or Wireman trade. It is pointed out by the respondents that certain criteria for age relaxation and the selection process is indicated. It is the case of the respondents that the work of Line Attendant and Meter Reader are totally different. It is stated that in the advertisement, after the interim orders were passed by this Court, certain modifications were made vide Annexure R/2 and now apart from granting 10% quota to Meter Readers, like the petitioners, total age relaxation is being granted to all the Meter Readers and without insisting upon any age criteria their cases for selection are being considered. However, by pointing out that as the work of a Line Attendant and a Meter Reader is different, the essential qualification of the candidate being holder of an ITI Certificate in the trade of electrician, wireman or lineman cannot be diluted as the work of a Line Attendant and Meter Reader is different. It is emphasized that meter reading is part of the activity to be performed by a Line Attendant apart from various other technical work. It is stated that as a Meter Reader the petitioners were only required to go to the premises of the consumer, record the meter reading, make a report and they were only required to distribute the bills. It is stated that as a contract Meter Reader the petitioners were free to do other work, if they had time and they were not full time employees of the Board. They were granted various incentives for the work performed as per the conditions contained in the agreement available at page 69, in W.P.No.1651/2010. By

referring to the work to be performed by a Line Attendant, it is stated that now as a Line Attendant apart from doing the work of a Meter Reader, the incumbent will have to work for the establishment and installation of electrical lines, they will have to dig holes for putting up of poles, putting up of wires, installation of wires on the electrical poles, they will be required to put the fuse on and off, they will have to undertake the work of looking after shut down/break down etc apart from meter reading. Accordingly, it is stated that as the work of a Line Attendant involves certain technical work, therefore, technical qualification and certificate from ITI is being insisted upon. According to Shri Mukesh Kumar Agrawal, the petitioners have been granted complete age relaxation, 10% quota for them is provided, but taking note of the technical nature of the work to be performed by the Line Attendants, the technical qualification is being insisted upon as it is a requirement of the statutory provision and is important from the safety aspect also and, therefore, no relaxation in the qualification can be insisted upon. According to Shri Mukesh Kumar Agrawal, the respondent board is taking action in accordance to law as per the work requirement and, therefore, it is well within their right in prescribing the proper technical qualification and other conditions required for appointment to the post in question. It is emphasized that as the appointments are under a specific scheme for contract engagement and not under the regular establishment of the Board, the contention of the petitioners that the action of the respondents is illegal cannot be accepted.

14. Having heard learned counsel for the parties at length and on considering the rival contentions made, it is seen that in all these petitions prayer made by the petitioners are mainly with regard to non-consideration of their claim in the process initiated vide Annexure R/1, for selection or engagement of Line Attendants on contract basis. If the prayer made by the petitioners are seen, it would be seen that they are aggrieved by non-consideration of their cases and non-grant of opportunity to participate in the process of selection without granting them age relaxation, weightage and relaxation/insistence upon the educational qualification. However, at the time of hearing and in the synopsis and written submissions filed in Writ Petition No.12653/2010(S), various other grounds on the basis of right accruing to the petitioners for regularization, claim of permanent status, other service benefits so also the allegations of unfair labour practice etc has been raised.

15. Infact, during the course of hearing of the writ petition, two fold submissions were made. Apart from making submissions with regard to right

of the petitioners to participate in the process of selection initiated vide Annexure R/1, various other grounds were raised on the basis of right accruing to the petitioners by virtue of their long working to claim regularization and permanent status etc.

16. As far as the second ground is concerned, as no specific prayer in this regard is made in the writ petitions and that apart as these questions are already sub judice and pending before various Labour Courts in the State of MP, at the instance of certain union and the employees by virtue of the directions issued by the Division Bench of this Court on 28.6.2010, in Writ Petition No.1110/2009, it is not appropriate for this Court to go into all these questions in these petitions. The petitioners are granted liberty to prosecute their claims with regard to grant of permanent status, regularization and other service benefits before the appropriate Labour Court where these disputes are pending. In these writ petitions, the only question with regard to entitlement of the petitioners to seek participation in the process of selection for engagement as Line Attendants on contract basis, is being considered.

17. A perusal of the advertisement issued vide Annexure R/1, for appointment on contract basis as Line Attendants, indicates that about 2400 posts of Line Attendants - contract basis, have been notified, reservation is granted to various categories like Scheduled Caste, Scheduled Tribe, Other Backward Caste candidates; certain qualifications and age criteria have also been fixed. Grievance of the petitioners in this regard are as under:

(a) That, proper age relaxation is not being granted to them;

(b) Weightage for the services rendered by them, for long period of time, is not being granted;

(c) Prescription of educational qualification as an ITI certificate holder in the Trade of Electrician, Lineman and Wireman is contrary to the qualifications prescribed for appointment to the post of Meter Reader..

That apart, additional submission made by Shri A. Trivedi, learned counsel, is with regard to grouping together the post of Line Attendants and Meter Readers and its violation under Article 14 is also to be taken note of.

18. As far as age relaxation to the petitioners are concerned, there is no dispute now in view of the specific stand of the respondents to the effect that

all such Meter Readers, who have worked on contract basis would be granted age relaxation and without insisting upon any age criteria they will be permitted to participate in the process of selection. Accordingly, the first ground of grievance made by the petitioners no more survives in view of the fair concession made by the respondents.

19. As far as the ground of non-fulfilling the educational qualifications and the right of the respondents to insist upon appointment/engagement on the basis of the qualification prescribed for appointment to the post of Meter Readers are concerned, this contention of the petitioners seems to be unsustainable.

20. Petitioners have stated that in the regulations framed by the Board for appointment as a Meter Reader, the only qualification prescribed is that the candidate should be 10th Class pass, should be literate and physically fit. Accordingly, the petitioners insist that this qualification can only be insisted upon when appointments are made to the post of Line Attendants on contract basis, and it is the case of the petitioners that the work of Line Attendants and that of Meter Readers are also similar. However, from the facts that have come on record it is clear that appointments in question is being made not on regular basis, in the regular establishment of the respondents, but it is on the basis of a scheme formulated for engagement of Line Attendants on contract basis. The scheme is available as Annexure R/4 and it is a specific contract engagement according to the terms and conditions stipulated in the scheme. Similarly, engagement of the petitioners also as service contractors for meter reading was also in accordance to a scheme formulated in this regard. Appointment of the petitioners as Meter Readers under the Scheme and the selection process now initiated for engagement as Line Attendants is also under a Scheme. These are not regular appointments to the establishment of the respondents and, therefore, the rules and regulations governing regular appointment to the establishment of the Board would not be applicable. Even though the said question is pending consideration before the Labour Court in the dispute raised by the petitioners, but for the present, this Court is not required to go into the said question in detail. Suffice it to take note of the fact that in the present case, the engagements are being made on contract basis under a Scheme. Neither the Scheme is under challenge nor is any declaration sought for quashing the same. That being so, prescription of qualification for appointment under the Scheme has to be tested by this Court on the ground of reasonableness in prescribing qualification, requirement of qualification for

discharging the duties for which the contract engagement is being done and the right of the petitioners to seek appointment on contract basis to the post of Line Attendants. The claim of the petitioners are mainly based on the fact that the work of Line Attendants and Meter Readers are same, but from the material available on record the said contention cannot be accepted. As far as the working of a Meter Reader is concerned, the work of a Meter Reader was to go to the premises of the consumer, record the readings of the meter and to deliver bills after they are prepared by the respondents. In the process, they were given certain incentive in case they found any irregularity in the working of the meter, detected cases of theft or helped in increasing the revenue and for this bonus is given. As far as the work of a Line Attendant is concerned, it is specifically indicated in the advertisement - Annexure R/1, and the work of Line Attendant includes discharging of various duties for maintenance of electric lines and work related to distribution of electricity. The work to be performed as a Line Attendant, as indicated in the advertisement, reads as under:

> "लाईन परिचारक की नियुक्ति पर उम्मीदवार को विद्युत वितरण से संबंधित कार्य जैसे – वितरण में विद्युत लाईनों के निर्माण के कार्य जिसमें गड्डा खोदने से सामान की ढुलाई एवं लाईन तैयार करने के सभी कार्य, विद्युत प्रदान के कार्य जैसे फ्यूज ऑफ काल, शट डाउन/ब्रेक डाउन, बिल वितरण, मीटर रीडिंग एवं रखरखाव के सभी कार्य।"

21. If the aforesaid nature of work is analysed, it would be seen that meter reading is only part of the work to be performed by a Line Attendant apart from various other duties for erection and maintenance of lines, it is because of this technical nature of duties involved that a different qualification is prescribed i.e.... ITI certificate in the Trade of Wireman, Lineman or Electrician. If the nature of duty to be performed by a Line Attendant and that of a Meter Reader are perused, it would be seen that they are entirely different. The work to be performed by a Line Attendant includes certain other technical work over and above that of meter reading and, therefore, it is the employer who is entitled to prescribe an appropriate qualification keeping in view the technical nature of work to be performed by the selected candidate. This Court in the absence of any statutory rule or constitutional provision being shown to be violated in this regard cannot interfere with the essential educational qualification prescribed for such technical work by the competent technical authorities of the electricity transmission and distribution company. The said function is purely an administrative function to be discharged by expert

authorities and this Court cannot enter into this area of expertise. Records indicate that apart from the fact that the nature of duty to be performed by a meter reader and a line attendant are entirely different, the prescription of extra qualification for appointment/engagement as a Line Attendant is a reasonable qualification done by the respondents keeping in view various technical aspects of the work, which is to be performed by the Line Attendant. That being so, if the respondents have prescribed a different qualification over and above the qualification held by a meter reader, this Court cannot interfere into the matter of fulfillment of essential educational qualification, once it is seen that the work to be performed as a Line Attendant does require certain technical knowledge and skill. To that extent, grievance of the petitioners is not at all justified.

22. The contention of the petitioners that the work of a Line Attendant and Meter Reader is identical cannot be accepted. The nature of work available for both the work as seen from the records does not indicate so. Accordingly, I am of the considered view that in fixing a particular essential qualification for selection/engagement as a Line Attendant, if the respondents have insisted upon a technical qualification as is indicated in the advertisement - Annexure R/1, the same cannot be termed as illegal or arbitrary warranting consideration or interference in these writ petitions.

23. It may also be taken note of that petitioners have tried to contend that the selection now initiated vide R/1 is an unfair labour practice and an arbitrary decision to somehow deny benefit to the petitioners. The said contention, prima facie, on the basis of the material available on record does not seem to be correct. However, further consideration in this regard is not be made in these proceedings as all these questions are to be decided in the Industrial Dispute pending between the parties before the Labour Court. For the present, prima facie assessment indicates that the work of a Meter Reader and a Line Attendant are different and, therefore, the petitioners cannot seek appointment/selection as a Line Attendant, on the basis of the qualifications prescribed for appointment to the post of Meter Reader.

24. Accordingly, with regard to relaxation/non-fulfillment of educational qualifications, interference into the matter cannot be made by this Court.

25. As far as grant of weightage for the work performed by the petitioners are concerned, respondents have stated that in pursuance to the interim order passed by this Court, 10% quota is fixed for duly qualified Meter Readers,

who fulfil the educational qualifications prescribed in Annexure R/1 for appointment. As the petitioners are not insisting upon any quota to be fixed, interest of justice requires that taking note of the long service rendered by the petitioners, if the petitioners fulfil the educational qualifications as prescribed in Annexure R/1, due to the work done by the petitioners 10% weightage be granted subject to their fulfilling all the other conditions prescribed in the advertisement except the age condition. To that effect petitioners are entitled to relief.

26. Now, the argument advanced by Shri A. Trivedi with regard to grouping together of the two posts and its consequential prejudice has to be taken note of. As already indicated hereinabove, there is no grouping together of both the posts, as claimed by the petitioners. The respondents are engaging Line Attendants on contract basis and they are taking dual work of Meter Reader and Line Attendants. Apart from giving to them certain work, which were being performed by Meter Readers, additional technical work as indicated in the advertisement are being given. In the absence of any statutory rule or regulation being shown to be violated, if such grouping together is made and in the absence of any provision being shown to this Court as to how and on what basis such grouping is prohibited, merely on the ground that grouping together would cause adverse affect to some of the Meter Readers interference into the matter is not called for.

27. According to the respondents, the work of a Meter Reader is only required to be done during a particular period and after the said work is done, a Meter Reader is free to carry out any other profession or vocation. If taking note of the nature of the work to be performed by a Meter Reader and the technical work to be done by a Line Attendant, if both the work is grouped together by the respondents, this Court cannot interfere into the matter merely because it causes inconvenience to the petitioners or it adversely affects their right to work as Meter Readers. The said contention cannot be a ground for holding the grouping together to be in violation to Article 14 of the Constitution. This is purely an administrative function and if the administrative action in this regard is undertaken by the competent authority, in the absence of constitutional or mandatory statutory provisions being shown to be violated, interference into the matter cannot be made.

28. During the course of hearing of this writ petition, Shri A. Trivedi did not point out any statutory or constitutional provision which is violated, except for

contending that this action is in violation to Article 14 of the Constitution. This is a very vague and an unspecified assertion and, therefore, on this count interference into the matter is not warranted.

29. In some of the petitions, candidates belonging to the Scheduled Caste and Scheduled Tribe have sought age relaxation as per the government policy. Once the respondents have stated that they are not insisting upon any age criteria as far as the petitioners are concerned, the said question need not be gone into now.

30. That apart, certain petitioners in Writ Petition No.14198/2010 are sub-station operators and as their cases are also being considered at par with the Meter Readers, all the benefits being granted to the Meter Readers by virtue of the return filed by the respondents and this order, shall also be extended to sub-station operators also, and such of the sub-station operators, who fulfil the essential qualifications prescribed in the advertisement alongwith other qualifications prescribed, would be eligible to participate in the process of selection.

31. In view of the above, these petitions are allowed in part. Granting liberty to the respondents to proceed to make engagement/selection on the post of Line Attendants, on contract basis, in accordance to the advertisement - Annexure R/1, the following directions are issued while conducting the selection process and finalizing the selection already done:

(a) All such Meter Readers, who have applied for selection will be granted age relaxation and without insisting upon their fulfillment of the age criteria laid down in the advertisement - Annexure R/1, their cases shall be considered without any restrictions.

(b) However, in case it is found that any of the Meter Readers does not fulfil the educational qualifications prescribed under the advertisement - Annexure R/1, their candidature can be rejected or cancelled and they can be deprived from participating in the process of selection. Only such candidates would be entitled to participate in the process of selection, who fulfil the minimum educational qualifications prescribed in the advertisement - Annexure R/1.

(c) Such of the Meter Readers, who fulfil the educational qualifications and also the other conditions of physical test etc, as prescribed in the advertisement - Annexure R/1, shall be considered for appointment by granting them 10% weightage to their overall merit and while preparing their merit list, 10% extra marks be granted to them.

(d) However, if it is found that the work done by any of the Meter Reader is less than three years, no such weightage need be granted. Weightage of 10% will be only granted to such of the Meter Readers, who have worked atleast for a period of 3 years as Meter Readers. The aforesaid criteria is being prescribed by this Court keeping in view the interest of justice required, and the fact that the petitioners have been working in the respondents' establishment for a long period of time.

(e) While considering the case of sub-station operators, similar benefit as is being granted to such Meter Readers shall also be granted.

32. With the aforesaid, these petitions stand allowed and disposed of.

Petition allowed.

I.L.R. [2011] M. P., 3019
WRIT PETITION

Before Mr. Justice R.C. Mishra & Mrs. Justice Vimla Jain

W.P. No. 5959/2008 (Jabalpur) decided on 23 September, 2011

MEENA MEHRA (SMT.) ...Petitioner

Vs.

THE LOKAYUKT ORGANIZATION & anr. ...Respondents

A. Judges (Protection) Act (59 of 1985), Section 3(1) - Additional Protection to Judges **- Petitioner working as Tahsildar entertained application under Section 113 of M.P. Land Revenue Code, although she has no jurisdiction to entertain the same - Held - Protection does not extend to acts purely administrative/ministerial/extra judicial/ alien to Judicial duty - Any act, which is not done in the discharge of official duty, is not covered by Section 3(1) - As application under**

Section 113 of the Code could have been entertained only by S.D.O. therefore, it was not her official or judicial duty to entertain the application under Section 113 of the Code - Petitioner not entitled for protection - Petition dismissed. (Para 11)

क. न्यायाधीश (संरक्षण) अधिनियम (1985 का 59), धारा 3(1) – न्यायाधीशों को अतिरिक्त संरक्षण – तहसीलदार के रुप में कार्यरत याची ने म.प्र. भू–राजस्व संहिता की धारा 113 के अंतर्गत आवेदन ग्रहण किया यद्यपि उसे ग्रहण करने का उसे कोई प्राधिकार नहीं था –अभिनिर्धारित – शुद्धरुप से प्रशासनिक/ अनुसचिवीय/ न्यायातिरिक्त/न्यायिक कर्तव्य से भिन्न कार्यों के लिये संरक्षण नहीं है – कोई कार्य जो कार्यालयीन कर्तव्य के निर्वहन में नहीं किया गया है, धारा 3(1) द्वारा आवृत्त नहीं है – चूंकि संहिता की धारा 113 के अंतर्गत आवेदन केवल एसडीओ द्वारा ग्रहण किया जा सकता है इसलिये संहिता की धारा 113 के अंतर्गत आवेदन को ग्रहण करना उसका कार्यालयीन अथवा न्यायिक कर्तव्य नहीं था – याची संरक्षण की हकदार नहीं – याचिका खारिज।

B. Judges Protection Act, (59 of 1985), Section 3(2) - Additional Protection of Judges **- In view of the provisions of Section 3(2) of the Act, protection do not operate as legal bar to investigate into allegation against any one of the Petitioners.** (Para 14)

ख. न्यायाधीश (संरक्षण) अधिनियम (1985 का 59), धारा 3(2) – न्यायाधीशों को अतिरिक्त संरक्षण – अधिनियम की धारा 3(2) के उपबंधो को दृष्टिगत रखते हुये, किसी एक याची के विरुद्ध अभिकथनों की जांच पर विधिक अवरोध के रुप में संरक्षण प्रवर्तित नहीं होता।

C. Constitution, Article 226, Criminal Procedure Code, 1973 (2 of 1974), Section 482 - Quashing of investigation **- F.I.R. discloses the prima facie commission of offence - Investigation is still on its way - It is statutory function of the police and superintendence thereof is vested in State Govt. - Not a fit case requiring interference with the investigation either under writ jurisdiction or under Section 482 of Cr.P.C.** (Paras 18 to 24)

ग. संविधान, अनुच्छेद 226, दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 482 – जाँच को अभिखंडित किया जाना – एफ.आई.आर. प्रथम दृष्ट्या अपराध कारित होना प्रकट करती है – जांच जारी है – यह पुलिस का कानूनी कर्तव्य है और इसका अधीक्षण राज्य सरकार में निहित है – जाँच में हस्तक्षेप की आवश्यकता का उचित मामला नहीं है, न तो रिट अधिकारिता न ही दं.प्र.सं. की धारा 482 के अंतर्गत।

Cases referred :

2005(2) MPLJ 155, AIR 1995 SC 21, AIR 1961 SC 1669, ILR (1879-80) 4 Cal 483, (2008) 7 SCC 487, 1977 CrLJ 1477, AIR 1930 Oudh 58, 2001(2) MPHT 330, 2004 RN 31, 2007(5) MPHT 138, AIR 1985 SC 470, AIR 1958 SC 232, AIR 1964 SC 264, AIR 1970 SC 1173, AIR 1977 SC 1323, ILR 2011 MP 1702, 2011(2) MPLJ 365, AIR 1982 SC 949, (2007) 13 SCC 165, (2006) 7 SCC 188.

Adarsh Muni Trivedi with *Ashish Trivedi,* for the petitioner.

Aditya Adhikari, Spl. PP for the respondents.

ORDER

The Order of the Court was delivered by **R.C. Mishra, J.** :–These petitions are interlinked as they relate to the same case registered on 31.01.2008 as Crime No.08/08 at Special Police Establishment (Lokayukt), Bhopal for the offences punishable under Sections 120-B & 420 of the IPC and 13(1)(d) read with 13(2) of the Prevention of Corruption Act, 1988 (for short 'the PC Act') against the petitioners and one Kishorilal Vishwakarma, the then Patwari of Halka No.25/31 at Jabalpur.

2. W.P. Nos.5959/08 and 2571/2011 are the petitions, under Articles 226 and 227 of the Constitution of India, for issuance of a writ in the nature of certiorari or mandamus or any other writ or direction for quashing of the FIR leading to registration of the case as against Smt. Meena Mehra and Vivek Tripathi, who, at the relevant point of time, were posted respectively as Tahsildar (Nazul) and Naib Tahsildar (Nazul) at Jabalpur whereas MCrC No.4261/2010 is the petition, under Section 482 of the Code of Criminal Procedure (for brevity 'the CrPC'), moved by Alok Kumar Shrivastava, the then Nazul Officer at Jabalpur, for quashing of the FIR and the corresponding investigation as against him.

3. For the sake of convenience, the petitioners shall be referred to by their respective names.

4. Background facts may be summarized as under -

(i) One parcel of land, admeasuring 0.154 hectare located in village Mahanadi bearing P.C. No.25, settlement No.663 and khasra no.30, was purchased by Smt. Dayabai as early as on 20.03.1943. In the revenue records, the land continues to be recorded in the name of Dayabai @ Phoolmati, widow of Diwan Bahadur P.N. Lakshmanan only.

(ii) On 14.3.2002, Shri Umesh Tripathi, Advocate submitted an application, under Section 113 of the M.P. Land Revenue Code (for short 'the MPLRC') on behalf of Smt. Indira Pastala, wife of Augustin Pastala, resident of 9-A, Easter Plot, Bunder Kolava, Mumbai, for correction of entry in the Khasra relating to the aforesaid land. It was asserted therein that in the year 1989, the entire land was mutated in her name only as the sole successor of Smt. Dayabai despite the fact that along with the mutation application, she had also filed copy of the family partition deed evidencing that half of the land had fallen in the share of her husband Augustin.

(iii) On 14.03.2002, petitioner Smt. Meena Mehra as Tahsildar (Nazul), upon the aforesaid application, directed registration of the case; publication of proclamation and also called for the report of the Patwari concerned. Thereafter, on 22.04.2002, observing that the land fell within the local jurisdiction of petitioner Vivek Tripathi, the Naib Tahsildar (Nazul), Smt. Meena Mehra transferred the case to him.

(iv) On 04.04.2002, Patwari Kishorilal Vishwakarma furnished a false report indicating that the land had already been mutated in the name of Smt. Indira Pastala.

(v) On 28.04.2002, petitioner Vivek Tripathi raised question of jurisdiction in the light of provisions of Section 178 of the MPLRC (whereunder power to make partition has been conferred on Tahsildar); posed query as to the date on which the land was mutated in favour of Smt. Indira Pastala and also directed her counsel to produce copy of the corresponding order.

(vi) Pursuant to the order-dated 28.04.2002, Shri Umesh Tripathi, Advocate, filed another application, under Section 178 of the MPLRC, for getting the name of Augustin Pastala recorded as co-sharer in the land. Thereupon, while accepting the partition under Section 178-A of the MPLRC as genuine transaction, petitioner Vivek Tripathi, by way of order-dated 21.05.2002, granted the relief as prayed for by directing recording of names of Indira Pastala and Augustin Pastala as Bhumiswamis of the land.

(vii) On 27.06.2002, on being informed about the fact that in the original khasra, name of Smt. Indira Pastala was not recorded and Rin pustika submitted on her behalf was also a forged one, petitioner Vivek Tripathi sought permission, under Section 51 of the MPLRC, to review the order.

(viii) On 10.07.2002, petitioner Alok Shrivastava, the then Nazul Officer, accorded necessary sanction to review the order-dated 21.05.2002.

(ix) For the reasons recorded in the order-dated 15.07.2002, petitioner Vivek Tripathi reversed the order-dated 21.05.2002 and directed deletion of entry, if any, made in the record in compliance therewith.

(x) In the light of abovementioned facts, -

❖ On 27.12.2003, Lalsingh Baghel, a patwari, made a complaint jointly addressed to the Chief Minister, Lokayukt, Inspector-General of Police and Commissioner against petitioner Vivek Tripathi alleging that while working as Naib Tahsildar (Nazul) at Jabalpur, he had not only mutated surplus nazul land worth crores of rupees in favour of unauthorized persons but had also caused loss to the tune of crores of rupees to the State Exchequer. The instances cited by Lalsingh Baghel included the proceedings conducted by Vivek Tripathi in respect of the land in question.

❖ On 02.01.2004, John Bosco Richardson, as State Vice-President of Samajwadi Party, made almost similar complaint to aforesaid authorities and also to the Chief Secretary to Govt. of M.P. and Collector, Jabalpur against Vivek Tripathi.

(xi) It was the complaint made by John Bosco Richardson that was enquired into by Rajyavardhan Maheshwari, Inspector SPE, Jabalpur as P.E. No.18/2006. In his opinion, all the three petitioners here and Kishorilal Vishwakarma who, at the relevant point of time, was posted as Patwari in Halka No.25/31, were guilty of procedural lapses and dereliction of duty, but none of them, while holding office as a public servant, had abused his official position to obtain for himself/herself or for any other person any wrongful gain.

Accordingly, he proposed recommendation for initiation of departmental enquiry against all the four revenue officials.

(xii) Not being satisfied with the outcome of the enquiry, the Deputy Inspector General of Police, SPE (Lokayukt), Bhopal remitted the matter for further enquiry in accordance with guidelines contained in the scrutiny note.

(xiii) In pursuance of the direction, another Inspector Deo Vrat Mishra posted in the Special Police Establishment, Lokayukt, Jabalpur, conducted further enquiry. He concluded that the case deserved to be investigated into against (a) petitioner Vivek Tripathi only for the offences punishable under Section 13(1)(d) read with 13(2) of the PC Act and Section 420 of the IPC (b) no charge was made out against petitioner Alok Kumar Shrivastava and (c) departmental proceedings ought to be initiated against petitioner Meena Mehra and another Tahsildar M.K. Tiwari and Kishorilal Vishwakarma.

(xiv) However, on 30.01.2008, taking into consideration the findings of District Vigilance Committee, Inspector Deo Vrat Mishra registered a case under Section 13(1)(d) read with 13(2) of the PC Act and Sections 120B and 420 IPC against all the three petitioners and Kishorilal Vishwakarma by scribing an FIR at Jabalpur office of the SPE. It was forwarded to Head Office of SPE at Bhopal where a case was registered as Crime No.08/08 on the basis thereof.

5. At the outset, it may be observed that Shri A.M. Trivedi, learned Senior Counsel appearing on behalf of petitioners Smt. Meena Mehra and Vivek Tripathi has raised a common ground based on provisions of Section 3 of the Judges (Protection) Act, 1985 (for short 'JP Act') for quashing of the FIR and the corresponding proceedings. According to him, each one of them, being a Revenue Officer, holds the status of a Judge as defined in Section 2 of the JP Act by virtue of Section 31 of the MPLRC. Other specific grounds raised on behalf of these petitioners questioning the legality and propriety of and continuance of investigation may be reproduced as under -

(1) GROUNDS RAISED BY SMT. MEENA MEHRA, THE PETITIONER IN W.P. NO.5959/2008

(i) Complaint made by John Bosco Richardson did not contain any incriminating fact against the petitioner.

(ii) The only role attributed to the petitioner is that, on 14.3.2002, while working as Tahsildar (Nazul), she had entertained an incomplete application, under Section 113 of the MPLRC moved on behalf of Smt. Indira Pastala for correction of entry relating to the land in question in the revenue records whereas power to correct or cause to be corrected such an error vested in the Sub-Divisional Officer. But, in fact, the petitioner, considering the contents of the application, had proceeded under Section 115 for correction of a wrong entry in Khasra and not under Section 113 for correction of error in the record-of-rights.

(iii) It was in the exercise of power conferred on her under Section 30(1) of the MPLRC that she had transferred the case to Vivek Tripathi, Naib Tahsildar.

(iv) In the inquiry conducted by Inspector Rajyavardhan Maheshwari as well as in the supplementary enquiry conducted by Deo Vrat Mishra, the petitioner was not found involved in any offence and, therefore, proposal was made for recommendation to initiate departmental enquiry.

(v) Even if the allegations as against her are taken at their face value and accepted in their entirety, no offence under the PC Act or the IPC would be made out.

(2) GROUNDS RAISED BY VIVEK TRIPATHI, THE PETITIONER IN W.P. NO.2571/2011 -

(i) The role ascribed to the petitioner Vivek Tripathi is that he deliberately passed orders for recording of the name of Augustine Pastala as a co-sharer with his wife Indira Pastala in respect of the holding in question despite the fact that her name was not recorded in the land records as the Bhumiswami, but as soon as he came to know about the error, he applied for necessary sanction as contemplated under Section 51 of the MPLRC to review the corresponding order passed by him on 21.05.2002 and immediately after receiving the sanction, he had proceeded to set aside the same by way of order dated 15.07.2002.

(ii) The proceedings initiated by him for partition of the land were in accordance with the provisions of Section 178-A of the MPLRC.

(iii) Complainant John Bosco Richardson is a person against whom the petitioner had lodged an FIR and the other complainant Lalsingh Baghel is the Patwari under suspension against whom action was taken at the instance of petitioner only. Allegation made by them, in substance, is that he had made false entries in the revenue records in favour of Smt. Indira Pastala and her husband. But, considering his reply, Inspector Rajwardhan Maheshwari, who conducted the inquiry, proposed only departmental action against the petitioner. However, in the supplementary inquiry, another Inspector namely Deo Vrat Mishra, without giving any opportunity to explain his conduct, expressed a contrary opinion recommending registration of a case under Section 420 of the IPC and Section 13(1)(d) read with 13(2) of the PC Act against him ignoring the well settled legal position, as explained by a Division Bench of this Court in *State of M.P. v. Srinivas Sharma* (2005 (2) MPLJ 155), that a mere mistake committed in passing a quasi-judicial order does not make out an offence of misconduct.

(iv) Allegation that his acts/omissions had resulted into a total loss of stamp duty to the extent of Rs.4,32,000/- is apparently hypothetical as the payment of stamp duty on a partition deed is governed by proviso (c) to Article 45 of the Schedule I-A of the Stamp Act, 1899, that reads as under -

> *"when land is held on Revenue settlement (Notwithstanding the fact that land revenue thereon is payable or not), the market value for the purpose of duty shall be calculated at sixty times the annual land revenue"*

Further, in an enquiry conducted by Nazul Officer, the allegation as to causing loss of stamp duty to the tune of Rs.4,32,000/- has been found to be baseless.

(v) Necessary conditions contemplated under the Madhya Pradesh Lokayukt Evam Up-Lokayukt Adhiniyam, 1981 (for short "Adhiniyam") for initiation of an enquiry were also not fulfilled. Moreover, the procedure prescribed under the Adhiniyam for making

an enquiry into allegation, as defined in clause (b) of Section 2, was not followed.

(vi) In view of the specific bar created by Section 8 of the Adhiniyam, the Lokayukt had no authority to enquire into the complaint made by Lalsingh Baghel as it was the subject matter of an enquiry conducted by SDO (Revenue), Jabalpur.

(vii) Even if the allegations as against him are taken at their face value and accepted in their entirety, no offence would be made out.

(viii) Article 21 of the Constitution of India not only protects life and liberty but also envisages a fair procedure and therefore, liberty of any person cannot be interfered with unless there exist cogent grounds therefor.

(3) GROUNDS RAISED BY ALOK KUMAR SHRIVASTAVA, THE PETITIONER IN MCRC NO.4261/2010 -

(i) The sole allegation levelled against him is that while working as Nazul Officer, Jabalpur, he had accorded sanction under Section 51 of the MPLRC for review of the order-dated 21.5.2002 passed by Vivek Tripathi, Naib Tahsildar, Nazul in revenue case No.5/A-6-A/Year 2001-02 directing recording of names of Indira Pastala and her husband Augustine Pastala as co-owners of the land as per the partition deed whereas in view of the report that Rin pustika and Khasra entries forming basis of the order were found to be forged, he had no other option except to permit recalling of the order.

(ii) Allegation as to loss of Rs.4,32,000/- as stamp duty to the State Government is apparently misconceived and upon an inquiry made by SDO (Revenue), Jabalpur, the corresponding complaint made against Vivek Tripathi has already been found to be false.

(iii) In the main inquiry conducted by Rajyavardhan Maheshwari as well as supplementary one conducted by Deo Vrat Mishra, he was not found prima facie guilty of any offence.

6. Contents of the replies to the writ petitions as submitted on behalf of respondent nos.1 and 2 may be summed up in the following manner -

Upon receipt of complaint in respect of illegal activities being committed by the petitioners Smt. Meena Mehra & Vivek Tripathi and other revenue officers, a detailed fact-finding enquiry was conducted which unearthed the following facts -

(a) Smt. Meena Mehra had no authority to act upon the application, under Section 113 of the MPLRC, moved on behalf of Smt. Indira Pastala as the power to deal with such an application vests only in a Sub-Divisional Officer.

(b) Investigating Agency was able to seize relevant revenue records but the investigation could not proceed further in view of the interim stay order passed by this Court in *Smt. Meena Mehra's case.*

(c) Relevant procedure, prescribed in Section 110(4) of the MPLRC and Rule 32 of the Mutation Rules, was not followed.

(d) By virtue of the provisions of Section 178 of the MPLRC, petitioner Vivek Tripathi, being a Naib Tahsildar, was not legally competent to deal with the prayer for partition between Smt. Indira and her husband Augustine Pastala of the land said to have been acquired by her only. Moreover, he directed substitution of their names in the record-of-rights wherein Dayabai was shown as the sole-Bhumiswami of the land. This apart, for the purpose of stamp duty payable on the partition deed, he assessed the value of land as 60 times of the lease rent that was fixed as Rs.1.44 and accepted stamp paper of Rs.100/- while ignoring the fact that a stamp duty was payable on Rs.1,37,898/- i.e. the market value of the land as the same had already been earmarked for residential purpose since 1971-72. Furthermore, he proceeded to seek permission for reviewing the order-dated 21.05.2002, only after knowing about the complaint.

(e) Petitioner Vivek Tripathi cannot take shelter of Sections 115 and 116 of the MPLRC, which relate to correction of wrong entry and an adjudication of dispute regarding entry in the Khasras and in any other land records by Tahsildar only.

(f) Section 3 of the JP Act is also of no avail to the petitioners namely Meena Mehra and Vivek Tripathi as it only protects a Judge who acts within his authority/jurisdiction.

(g) Section 8 of the Adhiniyam applies only to enquiry made by the Lokayukt regarding allegation against the public servant. It does not apply to an investigation being conducted by the SPE by virtue of explanation to Section 7 of the Lokayukt Adhiniyam read with Section 13(3)(iii) thereof. It is hardly material whether the complaint was made in a prescribed format or not. There is no bar under the law for taking cognizance of an offence by the SPE treating same as information.

7. While opposing the prayer for quashing the FIR as against petitioner Alok Shrivastava, learned Special Public Prosecutor has submitted that granting permission without proposing any action against the revenue officials prima facie found involved in initiation and completion of the proceedings so as to facilitate transfer of half of the land recorded in the name of Dayabai by Smt. Indira Pastala in favour of Augustine Pastala even without seeing the original record, also constituted parts of the conspiracy to cause wrongful loss to the State Exchequer. According to him, by and large, it can easily be inferred that all the revenue officers named in the FIR with an ill motive had acted upon Smt. Indira Pastala's application in collusion with each other.

8. Let us first advert to the preliminary objection based on sub-Section (1) of Section 3 of the JP Act, which reads thus -

*3. **Additional Protection to Judges.** - (1) Notwithstanding anything contained in any other law for the time being in force and subject to the provisions of sub-section (2), no Court shall entertain or continue any civil or criminal proceeding against any person who is or was a Judge for any act, thing or word committed, done or spoken by him when or in the course of, acting or purporting to act in the discharge of his official duty or function.*

9. Learned Senior Counsel, while making reference to Section 2 of the JP Act, has submitted that definition of Judge, as given in Section 2 thereof, is wide enough to include revenue officers upon whom status of the Courts has been conferred by Section 31 of the MPLRC. He has further contended that each one of the petitioners, being empowered by law to give in any legal proceeding a definitive judgment, was entitled to additional protection under Section 3(1) of the JP Act. Extensive arguments addressed in support of the plea regarding the protection may be summarized as under -

It is no doubt correct that with the coming into force of Entry 11-A of List III it is no more the exclusive power of the State Legislature to legislate under the said Entry but "administration of justice" and "constitution and organisation of all Courts" are the subjects on which the State Legislature can legislate (See. *State of T.N. v. G. N. Venkataswamy* AIR 1995 SC 21).

The word "Courts" is used to designate those tribunals, which are set up in an organised State for the administration of justice. By administration of justice is meant the exercise of judicial power of the State to maintain and uphold "rights" and to punish "wrongs". Whenever there is an infringement of a right or an injury, the Courts are there to restore the vinculum juris, which is disturbed. ... By "Courts" is meant Courts of civil Judicature and by "tribunals", those bodies of men who are appointed to decide controversies arising under certain special laws (*Harinagar Sugar Mills Ltd. v. Shyam Sundar Jhunjhunwala* AIR 1961 SC 1669).

Definition of 'Courts' under the Evidence Act is not exhaustive, (*Empress v. Ashootosh Chuckerbutty* ILR (1879-80) 4 Cal 483), as approved in *State of Madhya Pradesh v. Anshuman Shukla,* (2008) 7 SCC 487. Further, in view of the definition of 'Judge' in S.19 of Penal Code and that of 'offence' in S.40 of the Penal Code, the petitioners as the officers deciding matter under the MPLRC are fully protected under S.77 of the Penal Code as they had to perform judicial duties (*State of Maharashtra v. Y.P. Sawant* 1977 CRI.L.J. 1477). Mutation proceedings are judicial proceedings within the meaning of CrPC (*Lachhman Prasad Joshi v. Emperor* AIR 1930 Oudh 58). The petitioners viz. Meena Mehra and Vivek Tripathi who were exercising judicial powers under the Code while passing the orders in question in mutation proceedings, are entitled to protection under S.3(1)(supra) (*Balram v. Aswani Kumar Yadav* 2001 (2) MPHT 330).

Tahsildar passing any order under the MPLRC acts as 'Revenue Court' under Section 31 thereof and is, therefore, protected under Section 3 of JP Act being a Judge as defined under Section 2 thereof. Accordingly, criminal complaint against him is an abuse of the process of law and liable to be dismissed (*Om Prakash v. Surjan*

Singh 2004 RN 31). While passing orders under the MPLRC, Revenue Officer could be considered as a Judge as defined in Section 2 of the JP Act (*S.S. Trivedi v. State of M.P.* 2007 (5) MPHT 138).

10. However, the question of protection has to be examined from two different angles. Provisions of Section 3(1) not only protects Judges as defined in Section 2 from civil or criminal proceedings for any act, thing or word committed, done or spoken by him when, or in the course of, acting in the discharge of his official or judicial duty or function but also extends the protection to them for any act, thing or word committed, done or spoken by him while purporting to act in the discharge of his official or judicial duty or function. *(Emphasis supplied)*

Obviously, the protection does not extend to acts purely administrative/ ministerial/extra judicial/alien to the judicial duty. Any act, which is not done in the discharge of his judicial duty, is therefore, not covered by the sub-Section.

11. Turning to the facts of the present case, it may be seen that petitioner Smt. Meena Mehra, while working as Tahsildar (Nazul), had entertained an application under Section 113 of the MPLRC despite the fact that such an application could be entertained by Sub-Divisional Officer only. In other words, it was not her official or judicial duty to entertain the application under Section 113 thereof.

12. Learned Senior Counsel, however, submitted that in-fact, she had not acted under Section 113 of the MPLRC that relates to correction of clerical errors and any errors made in the record-of-rights, but had proceeded under Section 115 of the MPLRC, which empowers the Tahsildar to correct any wrong entry in Khasra. Placing reliance on a decision of the Supreme Court in *State of Karnataka v. Muniyalla* AIR 1985 SC 470, he has argued that mentioning of a wrong section would not invalidate an order, which is otherwise within power of the authority making it. He is further of the view that if the exercise of a power can be traced to a legitimate source, the fact that the same was purported to have been exercised under a different power does not vitiate the exercise of a power in question. For this, we have been reminded of the principle of law, as laid down by the Apex Court in *P. Balakotaiah v. Union of India* AIR 1958 SC 232 and reiterated in *Afzal Ullah v. State of U.P.* AIR 1964 SC 264, *J.K. Steel Ltd. v. Union of India* AIR 1970 SC 1173 and *Palaniappa Gounder v. State of Tamil Nadu* AIR 1977 SC 1323.

13. The aforesaid argument cannot be accepted simply because as per the provision of Section 115, Tahsildar, though competent to make an inquiry, is required to correct any entry by using red-ink. Accordingly, if petitioner Meena Mehra was inclined to treat the application as one under Section 115, she ought to have followed the prescribed procedure and should have caused the original khasra to be placed before her for correction but no such step was taken by her. It is, therefore, difficult to conclude that whatsoever she had done was done in the discharge of her official duty. Moreover, she had transferred the case to Naib Tahsildar (Nazul) who had no authority to deal with the application under Section 115 of the MPLRC. As indicated already, the case was transferred to petitioner Vivek Tripathi on 22.04.2002 and instead of pointing out that he had no authority to deal with the application apparently under Section 113 or to treat it as an application under Section 115, he proceeded in altogether different direction by requiring the applicant to satisfy himself on the point of jurisdiction in view of Section 178 of the MPLRC whereas, a bare perusal of the application filed by Shri Umesh Tripathi on 14.03.2002, would reveal that he did not even refer to Section 178. Moreover, as rightly pointed out by learned Special Public Prosecutor, partition could be effected between two co-sharers whereas by way of partition deed, Indira Pastala was trying to create co-ownership of her husband in respect of land said to have been acquired by her from Dayabai despite the fact that in the revenue record, the land continues to be in the name of Dayabai only.

14. There is yet another aspect of the matter. Section 3(1) of the JP Act neither creates any legal bar against investigation into the allegations levelled against a Judge nor contemplates sanction of any authority therefor. In the cases of *Aswani Kumar Yadav* (2001 (2) MPHT 330), *Om Prakash* (2004 RN 31) and *S.S. Trivedi* (2007 (5) MPHT 138), proceedings were quashed at the post-cognizance stage on the ground that Revenue Officer concerned was entitled to protection under S.3(1)(supra) against prosecution in respect of the offences said to have been committed by him in the discharge of his duty. But, as pointed out already, the offending acts in question were allegedly committed by the petitioners in the course of service and not in discharge of his/her duty and without any justification. These precedents are, therefore, distinguishable on facts. Furthermore, as clarified in sub-section (2) of S.3 thereof, sub-Section (1) does not, in any way, take away or abridge the power of the State Government to initiate such action (whether by way of civil, criminal, or departmental proceedings or otherwise) against any person who is or was a Judge. For a ready reference, sub-section (2) may be reproduced below -

"Nothing in sub-sec.(1) shall debar or affect in any manner the power of the Central Government or the State Government or the Supreme Court of India or any High Court or any other authority under any law for the time being in force to take such action (whether by way of civil, criminal, or departmental proceedings or otherwise) against any person who is or was a Judge."

15. Thus, on a careful analysis of the protective provisions of Section 3 of the JP Act, we are of the view that they do not operate as legal bar to investigation into the allegation against any one of the petitioners.

16. All the relevant aspects relating to competence of the Lokayukt Organization to investigate into the allegations have already been dealt with in *U.K. Samal v. The Lokayukt Organization* I.L.R. [2011] M.P. 1702. Accordingly, the objection as to competence of the investigation agency to continue with the investigation has no merit or substance. Further, as explained in another Division Bench of this Court in *Deo Vrat Mishra v. State of M.P.* 2011 (2) M.P.L.J. 365, the form of complaint made to the Lokayukt Organization also does not assume any significance.

17. In *State of W.B. v. Swapan Kumar Guha* AIR 1982 SC 949, whereupon strong reliance has been placed by learned Senior Counsel, a three-Judge Bench of the Supreme Court, while explaining the nature and scope of interference with investigation in a proceeding under Article 226 of the Constitution of India, laid down following guidelines -

"If on a consideration of the relevant materials, the Court is satisfied that an offence is disclosed, the Court will normally not interfere with the investigation into the offence and will generally allow the investigation in the offence to be completed for collecting materials for proving the offence. If, on the other hand, the Court on a consideration of the relevant materials is satisfied that no offence is disclosed, it will be the duty of the Court to interfere with any investigation and to stop the same to prevent any kind of uncalled for and unnecessary harassment to an individual".

18. Since it is not possible to hold that the FIR discloses no offence against the writ petitioners namely Meena Mehra and Vivek Tripathi, the first between the two guiding principles is attracted to the facts of the instant case. It is,

therefore, not a fit case requiring interference with the investigation under the writ jurisdiction.

19. Coming to the petition filed by Alok Kumar Shrivastava, it may be seen that recitals of the FIR as against him primarily concern the offences of cheating and conspiracy. As per the allegations, he was also involved in conspiracy pursuant to which he had allegedly tried to protect petitioner Vivek Tripathi from the penal consequences flowing from the order-dated 21.05.2002 by according sanction to review the same, -

(a) ignoring the legal position that no order affecting any question of right between private persons can be reviewed except only application of a party to the proceedings.

(b) without preferring any action against petitioner Vivek Tripathi, who had passed the aforesaid order resulting in loss to the State Exchequer even without seeing the original khasra.

20. Learned Senior Counsel has strenuously contended that none of the Inspectors, who had the occasion to make enquiry into the complaints, were able to collect even an iota of evidence to indicate criminal intent on his part. Attention has also been invited to the fact that refusal to exercise power conferred by Section 51 of the MPLRC to review the order-dated 21.05.2002 would have resulted in much serious consequences including loss of revenue to the State exchequer.

21. In response, learned Special Public Prosecutor has submitted that petitioner Alok Kumar Shrivastava ought to have refused to exercise the power to review, saying that **(i)** the order-dated 21.05.2002 was without jurisdiction as the powers under Section 113 of the MPLRC could only be exercised by a Sub-Divisional Officer and also that **(ii)** the powers, under Section 178 of the MPLRC, which could be exercised by Tahsildar only, were wrongly usurped by petitioner Vivek Tripathi. He has further pointed out that by virtue of the order-dated 16.05.2008 passed by a Single Bench of this Court in Meena Mehra's case (W.P.No.5959/08), the matter could not be investigated till 03.01.2011. Reference has also been made to the observations made in *Deo Vrat Mishra's case* (above) that absence of direct evidence as regards particular accused relating to conspiracy is without significance as, being secretly planned, it can be proved by circumstantial evidence.

22. Admittedly, investigation is still on its way. It is a statutory function of the police and the superintendence thereof is vested in the State Government. In *Sanapareddy Maheedhar Seshagiri v. State of A.P.* (2007) 13 SCC 165, the Apex Court, upon a conspectus of all the leading decisions on the ambit and scope of this Court's powers of interference with investigation including the one rendered in *Swapan Kumar Guha's case* (supra), sounded a note of caution in the following words -

> *"The High Court should be extremely cautious and slow to interfere with the investigation and/or trial of criminal cases and should not stall the investigation and/or prosecution except when it is convinced beyond any manner of doubt that the FIR does not disclose commission of any offence or that the allegations contained in the FIR do not constitute any cognizable offence or that the prosecution is barred by law or the High Court is convinced that it is necessary to interfere to prevent abuse of the process of the Court.*
>
> *In dealing with such cases, the High Court has to bear in mind that judicial intervention at the threshold of the legal process initiated against a person accused of committing offence is highly detrimental to the larger public and societal interest. The people and the society have a legitimate expectation that those committing offences either against an individual or the society are expeditiously brought to trial and, if found guilty, adequately punished".*

23. Nature, scope and purpose of Section 482 of the CrPC again fell for consideration before the Supreme Court in *Central Bureau of Investigation v. Ravi Shankar Srivastava,* (2006) 7 SCC 188. In that case, the FIR was registered by Superintendent of Police (CBI), Jaipur against the respondent no.1 viz. Ravi Shankar Srivastava, a member of Indian Administrative Service, upon the information in regard to certain advertisements involving criminal conspiracy resulting in commission of the offences including the one under Sections 13(2) and 13(1) of the PC Act. However, a Single Bench of Rajasthan High Court quashed the FIR on the ground of competence of the CBI to register the FIR under the Delhi Special Police Establishment Act, 1946. Observing that the High Court was not justified in quashing the proceedings based on the FIR, the Supreme Court not only set aside the order but also re-affirmed the following illuminating guidelines -

All courts, whether civil or criminal possess, in the absence of any express provision, as inherent in their constitution, all such powers as are necessary to do the right and to undo a wrong in the course of administration of justice on the principle "quando lex aliquid alicui concedit, concedere videtur et id sine quo res ipsae esse non potest" (when the law gives a person anything it gives him that without which it cannot exist). While exercising powers under the section, the court does not function as a court of appeal or revision. Inherent jurisdiction under the section though wide has to be exercised sparingly, carefully and with caution and only when such exercise is justified by the tests specifically laid down in the section itself. It is to be exercised ex debito justitiae to do real and substantial justice for the administration of which alone the courts exist.

One of the many categories of cases where inherent power can and should be exercised to quash the proceedings is where the allegations constitute an offence, but there is no legal evidence adduced or the evidence adduced clearly or manifestly fails to prove the charge. While dealing with the such case, it is important to bear in mind the distinction between a case where there is no legal evidence or where there is evidence which is clearly inconsistent with the accusations made, and a case where there is legal evidence which, on appreciation, may or may not support the accusations. When exercising jurisdiction under Section 482 of the Code, the High Court would not ordinarily embark upon an enquiry whether the evidence in question is reliable or not or whether on a reasonable appreciation of it accusation would not be sustained. That is the function of the trial Judge. *(Emphasis added)*

24. By applying the above tests to the facts of the present case, it can easily be concluded that the matter certainly requires investigation and further that there is no compelling and justifiable reason to interfere therewith under Section 482 of the CrPC.

25. To sum up, no interference, either under the inherent powers or writ jurisdiction, is called for.

26. The petitions, therefore, stand dismissed. However, nothing contained

herein shall be construed as any expression of opinion on the merits of the case. It shall still be open to the petitioners to raise all such pleas as are available under law. There shall be no order as to costs.

27. A copy of this order be retained in the connected petitions.

Petitions dismissed.

I.L.R. [2011] M. P., 3037
WRIT PETITION
Before Mr. Justice Rajendra Menon
W.P. No. 4466/2010 (S) (Jabalpur) decided on 26 September, 2011

SURENDRA SARAF ... Petitioner
Vs.
DR. HARI SINGH GAUR VISHWAVIDYALAYA ... Respondent

A. Vishwavidyalaya Adhiniyam, M.P. (22 of 1973), Section 24 - Power of Executive Council **- There is nothing in Adhiniyam which warrants that a decision taken by the Executive council has to be approved by the State Government.** (Para 12)

क. विश्वविद्यालय अधिनियम, म.प्र. (1973 का 22), धारा 24 – कार्यकारिणी परिषद की शक्ति – अधिनियम में ऐसा कुछ नही कि कार्यकारिणी परिषद के निर्णय को राज्य सरकार का अनुमोदन आवश्यक होगा।

B. Service Law - Service condition - Effect of in enactment of Central University Act **- Petitioners working against posts classified under category III & IV and being paid wages at the rate notified by State Government - On 01.05.2008 the Executive Council of University exercising powers under Section 24 of M.P. Vishwavidyalaya Adhiniyam 1973 resolved that all daily wages and muster roll employees working in the University be granted the minimum of the pay scale and allowance against the post on which they are discharging the duties - After this resolution the Central University Act 2009 came into force w.e.f. 20.03.2009 - On 17.07.2009, the Vice Chancellor of the University passed an order granting minimum of the pay scale alongwith 1/30th of the Dearness Allowance to each of the petitioners - Subsequently, when this order was withdrawn the petitioner approached the Court - Held - Once the Executive Council took a decision on 01.05.2008 for granting benefit to the petitioners, the same becomes a service condition of the**

petitioners and by virtue of Section 4(d) of the Act of 2009 the terms and conditions of appointment which were existing on 01.05.2008 i.e. prior to 20th March 2009 could not be changed - The University which came into existence after 20th March 2009, under law was duty bound to protect the right of the petitioners which accrued to them by virtue of decision taken by the Executive Council on 01.05.2008 - Respondents have committed an error in refusing to grant the aforesaid benefit. (Paras 3, 5 & 12)

ख. सेवा विधि – सेवा शर्त – केन्द्रीय विश्वविद्यालय अधिनियम की अधिनियमिति में इसका प्रभाव – याची III एवं IV श्रेणी के अंतर्गत वर्गीकृत पदों पर कार्यरत और उन्हें राज्य सरकार द्वारा अधिसूचित दर पर वेतन दिया जा रहा था – 01.05.2008 को विश्वविद्यालय की कार्यकारिणी परिषद् ने म.प्र. विश्वविद्यालय अधिनियम 1973 की धारा 24 के अंतर्गत शक्तियों के प्रयोग में यह संकल्प लिया कि विश्वविद्यालय में कार्यरत सभी दैनिक वेतन तथा मस्टर रोल कर्मचारियों को उस पद का न्यूनतम वेतनमान एवं भत्तें प्रदान किये जाये जिस पद पर वे अपने कर्तव्यों का निर्वहन कर रहे हैं – इस संकल्प के पश्चात् केन्द्रीय विश्वविद्यालय अधिनियम 2009, दिनांक 20.03.2009 से प्रभावी रूप से लागू हुआ – 17.07.2009 को विश्वविद्यालय के कुलपति ने प्रत्येक याची को मंहगाई भत्ते के 1/30 के साथ न्यूनतम वेतनमान प्रदान करने का आदेश पारित किया – तत्पश्चात्, जब यह आदेश वापस लिया गया तब याची न्यायालय के समक्ष आया – अभिनिर्धारित – एक बार जब कार्यकारिणी परिषद् ने याचीगण को लाभ प्रदान करने का निर्णय 01.05.2008 को लिया, वह याचीगण की सेवा शर्त बन जाता है और अधिनियम 2009 की धारा 4 (डी) के आधार पर नियुक्ति की शर्तें जो 01.05.2008 अर्थात् 20 मार्च 2009 से पहले विद्यमान थी उन्हें बदला नही जा सकता – विश्वविद्यालय जो 20 मार्च 2009 के पश्चात् अस्तित्व में आये, वे विधि अंतर्गत याचीगण के उन अधिकारों का संरक्षण करने के लिए बाध्य थे जो कार्यकारिणी परिषद् के निर्णय दिनांक 01.05.2008 के द्वारा उन्हें प्रोद्भूत हुए है – उपरोक्त लाभ प्रदान करने से इन्कार करने में प्रत्यर्थीगण ने भूल कारित की है।

C. Service Law - Casual Employee - **If an employee is working against a regular post in a regular nature of work and is a full time employee not engaged for any particular season or intermittently, he will not be a daily wages employee but would come in the category of casual employee.** (Para 14)

ग. सेवा विधि – आकस्मिक कर्मचारी – यदि कोई कर्मचारी नियमित स्वरूप के कार्य में नियमित पद पर कार्यरत है और पूर्णकालीन कर्मचारी है जो किसी विशिष्ट अवधि के लिए अथवा आंतरायिक रूप से नियुक्त नही किया गया है, वह दैनिक वेतन कर्मचारी नही है किन्तु वह आकस्मिक कर्मचारी की श्रेणी में आएगा।

D. ***Service Law - Causal Employee*** **- Petitioners working against work of a regular post continuously for last more than 5 to 10 years - Their work is of regular nature - They are not engaged intermittently nor are they part time employees - In note sheets and pay bills prepared by respondents, the petitioners are shown to be working against regular post - Held - Even though petitioners are categorized as 'daily wages employees', there is no reason for denying benefit to the petitioners - Even on the principle of "equal pay for equal work", petitioners are entitled to the benefit claimed for, i.e. at par with other casual employees - Respondents can not discriminate with them.** (Para14)

घ. सेवा विधि – आकस्मिक कर्मचारी – याचीगण पिछले 5 से 10 वर्षों से अधिक की अवधि से निरंतर रूप से नियमित पद पर कार्यरत – उनका कार्य नियमित स्वरूप का है – वे आंतरायिक रूप से नियुक्त नही, न ही वे अंशकालीन कर्मचारी है – प्रत्यर्थीगण द्वारा तैयार किये गये नोट शीट एवं वेतन पत्र में याचीगण का नियमित पद पर कार्यरत होना दर्शाया गया – अभिनिर्धारित – यद्यपि याचीगण को 'दैनिक वेतन कर्मचारी' के रूप में वर्गीकृत किया गया तथापि याचीगण को लाभ से वंचित करने का कोई कारण नही है – 'समान कार्य के लिए समान वेतन' के सिद्धांत पर भी याचीगण दावा किये गये लाभों के हकदार हैं अर्थात् आकस्मिक कर्मचारियों के समतुल्य – प्रत्यर्थीगण उनके साथ भेदभाव नही कर सकते।

Case referred :

(2010) 7 SCC 739.

P.C.Chandok, Dinesh Upadhyay, Arvind Shrivastava, Ashish Sinha, Thaman Khadka, Hakim Khan, N.K.Salunke, for the petitioner.

L.G.S. Baghel, for the respondent.

ORDER

RAJENDRA MENON, J.:– As common questions of law and facts are involved in all these petitions and as the relief claimed are also common, all these petitions are being decided by this common order.

2. For the sake of convenience the documents available and the pleadings in the record of W.P. No.4466/2010 (s) - *Surendra Saraf Vs. Dr. Hari Singh Gaur Vishwavidyalaya, Sagar* is being referred to in this order.

3. Each of the petitioner herein is working as a daily wages employee in Dr. Hari Singh Gaur Vishwavidyalaya at Sagar and they claim the benefit of pay in the minimum of the pay scale as is applicable to the post of which the duties are being performed by the petitioners. Some of the petitioners contend

that they are working as L.D.C. and other posts in the Grade III category and some are working in the posts in Grade IV category. For example, the petitioner Shri Surendra Saraf claims to be working as an L.D.C. Certain other petitioners are working as Lab Technicians, Book Lifters, Peons, Gardners etc. However, the main relief claimed by each of the petitioners are that they should be paid the minimum of the pay scale attached to the pay scale against which they are discharging the duties. It is stated that even though for some time the said benefit were granted but the same is now withdrawn. Initially Dr. Hari Singh Gaur Vishwavidyalaya was established under the M.P. Vishwavidhyalaya Adhiniyam, 1973 (hereinafter referred to as "Adhiniyam of 1973"). It is a University established by the State of M.P. but after the Central University Act, 2009 was brought into force w.e.f. 20th March 2009, the said University became a Central University under the said Act of 2009 w.e.f. 20th March 2009. It is the case of each of the petitioners that they were appointed as daily wages employees in the respondents establishment prior to the Act of 2009 came into force on 20th March, 2009. For example, petitioner Surendra Saraf in W.P. No.4466/2010(s) claims to have been appointed as L.D.C. on 3.10.1998 in the Department of Applied Microbiology & Biotechnology. He has continued to work ever since then. Same is the case with each of the petitioners herein. According to the petitioners after their appointment they were granted the minimum wages as notified by the Collector of the District concerned. However, as they were working in various posts under Class III and Class IV category, they demanded payment of salary in accordance to the pay scale prescribed to the posts. Various representations were submitted and finally the entire matter was placed before the Executive Council of the University. The Executive Council of the University met on 1.5.2008 and vide resolution Annexure P/7 resolved that all daily wages and muster roll employees working in the University be granted the minimum of the pay scale and allowance against the post on which they are discharging the duties. However, it was resolved that they will not get any increment, housing allowance, medical allowance or other allowance. It was also decided that this resolution will not apply to Project employees. The resolution of the Executive Council dated 1.5.2008 reads as under :-

पद क्रमांकः3: विश्वविद्यालय के विभिन्न विभागों में दैनिक/संचित मस्टर प्रदान करने पर विचार।

टीपः– प्रदेश कर्मचारी महासंघ (दैनिक वेतनभोगी) के

प्रकरण को कार्यपरिषद की बैठक दिनांक 24.01.2008 में नियमानुसार निर्णय किया गया। शासन को पत्र भेजा जा चुका है। उत्तर अपेक्षित है।

निर्णय :– निर्णय लिया गया कि विश्वविद्यालय के विभिन्न विभागों/स्ववित्तीय विभागों/शाखाओं में दैनिक/संचित मस्टर पर कार्यरत् कर्मचारियों को जिस पद पर कार्यरत् हैं उस पद का वेतनमान का मात्र न्यूनतम वेतन एवं भत्ते प्रदान किये जावें। वेतन वृद्धि, गृहभाडा भत्ता, चिकित्सा भत्ता तथा अन्य लाभ नहीं दिये जावे। साथ ही निर्णय लिया गया कि सभी प्रकार की परियोजनाओं में कार्यरत कर्मचारियों को यह लाभ नहीं दिया जावे।

4. After the aforesaid resolution was passed the Central Act of 2009 came into force and when the Act came into force, it is a case of the petitioners that by virtue of Section 4(d) of the Act of 2009, their service conditions stands protected. Section 4(d) of the Act of 2009 reads as under :-

"4(d) every person employed by Guru Ghasidas Vishwavidyalaya, Doctor Harisingh Gour Vishwavidyalaya and Hemvati Nandan Bahuguna Garhwal University, immediately before the commencement of this Act shall hold his office or service in Guru Ghasidas Vishwavidyalaya, Doctor Harisingh Gour Vishwavidyalaya and Hemvati Nandan Bahuguna Garhwal University, respectively, established under this Act by the same tenure, at the same remuneration and upon the same terms and conditions and with the same rights and previleges as to pension, leave, gratuity, provident fund and other matters as he would have held the same if this Act had not been enacted and shall continue to do so unless and until his employment is terminated or until such tenure, remuneration and terms and conditions are duly altered by the Statutes:"

5. The petitioners therefore started claiming the said benefit and in the meanwhile, when the 6th pay scale recommendations were also implemented, they sought for benefit under the said recommendation. However, on 17.7.2009 the Vice Chancellor of the University passed an order granting minimum of the pay scale along with 1/30 th of the Dearness Allowance to each of the petitioners. Subsequently, when this order was also withdrawn, petitioners have filed these writ petitions.

6. Taking me through the documents available on record and challenging the resolution of the Finance Committee and the Executive Committee of the

University for withdrawing the benefit which was earlier granted, it is argued that petitioners are entitled to the minimum of the pay as has been resolved to be granted to them by the Executive Council of the University prior to 20th March, 2009. It is stated that the decision of the Executive Council taken on 1.5.2008 becomes the condition of service of the petitioners and in view of Section 4(d) of the Act of 2009, the same is protected. It is also submitted that once the University has taken a decision to grant the benefit to the petitioners and when the order was passed on 17.7.2009 vide Annexure P/9 the same cannot be withdrawn without hearing or granting opportunity of explanation to the petitioners. Finally, it is argued that according to the respondents the Minimum Wages Act 1948 is applicable to the establishment and if the Minimum Wages Act is applicable then as per Section 12(1-A) of the Minimum Wages Act 1948 and Clause 4 of the Notification issued under the Minimum Wages Act by the Government of M.P. on on various dates petitioners are entitled to minimum of the pay scale. Clause 4 of the Notification issued under the Minimum Wages Act by the Government of M.P. in each and every occasion reads as under :-

> "(4) किसी भी स्थापना या उपक्रम में प्रचलित वेतन दरें अधिसूचित मूल न्यूनतम वेतन दरों तथा देय परिवर्तनशील महंगाई भत्ते के योग से अधिक होने पर यह समझा जावेगा कि स्थापना या उपक्रम द्वारा अधिसूचित मूल न्यूनतम वेतन दर तथा परिवर्तनशील महंगाई भत्ते दिये जाने का पालन किया जा रहा है, यदि स्थापना या उपक्रम द्वारा देय न्यूनतम वेतन एवं परिवर्तनशील महंगाई भत्ते का योग अधिसूचित न्यूनतम वेतन एवं परविर्तनशीन महंगाई भत्ते के योग से कम है, तो श्रमिक अंतर की राशि के लिये पात्र होगें।'

7. Accordingly, learned counsels for each of the petitioners argued that the petitioners are entitled to minimum of the pay scale and same cannot be denied to them.

8. Taking note of certain objections raised by the respondents in the return, amendment was made in the writ petition and the resolution of the Executive Council and Finance Committee dated 10.4.2010 and 24.4.2010 Annexure P/18 A and P/18B were also challenged and it is argued that once the right to receive the benefit is protected in view of Section 4(d) of the Act of 2009 and the provisions of the Minimum Wages Act, the resolution to the contrary is illegal. It is also argued that under the Adhiniyam of 1973 an Executive Council is constituted under Section 23 and the powers of the Executive Council is laid down in Section 24. The entire power to control, administrator the

property and fund of the University is with the Executive Council. It is stated that power of Executive Council in the matter of administration, creation of post, granting and sanctioning of budget is uncontrolled. It does not require any further sanction or approval of the State Government and therefore, objection of the respondents that the resolution of the Executive Council dated 1.5.2008 is not approved by the State Government and therefore, cannot be resort is also unsustainable. Placing reliance on a judgment rendered by the Supreme Court in the case of *Uttar Pradesh Land Development Corporation and another Vs. Mohd. Khursheed Anwar and another* - (2010)7 SCC 739, learned counsel argued that petitioners are entitled to minimum of the pay scale and the same cannot be denied to them. It is stated that petitioners are entitled to the said benefit under the principle of "Equal pay for Equal work".

9. Respondent - University has filed a reply and it is a case of the University that the resolution passed by the Executive Council of the University on 1.5.2008 was not approved by the State Government and therefore, it cannot be given effect to. Subsequently, after the University became Central University under the Act of 2009 initially mistaking the petitioners to be casual employees benefit applicable to the casual employees were granted by the University to the petitioners and order Annexure P/9 dated 17.7.2009 was passed by the Vice Chancellor of the University as a mistake. When the same was deducted, a Committee was constituted and the matter was placed before the Finance Committee and the Finance Committee by its resolution dated 10.4.2010 Annexure P/18A has not recommended for granting benefits to the petitioners. Recommendation of the Finance Committee is accepted by the Executive Council of the University on 24.4.2010 vide Annexure P/18B and therefore, it is stated that petitioners cannot claim any benefit. According to the respondents, petitioners are daily wages employees, they are not casual employees and therefore, benefit accruing to the casual employees for payment of minimum of the pay scale of Central Government will not apply to the petitioners. It is further stated in the return that the Minimum Wages Act 1948 is applicable and therefore, the petitioners are being paid the minimum wages as notified by the Collector under the Minimum Wages Act, 1948. In the return filed by the respondents specific averment in this regard is made in para 11.G wherein it is stated that the petitioners are being paid wages notified by the State Government as per the Minimum Wages Act 1948 and therefore, they are not entitled to any further benefit. Accordingly, in sum and substance

objection of the respondent are that the resolution passed by the Executive Council on 1.5.2008 is not applicable as it has not received the approval of the State Government and therefore, as wages under the Minimum Wages Act is being paid, petitioners cannot have any grievance. It is also stated that casual employees of the Central Government receives certain benefit which is not applicable to the petitioners who are daily wages employees. It is stated that decision of the Executive Council taken on 1.5.2008 cannot be enforced without approval of the State Government and as the service condition of the petitioners are already protected under Section 4(d) of the Act of 2009, it is stated that petitioners cannot claim any further benefit. Accordingly, it is the case of the respondents that no further relief can be granted to the petitioners now in these writ petitions.

10. I have heard learned counsel for the parties at length and perused the record. Except from the fact that the nature of work performed by the petitioners are different factual assertions are identical in all the cases. Some of the petitioners are working against post classified under Category III and some are working under Category IV. However, all of them are daily wages employees. They are not in a regular establishment and are being paid wages as per the Minimum Wages Act 1948 and the rate notified by the State Government known as Collectorate rate.

11. Petitioners claim the benefits on three counts : (1) In view of the resolution passed by the Executive Council of the University exercising powers under Section 24 of the Adhiniyam of 1973 on 1.5.2008; (2) On the ground that in view of Section 12(1A) and Clause 4 of the Notifications issued under the Minimum Wages Act, 1948 it is said they are entitled to minimum of the pay to the post against which they are discharging duties; and (3) on the principle of "Equal Pay for Equal Work".

12. As far as first ground is concerned under the Adhiniyam of 1973 an Executive Council is constituted under Section 23 and the powers of the Executive Council are prescribed under Section 24. The Executive Council is given wide power which includes the entire power to control and administer the property and funds of the University, the power of preparing annual financial estimate of the University, powers for appointment, creation of posts, prospecting the salary etc.. There is nothing in the Adhiniyam of 1973 which warrants that a decision taken by the Executive Council has to be approved by the State Government. Except for contending in the return that the decision

of the Executive Council taken on 1.5.2008 has not been approved by the State Government and therefore, cannot be given effect to, respondents are unable to demonstrate before this Court from the statutory provision i.e. Adhiniyam of 1973 or any other provision as to how and under what provision of law the resolution of the Executive Council warrants approval of the State Government. When the provision of Section 24 of the Adhiniyam of 1973 gives wide power to the Executive Council to take a decision, the decision taken by the Executive Council becomes final and applicable on the date it is taken and for the said purpose no further approval or sanction of the State Government is necessary. Once the Executive Council took a decision on 1.5.2008 for granting benefit to the petitioners, the same becomes a service condition of the petitioners and by virtue of Section 4(d) of the Act of 2009 the terms and conditions of appointment which were existing on 1.5.2009 i.e. prior to 20th March 2009 could not be changed. When the resolution was passed by the Executive Council of the University on 1.5.2008 it became a service condition for the petitioners and a right, legal and vested in nature accrued to the petitioner, it became the terms and condition for the contract of service and once the service condition/ contract was laid down by the Executive Council of the University under the Adhiniyam of 1973 by virtue of right available to the petitioners under Section 4(d) of the Act of 2009 the service condition could not be changed. The University which came into existence after 20th March, 2009, under law was duty bound to protect the right of the petitioners which accrued to them by virtue of decision taken by the Executive Council on 1.5.2008 and therefore, in refusing to granting the aforesaid benefit, respondents have committed an error and to that effect benefit can be granted to the petitioners.

13. That apart, if the respondents themselves contended in their reply that petitioners are entitled to payment of salary as notified by the Collector under the Minimum Wages Act, 1948, then in view of the provisions of Section 12(1-A) and Clause 4 of the Minimum Wages Notification issued from time to time, petitioners are entitled to the minimum of the pay scale of the post on which they are discharging their duties. Payment of minimum rates of wages is provided in Section 12 of the Minimum Wages Act and a sub section i.e. Section 1(A) has been incorporated in the State of M.P. by Amendment Act 23 of 1961 w.e.f. 23.6.1961. The said amended provision is applicable in the State of Madhya pradesh reads as under :-

> "(1-A) Where immediately before the issue of a notification under Section 5 fixing or revising the minimum rates of wages in respect

> of any scheduled employment, wages at a rate higher than the rate so fixed or revised, were payable under this Act, or under any law or award or agreement or custom or usage for the time being in force, then, notwithstanding anything contained in this Act, wages at such higher rate shall be payable to the employees in such scheduled employment and the wages so payable shall be deemed to be the minimum wages for the purposes of this Act."

Clause 4 of the Notification issued are in view of the aforesaid provision. The right to claim the benefit accrue to the petitioners by virtue of statutory provision of Minimum Wages Act is admitted, it is the case of the respondents themselves that Minimum Wages Act is applicable and they are paying salary as per Minimum Wages Act. Under the provisions of the Minimum Wages Act itself the condition is that if in any establishment the prescribed pay scale is more than that minimum wages notified under the Notification more beneficial pay shall be made applicable and in the case of respondent's establishment as the pay scale applicable to various posts is more than the one as provided under the of the Minimum Wages respondents are duty bound to grant benefit to the petitioners which is more beneficial. If the reply filed by the respondent-University is considered they have categorically stated in the return as under :-

> "5. That the persons who has/ have been engaged on daily wages has/ have been paid as per Collector rate in terms of Minimum Wages Rules 1948."

Similarly, in para 11.G also it is so stated :

> "11.G ... He may be paid wages notified by the State Government as per the Minimum Wages Act, 1948, which is being paid to him."

It is therefore clear that the respondents themselves admitted that the Minimum wages Act as notified of the State Government is payable. That being so, respondents cannot deny the benefit to the petitioners merely because the Finance Committee of the Executive Council have taken a decision in the matter as indicated in the return. Right accruing to the petitioners by virtue of the resolution of the Executive Council on 1.5.2008 and the Minimum Wages Act, 1948 are statutory legal rights available to the petitioners as per law and the same has to be enforced. Once the mandate of law entitles the petitioners to receive the benefit as claimed for, there is no reason as to why the same cannot be granted to the petitioners. Resolution passed by the Executive

Council and Finance Committee Annexure P/18A and P/18B on 10.4.2010 and 24.4.2010 are contrary to statutory provisions as indicated herein above and therefore, cannot be enforced.

14. As far as the third ground is concerned respondents have only stated that petitioners are not casual employees and therefore, they are not entitled to the benefit granted to the casual employee in their establishment. No where in the return have the respondents brought to the notice of this Court as to what is the difference between a casual employee and a daily wages employee. In W.P. No.4466/2010(s) petitioner has placed on record a Circular issued by the Government of India i.e. Government of India, Department of personnel and training OM No.49014/2/86 dated 7th June 1988 and Ministry of Labour OM No.53202/16/86-W.C.(M.W.) dated 23.8.88. These Circulars have been issued after a judgment was delivered by the Supreme Court on 17.1.1986 in the case of *Surendra Singh Vs. Union of India* laying down certain principles for payment of "equal pay for equal work". In these circulars certain guide lines have been laid down and petitioners have filed the said guide lines vide Annexure P/18A along with their amendment application. The aforesaid Circular contemplates that persons on daily wages should not be recruited for work of regular nature. Recruitment of daily wages should be made for work which is only casual or seasonal or intermittent in nature or work which is not full time in nature for which regular post cannot be sanctioned. If the aforesaid provisions applicable to the daily wages employee is taken note of it would be seen that if an employee is working against a regular post in a regular nature of work and is a full time employee not engaged for any particular season or intermittently, he will not be a daily wages employee but would come in the category of casual employee. If the petitioners work are assessed, it would be seen that the petitioners are working continuously for the last more than 5 to 10 years, their work is of regular nature, they are not engaged intermittently nor are they part time employees. Infact, they are all working against work of a regular post but they are termed as "daily wages employees". Even in the note sheets and the pay bills prepared by the respondents as are available on record, it is seen that the petitioners are shown to be working against regular post. For example, in W.P. No.4466/2010 (s) certain documents have been filed, signed and verified by the Head of the Department with regard to payments to be made to the petitioners like Shri Surendra Saraf. The same is available at page 49 of the paper book and in the said document, Head of the Department has noted as under :-

"Nature of work of above employees is similar to regular employees."

Similar notes are put up in the pay sheet and pay bill of most of the petitioners. It is therefore, clear that even though petitioners are categorized as 'daily wages employees' but in view of the Circulars issued by the Government of India, as is indicated herein above, the nature of work done by the petitioners is that of casual employees and when the casual employees are being paid salary at minimum of the pay scale along with dearness allowance at 1/30th of the regular pay scale, on the principle of "equal pay for equal work", there is no reason for denying benefit to the petitioners. That being so, even on the principle of "equal pay for equal work", petitioners are entitled to the benefit claimed for, i.e. at par with other casual employees who are paid minimum of the pay scale along with 1/30th of the D.A. and respondents are denying the same to the petitioners by creating an artificial differentiation between the petitioners and casual employees by treating the petitioners differently. In fact, petitioners are nothing but casual employees and the respondents by arbitrarily treating them as a 'daily wages employee' cannot discriminate with them.

15. Keeping in view the aforesaid, all these petitions are allowed. Respondents are directed to pay to the petitioners minimum of the pay in the scale of pay notified for the posts against which the petitioners are discharging duties. The said benefit be paid to the petitioners with effect from the date the order was passed on 16/17.9.2009 vide Annexure P/9. The benefit be paid retrospectively with all arrears within a period of three months from the date of receipt of certified copy of this order. The benefit shall be granted to each of the petitioners keeping in view the nature of work/ posts hold by them and the pay scale sanctioned for the same as is applicable in the respondents' establishment.

16. With the aforesaid all these petitions are allowed and disposed of.

Petition allowed.

I.L.R. [2011] M. P., 3049
WRIT PETITION
Before Mr. Justice Sujoy Paul
W.P. No. 2203/2006 (S) (Gwalior) decided on 29 September, 2011

SURESH CHAND UPADHYAY ...Petitioner
Vs.
UNION OF INDIA & ors. ...Respondents

A. Service Law - Disciplinary Proceedings - **Non-Supply of Enquiry Report - Mere non-supply of enquiry report will not vitiate the enquiry - Enquiry Report was provided to the petitioner along with punishment order - Petitioner failed to show how non-supply has caused prejudice to him - Enquiry not vitiated on this ground.** (Paras 10 &11)

क. सेवा विधि – अनुशासनिक कार्यवाही – जाँच प्रतिवेदन प्रदाय नहीं किया जाना – जाँच प्रतिवेदन को प्रदाय नहीं किये जाने मात्र से जाँच दूषित नहीं होगी – जाँच प्रतिवेदन शास्ति के आदेश के साथ याची को प्रदान किया गया – याची यह दर्शाने में असफल रहा कि प्रदाय नहीं किये जाने से उसे कैसे हानि कारित हुई – इस आधार पर जाँच दूषित नहीं होती।

B. Service Law - Disciplinary Proceedings - Non-supply of documents - **Documents desired by delinquent were not provided - Witnesses were also not summoned - Held - This alone would not vitiate the enquiry unless it is established as to how prejudice is caused to the petitioner.** (Para 12)

ख. सेवा विधि – अनुशासनिक कार्यवाही – दस्तावेज प्रदाय नहीं किया जाना – अपचारी द्वारा चाहे गये दस्तावेज उपलब्ध नहीं कराये गये – साक्षियों को भी समन नहीं किया गया – अभिनिर्धारित – केवल इससे जाँच दूषित नहीं होगी जब तक कि यह स्थापित नहीं किया जाता कि याची को कैसे हानि कारित हुई है।

C. Service Law - Disciplinary Proceedings - Charges of Corruption - **The charge of bribe and corruption are quasi judicial in nature which has civil and criminal consequences - Such grave charge is required to be proved beyond any shadow of doubt and to the hilt and it can not be proved on mere probabilities -Even in Departmental Enquiry, suspicion can not take place of proof.** (Paras 13 to 18)

ग. सेवा विधि – अनुशासनिक कार्यवाही – भ्रष्टाचार के आरोप – रिश्वत और भ्रष्टाचार के आरोप न्यायिककल्प प्रकृति के हैं जिसके सिविल एवं दाण्डिक परिणाम होते

हैं – ऐसे गंभीर आरोप को संदेह की किसी छाया से परे और पूर्णतः साबित किया जाना अपेक्षित है और इसे मात्र संभावनाओं पर साबित नहीं किया जा सकता – विभागीय जाँच में भी संदेह, साक्ष्य का स्थान नहीं ले सकता।

D. Service Law - Disciplinary Proceedings - Non-speaking punishment and revising order - **Non-speaking punishment and revising orders are cryptic and passed without application of mind.** (Para 19 & 20)

घ. सेवा विधि – अनुशासनिक कार्यवाही – कारण विहीन शास्ति तथा पुनरीक्षण आदेश – कारण विहीन शास्ति तथा पुनरीक्षण आदेश अस्पष्ट है और मस्तिष्क का प्रयोग किये बिना पारित किये गये हैं।

E. Service Law - Back Wages - **Charge of bribe and corruption could not be established to the hilt - However, needle of suspicion is against him -Petitioner liable to be re-instated - Not entitled for back wages.** (Para 21)

ङ. सेवा विधि – पिछला वेतन – रिश्वत और भ्रष्टाचार के आरोप पूर्णतः स्थापित नहीं किये जा सके हैं – किन्तु संदेह की सूई उसकी ओर है – याची बहाल किये जाने योग्य – पिछले वेतन के लिये हकदार नहीं।

Cases referred :

AIR 1991 SC 471, (1993) 4 SCC 727, (2009) 2 SCC 541, (2005) 8 SCC 211, (2011) 2 SCC 316, (2006) 12 SCC 321, (2009) 12 SCC 78, AIR 1964 SC 364, 2002(4) MPHT 418, (2009) 2 SCC 570, (2011) 6 SCC 376,(2009) 2 SCC 570.

Susheel Chaturvedi, for the petitioner.

V.K. Bharadwaj with *Raja Sharma,* for the respondents.

ORDER

SUJOY PAUL, J.:–The brief facts necessary for adjudication of this matter are as under:-

The petitioner who was a Constable in Railway Protection Force was subjected to disciplinary proceedings pursuant to the issuance of charge sheet (Annexure P-1) dated 9.2.1993. The said charge sheet was followed by departmental enquiry. After the enquiry a punishment of removal from service was inflicted on the petitioner by order dated 25.2.1994. The petitioner feeling aggrieved by the aforesaid punishment order, preferred an appeal before the statutory appellate authority. However, the said appellate authority did not decide the appeal preferred by the petitioner. At this stage, petitioner filed a

writ petition before the Allahabad High Court. The Allahabad High Court passed the order in W.P.No.14226/94 on 25.1.2005 (page 77). A perusal of the order of the High Court shows that this was an admitted position between the parties that enquiry officer's report was not supplied to the petitioner before imposition of punishment of removal. However, the High Court did not deal with the merits of the matter and relegated the petitioner to avail statutory remedy of revision by preferring a revision petition before the revisional authority. In turn, the revisional authority was directed to decide the revision expeditiously.

2. In turn, the petitioner preferred a revision petition Annexure P-10. The said revision is decided by the competent authority on 6.1.2006. The revisional order reads as under:-

> *"I have carefully considered the revision petition submitted by Sh Suresh Chandra Upadhaya, Ex.CT/RPF alongwith all the relevant documents. I find that the charges are of very serious nature. We cannot permit the officers & men of this Force to indulge in corrupt practices. The men in uniform cannot take advantage of their position to fleece innocent passengers. I find no merit in the petition and there is no ground to interfere with the orders issued earlier. Hence the petition, which is devoid of any merit, is rejected."*

3. The learned counsel for the petitioner submits that the revisional order issued by the Railway Board is served on the petitioner at Gwalior. The petitioner has assailed the punishment order on following grounds:-

i) The charge sheet given to the petitioner in English contains different names of the passengers/complainants qua the names mentioned in the Hindi version of the same charge sheet.

ii) By an executive instruction dated 7.5.1992 the respondent department decided to follow the judgment of Supreme Court in *Ramzan Khan's* case and, therefore, before punishment the enquiry officer's report ought to have been given to the petitioner.

iii) The enquiry officer's report has not been served to the petitioner before imposition of punishment of removal. Thus, it runs contrary to the judgment of the Supreme Court reported in

AIR 1991 SC 471 (*Union of India and others vs. Mohd. Ramzan Khan*) and vitiates the enquiry.

iv) The witnesses and documents desired by the petitioner were not summoned and provided.

v) The enquiry officer's findings are perverse and it is a case of no evidence.

vi) Material witnesses were not examined in the departmental enquiry.

vii) The revisional order is cryptic and non-speaking order, which does not contain any reason. The punishment is expressively harsh and disproportionate.

4. Shri Bharadwaj, learned senior counsel with Shri Raja Sharma, per contra submits that the disciplinary proceedings are governed by the statutory rules which are known as the Railway Protection Force Rules, 1987 (hereinafter referred to as the 'RPF Rules'). By taking this Court to various provisions of the rules, the learned senior counsel submits that the enquiry is conducted strictly in consonance with the aforesaid rules. The learned counsel heavily relied on Rule 154.2 of the RPF Rules, which reads as under:-

"154.2 While communicating the order imposing the punishment, a copy of the findings of the enquiry officer shall also be given to the party charged.

By placing reliance on this rule, the submission of the learned senior counsel is that the rule mandates that the enquiry officer's report is required to be served along with the punishment order. In absence of any challenge to the rules, the enquiry was conducted in accordance with rules and the aforesaid judgment in *Ramzan Khan's* case has no application because of specific rule on the subject.

5. The learned counsel further submits that there may be some spelling discrepancy in the names of the complainants in the English and Hindi charge sheet. Petitioner's contention that he does not understand English is an incorrect stand because the revision petition preferred by the petitioner is in English. The learned counsel further submits that no prejudice is caused to the petitioner in the matter of conducting departmental enquiry.

6. In nutshell, the learned counsel submits that the petitioner was a member

of a discipline protection force and a higher degree of discipline is expected from the members of the discipline force. By no stretch of imagination, it can be said that the punishment is disproportionate to the conduct of the petitioner. He further submits that it is practically impossible to secure presence of the complainants in the enquiry because in running train persons used to prefer genuine complaints, but at later point of time, it is difficult to secure their presence because they reside in different places than the place where enquiry is being conducted. He submits that if there is some evidence, that is sufficient to hold a person guilty in a domestic enquiry. In rejoinder submission, the learned counsel for petitioner submits that he is not pressing the relief with regard to challenge of constitutional validity of rules.

7. I have heard the learned counsel for the parties at length and perused the record.

8. The allegation mentioned in the charge sheet is as under:-

> ***"Charge:- On 16.011993 when constable No.1183 Suresh Chandra Upadhyay was detained for ACP duty on train on 2137 DN took illegal money from two passengers while returning on duty for ACP towards NDLS."***

The allegation against the petitioner amounts to illegally extracting money or taking bribe. In this factual background, it is required to be seen whether procedural part of the enquiry is proper or not. The prosecution is able to establish its case to the hilt and if yes, whether punishment is proportionate or not. However, I will deal these issues according to points.

Point No.(i) :

9. No doubt that there is a discrepancy in the spelling of names of witnesses between English and Hindi version of charge sheet. However, it is clear that the petitioner had preferred a revision petition in English. The presumption is that he knows at least that much English which was sufficient to understand the averments of the charge sheet in English. The petitioner was unable to show as to how prejudice is caused to him because of aforesaid discrepancy which is minor in nature. Accordingly, this point cannot be accepted and is hereby rejected.

Points No.(ii) and (iii) :

10. These points are inter-connected. It is true that the Apex Court in *Mohd. Ramzan's* case (supra) held that the enquiry officer's report should be supplied

to the delinquent employee and he be given an opportunity to represent against it before the disciplinary authority. It is also stated that the department issued an executive instruction dated 7.5.1992 with an intention to follow this judgment. The question is, what is the effect of non-supply of enquiry officer's report before imposition of punishment. True it is that the Statutory Rule 154.2 of the RPF Rules permits supply of enquiry officer's report along with punishment order and not before it. However, the issue is little different. Assuming that enquiry officer's report was required to be supplied and yet not supplied before punishment, mere non-supply will not automatically render the punishment order as illegal. *Ramjan's case* (supra) was further considered by a Five Judges (Constitution) Bench of Supreme Court in (1993) 4 SCC 727 (*Managing Director, ECIL, Hyderabad and others vs. B. Karunakar and others*) and the Apex Court held as under:-

> *"Hence, in all cases where the enquiry officer's report is not furnished to the delinquent employee in the disciplinary proceedings, the Courts and Tribunals should cause the copy of the report to be furnished to the aggrieved employee if he has not already secured it before coming to the Court/Tribunal and give the employee an opportunity to show how his or her case was prejudiced because of the non-supply of the report. If after hearing the parties, the Court/Tribunal comes to the conclusion that the non-supply of the report would have made no difference to the ultimate findings and the punishment given, the Court/Tribunal should not interfere with the order of punishment. The Court/Tribunal should not mechanically set aside the order of punishment on the ground that the report was not furnished as is regrettably being done at present. The Courts should avoid resorting to short cuts."*

11. This view is consistently followed by Supreme Court till date. Thus, mere non-supply will not render the enquiry as illegal as a thumb-rule. In the present case, the enquiry officer's report was supplied to the petitioner with punishment order. The petitioner has not advanced any argument to show as to how non-supply has caused prejudice to him. Accordingly, I am unable to hold that non-supply of enquiry officer's report has any such impact or will render the punishment order as illegal. Thus, these points deserve rejection.

Point No.(iv) :

12. Learned counsel for the petitioner submits that certain documents were

demanded by him which were not provided to him in the enquiry. He further submits that certain witnesses should have been summoned by the enquiry officer which has not been done. He relied on (2009) 2 SCC 541 (*Union of India and others vs. Prakash Kumar Tandon*). Although the petitioner has specifically argued on this issue, the law on this issue is well settled. Mere non-supply of documents or non-summoning of witness will not render the domestic enquiry as illegal automatically. The delinquent employee has to show and establish the prejudice caused to him because of alleged non-supply of documents and non-summoning of witnesses. Learned counsel for the petitioner has not argued as to how the aforesaid has caused prejudice to the petitioner. The Apex Court in (2005) 8 SCC 211 (*U.P.State Textile Corpn. Ltd. vs. P.C. Chaturvedi and others*) and in a recent judgment reported in (2011) 2 SCC 316 (*State Bank of India and others vs. Bidyut Kumar Mitra and others*) held that mere non-supply of documents in absence of prejudice will not vitiate the departmental enquiry (para 10). In the light of aforesaid analysis, this point is also decided against the petitioner.

Point No.(v and vi) :

13. These points are inter-related. Admittedly, the complainants were not produced in the departmental enquiry. There was no eyewitness to the incident of extracting money/taking bribe. The enquiry officer has given following finding:-

> *"That there was no eyewitness or any direct evidence or evidence except the statements of PW6, PW7 and PW8, from the evidence in forgoing paragraphs, it is well established that the delinquent Constable failed to perform his duties properly and he illegally extracted money from the two passengers under threat."*

In view of this finding, there is no manner of doubt that neither the complainants/two passengers nor any other eyewitness entered the witness box in the domestic enquiry.

14. The Apex Court in (2006) 12 SCC 321 (*Ritesh Chakarvarti vs. State of M.P.*) held that non-examination of material witnesses vitiates the enquiry. The Apex Court in the case of *Union of India and others vs. Gyan Chand Chattar* [(2009) 12 SCC 78] held that when a serious charge like bribery is made, it should be specific, definite and detailed. It cannot be based on hearsay statement. It is further held as under:-

"In a case of corruption, the only punishment is dismissal from service. Therefore, the charge of corruption must always be dealt with keeing in mind that it has both civil and criminal consequences. Such a serious charge of corruption requires to be proved to the hilt as it brings civil and criminal consequences upon the employee concerned. He would be liable to be prosecuted and would also be liable to suffer the severest penalty awardable in such cases. Therefore, such a grave charge of quasi-criminal nature was required to be proved beyond any shadow of doubt and to the hilt. It cannot be proved on mere probabilities." *(Emphasis added)*

15. In the present case also the charge is of extracting money from two passengers. The punishment inflicted is also removal from service. In such a case applying the principle laid down in *Gyan Chand Chattar's case* (supra) it is required to be seen whether the charge is proved to the hilt. This is also settled in law that even in domestic enquiries suspicion cannot take the place of proof however strong it may be. In catena of judgments the Supreme Court has consistently taken this view that suspicion cannot take the place of proof in departmental enquiries. In AIR 1964 SC 364 (*Union of India v. H.C. Goel*) followed by this Court in (2002(4) M.P.H.T. 418 (*Union of India and others vs. V.K. Girdonia and another*), it is held that mere suspicion is not sufficient to crucify a delinquent employee. In (2009) 2 SCC 570 (*Roop Singh Negi vs. Punjab National Bank and others*) the Apex Court took the same view.

16. In the light of aforesaid legal position, the question is whether the petitioner can be said to be guilty and charges can be said to be proved against him. Admitted position between the parties is that material witnesses and complainants did not enter the witness box. The charge is said to be proved by producing certain other R.P.F. Staff as prosecution witnesses. A bare perusal of the enquiry report shows that none of the prosecution witnesses had seen the alleged transaction/ extraction of money by the petitioner nor they were present at the time of incident. The charge is said to be proved on the basis of written complaints and the statements of prosecution witnesses who deposed that the said money was subsequently refunded by the petitioner lateron in GRP Thana to the complainants. Thus, on the basis of this deposition that since money was refunded, a presumption is drawn that it must have been taken. Whether this proves the allegation against the petitioner to the hilt, is a million-dollar question. The Apex Court in a recent judgment reported in (2011)

6 SCC 376 (*Commissioner of Police Delhi and others vs. Jai Bhagwan*) held as under:-

> *"Although there is some evidence that an amount of Rs.100 was returned by the respondent to the complainant but there is no such direct and reliable evidence produced by the appellants in the departmental proceedings which could clearly prove and establish that the respondent demanded and received an illegal gratification of the said denomination It seems that the proof of taking such illegal gratification has been drawn from the evidence of returning of Rs.100 to the complainant by way of a link-up. Non-examination of the complainant and another during the departmental proceeding has denied the respondent of his right of cross-examination and thus caused violation of Rule 16(iii) of the Delhi Police (F&A) Ruiles, 1980. In the absence of such a definite/clear proof supporting the case of the appellants it is difficult to draw a finding of taking illegal gratification by the respondent from the complainant. Therefore, as rightly held by the High Court the present case is a case of no evidence. Albeit there could be a needle of suspicion pointed towards the respondent. However, suspicion cannot take the place of proof."*

17. There is a unique similarity to a great extent between the case in hand and that of *Jai Bhagwan* (supra). In *Jai Bhagwan's* case also there was no proof of taking bribe nor complainants were examined in the departmental proceedings. In absence thereof, on the basis of returning of that amount to the complainants it was held to be sufficient proof against the delinquent employee. Same is the case here. The Apex Court in the said case held that it is a case of no evidence. However, by analyzing the entire factual backdrop, the Apex Court held that needle of suspicion is against the delinquent employee. Since suspicion cannot take the place of the proof, the finding and punishment was although set aside, no back wages were granted to the employee.

18. Following the ratio of this judgment, this Court is of the considered opinion that in the present case also the findings of enquiry officer are perverse and the charges are not established. It is a case of no evidence. However, in the present case also needle of suspicion points towards the petitioner. Accordingly, the petitioner is not entitled for any back wages.

Point No.(vii) :

19. The next contention is that the punishment order and the revisional order are non-speaking. This is an admitted position that the appellate authority has not chosen to decide the appeal of the petitioner. The disciplinary authority has merely accepted the enquiry officer's report and issued the punishment order. The Revising Authority has affirmed the same.

20. It is relevant to notice here that petitioner's revision petition is a detailed petition pregnant with factual backdrop as well as legal grounds. No reasons are assigned by the revisional authority as to why the petitioner's defence is not found to be trustworthy. I have no hesitation to hold that the revisional order dated 6.1.2006 is against the principles of natural justice and is a cryptic order passed without application of mind. The Apex Court in (2009) 2 SCC 570 *(Roop Singh Negi vs. Punjab National Bank and others)* emphasized the need of passing reasoned order by the statutory authorities. Thus, the revisional order being non-speaking deserves to be set aside by this Court.

21. In view of aforesaid analysis, this Court has no hitch to hold that the charges against the petitioner could not be proved to the hilt. Accordingly, the punishment order and revisional order are set aside. The petitioner shall be re-instated within two months .However, he shall not be entitled for the back wages. Petitioner shall be entitled to count his services for all other purposes except back wages.

22. Petition is allowed to the extent indicated above. No costs.

Petition allowed.

I.L.R. [2011] M. P., 3058

WRIT PETITION

Before Mr. Justice Sanjay Yadav & Mr. Justice T.K.Kaushal

W.P.No.11834/2009 (Jabalpur) decided on 10 October, 2011

BHAGWAT PRASAD @ MEWALAL @ MEWARAM ... Petitioner

Vs.

STATE OF M.P. & anr. ... Respondents

***Service Law - Order of Termination - Suppression of pendency of criminal case* - On the date of filing of attestation, petitioner was facing criminal trial - Pendency of criminal trial was suppressed by the**

Petitioner in attestation form - Held - Petitioner never had a clear intention and fair conduct to disclose his involvement in criminal case - Such conduct is unbecoming of a public servant - As the petitioner had concealed and suppressed the fact of pendency of criminal case, termination of his services on this ground does not call for interference - Petition dismissed. (Paras 10 to 12)

सेवा विधि – सेवा समाप्ति का आदेश – लंबित दाण्डिक प्रकरण का छिपाव – साक्ष्यांकन प्रस्तुत करने के दिनांक को याची दाण्डिक विचारण का सामना कर रहा था – साक्ष्यांकन प्रारूप में याची ने दाण्डिक विचारण लंबित होने का छिपाव किया – अभिनिर्धारित – दाण्डिक प्रकरण में उपने अंतर्वलित होने को प्रकट करने का याची का कोई स्पष्ट आशय एवं उचित आचरण कभी नहीं था – ऐसा आचरण लोक सेवक के लिए अनुचित है – चूंकि याची ने लंबित दाण्डिक प्रकरण के तथ्य का छिपाव एवं दमन किया, इस आधार पर उसकी सेवा समाप्ति में हस्तक्षेप अपेक्षित नहीं – याचिका खारिज।

Cases referred :

2010 (124) ELR 467 (SC).

Mahendra Pateria, for the Petitioner.

Naman Nagrath, Addl. A.G.for the respondents.

ORDER

The Order of the Court was delivered by:

T.K. KAUSHAL, J.:–This petition has been preferred by the petitioner under Article 226 of the Constitution of India seeking quashment of order dated 20.4.2000 (Annexure-P-6) passed by Chief Engineer, Water Resources Department terminating the services of the petitioner and further to quash the order dated 15.7.2002 (Annexure-P-8) passed by M.P. State Administrative Tribunal, Jabalpur in O.A. No.2711/2000, whereby aforesaid order of removal of petitioner has been confirmed.

2. Facts of the case in short are that petitioner was appointed as daily wages on 1.7.1986 and was regularized in service on the post of Amin on 17.9.1998 vide Annexure-P-1. On 22.2.2000 the Petitioner was served with a show cause notice (Annexure-P-3) requiring him to explain as to why he submitted false information in Clause 1,2,3,4,5, and 6 of attestation form regarding his involvement in criminal police case. In respect of incident dated 27.6.1991, a criminal case was registered against him at Police Station Damoh at Crime No.85/1991 under Sections 342, 327 and 295/34 of I.P.C. In another matter in Criminal Case No.322/1998, proceeding under Section 116(3) and 151/107 of the Code of Criminal Procedure, 1973 for committing breach of

peace was also initiated against him. Vide judgment dated 13.12.1999 (Annexure-P-5) passed by J.M.F.C. Damoh in Criminal Case No.28/1998, petitioner was acquitted of all the charges. Case pertains to preventive action was also dismissed on 20.3.1999 in Lok Adalat on account of expiry of stipulated time period of bond and surety.

3. According to the petitioner under the perception that aforesaid criminal cases were false and fabricated and further due to lack of understanding, petitioner furnished the information that no criminal case is pending against him. Considering the Police report received in department in response to the attestation form and his aforesaid reply, vide order dated 20.4.2000 (Annexure-P-6), service of the petitioner was terminated with immediate effect.

4. Order of removal of service is challenged in the petition on the grounds of its arbitrariness and illegality. Aforesaid order of removal has been passed without holding a proper departmental enquiry. Such step is disproportionate and harsh.

4. Relevant extract of contents of attestation form and information furnished and signed by the petitioner reads as below-

> 1– अनुप्रमाण फार्म में असत्य जानकारी देना या किसी तथ्यात्मक जानकारी को छिपाना अनर्हता समझी जाएगी और ऐसा करने में उम्मीदवार शासन के अधीन अनयोजन के लिये अनुपयुक्त ठहराया जा सकेगा ।
>
> 2– यदि इस फार्म को भरने और भेजने के बाद उम्मीदवार को नजरबंद या गिरफ्तार किया जाता है, अथवा उस पर मुकदमा चलाया जाता या उसे बंदी बनाया जाता है, अथवा उस पर जुर्माना किया जाता है, या उसे दोषसिद्ध पाया जाता है, अथवा उसे विवर्जित किया जाता है या दोषमुक्त किया जाता है तो ब्यौरे, यथास्थिति, राज्य लोक सेवा आयोग या उस प्राधिकारी को, जैसे अनुप्रमाणन फार्म पहले भेजा गया हो, तत्काल सूचित किये जाना चाहिए, अन्यथा यह माना जाएगा कि तथ्यात्मक जानकारी छिपाई गई है । अतः यह स्वयं उम्मीदवार के हित में होगा कि वह उन मामलों के ब्यौरे प्रस्तुत करें, जिनमें उसे गिरफ्तार किया गया था, उस पर अभियोजन चलाया गया था, आदि भले ही मामले अंतिम रूप से प्रतिवेदित कर गए हों (खात्मा), वापस ले लिये गये हों, या उनमें अन्ततः दोषमुक्ति हो गयी हो या समझौता कर लिया गया हो ।
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> 3– यदि यह तथ्य कि अनुप्रमाणन फार्म में असत्य जानकारी दी गई है या कि कोई तथ्यात्मक जानकारी छिपाई गई है, किसी व्यक्ति की सेवा के दौरान किसी भी समय ध्यान में आए तो, उसकी सेवाएं समाप्त की जा सकेंगी

12. (क) क्या आप कभी गिरफतार किए गए है ? क्या आप पर कभी अभियोजन चलाया गया है ? क्या आप कभी निरूद्ध किए गए है या आपसे मुचलका लिया गया है / आप पर जुर्माना किया गया है ? क्या आप किसी अपराध के लिए न्यायालय द्वारा दोषी ठहराये गये है या आपको किसी भी लोक सेवा आयोग द्वारा उसके द्वारा संचालित परीक्षाओं / किए जाने वाले चयनों में सम्मिलित होने से वर्जित किया गया है / उसके लिए अनर्ह ठहराया गया है या क्या आपको किसी भी विश्वविधालय या किसी भी अन्य शैक्षणिक प्राधिकरण / संस्था द्वारा किसी भी परीक्षा में बैठने से वर्जित किया गया है । निष्काषित किया गया है ?

(ख) क्या इस अनुप्रमाणन फार्म को भरते समय किसी भी न्यायालय, विश्वविधालय या किसी भी शैक्षणिक प्राधिकरण / संस्था में आपके विरूद्ध कोई मामले लंबित है ? यदि (क) अथवा (ख) में पूछे गये प्रश्नों के संबंध में आपके उत्तर हॉ में हो तो आपको इस अनुप्रमाणन फार्म को भरते समय मामले, गिरफतारी, निरोध, जुर्माने, दोषसिद्ध तथा दंडादेश आदि के पूरे ब्यौरे प्रस्तुत करने चाहिए तथा इस फार्म को भरते समय न्यायालय / विश्वविधालय /शैक्षणिक प्राधिकरण आदि के समक्ष जो मामला लंबित हो उसका स्वरूप बतलाना चाहिए । इस जानकारी के अतिरिक्त, जहॉ लागू हो वहां निम्नलिखित ब्यौरे भी दिए जाएगें :–

(1) अपराध /आरोप : नहीं

(2) पुलिस थाने में पंजीयित : नहीं

(3) यदि न्यायालय में चालान प्रस्तुत किया गया हो तो न्यायालय का नाम : नहीं

(4) मामले का कमांक, न्यायालय द्वारा उसका निपटारा किस तारीख को किया गया : नहीं

(5) दिया गया दण्ड : नहीं

(6) क्या दोषमुक्त कर दिया गया ? "कोई प्रकरण नहीं चला"

(7) दोषमुक्ति संदेह के लाभ पर आधारित थी या मामला वापस ले लिया गया था .'कोई प्रकरण नहीं चला"

5. Having placed reliance on 2010 (124) E.L.R. 467 (SC), *Kamal Nayan Mishra Vs. State of M.P. and others*, it is submitted by learned counsel for petitioner that removal from service is totally uncalled for and unwarranted and is a harsh step. Further placing reliance on judgment dated 24.6.2004 passed in W.P. No.2836/2003, *Laxman Singh Vs. State*, by this Court, prayed for his reinstatement. On the other hand, learned Additional Advocate

General for the respondents supported the impugned orders and opposed the grounds raised in the petition.

6. To buterrace the contention, learned counsel for the petitioner emphasized following observation of Hon'ble the Apex Court made in *Kamal Narayan Mishra's* case -

> *6.2 ----------where an employee (probationer) is required to give his personal data in an attestation form in connection with his appointment (either at the time of or thereafter), if it is found that the employee had suppressed or given false information in regard to matters which had a bearing on his fitness or suitability to the post, he could be terminated from service during the period of probation without holding any inquiry. The decision dealt with a probationer and not a holder of a civil post, and nowhere laid down a proposition that a confirmed employee holding a civil post under the State, could be terminated from service for furnishing false information in an attestation form, without giving an opportunity to meet the charges against him.*
>
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> ---
>
> *12. We also find from an examination of the terms of the attestation form that termination without notice or inquiry was contemplated only in the context of furnishing false information in and around the time of the appointment. Note (1) of the preamble warns that the furnishing of false information or suppression of any factual information in the attestation form would be a disqualification and is likely to render the candidate unfit for employment. Similarly the certificate at the end of the attestation form states that "I am not aware of any circumstances which might impair my fitness for deployment under Government. I agree that if the above information is found false or incomplete in any material respect, the appointing authority will have a right to terminate my services without giving notice or showing cause." Be that as it may.*
>
> *13. The termination of appellant without an inquiry or*

hearing was illegal and invalid. In the normal course, we would have set aside the termination and directed reinstatement with consequential benefits, reserving liberty to the employer to initiate disciplinary proceedings. But the peculiar facts of this case require us to adopt a slightly difference approach to do complete justice between the parties. We have already pointed out that there are clear indications that the appellant was bona fide under the impression that he was required to give the particulars sought in column (12) of the form with reference to the date of his appointment. Further, the entire matter relates to an attestation form given in 1994 and appellant has already been out of service for more than seven years on account of the illegal termination from service without inquiry on 7.3.2002. We are therefore of the view that interests of justice would be served if the appellant is reinstated with continuity of service and other consequential benefits, dispensing with any further disciplinary action. The appellant will not entitled to any salary for the period 7.3.2002.

7. Similarly, learned counsel for the petitioner emphasized following observation made by this Court in W.P. No.7836/2003----------

----------*True it is , the petitioner should have, in all propriety, stated that he was proceeded against in a criminal case and eventually acquitted before he filed an application for the post of daily wager. This may be a non-mention of a fact but it would not tantamount to a plain suppression of material information to keep the authorities in total darkness and blindfold them to the antecedents of the petitioner to gain an advantage. Indubitably, the petitioner did not want to gain any advantage by such non-mention. Mr. S.K. Yadav, learned counsel fairly acceded that had the said factum been mentioned, the Department could not have proceeded against him as there had been no stigma attached even before the point of entry in service.*

8. In present case, on the date of filing the attestation form, i.e. on 27.10.1998 criminal case was pending in the trial Court against the petitioner and trial was regularly proceeding in the court of J.M.F.C. Damoh. Aforesaid

form was forwarded to Police on 8.2.1999 for its verification. Vide judgment dated 23.12.1999, trial Court acquitted the petitioner of the charges. At the time regularization, this attestation form was required to be filled by the petitioner. It remains no longer disputed that the petitioner is the author of the attestation form. Explanation of the petitioner that on the pretext that aforesaid cases were false and fabricated, he responded the information regarding criminal case in these columns in negative.

9. It is a clear case where false information has been furnished in attestation form by the petitioner. Explanation given by the petitioner in response to the show cause notice Annexure-P-5 does not inspire the confidence. Hence we have no hesitation to hold that such entries were made with clear understanding and knowledge.

10. Conduct of petitioner in respect of furnishing information regarding his involvement in criminal case was suspicious and doubtful. In response to the attestation form vide letter dt.16.9.1999, fact of pendency of criminal cases was informed by the Police to the department. It is pertinent to note that in criminal case the name of petitioner was mentioned as Mewalal son of Ishwar Das. After acquittal of the charges, petitioner informed the department that his name is Mewalal and Bhawat Prasad both. Police also submitted a report to that effect that Mewalal and Bhawat Prasad is one and the same person. Petitioner never had a clear intention and fair conduct to disclose his involvement in that criminal case. Above such conduct is also unbecoming of a public servant.

11. Facts of *Kamal Narayan Mishra's* case are different and distinguishable. Similarly, the ratio of *Laxmi Narayan Bajpayee's* case is also not helping the petitioner in present case on account of distinguishable facts and circumstances of the case.

12. Order Annexure-P-6 has been passed by the authorities after affording due opportunity of hearing to the petitioner. Tribunal has also considered and appreciated the facts in right perspective. It being a clear case of concealment of facts and furnishing false information in column 12 of the attestation form in respect of involvement of petitioner in criminal case. Petitioner, therefore, is not entitled for any relief whatsoever.

In the result, the petition fails and is hereby dismissed. However, no costs.

Petition dismissed.

I.L.R. [2011] M. P., 3065
WRIT PETITION
Before Mr. Justice R.S. Jha
W.P. No. 3576/2010 (Jabalpur) decided on 11 October, 2011

T.S.N. NAIR ...Petitioner
Vs.
MADHYA PRADESH AUDYOGIK KENDRA VIKAS NIGAM LIMITED, BHOPAL & anr. ...Respondents

Service Law - Superannuation **- Petitioner working as stenographer in the establishment of the respondent No.1, M.P.A.K.V.N., completed 58 years on 31.03.2010 and, therefore, he was proposed to be superannuated from service with effect from 31.03.2010 - In Employees Service Rules, 1994-95 framed by the M.P.A.K.V.N., no specific provisions specifying the age of superannuation is provided - Petitioner alleging that he is entitled to continue up to the age of 60 years which is the age of superannuation prescribed for the employees of the State Government - Held - Age of superannuation of the employees of the respondent-company has throughout been 58 years and though the issue of enhancement was raised, it was duly considered and rejected in the meeting of the Coordination Committee - Managing Directors of the M.P.A.K.V.Ns. have also taken a clear decision in this regard - Age of superannuation in respect of employees of the respondent-company is 58 years - Petition dismissed.** (Paras 2, 3 & 13)

सेवा विधि – अधिवर्षिता – आशुलिपिक के रूप में प्रत्यर्थी क्र.1 एम.पी.ए.के.व्ही.एन. की स्थापना मे कार्यरत याची ने 31.03.2010 को 58 वर्ष पूर्ण किए और इसलिए, उसे 31.03.2010 से प्रभावी सेवानिवृत्ति प्रस्तावित की गई – एम.पी.ए.के.व्ही.एन. द्वारा विरचित कर्मचारी सेवा नियम 1994 – 95 में अधिवर्षिता की आयु भी विनिर्दिष्टित करने वाले कोई विनिर्दिष्ट उपबंध उपबंधित नही – याची का अभिकथन कि वह 60 वर्ष की आयु तक कार्यरत रहने के लिए हकदार है जो कि राज्य सरकार के कर्मचारियों हेतु निहित की गई अधिवर्षिता की आयु है – अभिनिर्धारित – प्रत्यर्थी कंपनी के कर्मचारियों की अधिवर्षिता की आयु 58 वर्ष रही है और यद्यपि उसे बढ़ाये जाने की बात उठाई गई थी उस पर सम्यक् रूप से विचार किया गया था और समन्वय समिति की बैठक मे उसे अस्वीकार किया गया था – एम.पी.ए.के.व्ही.एनएस. के प्रबंध निदेशकों ने भी इस संबंध मे स्पष्ट निर्णय लिया था – प्रत्यर्थी कंपनी के कर्मचारियों के संबंध में अधिवर्षिता की आयु 58 वर्ष है – याचिका खारिज।

Cases referred :

W.P.1227/1998, W.P. 3126/2011.

D.K. Dixit, for the petitioner.

N.K. Salunke, for the respondent No.1.

ORDER

R.S. JHA. J.:– The petitioner has filed this petition being aggrieved by order passed by the respondent No. 1, dated 11-11-2009 by which the petitioner has been retired on completing the age of 58 years.

2. The brief facts leading to filing of the present petition are that the petitioner was working as stenographer in the establishment of the respondent No. 1, Madhya Pradesh Audyogik Kendra Vikas Nigam, Limited, Bhopal. He was initially appointed on 1-10-1988 as a stenographer and since then has been rendering services with the respondent. It is stated that his date of birth is 2-3-1952 according to which he completed 58 years on 31-3-2010 and, therefore, by the impugned communication dated 11-11-2009 he was proposed to be superannuated from service with effect from 31-3-2010 being aggrieved by which the petitioner has filed the present petition alleging that he is entitled to continue in service till the age of 60 years i.e. the age of superannuation prescribed for the employees of the State Government.

3. It is submitted by the learned counsel appearing for the petitioner that in view of the provisions of the Rule 60 of the Employees Service Rules, 1994-95 (hereinafter referred to as the "Rules of 1994-95) framed by the Madhya Pradesh Audyogik Kendra Vikas Nigam, Limited, Bhopal as no specific provision specifying the age of superannuation is provided in the said rules, the petitioner is entitled to continue up to the age of 60 years which is the age of superannuation prescribed for the employees of the State Government. It is further submitted that this Court by an interim order dated 18-3-2010 passed in this petition has permitted the petitioner to continue in service.

4. The learned counsel appearing for the respondents, per contra, submits that the petition filed by the petitioner is baseless and misconceived inasmuch as the age of retirement in the establishment of the respondent-company is 58 years and the same has not been enhanced from 58 years to 60 years. It is submitted that the respondent- company is a company duly incorporated under the provisions of the Companies Act, 1956 and is one of the five subsidiary companies of Madhya Pradesh Audyogik Vikas Nigam (MPAVN) which has

subsequently been named as M.P. State Industries Development Corporation (MPSIDC) which is the parent company and is also incorporated as a company under the provisions of the Companies Act, 1956. It is further clarified that as there is no specific provision regarding the age of superannuation in the Rules of 1994-95, therefore, the respondent-company since the very beginning has prescribed to and adopted the same age of superannuation fixed by the MPAVN (now MPSIDC) under M.P. Audyogik Vikas Company Employees Rules 1976 (hereinafter referred to as the Rules of 1976), Rule 9 whereof provides that the age of superannuation shall be 58 years. It is submitted that the respondent-company has since the very beginning and uniformly applied the aforesaid age of superannuation to all its employees and none of them have been permitted to continue beyond the age of 58 years.

5. It is further stated that the issue regarding enhancement of the age of superannuation was taken up by the Coordination Committee, in which Managing Directors of all the Audyogik Vikas Nigams are members, and was chaired by the Managing Director of the MPSIDC, in its meeting held on 28- 8-1999 and in the said meeting it was clearly decided that the age of superannuation shall continue to be 58 years and shall not be enhanced to 60 years. A copy of the minutes of the Coordination Committee has been filed by the respondents as Annexure R-1/2. It is further submitted that in view of the residuary clause in the Service Rules of 1994-95, which is included as a note therein, it has been clearly provided that the decision of the Managing Director of the MPSIDC, in case of any ambiguity in the rules, shall be final and binding and in such circumstances, as the Managing Director of the MPSIDC has decided and ordered that the age of superannuation shall be 58 years, the contention of the petitioner to that extent is not well founded.

6. During the course of arguments, the respondent-company has also placed before this Court copy of order passed by the Indore Bench of this Court in W.P.No. 1227 of 1998 (*Niladri Sen v. State of M.P. & others*), a similar petition claiming enhancement of age of superannuation, which has been dismissed by order dated 31-8-1998 as well as the order passed in W.P.No. 3126/2011 (*Shaligram Patel v. State of M.P. & others*) and connected matters decided on 9-5-2011 whereby an identical claim made by the petitioners therein has also been dismissed.

7. The learned counsel appearing for the petitioner, in reply, submits that the aforesaid decisions of the Indore Bench of this court are distinguishable inas

much as the provisions of Rule 60 of the Rules of 1994-95 have not been considered therein.

8. I have heard the learned counsel appearing for the parties at length and perused the record.

9. It is an undisputed fact that the respondent-company is a company duly registered under the provisions of the Companies Act, 1956 and is a subsidiary company of the MP Audyogik Vikas Nigam (MPAVN) which has subsequently been renamed as the M.P. State Industries Development Corporation (MPSIDC). Clause 21 of the Article of Association of the respondent-M.P.Audyogik Kendra Vikas Nigam, Limited, Bhopal which has been produced before this Court, clearly provides that :

> "21. Notwithstanding anything contained in any of these articles, the MPAVN may from time to time, issue such directions or instructions as it may consider necessary in regard to the affairs the conduct of the business of the Company or Directors thereof and in like manner may vary and annul any such direction or instruction. The Directors shall duly comply with and give immediate effect to directions or instructions so issued."

10. It is undisputed that since the very beginning Rule 9 of the Rules of 1976 of the MPAVN specifically provides that the age of superannuation of its employees shall be 58 years. It is also clear and uncontroverted that the note appended to the Rules of 1994-95, a copy of which has been annexed along with the petition, as Annexure P-5, also stipulates that in case of any doubt arising in the implementation of Rules of 1995 or in case there is no provision in respect of any matter relating to service of employees under the Rules of 1994-95, then the decision of the Managing Director, M.P. Audyogik Vikas Nigam (i.e. the MPAVN now MPSIDC) shall be final and binding.

11. From a conjoint reading of the aforesaid clause 21 of the Memorandum of Association as well as the note appended to the Rules of 1994-95 it is clear that in all matters, in respect of which there is any doubt or which have not been specifically provided for in the rules, the directions issued by the Managing Director of the MPAVN (now MPSIDC) shall be binding upon the M.P. Audyogik Kendra Vikas Nigams which is the respondent in the present petition -and therefore full powers have been conferred upon the Managing Director of the MPAVN (now MPSIDC) to issue directions in all respects.

12. From a perusal of point No. 4 contained in document Annexture-R-1/2 filed by the respondents which is a copy of minutes of the meeting of the Coordination Committee of the MPSIDC held on 20-8-1999, in which the Managing Directors of all the Audyogik Kendra Vikas Nigams including the respondent No.1 in the present petition, were members clearly indicates that the issue regarding enhancement of the age of superannuation was taken up in the aforesaid meeting and it was specifically decided by the Managing Director of MPAVN (now MPSIDC) that the age of superannuation of Class I to Class IV employees of all the M.P. Audyogik Kendra Vikas Nigams shall continue to remain 58 years. It is also undisputed and uncontroverted that the respondent-company has till date superannuated all of its employees on attaining the age of 58 years and has not enhanced or adopted the age of 60 years in respect of any employee.

13. In view of the aforesaid circumstances, it is apparent that the age of superannuation of the employees of the respondent-company has throughout been 58 years and though the issue of enhancement was raised, it was duly considered and rejected in the meeting of the Coordination Committee held on 20-8-1999. It is also clear from a perusal of the aforesaid documents that the Managing Director of the M.P. Audyogik Vikas Nigams (now MPSIDC) has also taken a clear decision in this regard in the aforesaid meeting and held that the age of superannuation shall continue to remain 58 years and shall not be enhanced beyond that. In the facts and circumstances it is clear that the age of superannuation in respect of employees of the respondent-company is 58 years.

14. It is, however, contended by the learned counsel appearing for the petitioner that in view of the provisions of Rule 60 of the Rules of 1994-95, the age of superannuation of 60 years as prescribed for the employees of the State Government, shall be applicable by implication to the employees of the respondent-company as well, and therefore the petitioner is also entitled to continue in service up to the age of 60 years.

15. To appreciate the submissions of the learned counsel for the petitioner it is relevant to take note of the provisions of Rule 60 of the Rules of 1994-95. The aforesaid, rule which is in the nature of a saving clause, provides that all rules prevailing prior to coming into force of the aforesaid rules shall stand repealed to the extent of the matters covered by the Rules of 1994-95 but any order issued under the repealed rules shall continue to remain in force. The

aforesaid rules further provide that on any other issue or subject matter which has not been included in the present rules, the rules of the State Government which are not contrary to the provisions of the Rules of 1994-95 shall apply.

16. In my considered opinion, the aforesaid rule does not help the cause of the petitioner for two reasons, firstly, that in accordance with the directions issued by the Managing Director of the M.P. Audyogik Vikas Nigam (now MPSIDC) the age of superannuation of the employees of the respondent-company has throughout been 58 years which has been uniformly implemented and followed and secondly, on account of the fact that the Rules of 1994-95 themselves provide in the note appended to the rules that in case of any doubt or in respect of matters which are not provided in the rules the directions issued by the Managing Director of the M.P. Audyogik Vikas Nigam shall be final and binding and in exercise of the aforesaid powers the Managing Directors in the meeting of the Coordination Committee held on 20-8-1999 has already taken a decision that the age of superannuation of the employees of the respondent-company shall continue to remain 58 years.

17. From the aforesaid it is clear that in accordance with the note contained in the Rules of 1994-95 and clause 21 of the Article of Association of the respondent-company the age of superannuation of the respondent-company had already been determined by the Managing Directors of the M.P. Audyogik Kendra Vikas Nigams as 58 years and, therefore, there being no ambiguity, vacuum or absence of any provision, the residuary clause in Rule 60 would not become operative and consequently the rules and order of the State Government would not apply to the petitioner.

18. Quite apart from the above the other issues raised by the petitioner have already been considered and rejected by the Indore Bench of this Court in W.P.No. 1227 of 1998 (*Niladri Sen v. State of M.P. & others*), decided on 31-8-1998 as well as in W.P.No. 3126/2011 (*Shaligram Patel v. State of M.P. & others*) and connected matters decided on 9-5-2011 wherein the Court has specifically held that the respondent being a company and the age of superannuation having been prescribed as 58 years the petitioners therein cannot claim as of right to apply the age of superannuation prescribed for the employees of the State Government. I am in respectful agreement of the view taken in the aforesaid petitions by this Court.

19. In view of the aforesaid facts and circumstances of the case, I do not find any merit in the petition which deserves to be dismissed, however, it is made

clear that as the petitioner has been permitted to continue in service beyond the age of 58 years on account of the interim order passed by this Court, the salary paid to him beyond the age of 58 years shall not be recovered from him however for all other purposes i.e. pensionary and retiral dues, if the petitioner is entitled to the same, the age of superannuation shall be treated to be 58 years.

20. With the aforesaid observations, the petition filed by the petitioner being meritless is accordingly dismissed. In the facts and circumstances of the case there shall be no order as to costs.

Petition dismissed.

I.L.R. [2011] M. P., 3071
WRIT PETITION
Before Mr. Justice Alok Aradhe
W.P. No. 9079/2005 (Jabalpur) decided on 18 October, 2011

JAGDISH PRASAD ...Petitioner
Vs.
SANGAMLAL & ors. ...Respondents

A. Constitution - Article 227 - Writ Petition - Validity of award passed by Lok Adalat - **Award passed by the Lok Adalat is akin to a compromise decree, its validity can be challenged by a party in a writ petition on the ground that the same has been obtained by playing fraud.** (Para 5)

क. संविधान – अनुच्छेद 227 – रिट याचिका – लोक अदालत द्वारा पारित अवार्ड की विधिमान्यता – लोक अदालत द्वारा पारित अवार्ड समझौता डिक्री के समान है, पक्षकार द्वारा उसकी विधिमान्यता को रिट याचिका में इस आधार पर चुनौती दी जा सकती है कि उसे कपट द्वारा अभिप्राप्त किया गया है।

B. Constitution - Article 227 - Writ Petition - Award passed by Lok Adalat - **On the basis of compromise arrived at between the parties, an award was passed by Lok Adalat - Petitioner later learnt that land allotted to petitioner under the award belongs to other persons who are not parties to the proceedings and the lands allotted to the petitioner under the award have already been sold by respondents vide registered sale-deeds - Held - Consent to settlement, was obtained from the petitioner by playing fraud - Or even otherwise, parties to the**

agreement were under mistake as to a matter of fact essential the agreement, which renders the agreement void -Award passed by Lok Adalat can not be sustained in the eye of law - Award quashed.

(Paras 2, 5, 8 &10)

ख. संविधान – अनुच्छेद 227 – रिट याचिका – लोक अदालत द्वारा पारित अवार्ड – पक्षकारों के मध्य हुए समझौते के आधार पर लोक अदालत द्वारा अवार्ड पारित किया गया – याची को बाद में पता चला कि अवार्ड के अंतर्गत याची को आवंटित की गयी भूमि अन्य व्यक्तियों की है जो कार्यवाही में पक्षकार नहीं है और अवार्ड के अंतर्गत याची को आवंटित की गयी भूमि पहले ही प्रत्यर्थीगण ने रजिस्ट्रीकृत विक्रय पत्र द्वारा विक्रय कर दी है – अभिनिर्धारित – याची से समझौते के लिए सहमति कपट द्वारा अभिप्राप्त की गयी – अन्यथा भी, करार के पक्षकार करार के लिए आवश्यक मामले के तथ्यों के बारे में भ्रमित थे जिससे करार शून्य हो जाता है – लोक अदालत द्वारा पारित अवार्ड विधि की दृष्टि में कायम नही रखा जा सकता – अवार्ड अभिखंडित।

C. Word and Phrases - **"Fraud" means and includes any of the following acts committed by a party to a contract, or with his connivance, or by his agent, with intent to deceive another party thereto or his agent, or to induce him to enter into the contract : (1) the suggestion, as a fact, of that which is not true by one who does not believe it to be true (2) the active concealment of a fact by one having knowledge or belief of the fact (3) a promise made without intention of performing it (4) any other act fitted to deceive (5) any such act or omission as the law specially declares to be fraudulent.** (Para 5)

ग. शब्द और वाक्यांश – "कपट" का अर्थ है और इसमें समाविष्ट है, संविदा के पक्षकार द्वारा या उसकी मौनानुमति से या उसके अभिकर्ता द्वारा उसके अन्य पक्षकार या उसके अभिकर्ता को भ्रमित करने के आशय के साथ अथवा उसे संविदा के लिये उत्प्रेरण के लिये गये निम्न में से कोई कृत्यः (1) तथ्य के रुप में सुझाव जो सत्य नहीं, उसके द्वारा जिसका वह तथ्य सत्य होने पर विश्वास नहीं (2) तथ्य का सक्रिय छिपाव उसके द्वारा जिसे तथ्य की जानकारी एवं विश्वास है (3) पालन करने के आशय के बिना दिया गया वचन (4) प्रवंचना युक्त कोई अन्य कार्य (5) कोई ऐसा कार्य या लोप जिसे विधि विशिष्ट रुप से कपटपूर्ण घोषित करती है।

Cases referred :

2009(1) MPLJ 495, 2005 SAR 723, AIR 2010 SC 3745, AIR 2003 SC 3044, (2008) 2 SCC 660, AIR 1954 SC 340, AIR 1994 SC 853, 2008 AIR SCW 6654, (2005) 6 SCC 478, (2007) 7 SCC 482, (1993) SUPPL. 4 SCC 46.

Umesh Shrivastava, for the petitioner.

M.L. Choubey, for the respondents No. 1 to 3.

ORDER

ALOK ARADHE, J. :–In this writ petition filed under Article 227 of the Constitution of India the petitioner has assailed the validity of the award dated 28.9.2003 passed in Civil Appeal No.22-A/2001 by Lok Adalat as well as order dated 31.7.2005 by which application for review filed by the petitioner has been rejected.

2. The petitioner had filed a civil suit, namely. Civil Suit No.245-A/1998 against respondent Nos. 1 to 3 and their father, namely, Ramkumar seeking relief of declaration, injunction and possession. The suit filed by the petitioner was decreed vide judgment and decree dated 23.7.2001 by the trial Court. Being aggrieved by the aforesaid decree, the respondents No.1 to 3 and aforesaid Ramkumar preferred an appeal which was registered as Civil Appeal No.22-A/2009. An application for compromise was filed before the appellate Court by the parties. On the basis of compromise arrived at between the parties, an award was passed by Lok Adalat on 28.9.2003. The petitioner later learnt that land allotted to petitioner under award belongs to other persons who are not parties to the proceedings and the lands allotted to the petitioner under the award have already been sold by respondents vide registered sale-deeds. The petitioner thereupon filed an application for review which was rejected by the Lok Adalat on 31.7.2005 on the ground that it has no power to review its order. In the aforesaid backdrop, the petitioner has approached this Court.

3. Learned counsel for the petitioner submitted that the Lok Adalat ought to have made an inquiry before passing an award. It was further submitted that neither any inquiry was made nor any statement of witnesses were recorded with regard to genuineness of the compromise arrived at between the parties. The Lok Adalat ought to have satisfied itself that compromise is fair and legal. In support of his submissions learned counsel for petitioner has relief on decisions reported in 2009 (1) MPLJ 495, 2005 SAR 723 and order dated 15.12.2009 passed in Writ Petition 13577/2005.

4. On the other hand, Shri M.L.Choubey, learned counsel for respondent Nos. 1 to 3 submitted that petitioner is under an obligation to plead and prove particulars of fraud. In the plaint itself the petitioner has mentioned the details of the land, which include the land allotted to him under the award. It is not the case of the petitioner that his signature on the application for compromise was obtained by playing fraud. It is also pointed out that petitioner has averred

that since he was illiterate, therefore he accepted to the suggestion for compromise. The Lok Adalat while passing the award is not required to make any enquiry. The respondent No. 4 during pendency of the writ petition has died, instead of brining on record his legal representatives, the name of respondent No.4 has been deleted, therefore, the writ petition has abated. In support of his submissions, learned counsel for the petitioner has placed reliance on the decisions reported in *Kalabharati Advertising v. Hemant Vimalnath Narichania and others,* AIR 2010 SC 3745, *Surya Dev Rai vs. Ram Chander Rai and others,* AIR 2003 SC 3044 and *State of Punjab and another vs. Jalour Singh and others,* (2008) 2 SCC 660.

5. I have considered the submissions made on both sides. It is well settled in law that Lok Adalats have no adjudicatory or judicial functions. Their functions relate purely to conciliation. A Lok Adalat determines the reference on the basis of a compromise or settlement between the parties and puts it seal of confirmation by making the award in terms of compromise. It is equally well settled legal proposition that if any party wants to challenge the award based on settlement, the same can be examined in a writ petition under Article 226 and/or 227 on very limited grounds. [See: *Jalour Singh and others* (supra)]. In *Kiran Singh and others vs. Chaman Paswan and others,* AIR 1954 SC 340 it has been held that a judgment or decree obtained by playing fraud on the Court is a nullity and non est in the eyes of law and it's invalidity can be challenged even in collateral proceedings. Similar view has been taken in *S.P.Chengalvaraya Naidu (dead) by L.Rs. vs. Jagannath(dead) by L.Rs. and others,* AIR 1994 SC 853 and in 2008 AIR SCW 6654. Though the award of a Lok Adalat is not a result of a contest on merits, just as a regular suit by a Court in a regular trial is, however it is as equal and on par with a decree on compromise and will have same binding effect and be conclusive [See: *P.T.Thomas vs. Thomas Job,* (2005) 6 SCC 4781. It is trite law that validity of a compromise decree can be challenged on the ground that it was obtained by playing fraud. [See: *A.A.Gopalkrishnan vs. Cochin Devaswom Board & ors.,* (2007) 7 SCC 482]. Since the award passed by the Lok Adalat is akin to a compromise decree, its validity can be challenged by a party in a writ petition on the ground that the same has been obtained by playing fraud. "Fraud" means and includes any of the following acts committed by a party to a contract, or with his connivance, or by his agent, with intent to deceive another party thereto or his agent, or to induce him to enter into the contract:- (1) the suggestion, as a fact, of that which is not true by one who

does not believe it to be true; (2) the active concealment of a fact by one having knowledge or belief of the fact; (3) a promise made without intention of performing it; (4) any other act fitted to deceive; (5) any such act or omission as the law specially declares to be fraudulent. [See: Advanced Law Lexicon by P. Ramanatha Aiyar, Third Edition Reprint 2007].

6. Now the facts of the case may be seen. Admittedly, petitioner is an illiterate person and a decree was passed by which claim of the petitioner was decreed, and it was held that petitioner has 1/6th share in the suit lands. During the pendency of appeal, an application for compromise was filed on the basis of which award was passed by Lok Adalat. In para 5.7 of the writ petition the petitioner has averred that he was allotted land bearing Khasra No. 106 and 345 situate at village Kiniyakala and land bearing Khasra No. 389 admeasuring 0.94 acres at village Kuthila. In para 5.8 of the petition the petitioner has averred that lands allotted to him under the award belong to Devlal Singh and Rajaram who are in possession of land for past more than 40 years. The lands allotted to petitioner were sold by registered sale deeds by the respondents. The copies of sale deeds have been filed as Annexures-P-5 to P-7. In para 5.11 of the writ petition the petitioner has also stated that though aforesaid lands were mentioned in the plaint as well as in decree of the trial Court, however, the fact that lands have already been sold as not known to the petitioner. The plaint was prepared on the basis of revenue records of the year 1958-59. Thus, from the averments made in the writ petition, referred to supra, it is graphically clear that under the award the lands were allotted to petitioner which were already sold and were in possession of third parties.

7. It is pertinent to mention here that there is no denial on behalf of respondents in the return that land allotted to petitioner under the award are in possession of third parties and have already been sold vide sale-deeds Annexures-P-5 to P-7. It is well settled proposition of law that an averment of fact which is not denied is deemed to be admitted. [See: *Naseem Bano (Smt.) vs. State of U.P. and others*, (1993) Suppl. 4 SCC 46]. The respondents have only stated in the return that Khasra numbers allotted to the petitioner under the award have been mentioned in the plaint. It is worth noticing that explanation for mentioning khasra numbers in question in the plaint has been offered in para 5.11 of the writ petition. However, no averments have been made in rebuttal by the respondents.

8. Thus, from above narration of facts it is graphically clear that it was not

brought to the notice of the petitioner at the time of settlement that lands which are being allotted to him under the award have already been sold and third parties are in possession, though this fact was well within the knowledge of respondents. The consent of the petitioner for compromise was obtained by active concealment of aforesaid fact by the respondents. Thus, the consent to settlement, on the basis of which impugned award has been passed, was obtained from the petitioner by playing fraud. Even if, for the sake of argument it is accepted that no fraud was played upon the petitioner, yet it is a case where both the parties to the agreement were under mistake as to a matter of fact essential the agreement, which renders the agreement void. Thus, for aforementioned reasons the award passed by Lok Adalat can not be sustained in the eye of law.

9. At this stage, I may deal with the objection raised on behalf of respondents that since respondent no.4's name, who died during pendency of writ petition was deleted, therefore the writ petition has abated. It is relevant to mention that the sons of deceased respondent No.4 are already on record as respondents 1 to 3, therefore, it cannot be said that on account of failure to implead the legal representatives of deceased respondent No.4, the writ petition has abated. Thus, the aforesaid contention made on behalf of the respondents does not deserve acceptance.

10. For the aforementioned reasons, the award dated 28.9.2003 passed by the Lok Adalat in Civil Appeal No.22-A/2001 is hereby quashed. Consequently, the order dated 31.7.2005 is also quashed. In the result, the writ petition succeeds and is hereby allowed.

Petition allowed.

I.L.R. [2011] M. P., 3076
WRIT PETTTION
Before Mr. Justice Sujoy Paul
W.P.No. 7182/2011 (Gwalior) decided on 11 November, 2011

AMOL CHAVHAN ... Petitioner
Vs.
SMT. JYOTI CHAVHAN ... Respondent

A. ***Evidence Act (1 of 1872), Section 45, Civil Procedure Code (5 of 1908), Section 151 - Medical Examination of defendant -*** **Respondent filed application for divorce under Section 12 of Hindu**

Marriage Act, on the ground of impotency - Held - Family Court can issue direction for medical examination of a party regarding alleged impotency - Such direction does not violate the fundamental right flowing from Article 21 of Constitution. (Para 7)

क. साक्ष्य अधिनियम (1872 का 1), धारा 45, सिविल प्रक्रिया संहिता (1908 का 5), धारा 151 – प्रतिवादी का चिकित्सीय परीक्षण – प्रत्यर्थी ने हिन्दू विवाह अधिनियम की धारा 12 के अंतर्गत नपुंसकता के आधार पर विवाह विच्छेद हेतु आवेदन प्रस्तुत किया – अभिनिर्धारित – अभिकथित नपुंसकता के संबंध में पक्षकार का चिकित्सीय परीक्षण हेतु कुटुम्ब न्यायालय निदेश जारी कर सकता है – ऐसा निदेश संविधान के अनुच्छेद 21 के मूलभूत अधिकार का अतिलंघन नही करता।

***B. Constitution - Article 20(3)* - Direction given by Family Court for medical examination of defendant regarding alleged impotency - Article 20(3) has no application as said Article gives protection to accused in criminal case and deals with criminal matters - In divorce case, husband can not be equated with an accused.** (Para 13)

ख. संविधान – अनुच्छेद 20 (3) – कुटुम्ब न्यायालय द्वारा अभिकथित नपुंसकता के संबंध में प्रतिवादी के चिकित्सीय परीक्षण हेतु निदेश दिया गया – अनुच्छेद 20 (3) लागू नही होता क्योंकि उक्त अनुच्छेद अभियुक्त को दाण्डिक प्रकरण में संरक्षण देता और दाण्डिक मामलों से संबंधित है – विवाह विच्छेद के प्रकरण में, पति को अभियुक्त के समतुल्य नही माना जा सकता।

Cases referred :

AIR 1966 ALLAH. 150, AIR 1969 A.P. 167, AIR 1972 MYSORE 157, AIR 1981 MADRAS 349, AIR 1985 A.P. 1, (2009) SCC 433, (2003) 4 SCC 493, AIR 1953 SC 325.

Aniket Naik, for the Petitioner.

None, for the Respondent.

ORDER

SUJOY PAUL, J. :– The petitioner is aggrieved by order passed by the Court below (Annexure P-6) dated 2/9/2011. By this order the Court below has allowed the application under Section 45 of the Evidence Act and directed for medical examination of the present petitioner before the medical board to ascertain whether the petitioner is impotent or not?

2. Shri Aniket Naik, learned counsel for the petitioner submits that as against the application preferred by petitioner's wife under Section 45 of the Evidence Act (Annexure P-3), the present petitioner filed a reply/application

and made a counter request for medical test of the wife as well. The Court below by Annexure P-6 has allowed the application of wife and rejected the application of present petitioner on the ground that present petitioner is neither applicant/plaintiff before the Court below nor he has made any allegations against his wife by filing any petition. The Court below opined that the basic controversy can be resolved if the petitioner is directed to appear for his medical examination before the medical board. By assigning aforesaid reasons, the Court below allowed the application of the wife and rejected the application of present petitioner. Shri Aniket Naik relied on AIR 1966 Allahabad 150 (para 2) *(Jagdish Lal Vs. Smt. Shyama Madan and others)* and AIR 1969 A. P. 167 *(Adapa Vittal Vs. Govula Ramakistian and others)*. However, Shri Naik fairly submits that this judgment shows that it is a consent order for medical examination of wife. Therefore, this judgment will not be a binding precedent for the Court. He further relied on AIR 1972 Mysore 157 *(Smt. Revamma Vs. Sri Shanthappa)*. In this case in para 4 and 5 the Mysore High Court opined that under Section 55 C.P.C. the Court does not have any inherent power to compel a person to undergo medical examination. Para 4 and 5 are reproduced as under:-

> "4. In a case where a party alleges that a person is impotent or suffering from other such incurable disease, it is for the person making such an allegation to prove the same. A party cannot be compelled to undergo medical examination. As stated by the High Court of Gujarat.
>
> "There is no provision under the Hindu Marriage Act or the Rules framed thereunder or in the Code of Civil Procedure or in the Indian Evidence Act or any other law which would show any power in the court to compel any party to undergo medical examination."
>
> A medical examination for ascertaining whether a person is insane or impotent are all cases in which unless by the law of the land a person can be compelled to undergo medical examination, an order directing a person to undergo medical examination would be clearly illegal and without jurisdiction. In *P. Sreeramamurthy v. P.Lakshmikantham.* AIR 1955 Andhra 207, when an order was passed directing medical examination, it was held that there must be some statutory provision under which it would be open to

the court to compel medical examination of a party, thus restricting the enjoyment of personal liberty of the person. It was also held that in a case like this it was not right to rely upon the general or inherent powers of the court under Section 151 of the Civil Procedure Code. It may be pointed out that even medical examination is specifically provided as under the terms of the Indian Lunacy Act. In the absence of any provision, it is not competent to any party to compel the other party to undergo medical examination.

5. In the case of *Ranganathan Chettiar vs. Chinna Lakshmi Achi,* AIR 1955 Mad 546, it has been held that it is not open to the court under S. 151 of the Code of Civil Procedure to order a medical examination of a party against the consent of such party. To pass such an order is tantamount to treating a human being as a material object, which no court should do under its inherent power. It is, thus, clear that it is not open to the court to invoke Section 151 of the Code of Civil Procedure to order a medical examination against his consent. In that view, the order directing the medical examination of the petitioner is one which has been passed by the learned Judge in excess of his jurisdiction and the same is liable to be set aside."

3. Shri Naik then relied on AIR 1981 Madras 349 *(N. Venkatachalapathy Vs. Saroja)*. In para 3 of this judgment, the Madras High Court held that Court cannot direct medical examination. The Madras High Court ultimately held as under:-

"These decisions, therefore, lay down that a person in the position of the respondent, cannot be directed to be examined medically against her wish. Since the respondent has opposed the application of the petitioner and had also denied the defect in her, it is clear that any medical examination, if ordered, would only be against her wish, which as stated earlier, cannot be done. Though the Court below has not proceeded on this ground, yet, the dismissal of the application by the learned District Judge could be sustained on this ground as well. There is absolutely nothing illegal or irregular in the order of the Court below dismissing the application filed by the petitioner. That order is perfectly correct and justified and deserves to be upheld. The civil revision petition fails and is dismissed with costs."

4. Lastly, Shri Naik relied on analogy and principles which are analogous to Article 20 (3) of the Constitution. Shri Naik submits that none can be forced to become a witness against himself and such an order passed by the Court below hits Article 21 and right of personal liberty of the petitioner. In alternately, Shri Naik submits that if wife's application is allowed, for the same reason petitioner's application should have been also allowed by the Court below directing medical examination of wife.

5. I have heard the counsel for the petitioner at length and perused the record.

6. The pivotal questions are as under:-

(1) Whether the family court can issue direction for medical examination of a party?

(2) Whether such a direction of medical examination infringes any fundamental rights including rights flowing from Article 21 of the Constitution?

(3) Since a direction is issued for medical examination of husband, whether similar direction needs to be issued against wife in the facts situation of this case?

7. Admittedly, wife filed an application under Section 12 of the Hindu Marriage Act, 1955 against the husband mainly on the ground of alleged impotency of the husband. Thus, the basic question before the Court below is regarding the correctness of these allegations. The Court below exercised its discretionary and inherent powers and allowed the application under Section 151 of the C.P.C./45 of Evidence Act. The subsequent judgment AIR 1985 AP 1*(G. Venkatanarayanan Vs. Kurupati Laxmi Devi)* shows that such a direction can be given by the Court below to ascertain the real position. In AIR 1985 AP 1 *(G. Venkatanarayanan Vs. Kurupati Laxmi Devi)*, the Court directed that in matrimonial proceedings the Court can appoint Commissioner doctor to examine a party and it is not excluded under Section 14 of the Evidence Act nor it deprives any personal liberty of a person under Section 21 of the Constitution. Relevant portion of this judgment in paras 6,8 and 9 are reproduced herein under:-

"6. The human body is the most ancient apparatus and defied probe and vulnerability to diagnosis and treatment of ailments for

long time. The human intellect generated by the human body unraveled the mysteries and complications in the human body and the process of experimentation for several years, dissection of anatomy scientific analysis and modem scientific approach contributed to discovery of diverse methods of diagnosis of deficiencies and ailments and treatment of the same. There is a gradual change over from oral diagnosis and treatment to discovery of deficiencies precisely by scientific data and effective of medicines and surgery. The transplantation of heart and other parts of the body, scanning the body to detect deficiencies and malfunctioning, invasive diagnosis and treatment yielded divides of minimizing wear and tear of the body and thereby improving the longevity and quality of life through the avoidance of final exit is not in sight. The close affinity between law and medicine is demonstrated by medical jurisprudence. The physician as an expert witness has become a common and welcome feature in Courts ranging from opinions on nature and degree of injuries to the proximate cause of death in criminal cases assessment of insanity and several other situations. When there is a dispute between the wife and husband about the potency of either of them their evidence reflected by truth constitutes the cream of evidence and the marshaling of adventitious or extraneous circumstances afford a poor substitute. In the even of diametrically opposite and rival versions of the parties the recourse to medical test resolves the riddle and the medical opinion assumes the acceptable piece of evidence. In the present atmosphere of looking forward to progeny of artificial insemination, scientific probe by virginity tests and the knowledge of predelivery sex the depreciation of the importance of determination of potency by medical test does not bear the impress of realistic approach.

8. The examination of mental or bodily state is not excluded by Section 14 of the Evidence Act. The exposure to medical examination aided by scientific data cannot be construed as deprivation of personal liberty and breach of Article 21 of the Constitution.

9. The Order of the Court below is confirmed.C.R.P. Dismissed. No costs."

8. This question is no more res-integra in view of the judgment of Supreme Court in (2009) SCC 433 *(Lalit Kishore Vs. Meeru Sharma and Another)*. The Apex Court held by invoking Section 151 that medical examination of a party in Hindu Marriage Act proceedings is permissible. Para 2 to 7 of this judqment is reproduced as under:-

> "2. In our view, the High Court as well as the Family Court was not justified in rejecting the application for medical examination of the respondent wife. It is difficult to conceive that the Family Court cannot be conferred with the jurisdiction to pass an order for medical examination in an appropriate case because when such report is received, that would facilitate the court in giving a positive conclusion on the mental condition of the respondent wife.
>
> 3. It is true that the Hindu marriage Act, 1955 or any other law governing the field does not contain any express provision empowering the court to issue direction upon a party in a matrimonial proceeding to compel him to submit herself/himself to a medical examination. But, in our view, it does not preclude the court from passing such an order. The court is always empowered to satisfy itself as to whether a party before it suffers from mental illness or not, either for the purpose of taking evidence on the ground for which the matrimonial proceeding was started.(sic).
>
> 4. It is well settled that the primary duty of the court is to see that the truth comes out. Therefore, although he medical examination of a party is not provided in the Act, even then, the court has complete inherent power in an appropriate case under Section 151 of the Code of Civil Procedure to pass all orders for doing complete justice to the parties to the suit.
>
> 5. In *Sharda v. Dharmpal* a three-Judge Bench decision of this Court has taken into consideration the power of the court to allow such an application for medical examination of a party in a matrimonial proceeding and observed as under: (SCCp.509, para 34).
>
> "34. In certain cases medical examination by the experts in the field may not only be found to be leading to the truth of the matter but may also lead to removal of misunderstanding between the parties. It may bring the parties to terms."

6. In view of the aforesaid decision of this Court in Sharda and considering the fact that the report of the medical expert would only be an evidence in the proceeding, we do not find any reason why such an application for appointment of a medical expert to examine the respondent wife cannot be granted.

7. For the reasons aforesaid. the impugned order as well as the order of the Family Court are set aside. The application for appointment of a medical expert for medical examination of the respondent wife filed at the instance of the appellant husband is thus allowed. The appeal is thus allowed. There will be no order as to costs."

9. Thus, in view of the judgment in *Lalit Kishore* (supra), I have no hesitation to hold that the view expressed by Madras High Court in *G. Venkatanarayanan* (supra) cannot be followed and since there is an inherent power under Section 151 C.P.C. with the Family Court to direct medical examination, the Court below has not committed any error of law in passing the impugned order.

10. The Apex Court in the aforesaid judgment has relied on *Sharda Vs. Dharmpal* reported in (2003) 4 SCC 493 to hold that medical examination by experts is permissible to ascertain the truth of the matter. In view of this, question No.1 deserves to be answered against the petitioner. The Court below took a plausible stand and, therefore, cannot be interfered in this proceeding under Article 227 of the Constitution.

11. So far the issue regarding infringement of petitioner's personal or fundamental rights flowing from Article 21 is concerned, in the opinion of this Court, there is no such infringement in a proceeding of this nature, where a question raised regarding impotency of petitioner by the wife, the Court has inherent power to direct the petitioner to undergo medical test.

12. So far the issue regarding direction for wife's medical examination is concerned, the petitioner's contention is misconceived. A divorce petition under Section 12 is filed by the wife making specific allegations against the petitioner. There is no allegation of adultery etc. against the wife and, therefore, the Court was under no obligation to allow the application of petitioner for medical examination of wife. Needless to mention that whenever Courts are required to appoint expert or require medical examination of

somebody, it is always on the basis of allegations and averments made by the party to ascertain the truth of the matter. In absence of any factual foundation and pleadings by the petitioner, there was no occasion for the Court to direct such a medical examination of the wife.

13. The scope of interference under Article 227 of the Constitution is well established and well defined. In the absence of jurisdictional error or apparent illegality, there is no scope of interference under Article 227 of the Constitution. Apart from this, analogy or assistance from Article 20(3) also cannot be taken. A plain reading of the language of the said article shows that it dealt with a protection with regard to criminal matters. In AIR 1953 SC 325 *(Makbool Husain Vs. Bombay High Court),* the Apex Court held that the article contemplates proceedings of the nature of criminal proceeding before a court of law (para 12). Thus, the analogy from Article 20(3) has also of no help to the petitioner.

14. In the result, I hold that the Court below has rightly directed medical examination of the petitioner. In the result, the petition is hereby dismissed. No costs.

Petition dismissed.

I.L.R. [2011] M. P., 3084
WRIT PETITION
Before Mr. Sushil Harkauli, Acting Chief Justice &
Mr. Justice Alok Aradhe
W.P. No. 14740/2008 (Jabalpur) decided on 18 November, 2011

ASHOK KUMAR ...Petitioner
Vs.
STATE OF M.P. & ors. ...Respondents

A. ***Court Fee (M.P. Amendment) Act, 2008 - Schedule II, Article 11(a)(i) - Enhancement of Court Fee - Purpose*** **- Reason for increase in expenditure on Court is implementation of recommendation made by Justice Shetty Commission - Held - Need has arisen for amendment in Court Fees Act.** (Para 7)

क. न्यायालय शुल्क (म.प्र.संशोधित) अधिनियम, 2008 – अनुसूची II अनुच्छेद 11(a)(i) न्यायालय शुल्क में वृद्धि – उद्देश्य – न्यायशुल्क में वृद्धि का कारण न्यायमूर्ति शेट्टी की अनुशंसा का क्रियान्वयन है – अभिनिर्धारित – न्यायालय शुल्क अधिनियम में संशोधन की आवश्यकता उत्पन्न हो चुकी है।

B. ***Fiscal Laws*** **- Laws relating to economic activities should be viewed with greater latitude - State has to be left with wide latitude in devising ways and means of fiscal or regulatory measures, and the Court should not unless compelled by the Statute or by the Constitution encroach into this field, or invalidate such law.** (Para 8)

ख. वित्तीय कानून – आर्थिक गतिविधियों संबंधी कानूनों को विस्तृत दृष्टि से देखा जाना चाहिये – राज्य को वित्तीय तथा विनियामक उपायों के प्रबंध हेतु योजना बनाने के लिए व्यापक विस्तार की स्वतंत्रता देना चाहिए और जब तक कानून द्वारा अथवा संविधान द्वारा विवश न हो न्यायालय को इस क्षेत्र में अधिक्रमण नही करना चाहिए या ऐसे कानून को अविधिमान्य नही करना चाहिए।

C. ***Court Fee (M.P. Amendment) Act, 2008 - Schedule II, Article 11(a)(i) - Ad valorem Court Fee - Discrimination*** **- Payment of Ad valorem Court Fee on appeal for enhancement of compensation - Position of appellant seeking enhancement of compensation is different from that of Insurance Company and Owner - Insurance Company can challenge the award on limited grounds - Owner and Insurance Company are liable to pay atleast Rs. 25,000 alongwith memo of appeal - Owner and Insurance Company are saddled with liability of pay compensation whereas in case of claimant, compensation is awarded by Tribunal - Provision not discriminatory - Petition dismissed.** (Para 9)

ग. न्यायालय शुल्क (म.प्र.संशोधन) अधिनियम 2008 – अनुसूची II अनुच्छेद 11 (a)(i)– मूल्य के अनुसार न्यायालय शुल्क – भेद – क्षतिपूर्ति में वृद्धि के लिए अपील में मूल्यानुसार न्यायालय शुल्क का भुगतान – अपीलांट जो क्षतिपूर्ति में वृद्धि चाहता है की स्थिति बीमा कम्पनी तथा मालिक से भिन्न – बीमा कम्पनी अधिनिर्णय को सीमित आधारों पर चुनौती दे सकती है – स्वामी और बीमा कम्पनी अपील मेमो के साथ कम से कम 25000/– रुपये अदा करने हेतु दायित्वाधीन है – मालिक एवं बीमा कंपनी क्षतिपूर्ति भुगतान हेतु बोझ के अधीन दायित्वाधीन है जबकि दावाकर्ता की स्थिति में क्षतिपूर्ति अधिकरण द्वारा अधिनिर्णीत की जाती है – प्रावधान भेदपूर्ण नही – याचिका खारिज।

D. ***Court Fee (M.P. Amendment) Act, 2008 - Schedule II, Article 11(a)(i) - Upper limit of Court Fee - Absence of*** **- Issue of absence of limit of Court Fee does not arise in the present case - Issue left to be dealt with in an appropriate case.** (Para 10)

घ. न्यायालय शुल्क (म.प्र.संशोधन) अधिनियम 2008 – अनुसूची IIअनुच्छेद 11 (a)(i)–न्यायालय शुल्क की अधिकतम सीमा – की अनुपस्थिति – वर्तमान प्रकरण में

न्यायालय शुल्क की सीमा की अनुपस्थिति का विवाद्यक उत्पन्न नही होता – समुचित प्रकरण में कार्यवाही के लिये विवाद्यक छोड़ दिया गया।

E. Court Fee (M.P. Amendment) Act, 2008 - Schedule II, Article 11(a)(i) - Date of Operation - **Right to file appeal vests in the suit or on the date when an action is initiated - Such right is Substantive Right can not be taken away by an enactment which is not retrospective unless it says so expressly - Fixed Court Fee is payable on claims filed before 02.04.2008 - Ad valorem Court Fee would be payable on claims filed on or after 02.04.2008.** (Para 12)

ङ. न्यायालय शुल्क (म.प्र.संशोधन) अधिनियम 2008 – अनुसूची II अनुच्छेद 11 (a)(i)– प्रवर्तन की तिथि – अपील प्रस्तुत करने का अधिकार वादपत्र में अथवा कार्यवाही आरंभ करने की तिथि में निहित है – ऐसा अधिकार मौलिक अधिकार है जिसे अधिनियमिति द्वारा हटाया नही जा सकता जो भूतलक्षी नही है, जब तक कि वह ऐसा अभिव्यक्त रुप से प्रकट नही करती – 02.04.2008 से पूर्व प्रस्तुत किये गये दावे पर निश्चित न्यायालय शुल्क देय होगा – 02.04.2008 को या उसके पश्चात् प्रस्तुत किये गये दावों पर मूल्यानुसार न्यायालय शुल्क देय होगा।

Cases referred :

AIR 1987 SC 1184, AIR 2004 SC 1531, 1989(SUPP) 1 SCC 656, 1979(2) SCC 236, 1980 (SUPP) SCC 471, AIR 2002 KAR. 338, 2002 SCC (L&S) 508, (2006) 12 SCC 178, (2006) 12 SCC 183, (2006) 12 SCC 187, (1996) 1 SCC 345, ILR 2011 M.P. 1932, (2003) 1 SCC 692, (2009) 8 SCC 431, AIR 1951 SC 41, (1992) 1 SCC 119, (2008) 4 SCC 720, (2001) 7 SCC 201, AIR 1960 SC 980, AIR 1996 SC 1560.

Sanjay Agrawal, for the petitioner.

R.D. Jain, A.G. for the respondents.

ORDER

The Order of the Court was delivered by **ALOK ARADHE, J. :**–In this writ petition, the petitioner who claims himself to be a social worker and a businessman, impugns the validity of provisions of the Court Fee (M.P. Amendment) Act, 2008 in so far as it substitutes Article 11-a(i) in the second schedule appended to the Court Fees Act, 1870. This case has been heard along with a bunch of other cases involving the same issue. Thus this decision will govern all these cases. The other cases referred above are Writ Petitions No. 1796 of 2007, 3437 of 2007, 3804 of 2007, 3872 of 2007, 8611 of 2008 and 14738 of 2008.

2. Under Article 11-a(i) of the Court Fees Act, as amended by M.P. Act No.6 of 2008, in an appeal filed against an award passed by the Motor Accident Claims Tribunal (for short MACT), the claimant is required to pay ad valorem Court Fee at the prescribed rate, which at present is 10%, on the difference between the amount of compensation awarded by MACT and the amount claimed in the appeal. The aforesaid amendment has come into force w.e.f. 2.4.2008. The relevant extract of the Court Fee (M.P. Amendment) Act, 2008 (hereinafter referred to as the 'Act, 2008') reads as under:

> *"(ii) In article 11, for clause (a) and entry relating thereto, the following clause and entries relating thereto shall be substituted, namely :-*
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> | | | |
> |---|---|---|
> | *(a)* | *when presented to the High Court -* | |
> | *(i)* | *by the claimant for enhancement of the amount of award passed by the Motor Accident Claims Tribunal* | *ten percent of the enhanced amount claimed in appeal.* |
> | *(ii)* | *in matters other than sub-clause (i) above."* | *Thirty rupees* |

3. Learned counsel for the petitioner submitted that the Amendment Act, 2008 in so far as it substitutes Article 11-a(i) in the second schedule of the Act is discriminatory as only the claimant is required to pay the ad valorem court-fee on the enhanced amount of compensation whereas, the Insurance Company and the owner can file an appeal on fixed court-fee. It is further submitted that prescription of ad valorem court-fee without upper limit is arbitrary. It is also urged that excessive levy in the form of court-fee at the rate of 10% of the enhanced amount claimed in appeal would amount to denial of access to justice. It is further urged that such an amendment cannot be introduced by the State Legislature with a view to cut-short the litigation. In support of his submissions, learned counsel for the petitioner has placed reliance on decisions of Supreme Court in *Skandia Insurance Co. Ltd., Vs. Kokilaben Chandravadan and others,* AIR 1987, 1184, *National Insurance Co. Ltd., Vs. Swaran Singh and others,* AIR 2004 SC 1531, *Adhunik Grah Nirman Sahakari Samiti Ltd., and others Vs. State of Rajasthan and another,* 1989 (Supp.) 1 SCC 656, *State of Haryana Vs. Smt. Darshana*

Devi and others, 1979(2) SCC 236 *M/s. Central Coal Fields Ltd., and another Vs. M/s. Jaiswal Coal Co. and others,* 1980 (Supp.) SCC 471 and *Mahadev Naik Vs. State of Karnataka and another etc.,* AIR 2002 Karnataka 338.

4. On the other hand, learned Advocate General for the respondents submitted that court- fee as per the amended provision will have to be paid only when the claimant wants to file an appeal for enhancement of the amount of compensation already awarded by the MACT. Care has been taken to provide that where the claim for compensation is dismissed by the MACT, the claimant can file an appeal on the fixed nominal court-fee. It is further submitted that large numbers of frivolous appeals claiming enhancement of compensation are being filed every year due to which prompt disposal of other bona-fide appeals is being delayed/hampered. The concept of quid pro quo differentiating fee from tax has been mellowed down almost to the point of oblivion by the Supreme Court. And, in any case even that concept has not to be seen with regard to individual litigant or individual case, but there should be only a broad co-relation between the totality of fee and totality of expenses on the services rendered. In this connection, learned counsel for the respondents has invited our attention to paragraph 18 of the return filed on behalf of the respondents. It is also submitted that if a claimant is unable to pay the court-fee on account of financial constraints, he can always file an appeal as an indigent person under Order 44 of the Code of Civil Procedure. It is also submitted that issue relating to fixation of upper limit of the court fee is academic and does not arise in the facts and circumstances of the case and the decision in the case of *Adhunik Grah Nirman Sahakari Samiti Ltd.* (supra) is distinguishable Learned Advocate General in support of his submissions has placed reliance on decisions of Supreme Court in *All India Judges' Association and others Vs. Union of India and others,* 2002 SCC (L&S) 508, *All India Judges' Association and others Vs. Union of India and others,* (2006) 12 SCC 178, *All India Judges' Association and others Vs. Union of India and others,* (2006) 12 SCC 183, *All India Judges' Association and others Vs. Union of India and others,* (2006) 12 SCC 187, *Secretary to Government of Madras and another Vs. P.R. Sriramulu and another,* (1996) 1 SCC 345 and Division Bench decision of this Court in the case of *Manohar Wadhwani Vs. Bank of Baroda,* I.L.R. [2011] M.P. 1932.

5. We have considered the submissions made on both sides. Reference to Statement of Objects and Reasons is permissible for understanding the

background, the antecedent state of affairs, the surrounding circumstances in relation to the statute and the evil which the statute sought to remedy.[See: *Bhaiji v. Sub-divisional Officer, Thandla,* (2003) 1 SCC 692 and *A. Manjula Bhashini v. Managing Director Andhra Pradesh Women's Cooperative Finance Corporation Ltd.,* (2009) 8 SCC 431. It is well settled in law that it must be assumed that the legislature understands and appreciates the need of the people and the laws it enacts are directed to alleviate problems which are manifest by experience and that the elected representatives assembled in a legislature and enact laws which they consider to be reasonable for the purpose for which they are enacted. [See: *Charanjit Lal Chowdhury v. Union of India,* AIR 1951 SC 41] The Statement of Objects and Reasons of Act No.6 of 2008 contains declaration that it has been decided to levy the court fee on the memorandum of appeal when presented to the High Court by the claimant for enhancement of the award passed by the Motor Accident Claims Tribunal by making suitable amendment in Article 11 of Schedule II to the Principal Act. Having regard to inflationary trends and the increased cost of administration of justice, the increase in court-fee is necessitated. The Supreme Court in *All India Judges' Association v. Union of India,* (1992) 1 SCC 119 and in subsequent cases namely *All India Judges' Association and others Vs. Union of India and others,* 2002 SCC (L&S) 508, *All India Judges' Association and others Vs. Union of India and others,* (2006) 12 SCC 178, *All India Judges' Association and others Vs. Union of India and others,* (2006) 12 SCC 183, *All India Judges' Association and others Vs. Union of India and others,* (2006) 12 SCC 187 and in the order dated 12.7.2010 passed in Writ Petition (C) No.1022/89, has given various directions to the Government, in the light of Justice Shetty Commission recommendations, requiring considerable amount of funds most of which will fall under the head of administration of justice. This has enormously increased the financial burden on the State towards maintaining the Judicial Establishment of the State. The burden has also been substantially increased with the implementation of the Sixth Pay Commission. There is great emphasis on increase in the Judicial infrastructure, which again requires substantial financial resources.

6. In *All India Judges' Association and others Vs. Union of India and others,* 2002 SCC (L&S) 508, it has been directed that entire expenditure on account of recommendations of Justice Shetty Commission be borne by respective States. It has been held that it is for the State to increase the

court-fee or to approach the Finance Commission or the Union of India for more allocation of funds. In the order dated 12.7.2010 passed in W.P.(c) No.1022/89, once again Supreme Court has reiterated that funds internally generated by way of court-fees should be deployed for infra-structure of the subordinate Judiciary and Government may consider amending the Court Fees Act.

7. In the return which has been filed in W.P. No.1796/2007, it is stated on behalf of the State Government that there has been steady decline in collection of court-fee. The amount collected by way of court-fees and the amount spent by the State Government on the establishment expenditure of Civil and Session Court in the State, which has been mentioned in paragraph 7 of the return is reproduced below for the facility of reference:-

Year	Court collected Fees	Year	Amount spent
2000-01	24 crores	2000-01	72 crores
2001-02	16.5 crores	2001-02	68 crores
2002-03	29 crores	2002-03	70 crores
2003-04	20 crores	2003-04	75 crores
		2004-05	106 crores
		2005-06	102 crores

The expenditure incurred in respect of the High Court has also been mentioned in the form of chart in para 7 of the return, which shows the steady increase. The chart is reproduced below for ready reference:

2000-01	13.5 crores
2001-02	14 crores
200-03	14.5 crores
2004-05	17 crores
2005-06	21.5 crores

It has further been averred in the return that the main reason for increase in expenditure on Court is the implementation of recommendation made by Justice Shetty Commission. The aforesaid averments made in the return have not been controverted by the petitioner. In order to meet the expenditure, the Government has to raise funds through court-fee. In the aforesaid context, the need has arisen for amendment in the Court Fees Act, which is otherwise discernible from the statement of objects and reasons.

8. It is equally well settled legal proposition that laws relating to economic

activities should be viewed with greater latitude. The Court should feel more inclined to give judicial deference to legislative judgment in the field of economic regulation, as compared to other areas where fundamental rights are involved. Since economic matters are extremely complicated, this inevitably entails special treatment for special situations. The State therefore has to be left with wide latitude in devising ways and means of fiscal or regulatory measures, and the Court should not, unless compelled by the statute or by the Constitution, encroach into this field, or invalidate such law. [See: *Government of Andhra Pradesh and Others v. P. Laxmi Devi,* (2008) 4 SCC 720].

9. In the backdrop of well settled legal position, we may advert to the facts of the case. Prior to coming into force of Act No.6 of 2008, an appeal could be filed by the claimant seeking enhancement of the amount of compensation on fixed court-fee. In other words, a claimant was exempted from payment of court-fee on ad-valorem basis. By the impugned amendment, the aforesaid exemption has been withdrawn and only those claimants, who have received compensation, have been made liable to pay ad-valorem court fee like other litigants. Article 11 (1) (i) of the Act as amended by Act No.6 of the 2008 has been assailed on the ground that the same is discriminatory. In order to substantiate the plea of discrimination, it has to be shown that similarly situated persons are being subjected to different treatment. In the instant case, the insurance company, owner of the vehicle and the claimant cannot be said to be similarly situated persons. Under Section 149 (2) of the Motor Vehicle Act, 1988 (in short 'the 1988 Act'), the insurance company can contest the claim on limited grounds mentioned therein, except in those few cases where the MACT grants permission to the Insurance Company to take other defences. Naturally the scope of appeal also becomes limited to such grounds of defence. Further, the Legislature will be deemed to have knowledge, experience or statistics that insurance companies have law departments in which the awards passed by the tribunals are scrutinised and thereafter a decision is taken whether to file or not to file an appeal. Whereas the appeals by the claimants seeking enhancement of compensation that are filed in large numbers and in an indiscriminate manner which gives rise to the suspicion, if not inference, that there is an increase in the tendency of litigants to gamble in litigation. Similarly, if the owner of the vehicle wants to file an appeal against the award passed by the tribunal he is required to deposit at least a sum of Rs.25,000/- along with the memorandum of appeal as required by Proviso to Section 173 (1) of the 1988 Act. The owner as well as the insurer are saddled

with the liability to pay the amount of compensation whereas the in case of claimant, the amount of compensation is awarded by the tribunal. For the aforementioned reasons, we have no hesitation to hold that the petitioner has not been able to substantiate the plea of discrimination. Accordingly, the plea cannot be upheld.

10. The next contention raised on behalf of the petitioner is that requirement of payment of ad-valorem court fee without upper limit is arbitrary and discriminatory, because in respect of plaint, written statement, set off, counter claim and memorandum of appeal presented in civil or revenue court, upper limit of Rs.1.5 lacs as court fee has been prescribed. Thus, if a claimant seeks enhancement of amount of compensation by Rs.15 Lacs he would have to pay Rs.1.5 Lacs as court fee. In the writ petitions under consideration, on facts, the aforesaid issue does not arise. It is well settled that Courts do not decide academic questions which do not arise on the facts of the case. [See: *Basant Kumar v. State of Rajasthan and Others*, (2001) 7 SCC 201] Besides that it has been urged on behalf of the State that the decision in the case of *Adhunik Grah Nirman Sahakari Samili Ltd.* (supra) is distinguishable. It was argued that the Supreme Court in that case was faced with the proceeding for grant of probate and letters of Administration, which being contentious was to be registered as a suit. In the aforesaid context, it was held that if in respect of all other suits upper limit of Rs.15,000/- on the court-fee is fixed there is no logical justification for excluding the proceeding for grant of probate and letters of administration, which are registered as suits, without fixing upper limit for court-fee. It is further submitted on behalf of the respondents that an appeal filed against the award passed by the MACT cannot be equated with the regular appeals against decrees filed either under the Code of Civil Procedure or under other enactments. Be that as it may, we leave the issue to be dealt with in an appropriate case.

11. Now we may deal with the submission made on behalf of the petitioner that prescription of ad-valorem court fee at the rate of 10% would amount to denial to access to justice. We are not impressed by the aforesaid submission for the simple reason that if a claimant has no means to pay the ad-valorem court fee he can always sue as an indigent person under Order 44 of the Code of Civil Procedure. Accordingly, the aforesaid contention also does not deserve acceptance.

12. Before parting with the case, we may restate the well settled legal

principle that the right to file an appeal vests in the suitor on the day when an action is initiated. The said right is a substantive right and cannot be taken away or even curtailed by an enactment which is not retrospective unless it says so expressly or by necessary intendment. [See: *E.V. Balakrishan v. Mahalkshmi Anmal and Anothers,* AIR 1960 SC 980 and *Ramesh Singh and Another v. Cinta Devi and Others*, AIR 1996 SC 1560]. Thus in view of the aforesaid enunciation of law, the appeals which are filed in respect of the claims instituted before the Motor Accident Claims Tribunal before 2.4.2008, fixed court fee would be payable whereas in respect of the appeal against the awards in respect of claims filed on or after 2.4.2008 ad-valorem court fee as provided under the Act No.6 of 2008 would be payable.

13. In view of the preceding analysis, we do not find any merit in the writ petition. The same fails and is hereby dismissed.

Petition dismissed.

I.L.R. [2011] M. P., 3093
APPELLATE CIVIL
Before Mr. Justice A.K. Shrivastava
S.A. No. 212/1995 (Indore) decided on 8 August, 2011

STATE OF M.P. ...Appellant
Vs.
VIJAYABAI & ors. ...Respondents

***A. Land Revenue Code, M.P. (20 of 1959), Section 158 - Bhumiswami* - Land given to plaintiffs' forefather in Inam by the-then Holkar State and not to the deity - Firstly the plaintiffs' forefather and after his death, the plaintiffs became the Bhumiswami on coming into force of the Code.** (Para 17)

क. भू राजस्व संहिता, म.प्र. (1959 का 20), धारा 158 – भूमिस्वामी – तत्कालीन होल्कर राज्य द्वारा वादीगण के पूर्वजों को भूमि ईनाम में दी गई और न कि 'देवता' को – संहिता के प्रवर्तित होने पर सर्वप्रथम वादीगणों के पूर्वज और उसकी मृत्यु पश्चात वादीगण भूमिस्वामी बने।

***B. Land Revenue Code, M.P. (20 of 1959), Section 57(2),(3), Civil Procedure Code (5 of 1908), Section 9 - Dispute with the State Government* - Plaintiffs' suit for declaration of Bhumiswami right and injunction against the Government - Held - Civil suit is maintainable.** (Para 18)

ख. भू राजस्व संहिता, म.प्र. (1959 का 20), धारा 57(2),(3), सिविल प्रक्रिया संहिता (1908 का 5), धारा 9 – राज्य सरकार के साथ विवाद – वादीगण का सरकार के विरुद्ध भूमिस्वामी अधिकार की घोषणा एवं व्यादेश हेतु वाद – अभिनिर्धारित – सिविल वाद पोषणीय है।

Cases referred :

2006(3) MPLJ 87, 2001 RN 343, (2005) 10 SCC 124, 1976 JLJ 278, (2000) 3 SCC 668.

Pramod Meetha, G.A. for the appellant/State.
Bharat Mehta, for the respondents.

JUDGMENT

A.K. SHRIVASTAVA, J. :–This is defendant's second appeal who has lost from two Courts below as suit of plaintiffs has been decreed and first appeal filed by defendant has been dismissed.

2. The facts necessary for the disposal of this appeal lie in narrow compass. Long back more than 28 years ago on 22.04.1983, a suit for declaration of bhumiswami right and injunction has been filed by the plaintiffs against defendant-State Government on the averments that suit property was given to their forefather by the-then Holkar State in Inam since they were offering the prayer to the deity Shri Ramji of Ram Mandir. Earlier their forefather was cultivating the agricultural lands in question and was also offering the Pooja to the deity Shri Ramji of the said Mandir. On coming into force of M.P. Land Revenue Code, 1959 (in short "Code") by operation of law, the plaintiffs' forefather became bhumiswami and after their death they have become the bhumiswami. The Tehsildar without issuing any notice to the plaintiffs in contravention to the law has mentioned the name of Collector Dewas as Manager of Shri Ramji Mandir and in the year 1982-83 has put the lands in question for auction to give Patta. The notice of auction is dated 24.05.1982 which plaintiffs received on 04.06.1982 and hence after serving notice under Section 80 of CPC on 25.06.1982 which was received in the office of Collector Dewas on 26.06.1982 the present suit has been filed for declaration of bhumiswami right as well as for injunction.

3. The defendant-State Government refuted the plaint averments by filing written statement. In the written statement the factum of giving lands in question to forefather of plaintiffs in Inam has been denied. But, the factum of offering Pooja by the plaintiffs has not been denied. According to defendant,

the plaintiffs are Pujaris and in order to maintain the Mandir the land was given and they are not the bhumiswami. The procedure of inserting the name of Collector Dewas as Manager of the temple of suit property in the revenue record has been pleaded to be validly adopted. It has been prayed by the defendant that suit be dismissed.

4. Learned Trial Court framed necessary issues. The plaintiffs thereafter examined themselves and proved the revenue record. However, the evidence of plaintiffs has not been rebutted by defendant by examining any witness.

5. Learned Trial Court on the basis of evidence placed on record decreed the suit of plaintiffs and the first appeal which was filed by defendant, has been dismissed by the impugned judgment and decree.

6. In this manner this second appeal has been filed by the defendant assailing the judgment and decree passed by learned Two Courts below.

7. This Court on 15.12.1995 admitted the second appeal on the following substantial questions of law :-

1) Whether Pujari of a Deity can acquire the rights of Bhu-swami in respect of the land belonging to Deity, handed over to State for cultivation, for maintenance, puja-archana of Deity?

2) Whether Civil Court has jurisdiction to decide the present suit in the form in which it has been brought?

3) Whether the judgment and decree passed by the Courts below suffer from the infirmity of perversity?

8. Shri Pramod Meetha, learned Government Advocate submitted that the status of plaintiffs is that of Pujari of deity only and they cannot acquire right of bhumiswami over the suit property. Learned Government Advocate further submits that indeed land is of deity and the plaintiffs' forefather was given only right to offer Pooja and for the maintenance of the temple, the land in question was given to him and if that would be the position, since, the disputed lands were never given to forefather of plaintiffs by the-then Ruler but lands were given to deity, therefore, the plaintiffs are not the bhumiswami. In support of his contention, learned counsel has placed heavy reliance *Mahant Shri Trilokdas Guru Vs. Sita Bai and others,* 2006(3) MPLJ 87.

9. Learned Government Advocate further submits that without approaching the SDO, the Civil Suit has been directly filed which is not maintainable in view of the Section 57(2) and 57(3) of the Code, hence it has been prayed that appeal be allowed and the judgment and decree of learned two Courts below be set aside and the suit of the plaintiffs be dismissed.

10. On the other hand, Shri Mehta, learned counsel for respondents argued in support of the impugned judgment and submitted that the lands in question were never given to deity, on the contrary they were given to forefather of plaintiffs in Inam to offer Pooja of Mandir Shri Ramji and if that would be the position, by operation of law under Section 158 of the Code on -coming into force of the Code, firstly plaintiffs' forefather and after his death, the plaintiffs became bhumiswami of the suit property and therefore learned two Courts below did not err in decreeing the suit of the plaintiffs. By placing reliance on the Full Bench decision of this Court *State of M.P. v. Balveer Singh,* 2001 RN 343 it has been put-forth by learned Counsel for respondents that since the suit for declaration of bhumiswami right and permanent injunction has been filed, the same is maintainable before the Civil Court and the plaintiffs are not required to approach S.D.O. first in view of Section 57(2) of the Code.

11. Learned Counsel further submits that without issuing any notice to plaintiffs and without holding any inquiry under Section 115 of the Code the entry in the revenue record has been changed by the Tehsildar and entered the name of Collector Dewas as Manager of the said temple, which is wholly unwarranted under the law and de horsto Section 115 of the Code. Hence it has been prayed that this appeal is sans substance and the same be dismissed.

12. Having heard learned counsel for the parties, I am of the view that this appeal deserves to be dismissed.

Regarding substantial question of law No.1 :

13. On bare perusal of the plaint this Court finds that nowhere the plaintiffs have pleaded that suit property was given to deity. On the other hand it is pleaded that lands in question were given to plaintiffs' forefather in Inam as they were offering Pooja of temple Shri Ramji. These averments of plaintiffs have been denied by the defendant. According to defendant, the only right which the plaintiffs are owing is to offer the Pooja in the temple and in order to maintain the temple and its affairs in the capacity of Puiari they are possessing the suit property. But they are not the bhumiswami.

14. Indeed the learned Trial Court framed the issues No. 1 to 3 in this regard. In order to prove these issues the foundation stone (the basic documents) Inam of the lands have been filed by the plaintiffs and they are Ex.P/6, Ex.P/7 and Ex.P/8. Ex.P/6 is in respect to Village Dhulna Ex.P/7 is of Village Iklera and Ex.P/8 is of village Nemawar. These documents are dated 06.03.1930. It would be relevant to mention that how and in what manner the disputed land has been given in this document and to whom, therefore, I am reproducing the document here:

पर्चा बावत तहकीकात इनाम जमीन
नाम मौजा दुलना महाल खातेगांव जिला नेमावर
होलकर स्टेट

नाम इनामदार	खसरा नंबर इनामी खेतों	रकबा.	इनाम का प्रकार	शरायत अगर कोई हो.	रकम दामी जो वाजीब हो	कैफियत.
1	2	3	4	5	6	7
गंगाधर पुत्र मुकुंदा पुजारी ब्राम्हण सा. नेमावर	121	32..80	देवस्थान	श्रीरामजी मंदिर मौजे नेमावर के पूजा अर्चा बाबत	इनाम इन्क्वायरी रा0न0 30 मुनाफिक दामी माफ	
मीजान	1	32..80				

15. These three documents are identically verbatim to each other accept the name of the village. Needless to say that Ex.P/6 is of village Dhulna, while Ex.P/7 is of village Iklera and Ex.P/8 pertains to Village Nemawar. On bare perusal of column No. 1 which is the column of Inamdar, to whom the land is given, the name of Gangadhar S/o. Mukunda has been mentioned and this position finds place in Ex.P/7 and Ex.P/8 also. Except in Ex.P/8 word Pujari has not been mentioned. In column No.2 the khasra number of the field has been given, column No.3 pertains to its area while column No.4 is in respect of which kind of Inam is and in this column Devisthan has been endorsed. Column No.5 and 6 are very important. In Column No.5, which is in respect of conditions, if any, it has been mentioned to offer Pooja of Shri Ramji Mandir. In column No.6 it has been mentioned that Inam land has been given in terms of Rule No.30 and payment of revenue is exempted. On the rear side of this document, it has been mentioned that the land is given to Inamdar i.e. plaintiffs' forefather by the order of Settlement Officer. The signature of Settlement Officer is also there on each document of Ex.P/6, P/7 and P/8.

16. It would be relevant to mention here that if the land would have been

given to deity Shri Ramji then certainly name of deity should have been mentioned in column No.l but in column No. 1 the name of Gangadhar, who was the forefather of the plaintiffs, has been mentioned and therefore I am of the view that the land was given to plaintiffs' forefather in Inam by the-then Holkar State to offer Pooja of Shri Ramji Mandir. Thus, it cannot be said that land was given to deity Shri Ramji. The plaintiff Vishwanath examined himself as PW1 and he proved these documents. No document in rebuttal has been filed by defendant nor any witness has been examined by it. Hence, it has been proved that land was given to plaintiffs' forefather in Inam to offer Pooja and therefore learned Courts below did not commit any error in decreeing the suit of plaintiffs. The decision of *Mahant Shri Trilokdas Guru* (supra) relied by learned Counsel for State is not applicable in the present case because as facts borne out from the said decision the plaintiffs' forefather of that case was working in the temple named as Shri Ram Mandir, and they used to clean the temple and were performing other duties of the temple. However, facts of this case are altogether different. In the present case, there is a different pleading of plaintiffs that lands in question were given to their forefather in Inam to offer the Pooja of deity. In these facts and circumstances, I am of the view that decision of *Mahant Shri Trilokdas Guru* (supra) is not applicable in the present case.

17. Substantial question of law No. 1 is thus answered that because that lands in question were given to plaintiffs' forefather in Inam by the-then Holkar State and not to the deity, firstly the plaintiffs' forefather and after his death, the plaintiffs became the bhumiswami on coming into force of the Code.

Regarding substantial question of law No.2 :

18. So far as the contention of learned Government Advocate that suit is not maintainable in view of Section 57(2) and 57(3) of the Code because without approaching the SDO, straightway suit has been filed is not maintainable is concerned, suffice it to say that Full Bench of this Court in *Balveer Singh* (supra) has already held that Civil suit is maintainable without approaching the SDO. Moreover, the Supreme Court in *Hukam Singh (Dead) by LRs and others Vs. State of M.P.* (2005) 10 SCC 124 has held that Civil Court is having jurisdiction and judgment of this Court was reversed holding that there is bar under Section 57(2) of the Code to file Civil Suit. The present case is for declaration of bhumiswami right and injunction which, according to me, is maintainable in Civil Court only and in this regard Section 9 of the CPC may

be seen. The Supreme Court in *Hukam Singh's case* (supra) has approved the earlier Full Bench decision of this Court *Ramgopal v. Chetu* 1976 JLJ 278. The Supreme Court also relied its other earlier decision *Rohini Prasad v. Kasturchand* (2000) 3 SCC 668 in which it was held by the Supreme Court that Full Bench decision of *Ramgopal* (supra) has laid down the correct proposition of law and therefore I am of the view that Civil Suit is maintainable and Civil Court was having jurisdiction to decide the Civil Suit in the form in which it has been brought. In this context, I am also relying Full Bench decision of this Court *Ramgopal* (supra).

Regarding substantial question of law No.3 :

19. For the reasons stated hereinabove the judgment passed by learned Two Courts below does not suffer from any infirmity and perversity. This substantial question of law is also thus answered accordingly.

20. In the result this appeal fails and is hereby dismissed and the judgment and decree passed by learned two Courts below is hereby affirmed No costs.

Appeal dismissed.

I.L.R. [2011] M. P., 3099
APPELLATE CIVIL
Before Mr. Justice A.K. Shrivastava
S.A. No. 327/1996 (Indore) decided on 10 August, 2011

CHANDERBAI (SMT.) & ors. ...Appellants
Vs.
STATE OF M.P. ...Respondent

*A. **Civil Procedure Code (5 of 1908), Section 11 - Resjudicata** - **Issue in the earlier suit quite distinct to the issue in the present suit - Issues are not directly and substantially identical to each other - Bar of Resjudicata would not be applicable.***

In the earlier suit the matter which was substantially in issue was whether plaintiff Bhulaji became 'pakka krishik' of the suit property on 02.10.1951 on the date of abolition of the Abolition Act of 1951 and thereafter they became Bhumiswami on coming into the force of the Code, while in the present suit the controversy between the parties and the matter in issue is whether

plaintiff had become Bhumiswami by way of adverse possession - Hence, the issue in the earlier suit was quite distinct to the issue in the present suit and they are not directly and substantially identical to each other.

In order to attract the dictum of Resjudicata as envisaged u/s 11, CPC the bar is only if the suit or any issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties should be there - Since in the present suit the matter is not directly or substantially in issue which was directly substantial in issue in former suit and, therefore, the bar of Resjudicata would not be applicable - The plaintiff's father did not acquire Bhumiswami right by way of adverse possession in the former suit when it was filed on 16.06.1969 and the issues in both the suits are quite distinct. (Para 14and 15)

क. सिविल प्रक्रिया संहिता (1908 का 5), धारा 11 – पूर्व न्याय – पूर्ववर्ती वाद का विवाद्यक, वर्तमान वाद के विवाद्यक से बिल्कुल भिन्न है – विवाद्यक प्रत्यक्ष रुप से तथा सारवान रुप से एक दूसरे के समरुप नहीं है – पूर्व न्याय का वर्जन लागू नहीं होगा।

***B. Civil Procedure Code (5 of 1908), Order II Rule 2 - Bar to sue* - Present suit altogether on different cause of action from earlier suit - Matter in controversy which is directly and substantially in issue is also altogether different - Bar is not applicable.**

In the present suit, as the plaintiff is claiming Bhumiswami right by way of adverse possession on the basis of altogether different cause of action, that bar is also not applicable in the present case, because, alleging to become Bhumiswami by adverse possession accrued in only on 17.01.1990 when he completed his possession for last 30 years and earlier to it the cause of action was not mature. (Para 17)

ख. सिविल प्रक्रिया संहिता (1908 का 5), आदेश II नियम 2 – वाद का वर्जन – वर्तमान वाद का वाद हेतुक पूर्ववर्ती वाद के वाद हेतुक से बिल्कुल भिन्न है – विवादित मामला जो प्रत्यक्ष एवं सारवान रुप से विवाद्य है वह भी बिल्कुल भिन्न है – वर्जन लागू नही होगा।

***C. Civil Procedure Code (5 of 1908), Section 11 - Principle of Resjudicata* - Section 11, CPC is based partly on the maxim of Roman**

jurisprudence, 'interest reipublicae ut sit finis litium' it concerns the State that there be an end to law suits and partly on the maxim 'Nemo debet bis vexari pro una et eadem causa' which would mean that no man should be vexed twice over the same cause - In the present case, cause of action and the nature of cause of action are quite distinct in both the suits, for this additional reason also Section 11 CPC would not be applicable. (Paras 15 & 16)

ग. सिविल प्रक्रिया संहिता (1908 का 5), धारा 11 – पूर्व न्याय का सिद्धांत – धारा 11 सि.प्र.सं. अंशतः रोमन विधि शास्त्र के सूत्र 'इन्ट्रेस्ट रिपब्लिके अट सिट फिनिस लिटियम' अर्थात राज्य का हित इस बात में है कि मुकदमेबाजी का अंत हो पर आधारित है और अंशतः सूत्र 'नेमो डेबेट बिस वेक्झारी प्रो अना एट इएडम क्वासा' अर्थात किसी भी व्यक्ति को एक ही हेतुक के लिए दो बार तंग नहीं किया जाना चाहिए पर आधारित है – वर्तमान मामले में वाद हेतुक तथा वाद हेतुक का स्वरुप दोनों मुकदमों में बिल्कुल भिन्न है, इस अतिरिक्त कारण से भी धारा 11 सि.प्र.सं. लागू नहीं होगी।

Aditya Garg, for the appellants.
Pramod Mitha, for the respondent.

ORDER

A.K. Shrivastava, J.:–This is plaintiff's second appeal who has lost from both the Courts below since his suit for declaration of Bhumiswami right and injunction has been dismissed by learned Trial Court and the first appeal has also been dismissed by the impugned judgment and decree.

2. The facts necessary for the disposal of this second appeal lie in narrow compass. Prabhulal (original plaintiff) whose L.Rs. are present appellants filed civil suit for declaration of Bhumiswami right and injunction in the Trial Court pleading in the plaint that he was Zamindar of erstwhile Gwalior State. The Gwalior State was merged in Madhya Bharat Government. On 2.10.1951 "Madhya Bharat Zamindari Abolition Act Samvat 2007" (in short Abolition Act) came into force w.e.f. 2.10.1951. The suit property which is agriculture land and the description whereof is mentioned in the plaint which his the subject matter of the suit was being possessed by plaintiff's father Bhulaji and it did not vest in the State. The plaintiff Prabhulal along with his mother Jadavbai Wd/o Bulaji filed a civil suit in the Court of Civil Judge Class-II Agar (Civil Suit No. 50-A/1969) earring State of M.P. and its functionaries as well as certain other persons as defendants for declaration of Bhumiswami right and injunction claiming in the earlier suit that the land in question did not vest in the State Government and on coming into force of

M.P. Land Revenue Code, 1959 (hereinafter referred to as the Code) they became Bhumiswami. However, the said civil suit was dismissed on 7.4.1973 and the first appeal which was filed by plaintiffs was dismissed and the same result met in the second appeal filed by them which was also dismissed on 20.11.1989.

3. In para 3 of the plaint specifically it has been pleaded in the present suit that although his possession was obtained by the then Madhya Bharat Government on 2.10.1951 but on the same date he again encroached upon the lands in question and since then he is possessing the same as owner in the knowledge of the State Government and his possession is peaceful without interruption for a period of more than 30 years and still he is in possession of the suit property.

4. In para 8 of the plaint specifically it has been pleaded that the name of plaintiff has been recorded as trespasser in the revenue record and when plaintiff requested Patwari of the village to record his name in the column of Bhumiswami he did not agree and he also gave threat to dispossess him on 17.1.90. Hence, a suit for declaration and injunction has been filed by the plaintiff. The cause of action has been pleaded to be 17.1.90 after completion of 30 years of his possession, as according to plaintiff Bhumiswami right has been accrued in him by way of adverse possession. Hence, it has been prayed that plaintiff be declared as Bhumiswami on the basis of adverse possession and a decree of possession be also granted against the defendants not to interfere in his possession.

5. The State of M.P. filed written statement and denied the plaint averments. However, the factum of possession of plaintiff has been admitted in para 3 as well as in para 8 of the written statement although according to the defendant his possession is that of a trespasser. In special plea it has been pleaded by defendant that the present suit is barred by the dictum of Resjudicata because earlier civil suit for declaration of Bhumiswami right and injunction was filed by the plaintiff which was dismissed and the judgment and decree of dismissal was maintained up to this Court in Second Appeal.

6. Learned Trial Court framed necessary issues and tried issue No.6 which is in respect of Resjudicata was decided as preliminary issue. Vide order dt. 10.12.1991 the learned Trial Court dismissed the suit holding that a bar of Resjudicata is there in the present case. The plaintiff filed first appeal before learned Appellate Court which has been dismissed by the impugned judgment and decree.

7. In this manner this second appeal has been filed by the unsuccessful plaintiff.

8. This Court on 29.4.1997 admitted this second appeal on the following substantial question of law:

> "Whether the Courts below have committed an error of law in dismissing the suit on application of Order II Rule 2 and Section 11 of the Code of Civil Procedure?"

9. In his usual whims Shri Aditya Garg, submitted that matter which was in issue in the former suit was whether the suit property did not vest in the State on coming into force of the Madhya Bharat Zamindari Abolition Act since it was in the self cultivation of the Zamindar and, therefore, on coming into force of the Code firstly the plaintiffs father Bhulaji became Bhumiswami and after his death his mother and plaintiff became the Bhumiswami. That suit was dismissed and it was held that the land in question vested in the State on coming into force of the Abolition Act, 1951 and therefore, the father of plaintiff did not become a pakka tenant and thus did not become Bhumiswami on coming into the force of the Code But, in the present suit the issue in controversy is that whether the plaintiff had acquired Bhumiswami right against the State/Government on account of adverse possession since plaintiff is in possession of suit property for more than last 30 years as Bhumiswami in the knowledge of State and his possession is peaceful and without interruption. Thus according to learned Counsel the matter in issue of two suits is not directly and substantially similar to each other and the issues framed in the present suit were not directly and substantially in issue in the arlier suit and, therefore, the bar of Resjudicata in the present case as held by learned first Appellate Court as well as by learned Trial Court dismissing the suit on the principle of Resjudicata deserves to be set-aside.

10. Learned Counsel further submits that whether plaintiff on the basis of subsequent cause of action acquired Bhumiswami right by way of adverse possession and whether in these facts and circumstances of the case the bar of resjudicata would be applicable or not is a mixed question of fact and law and, therefore, the learned Trial Court erred in trying issue No.6 as preliminary issue and thereafter dismissing the suit of plaintiff and the same error has been committed by learned First Appellate Court. Hence, it has been prayed by learned Counsel that by setting aside the impugned judgment of learned two Courts below the case be sent back to the Trial Court to decide the matter afresh after recording the evidence of the parties.

11. Combating the aforesaid submission put forth by learned Counsel for the appellants, Shri Pramod Mitha learned Government Advocate argued in support of the impugned judgment and submitted that the earlier suit was also for declaration of Bhumiswami right and injunction which was dismissed and the judgment of dismissal attained finality up to this Court and the present suit is also for declaration of Bhumiswami right and injunction, therefore, the same is barred by principles of Resjudicata and if that would be the position, learned Counsel submits that learned two Courts below did not err in dismissing the suit of plaintiff. To bolster his submission, learned Counsel has placed reliance on the judgment passed in the earlier suit dated 7.4.1973 and the certified copy of the plaint of the earlier suit which are on record.

12. Learned Government Advocate further submits that in the earlier suit Survey No.963 was not the subject matter of that suit, but, merely because in the present case the same is also put in dispute, it cannot be said that the present suit is not barred by Order II of Rule 2 CPC. On these premises it has been put forth by learned Government Advocate that this appeal sans substance and the same be dismissed.

13. Having heard learned counsel for the parties I am of the view that this appeal deserves to be allowed and the case is sent back to learned Trial Court.

Regarding Substantial Question of Law No.2

14. By keeping the plaint of the present suit in juxtaposition to the plaint of earlier suit (Civil Suit No. 50-A/1969) this Court finds that in the earlier suit the matter which was substantially in issue was whether plaintiff Bhulaji became 'pakka krishik' of the suit propperty on 2.10.1951 on the date of abolition of the Abolition Act of 1951 and thereafter they became Bhumiswami on coming into the force of the Code, while in the present suit the controversy between the parties and the matter in issue is whether plaintiff had become Bhumiswami by way of adverse possession. Hence, the issue in the earlier suit was quite distinct to the issue in the present suit and they are not directly and substantially identical to each other. It be seen that in present case the State of M.P. who is defendant has admitted the possession of the plaintiff in the written-statement although according to it the status of plaintiff is that of a trespasser.

15. In order to attract the dictum of Resjudicata as envisaged under Section 11 CPC the bar is only if the suit or any issue in which the matter

directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties should be there. Since in the present suit the matter is not directly or substantially in issue which was directly substantial in issue in former suit and, therefore, the bar of Resjudicata would not be applicable. The plaintiff's father did not acquire Bhumiswami right by way of adverse possession in the former suit when it was filed on 16.6.1969 and the issues in both the suits are quite distinct.

16. Section 11, CPC is based partly on the maxim of Roman jurisprudence, "interest reipublicae ut sit finis litium" it concerns the State that there be an end to law suits and partly on the maxim Memo debet bis vexari pro una et eadem causa which would mean that no man should be vexed twice over the same cause. The term "same cause of action" is having a great significance in the applicability of principal of Resjudicata. In the present case as already pointed out hereinabove, the cause of action and the nature of cause of action are quite distinct in both the suits, for this additional reason also Section 11 CPC would not be applicable in the present case.

17. So far as the bar of present suit under Order II Rule 2 CPC is concerned, the Survey No. 963 was not the subject matter of the earlier suit. Ordinarily the bar as envisaged under this provision would have been applicable but since the present suit is filed altogether on different cause of action which is altogether distinct from earlier suit and the matter in controversy which is directly and substantially in issue is also altogether different in the present suit, as the plaintiff is claiming Bhumiswami right by way of adverse possession on the basis of altogether different cause of action, that bar is also not applicable in the present case, because, alleging to become Bhumiswami by adverse possession accrued in only on 17.1.1990 when he completed his possession for last 30 years and earlier to it the cause of action was not mature.

18. However, the question still remains whether plaintiff had acquired Bhumiswami right by adverse possession or not and since it is a question of fact and law it can be decided only after a detailed enquiry by leading evidence on the issues framed.

19. The substantial questions of law is thus, answered that the two Courts below have committed an error of law in dismissing the suit on application of Order II Rule 2 and Section 11 of the CPC. The substantial question of law is thus, answered in affirmative in favour of appellant and against the respondents.

20. For the reasons stated hereinabove, this appeal succeeds and is, hereby, allowed. The impugned judgment and decree passed by learned two Courts below is, hereby, set-aside. The preliminary issue No.6 is decided in favour of plaintiff and it is hereby held that the present suit is not barred by Resjudicata. The case is sent back to the Trial Court who shall record the evidence of the parties and shall decide the suit of plaintiff on other issues independently without being influenced by any of the observations, if any, made by this Court in this order. The parties are hereby directed to appear before learned Trial Court on 26.9.2011.

21. The Registry is hereby directed to send the record post haste so as to reach that Court much prior to 26.9.2011 and for this date of hearing no separate notice shall be issued.

Appeal allowed.

I.L.R. [2011] M. P., 3106

APPELLATE CIVIL

Before Mr. Justice A.K. Shrivastava

S.A. No. 406/1998 (Indore) decided on 12 August, 2011

STATE OF M.P. ...Appellant

Vs.

MANGILAL ...Respondent

A. Specific Relief Act (47 of 1963), Section 38 - Permanent Injunction - **State Government admitting the possession of plaintiff for 12 years prior to the date of the filing of the suit - From the record it is proved that from 1956-57 to 1963-64 the suit property has been recorded in the name of 'T' - Defendant-State Government has not filed any document in order to show when the suit property came in the ownership of State or when the Bhumiswami rights of 'T' were extinguished - Held - Appellate Court rightly granted the decree of permanent injunction in favour of respondent/plaintiff, holding him not to be a trespasser on the Government land.** (Para 12)

क. विनिर्दिष्ट अनुतोष अधिनियम (1963 का 47), धारा 38 – स्थाई व्यादेश – राज्य सरकार ने याची का वाद प्रस्तुती दिनांक के 12 वर्ष पूर्व से कब्जा होना स्वीकार किया – अभिलेख से यह साबित किया गया है कि 1956–57 से 1963–64 तक वाद सम्पत्ति 'टी' के नाम से अभिलिखित है – प्रतिवादी–राज्य सरकार ने यह दर्शाने के लिये कोई दस्तावेज प्रस्तुत नहीं किया कि वाद सम्पत्ति राज्य के स्वामित्व में कब आयी अथवा

'टी' के भू–स्वामी होने के अधिकार कब समाप्त किये गये – अभिनिर्धारित – अपीलीय न्यायालय ने उचित रुप से प्रत्यर्थी/वादी के पक्ष में उसे सरकारी भूमि पर अतिचारी नहीं मानते हुये स्थाई व्यादेश की डिक्री प्रदान की।

B. Evidence Act (1 of 1872), Section 114(g) - Adverse Inference **- Party in possession of best evidence, which would throw sufficient light on the issue in controversy withholding it - Court should draw an adverse inference against him notwithstanding that onus of proof does not lie on him.**

Up to 1963-64 the land was recorded in the name of Thakur Narendra Singh as Bhumiswami in the revenue record, then how and in what manner and by which order it was recorded to be of the State Government later on in the revenue record.

How and in what manner and when the disputed land vested in the State, there is nothing on record -First Appellate Court rightly came to hold that the suit property is not a government land and the plaintiff can not be held to be a trespasser against the State Government. (Para 12, 15 & 16)

ख. साक्ष्य अधिनियम (1872 का 1), धारा 114(जी) – प्रतिकूल निष्कर्ष – पक्षकार के कब्जे में सर्वोत्तम साक्ष्य जो अंतर्ग्रस्त विवाद्यक पर पर्याप्त प्रकाश डाल सकती है – उस पर सबूत का भार नहीं होते हुए भी न्यायालय को उसके विरुद्ध प्रतिकूल निष्कर्ष निकालना चाहिए।

Cases referred :

AIR 1953 SC 225, AIR 1917 PC 6, AIR 1968 SC 1413, 1960 JLJ 1016.

Pramod Mitha, G.A. for the appellant.

None for the respondent though served.

ORDER

A.K. Shrivastava, J.:–This appeal has been filed by defendent-State Government assailing the judgement of reversal passed by learned First Appellate Court allowing the appeal of plaintiff and thereby reversing the judgement and decree passed by learned Trial Court dismissing his suit.

2. In brief the suit of plaintiff is that the suit property which is agricultural land and the description whereof has been mentioned in the plaint and which is the subject matter of the suit is in possession of plaintiff since 1935-36 i.e.

for last 50-51 years prior to the date of filing of the suit which was filed on 20.1.1986. According to the plaintiff after putting hard labour by flowing his sweat he made the land in question cultivable and his possession is hostile against the State and he has acquired Bhumiswami right by adverse possession.

3. Naib-Tehsildar Ratlam, issued a notice under Section 248(1) of the M.P. Land Revenue Code, 1959 (in short the Code) to the plaintiff which he replied on 10.2.1975 but de hors to the law on. 13.8.1975 said Naib-Tehsildar imposed a fine of Rs.1,500/- on plaintiff and by passing further an order to remove the possession over the suit property. Hence, the present suit has been filed by the plaintiff.

4. By amending his plaint it has been pleaded by the plaintiff that Thakur Narendra Singhji entered into an agreement of sale with plaintiff @ Rs.500/- per bigha agreed to sell 5 bighas land for a consideration of Rs. 2500/- on *Akshay Tritiya* in the year 1935-36. A sum of Rs. 500/- was obtained as advance by said Thakur Narendra Singh and thereafter he delivered the possession of the suit property to the plaintiff. For the balance amount of consideration Rs.2,000/- it was agreed between the parties that it shall be paid by the plaintiff in 15 instalments @ Rs. 135/- per year. A document to that effect Ex.P/1 was executed by said Narendra Singh in favour of plaintiff. Hence, it has been prayed by the plaintiff that he is entitled for the declaration that he has acquired Bhumiswami right by adverse possession and the order passed by Naib-Tehsildar Ratlam, dated 13.8.1975 in in effective. A decree of permanent injunction has also been sought that defendant shall not interfere in the possession of plaintiff on the suit property.

5. The State Government by filing written statement refuted the plaint averments. Although it has been specifically admitted by him that for last 12 years the plaintiff is possessing the suit property. In the written statement it has been prayed that the suit be dismissed.

6. The learned Trial Court on the basis of the averments made in the plaint and denial in the written statement framed necessary issues and after recording the evidence of the parties dismissed it.

7. The plaintiff assailed the judgment of learned Trial Court dismissing his suit by filing first appeal. The learned First Appellate Court by the impugned judgment allowed the appeal of plaintiff by passing a decree of injunction.

8. In this manner this second appeal has been filed by the defendant-State Government.

8. This Court on 7.10.1999 admitted this second appeal on the following substantial question of law:

> "Whether a decree for permanent injunction alone, was rightly granted by the Lower Appellate Court in favour of Respondent/plaintiff?".
>
> 2. Whether the findings recorded by Lower Appellate Court are illegal and perverse ?"

9. Shri Mitha learned Government Advocate has submitted that learned First Appellate Court was not correct in passing the decree of injunction and the findings of learned Appellate Court are illegal and perverse.

10. None has put appearance on behalf of respondent though served.

11. Having heard learned Government Advocate and after perusing the record I am of the view that this appeal deserves to be dismissed.

Regarding Substantial Question of Law No.1.

12. On bare perusal of the findings recorded by learned First Appellate Court from para 5 onwards this Court finds that defendant-State Government has admitted the possession of plaintiff for 12 years prior to the date of the filing of the suit which was filed on 20.1.1986. I have also gone through the written statement and on bare perusal of para 4 of it this Court finds that specifically the possession of plaintiff for last 12 years as trespasser has been admitted by the defendant-State Government. The learned First Appellate Court on scanning the oral and documentary evidence in para 7 has recorded a finding that in Samvat 2020-21 i.e. 1963-64 the name of Thakur Narendra Singh is entered in the revenue record as Bhumiswami in the revenue record. Earlier to it in the year 1956-57 in the Khasra (revenue record) Ex.P/6 the name of Thakur Narendra Singh has been mentioned on the suit property. Thus, according to learned First Appellate Court from the record it is proved that from 1956-57 to 1963-64 the suit property has been recorded in the name of Thakur Narendra Singh, and when the suit property came in the ownership of State or when the Bhumiswami rights of Thakur Narendra Singh were extinguished, the defendant- State Government has not filed any document in this regard. According to me since the entire revenue record is in power and possession of the State Government therefore, it was bounden duty of the State Government to produce that record in the Court which could throw

sufficient light on the controversy and the defendant- State Government cannot be heard to say, relying upon the abstract doctrine of onus of proof that it was no part of its duty to produce that record unless he was called upon to do so. In this context I may profitably place reliance on the decision of Supreme Court *Hiralal and others v. Badkulal and others* AIR 1953 SC 225 and also the judgment of *T.S. Murugesam Pillai v. M.D.Gnana Sambandha Pandara Sannadhi and others* A.I.R. 1917 Privy Council 6. According to me if a party is in possession of best evidence which would throw sufficient light on the issue in controversy is withholding it the Court should draw an adverse inference against him notwithstanding that onus of proof does not lie on him. In this context I may profitably place reliance on the decision of Supreme Court *Gopal Krishnaj Ketkar v. Mohamed Haji Latif and others* AIR 1968 Supreme Court 1413.

15. The defendant-State Government in its written statement is claiming the suit property its own. Since it is borne out from the record that upto 1963-64 the land was recorded in the name of Thakur Narendra Singh as Bhumiswami in the revenue record, then how and in what manner and by which order it was recorded to be of the State Government later on in the revenue record. There is a complete procedure under the M.P.Land Revenue Code 1959 (in short the Code) that if a wrong or incorrect entry is made in the revenue records prepared under Section 114 by an Officer subordinate to Tehsildar, the Tehsildar may direct necessary changes to be made in the revenue record in red ink after making such enqiry from the person concerned as he may deem fit after giving due written notice. In this context Section 115 of the Code may be seen. The Division Bench of this Court in *Shiv Narain vs. Tahsildar, Gwalior* 1960 JLJ 1016 by analyzing Section 50 of Madhya Bharat Land Revenue and Tenancy Act which is equivalent to the provision of Section 115 of the present Code has held that without issuing any notice to the person aggrieved the revenue record cannot be corrected and an enquiry should have been held before passing any order. This Division Bench decision of *Shiv Narain* (supra) has been followed later on in several judgments of this Court.

16. The learned First Appellate Court in para 8 of the impugned judgment has rightly arrived at a finding that the possession of plaintiff is shown to be that of encroacher and the Tehsildar initiated enquiry under Section 248 of the Code against him, but, how and in what manner and when the disputed land vested in the State, there is nothing on record and because the defendant-

State Government is having the entire record with it should have filed it in the Court. Hence, learned First Appellate Court rightly came to hold that the suit property is not a government land and the plaintiff cannot be held to be a trespasser against the State-Government. This finding of learned First Appellate Court is not required to be interfered with.

17. The learned First Appellate Court on the basis of evidence of plaintiff as well as from the revenue record which is on record, rightly came to hold that the land in question was taken by plaintiff from Bhumiswami Thakur Narendra Singh and whether it has been rightly obtained by him, it is the interse dispute between Thakur Narendra Singh and plaintiff but, the defendant-State Government has no role in between the interse dispute between them. Said Thakur Narendra Singh has not come forward to assert that plaintiff is not the Bhumiswami of the suit property or his possession is illegal but certainly the State Government has no authority holding the plaintiff to be an encroacher holding the suit property to be government land. The suit property is government land is not at all has been proved by the State Government. Although Thakur Narendra Singh was the Bhumiswami this has been found to be proved by learned First Appellate Court. The learned First Appellate Court on the basis of evidence placed on record rightly came to hold that with the permission of the Bhumiswami Thakur Narendra Singh the plaintiff is in possession of the suit property and this is so proved from the evidence placed on record as well as the document Ex.P/1 executed by Narendra Singh in favour of plaintiff. These findings are pure finding of fact which has been rightly arrived at by learned First Appellate Court after appreciating and marshalling the evidence and by considering the various provisions of law and which cannot be set-aside in the second appeal since there is no perversity in it.

18. The substantial question of law No.1 is thus answered in affirmative that learned 'First Appellate Court rightly granted the decree of permanent injunction in favour of respondent holding him not to be a trespasser on the government land.

Regarding Substantial Question of law No.2.

19. Learned Government Advocate could not point out that how and in what manner the impugned judgment of learned First Appellate Court and the findings rendered therein are illegal and perverse and, therefore, this question is answered that findings recorded by learned First Appellate Court are not illegal and perverse.

20. Resultantly, this appeal fails and is, hereby, dismissed but with no order as to costs because no one has put appearance on behalf of respondent.

Appeal dismissed.

I.L.R. [2011] M. P., 3112
APPELLATE CIVIL
Before Mr. Justice J.K. Maheshwari
M.A. No. 4871/2010 (Jabalpur) decided on 29 August, 2011

NATIONAL INSURANCE COMPANY LTD. ... Appellant
Vs.
RAMESH KUMAR BURMAN & anr. ... Respondents

A. Workmen's Compensation Act (8 of 1923), Section 4(c)(i) Part -II of Schedule I - Permanent Partial Disability - Non examination of Doctor- **Respondent suffered amputation of left thumb and index finger of left hand became unworkable due to injuries sustained by him - Such injuries falls at serial No. 5 and 27 of Part II of Schedule I of Act - In case of permanent partial disablement resulted from injury under Section 4(c)(i) of the Act, the statement of medical practitioner assessing the loss of earning capacity not required - Statement of Medical Practitioner to record a finding with respect to loss of earning capacity comparable to injuries is necessary only when the injuries of the injured falls under Section 4(c)(ii).** (Para 10)

क. कर्मकार प्रतिकर अधिनियम, (1923 का 8), धारा 4(सी)(i) अनुसूची–I का भाग – II – स्थायी आंशिक निःशक्तता – चिकित्सक का परीक्षण नहीं किया जाना – प्रत्यर्थी को आयी चोटों के कारण उसके बांये हांथ की तर्जनी अनुपयोगी हो गयी तथा उसे बांये अंगूठे का अंगोच्छेदन सहना पड़ा – ऐसी क्षतियां अधिनियम की अनुसूची I के भाग II के अनुक्रमांक 5 व 27 में आती है – अधिनियम की धारा 4(सी)(i) के अंतर्गत क्षति के परिणामस्वरूप स्थायी आंशिक निःशक्तता के मामले में उपार्जन क्षमता की हानि का निर्धारिण करने वाले चिकित्सक का कथन आवश्यक नहीं – क्षतियों की तुलना में उपार्जन क्षमता की हानि के संबंध में निष्कर्ष अभिलिखित करने के लिए चिकित्सक का कथन केवल तब आवश्यक है जब आहूत की क्षतियां धारा 4(सी)(ii) के अंतर्गत आती है।

B. Workmen's Compensation Act (8 of 1923), Section 4A - Date from which interest is payable **- On the date of incident, F.I.R. was lodged, M.L.C. was performed and claim form was submitted to the insurance company through employer - Admittedly the liability of employer is**

indemnified by insurance company - No amount was paid by the insurance company within a month - In absence of payment of compensation within one month, the interest as specified under Section 4(A)(3)(a) of the Act, shall be payable by Insurance Company - Interest on the amount of compensation shall be payable after one month from the date of accident @ 12% per annum till its realization. (Paras 18 to 20)

ख. कर्मकार प्रतिकर अधिनियम, (1923 का 8), धारा 4ए – तिथि, जब से ब्याज देय होगा – घटना दिनांक को एफ.आई.आर. दर्ज की गयी, एमएलसी किया गया और नियोक्ता के जरिए बीमा कम्पनी का दावा प्रारूप प्रस्तुत किया गया – स्वीकृत रूप से नियोक्ता के दायित्व को बीमा कम्पनी द्वारा क्षतिपूरित किया जाता है – बीमा कम्पनी द्वारा एक माह के भीतर कोई रकम संदाय नही की गयी – एक माह के भीतर प्रतिकर का भुगतान नही किये जाने से बीमा कम्पनी द्वारा ब्याज देय होगा जैसा कि अधिनियम की धारा 4(ए)(3)(ए) के अंतर्गत विनिर्दिष्ट है – दुर्घटना दिनांक के एक माह बाद से 12 प्रतिशत प्रतिवर्ष क्षतिपूर्ति की रकम पर ब्याज उसके भुगतान तक देय होगा।

Cases referred :

PART-3 2010 ACC 915, (2010) 10 SCC 347, 1976 ACJ 141, 1997 ACJ 517, 1998 ACJ 1, 2007 ACJ 845, 2009 ACJ 115, 2009 ACJ 2742, 2004 ACJ 452(SC).

D.N. Shukla, for the appellant.
Ashish Agrawal, for the respondent No.1.
Rajendra Puranik, for the respondent No.2.

ORDER

J.K. MAHESHWARI, J.:– Both the appeals are arising out of Award passed by Commissioner, Workmen's Compensation dated 26/10/2010, however, they are being disposed of by the common order.

2. M.A. N0.4871/2010 filed by the Insurance Company has been admitted by this Court on 14/12/2010, without framing the substantial questions of law by the said order. But, the substantial questions of law as available in the memo of appeal, this Court is proceeding to decide those questions, which are as under :

> "(i) Whether the finding given by the learned Commissioner, Workmen's Compensation about the permanent partial disablement i.e. 40% is not correct considering the schedulc-ll of the Workmen's Compensation Act ?

(ii) Whether the interest has been awarded contrary to the Section 4A of the Workmen's Compensation Act and the judgment of the Apex Court in case of *Palraj Vs. Divisional Controller,* Part-3, 2010 ACC, page 915 ? "

3. In M.A. No.493/2011 the question of law with respect to grant of interest from the date of accident has been pressed, however, looking to the IInd question of law as framed in M.A. N0.4871/2010, the issue of payment of interest may be considered simultaneously.

4. Undisputedly, the injured was working as labourer in the Saw Mill since 2002. On 15/4/2003 at about 12.30 p.m. when the appellant was working on the saw machine, his left thumb was amputated and received severe injury in the index finger of left hand. The claim form was submitted to the Insurance Company through the employer. At the time of incident, he was aged about 45 years and getting salary of Rs.2,880/- per month. Immediately . FIR was lodged MLC and other formalities were also performed on the same day which are available on record. It is claimed that on account of disability an amount of Rs.4,87,987/- may be awarded along with interest @ 12% per annum.

5. The defendants have filed their separate written statements. In the written statement of defendant No.2-Insurance Company, it is stated that defendant No.l has not given any intimation regarding the incident. More so it was the negligence of the applicant, however, the insurance company is not liable to pay any amount of compensation and the interest thereon. The defendant No.l by filing written statement admitted the incident and injury received to injured. It is also admitted that the applicant was a workman under his employment and getting salary of Rs 2880/- per month. It is further stated that the claim form was submitted to the insurance company, however, the payment is to be made by the insurance company indemnifying the liability as per policy, therefore, the compensation may be awarded against the insurance company along with interest.

6. The Commissioner, Workmen's Compensation accepted the salary Rs.2880/- considering the certificate produced before him and looking to the fact that the injuries as received to the injured falls under Section 4(c)(i) Part-II of Schedule-1 of the Workmen's Compensation Act, 1923 (hereinafter it be called as 'the Act'), however, accepting the disability to the extent of 40% awarded a sum of Rs.1,12,713/- and interest @ 12% per annum if the award is not satisfied within 45 days from the date of order.

7. Shri D.N. Shukla, learned counsel representing Insurance Company in M.A. No.4871/2010, contends that the finding with respect to partial permanent disablement, without the statement of doctor as recorded by the trial Court is improper. It is urged that looking to the injuries received by the injured, the statement of the medical practitioner ought to be recorded, because the injuries received to him falls under the Explanation-II of Section 4(c)(ii) of the Act. It is submitted by him that the percentage of disability may hardly be to the extent of 30% instead of 40% as accepted by the Commissioner, therefore, award of compensation without the statement of medical practitioner is against the law and also on higher side. It is further submitted that the interest as awarded by the Commissioner fastening the liability on the insurance company is improper in view of the decision of the Apex Court in the case of *Pal Raj Vs. Divisional Controller,* Part-3, 2010 ACC, page 915.

8. Shri Gulab Sohane, learned counsel appearing on behalf of Insurance Company in M.A. No.493/2011, contends that the Commissioner committed an error in awarding compensation accepting 40% disability, in fact, the disability may not be accepted until the statement of the medical practitioner in regard to the percentage of loss of earing capacity comparable to injuries as apparent from Explanation II of Section 4(c) of the Act is recorded, however, the compensation as awarded is on higher side. On the point of award of interest, it is urged that the employer ought to pay, and Insurance Company may not be held liable to pay interest. In view of the forgoing, it is prayed that the appeal filed by claimant seeking enhanced rate of interest from the date of accident may be dismissed.

9. Per contra, in counter to the arguments of learned counsel of the Insurence Company, in both the appeals, Shri Ashish Agrawal, learned counsel for the claimant, contends that left thumb of injured is amputated and also lost his index finger and middle finger of left hand, however, he is unable to perform the work. As per his contetion the said injuries are of Schedule I Part II at serial No.6, and the loss of index finger is at serial No.27, thereby total percentage of disablement comes to 54%. It is further submitted that such permanent partial disablement does not fall under Explanation-II of sub Section (ii) of Section-4 (c) of the Act. It is submitted that if Comissioner has awarded compensation accepting the disablity to the extent of 40%, it is not on higher side, in fact the compensation as awarded is meager looking to the percentage of disability. On the point of

interest, it is said that on the date of accident FIR was lodged, MLC was performed, intimation to the Insurance Company was given by submitting claim from through employer as apparent from the record, however, the interest ought to have been awarded from the date of incident against the Insurance Company who has indimnified the liability of the owner as per policy, and even on having knowledge of the accident failed to pay the amount of compansation fell due. In view of forgoing, it is urged that interest @ 12% per annum from the date of accident, ought to have been awarded, modify the direction as issued by the Commissioner by the impugned award.

10. After having heard learned counsel for both the parties and also the injured present in the Court and on perusal of the record, it is apparent that there is a amputation of left thumb and due to injuries received to index finger of left hand, it is not in a workable condition. The injuries received to the injured is akin to the certificate of permanent disability which is accepted by the Commissioner by the impugned award, however, there is no reason to disbelieve such certificate. Looking to the injuries of injured, present in Court and the certificate of permanent disability, in the opinion of this Court, such injuries falls at serial No.5 and 27 of Part-II of Schedule-I of the Act. Serial No.5 is the amputation of thumb, to which disability is to the extent of 30%, and serial No.27, if the index finger is wholly affected then the percentage of the disability comes to 14%. Accordingly, total disability received by the injured is 44% comparable to loss of earning capacity. The Commissioner accepted the disability to the extent of 40% and granted compensation for loss of earning to such extent appears to be just and reasonable. In view of the foregoing discussion and looking to the injuries the arguments as advanced by learned counsel of the Insurance Company is not acceptable and is repealed. It is to be observed that the statement of the medical practitioner to record a finding with respect to loss of earning capacity comparable to injuries is necessary only when the injuries of the injured falls under Section 4 (c) (ii), Explanation-II of the Act. In case of permanent partial disablement resulted from the injury under Section 4 (C) (1) of the Act the statement of medical practitioner assessing the loss of earning capacity is not required. In the opinion of this Court, the finding of loss of earning due to 40% disability as recorded by the Commissioner is in accordance to law, the substantial question of law No.1 is hereby answered accordingly.

11. By the impugned award the Commissioner directed to pay interest @ 7.5% from the date of filing of the application till passing the award. It is further directed that if the said amount is not deposited within 45 days, then interest @ 12% per annum from the date of award shall be payable. The Insurance Company relying upon the judgment of *Pal Raj Vs. Divisional Controller,* (2010) 10 SCC 347, submitted that the award of interest against insurance company from the date of application is contrary to law laid down in the said judgment. On the other hand claimant, in his appeal, contended that issuance of direction to pay interest 7.5% from the date of application and if compensation settled and not paid within 45 days from the date of award is not in accordance to law, in fact the interest must be paid if the compensation has not paid within 30 days from the date of accident and the rate thereof must be 12% per annum as specified under Section 4A (3)(a) of the Act.

12. As the issue posed for answer by the insurance company and the demand made by the claimant relates to grant of interest on the amount of legally payable compensation and what would be date on which it fall due. Prior to dealing with the said question, the law laid down by the Apex Court in various judgments is required to be analysed to crystallize the legal position emerges up till now. Long back the question of payment of interest and from which date it shall be payable by the employer has come up for consideration before the Bench consisting of four Judges of the Hon'ble Supreme Court in the case of *Pratap Narain Singh Deo V. Shrinivas Sabata and another,* 1976 A.C.J.141, in the light of Section 3, & 4 A of the Workmen's Compensation Act the Apex Court in para-7 and 8 has held as under :

> "7. Section 3 of the Act deals with the employer's liability for compensation. Sub-section (1) of that section provides that the employer shall be liable to pay compensation if "personal injury is caused to a workman by accident arising out of and in the course of his employment". It was not the case of the employer that the right of compensation was taken away under-section (5) of Section 3 because of the institution of a suit in a civil Court for damages, in respect of the injury, against the employer or any other person. The employer therefore became liable to pay the compensation as soon as the aforesaid personal injury was caused to the workman by the accident which admittedly arose out of and in the course of the employment. It is therefore futile to contend that the

compensation did not fall due until after the Commissioner's order dated May 6. 1969 under Section 19. What the section provides is that if any question arises in any proceeding under the Act as to the liability of any person to pay compensation or as to the amount or duration of the compensation it shall in default of agreement, be settled by the by the Commissioner. There is therefore nothing to justify the argument that the employer's liability to pay compensation under Section 3. in respect of the injury, was suspended until after the settlement contemplated by section 19.The appellant was thus liable to pay compensation as soon as the aforesaid personal injury was caused to the appellant, and there is no justification for the argument to the contrary.

8. It was the duty of the appellant, under Section 4-A(1) of the Act to pay the compensation at the rate provided by section 4 as soon as the personal injury was caused to the respondent. He failed to do so. What is worse, he did not even make a provisional payment under sub-section (2) of section 4 for, as has been stated, he went to the extent of taking the false pleas that the respondent was a casual contractor and that the accident occurred solely because of his negligence. Then there is the further fact that he paid no heed to the respondent's personal approach for obtaining the compensation. It will be recalled that the respondent was driven to the necessity of making an application to the Commissioner for settling the claim, and even there the appellant raised a frivolous objection as to the jurisdiction of the Commissioner and prevailed on the respondent to file a claim for a sum which was so grossly inadequate that it was rejected by the Commissioner. In these facts and circumstances, we have no doubt that the Commissioner was fully justified in making an order for the payment of interest and the penalty."

13. In the case of *Maghar Singh V. Jashwant Singh,* 1997 ACJ 517, three Judges Bench of Hon'ble the Apex Court has considered the issue of payment of interest and directed to pay from the date of accident which was prior to the date of amendment. The relevant paras are as thus :

"5. The accident occurred way back in 1984 and, therefore, we must decide the rate of interest keeping that factor in mind. We

think it would be appropriate to grant interest at the rate of 9 per cent per annum.

6. In the result, we allow this appeal, set aside the orders of the courts below and hold that the appellant is entitled to compensation of Rs.24,0000/- with interest at the rate of 9 per cent per annum from the date of the accident, i.e. 26.7.1984 till the date of recovery or actual payment. We direct the respondent to deposit the amount in the Court of Senior Sub Judge, Sangrur, within three months from today, failing which the appellant will be entitled to recover the same in accordance with law. There will be no order as to costs."

14. In the case of *Ved Prakash Garg V. Premi Devi and others,* 1998 ACJ 1, the question regarding liability of payment of interest and penalty against the insurance company and with effect from which date came for consideration before the two Judges Bench of the Hon'ble the Apex Court and in the said case Considering the scheme of the Workmen's Compensation Act and the Scheme of Motor Vehicle Act, 1988 particularly Section-146 which specifies necessity for insurance against third party risk and Section-147 which specifies requirement of policy and limits of liability of the insurance company held as under :

"**Scheme of the Act:** Before we deal with the rival contentions and have a look at the divergent view-points expressed by the different High Courts on this question, it will be necessary to keep in view the relevant statutory schemes in the light of which this controversy has to be resolved. The Compensation Act deals with the provisions for payment by certain classes of employers to their workmen of compensation for employment injuries caused by accident. There is no dispute between the parties that the deceased drivers and cleaner in these cases were workmen employed by the appellant-employers. Section 3 of the Compensation Act deals with 'Employer's liability for compensation'. Sub-section (1) thereof lays down that 'if personal injury is caused to a workman by accident arising out of and in the course of his employment, his employer shall be liable to pay compensation in accordance with the provisions of Chapter II'. It is also not in dispute that fatal personal injuries were caused to the workmen by accidents which arose out of and

in the course of their employment because of which they were working on the motor vehicles of the appellant-employers when they met their ends on account of motor accidents. Section 4 of the Compensation Act deals with 'Amount of compensation'. It lays down the statutory scheme for computing the compensation payable in cases of the types of accidental injuries suffered by the workmen concerned. The employer, on a conjoint reading of Sections 3(1) and 4(1) of the Compensation Act, would be liable to make good the liability for paying compensation to the insured workmen under circumstances contemplated by these provisions. Then follows Section 4A of the Compensation Act with which we are directly concerned. It is, therefore necessary to extract it in extenso. The said Section during the relevant time, in 1992, when the accidents were caused read as under :

"4-A. Compensation to be paid, when due and penalty for default.- (1) Compensation under section 4 shall be paid as soon as it falls due.

(2) In cases where the employer does not accept the liability for compensation to the extent claimed, he shall be bound to make provisional payment based on the extent of liability which he accepts, and, such payment shall be deposited with the Commissioner or made to the workman, as the case may be, without prejudice to the right of the workman to make any further claim.

(3) Where any employer is in default in paying the compensation due under this Act within one month from the date it fell due, the Commissioner may direct that, in addition to the amount of the arrears, simple interest at the rate of six per cent per annum on the amount due together with, if in the opinion of the Commissioner there is no justification for delay, a further sum not exceeding fifty per cent of such amount, shall be recovered from the employer by way of penalty."

The said Section was further amended by Act 30 of 1995 with effect from 15-9-1995 and in the amended form it now reads as under :

"4A. Compensation to be paid when due and penalty for default-

(1) Compensation under section 4 shall be paid as soon as it falls due.

(2) In cases where the employer does not accept the liability for compensation to the extent claimed, he shall be bound to make provisional payment based on the extent of liability which he accepts, and, such payment shall be deposited with the Commissioner or made to the workman, as the case may be, without prejudice to the right of the workman to make any further claim.

(3) Where any employer is in default in paying the compensation due under this Act within one month from the date it fell due, the Commissioner shall -

(a) direct that the employer shall, in addition to the amount of the arrears, pay simple interest thereon at the rate of twelve per cent per annum or at such higher rate not exceeding the maximum of the lending rates of any scheduled bank as may be specified by the Central Government, by notification in the Official Gazette, on the amount due; and

(b) if, in his opinion, there is no justification for the delay, direct that the employer shall, in addition to the amount of the arrears and interest thereon, pay a further sum not exceeding fifty per cent of such amount by way of penalty :

PROVIDED that an order for the payment of penalty shall not be passed under clause (b) without giving a reasonable opportunity to the employer to show cause why it should not be passed."

A mere look at the aforesaid provision shows that Section 4A deals with the time for payment of compensation as required to be computed under Section 4. Sub-section (1) thereof mandates that compensation shall be paid as soon as it falls due. Sub-section (2) thereof contemplates a situation wherein the employer though accepting his liability to pay compensation to his injured workman disputes the extent of the claim of compensation and in such a case sub-section (2) enjoins him to make provisional payment based on the extent of accepted liability by depositing it with the Commissioner or to pay it directly to the workman. It is obvious that such an obligation of the employer would not

arise under Section 4A sub-section (2) if he totally disputes his liability to pay on grounds like the injured person being not his employee or that the accident was caused to him at a time when he was not in the course of employment or that the accident caused to him did not arise out of his employment. If such disputes are raised by the employer then his obligation to make provisional payment under sub-section (2) of Section 4A would not arise and his liability would depend upon the final adjudication by the Workmen's Commissioner at the end of the trial. In that light when sub-section (3) of Section 4A is seen it becomes obvious that once the compensation due under the Act becomes ascertained either provisionally under sub-section (2) or finally on adjudication by the Commissioner and if the employer does not pay the same within one month from the date it thus falls due, the Commissioner can direct under sub- clause (a) of Section 4A(3) interest at the rate provided therein and also penalty as contemplated by sub-clause (b) thereof as per the amended Section 4A (3) of the Compensation Act but even under the unamended Section 4A (3) which applied at the relevant time a clear distinction is made by the Legislature between the imposition of penalty by way of a further sum not exceeding fifty per cent of compensation amount and the imposition of interest on the amount of compensation found payable when it is not paid within the requisite time as and when it fell due. Thus even in the scheme of unamended Section 4A (3) or as per the amended Section 4A (3) read with clauses (a) and (b) thereof, it becomes clear that additional amount of compensation can be levied against the defaulting employer by way of penalty if it is shown that there is no justification for the delay on his part in making good the compensation amount to the claimant. Interest payable on the principal amount, if not paid when it fell due, is not considered by the Legislature to be a penalty. This is further highlighted by the proviso to Section 4A (3) as substituted by Act 30 of 1995 which clearly indicates that a penalty amount under clause (b) cannot be imposed against the employer without giving him reasonable opportunity to show cause. No such show cause notice is contemplated while imposing interest on default of payment of the principal amount on the part of the employer as per Section 4A (3) (a). Absence of this provision is

obviously based on the legislative intent that interest on principal amount is not by way of penalty. Therefore, the employer need not be heard in this connection. A simpliciter default in payment of compensation within the time of one month from the date it fell due would automatically attract the provision for simple interest under Section 4A (3) as per the rate prescribed therein and for such imposition of interest no question of justification for the delay is countenanced by the Legislature. But while imposing penalty justification for delay would be a good defence for the employer for meeting such claim for penalty. The same aspect is further highlighted by Section 4A (3) (a) of the Compensation Act as existing on the Statute book at present which shows that the interest payable under sub-section (3A) is to be paid to the workman or his dependant while the penalty imposed is to be credited to the State Government. It is in the light of the aforesaid statutory scheme of Section 4A that the question posed for our consideration has to be resolved.

xxx xxx xxx xxx

"14. On a conjoint operation of the relevant schemes of the aforesaid twin Acts, in our view, there is no escape from the conclusion that the insurance companies will be liable to make good not only the principal amounts of compensation payable by insured employers but also interest thereon, if ordered by the Commissioner to be paid by the insured employers. Reason for this conclusion is obvious. As we have noted earlier the liability to pay compensation under the Compensation Act gets foisted on the employer provided it is shown that the workman concerned suffered from personal injury, fatal or otherwise, by any motor accident arising out of and in the course of his employment. Such an accident is also covered by the statutory coverage contemplated by Section 147of the M.V. Act read with the identical provisions under the very contracts of insurance reflected by the policy which would make the insurance company liable to cover all such claims for compensation for which statutory liability is imposed on the employer under section 3 read with section 4-A of the Compensation Act. All these provisions represent a well-knit

scheme for computing the statutory liability of the employers in cases of such accidents to their workmen. As we have seen earlier while discussing the scheme of section 4-A of the Compensation Act the legislative intent is clearly discernible that once compensation falls due and within one month it is not paid by the employer then as per section 4-A (3) (a) interest at the permissible rate gets added to the said principal amount of compensation as the claimants would stand deprived of their legally due compensation for a period beyond one month which is statutorily granted to the employer concerned to make good his liability for the benefit of the claimants whose breadwinner might have either been seriously injured or might have lost his life. Thus so far as interest is concerned it is almost automatic once default, on the part of the employer in paying the compensation due, takes place beyond the permissible limit of one month. No element of penalty is involved therein. It is a statutory elongation of the liability of the employer to make good the principal amount of compensation within permissible time-limit during which interest may not run but otherwise liability of paying interest on delayed compensation will ipso facto follow. Even though the Commissioner under these circumstances can impose a further liability on the employer under circumstances and within limits contemplated by section 4-A(3)(a) still the liability to pay interest on the principal amount under the said provision remains a part and parcel of the statutory liability which is legally liable to be discharged by the insured employer. Consequently such imposition of interest on the principal amount would certainly partake the character of the legal liability of the insured employer to pay the compensation amount with due interest as imposed upon him under the Compensation Act. Thus the principal amount as well as the interest made payable thereon would remain part and parcel of the legal liability of the insured to be discharged under the Compensation Act and not dehors it. It, therefore, cannot be said by the insurance company that when it is statutorily and even contractually liable to reimburse the employer qua his statutory liability to pay compensation to the claimants in case of such motor accidents to his workmen, the

interest on the principal amount which almost automatically gets foisted upon him once the compensation amount is not paid within one month from the date it fell due, would not be a part of the insured liability of the employer. No question of justification by the insured employer for the delay in such circumstances would arise for consideration. It is of course true that one month's period as contemplated under Section 4-A (3) may start running for the purpose of attracting interest under sub-clause (a) thereof in case where provisional payment has to be made by the insured employer as per section 4-A(2) of the Compensation Act from the date such provisional payment becomes due. But when the employer does not accept his liability as a whole under circumstances enumerated by us earlier then section 4-A(2) would not get attracted and one month's period would start running from the date on which due comoensation payable by the employer is adjudicated upon by the Commissioner and in either case the Commissioner would be justified in directing payment of interest in such contingencies not only from the date of the award but also from the date of accident concerned. Such an order passed by the Commissioner would remain perfectly justified on the scheme of section 4-A (3) (a) of the Compensation Act. But similar consequence will not follow in a case where additional amount is added to the principal amount of compensation by way of penalty to be levied on the employer under circumstances contemplated by section 4- A(3)(b) of the Compensation Act after issuing show-cause notice to the employer concerned who will have reasonable opportunity to show cause why on account of some justification on his part for the delay in payment of the compensation amount he is not liable for this penalty. However, if ultimately, the Commissioner after giving reasonable opportunity to the employer to show cause takes the view that there is no justification for such delay on the part of the insured employer and because of his unjustified delay and due to his own personal fault he is held responsible for the delay, then the penalty would get imposed on him. That would add a further sum up to 50 per cent on the principal amount by way of penalty to be made good by the defaulting employer. So far as this

penalty amount is concerned it cannot be said that it automatically flows from the main liability incurred by the insured employer under the Compensation Act. To that extent such penalty amount as imposed upon the insured employer would get out of the sweep of the term liability incurred' by the insured employer as contemplated by the proviso to section 147(1)(b) of the M.V. Act as well as by the terms of the insurance policy found in provisos (b) and (c) to sub-section (1) of section II thereof. On the aforesaid interpretation of these two statutory schemes, therefore, the conclusion becomes inevitable that when an employee suffers from a motor accident injury while on duty on the motor vehicle belonging to the insured employer, the claim for compensation payable under the Compensation Act along with interest thereon, if any, as imposed by the Commissioner, under Sections 3 and 4-A(3)(a) of the Compensation Act will have to be made good by the insurance company jointly with the insured employer. But so far as the amount of penalty imposed on the insured employer under contingencies contemplated by section 4-A(3)(b) is concerned as that is on account of personal fault of the insured not backed up by any justifiable cause, the insurance company cannot be made liable to reimburse that part of the penalty amount imposed on the employer. The latter because of his own fault and negligence will have to bear the entire burden of the said penalty amount with proportionate interest thereon if imposed by the Workmen's Commissioner."

In para-19 of the said judgment concluded as under :

"19. As a result of the aforesaid discussion it must be held that the question posed for our consideration must be answered partly in the affirmative and partly in the negative. In other words the insurance company will be liable to meet the claim for compensation along with interest as imposed on the insured employer by the Workmen's Commissioner under the Compensation Act on the conjoint operation of Section 3 and Section 4-A sub-section (3) (a) of the Compensation Act. So far as additional amount of compensation by way of penalty imposed on the insured employer by the Workmen's Commissioner under section 4-A(3) (b) is concerned, however, the insurance

company would not remain liable to reimburse the said claim and it would be the liability of the insured employer alone."

15. Thereafter in the case of *National Insurance Co. Ltd. V. Mubasir Ahmed and another*, 2007 ACJ 845, the said issue was considered by the Bench comprising with two Judges wherein para-9 the Apex Court held as under :

"9. Interest is payable under section 4-A (3) if there is default in paying the compensation due under this Act within one month from the date it fell due. The question of liability under Section 4- A was dealt with by this Court in *Maghar Singh V. Jashwant Singh*, 1997 ACJ 517 (SC). By Amending Act, 30 of 1995, section 4-Aof the Act was amended, inter alia, fixing the minimum rate of interest to be simple interest at the rate of 12 per cent. In the instant case, the accident took place after the amendment and, therefore, the rate of 12 per cent as fixed by the High Court cannot be faulted. But the period as fixed by it is wrong. The starting point is on completion of one month from the date on which it fell due. Obviously, it cannot be the date of accident. Since no indication is there as when it becomes due, it has to be taken to be the date of adjudication of the claim. This appears to be so because section 4-A (1) prescribes that compensation under section 4 shall be paid as soon as it falls due. The compensation becomes due on the basis of adjudication of the claim made. The Adjudication under section 4 in some cases involves the assessment of loss of earning capacity by a qualified medical practitioner. Unless adjudication is done, question of compensation becoming due does not arise. The position becomes clearer on a reading of sub-section (2) of section 4-A. It provides that provisional payment to the extent of admitted liability has to be made when employer does not accept the liability for compensation to the extent claimed. The crucial expression is 'falls due'. Significantly, legislature has not used the expression 'from the date of accident'. Unless there is an adjudication, the question of an amount falling due does not arise."

Similar view is taken by the two Judges Bench of the Apex Court in the case of *Kamla Chaturvedi V. National Insurance Col Ltd. and others,* 2009 ACJ 115, and the date of payment of the interest has been directed as per the judgment of the Apex Court in the case of *Mubasir Ahmed and another* (supra).

16. Thereafter in the case of *Pal Raj* (supra), the Apex Court in para 19 and 20 has held as under :

> "19. It will be evident that compensation assessed under Section 4 is to be paid as soon as it falls due and in case of default in payment of the compensation due under the Act within one month from the date when it falls due, the Commissioner would be entitled to direct payment of simple interest on the amount of the arrears @ 12% per annum or at such higher rates which do not exceed the maximum lending rates of any scheduled bank as may be specified by the Central Government. Both the Commissioner, Workmen's Compensation, as also the High Court, therefore, rightly held that interest under the 1923 Act cannot be claimed from the date of filing of the application, but only after a default is committed in respect of the payment of compensation within 30 days from the date on which the payment becomes due.
>
> 20. We are satisfied that the impugned order of the High Court was only an attempt to correct the erroneous interpretation of Part II of Schedule I of the Workmen's Compensation Act, 1923 by the Commissioner, Workmen's Compensation. The loss of earning capacity has to be computed keeping in mind the alternate employment given to the appellant on the same salary as he was enjoying while performing the duty of a bus driver. The same cannot be ignored in computing the amount of compensation which the appellant was entitled to."

17. In the judgment of *Oriental Insurance Co. Ltd. Vs. Mohd. Nasir and another*, 2009 ACJ 2742, the question regarding payment of interest and liability against the insurance company and such interest is payable by which date has been dealt with in para-23 with the following observations :

> "23. The said provision, as it appears from a plain reading, is penal in nature. It, however, does not take into consideration the chargeability of interest on various other grounds including the amount which the claimant would have earned if the amount of compensation would have been determined as on the date of filing of the claim petition. Workmen's Compensation Act does not prohibit grant of interest at a reasonable rate from the date of filing of the claim petition till an order is passed. Only when sub-section

(3) of section 4-A would be attracted, a higher rate of interest would be payable wherefor a finding of fact as envisaged therein has to be arrived at. Only because in a given case, penalty may not be held to be leviable, by itself may not be a ground not to award reasonable interest.

Reliance has been placed on the case of *National Insurance Co. Ltd. V. Mubasir Ahmed,* 2007 ACJ 845 (SC), wherein it was held:

(9). "9. Interest is payable under section 4-A (3) if there is default in paying the compensation due under this Act within one month from the date it fell due. The question of liability under Section 4-A was dealt with by this Court in *Maghar Singh V. Jashwant Singh,* 1997 ACJ 517 (SC). By Amending Act, 30 of 1995, section 4-A of the Act was amended, inter alia, fixing the minimum rate of interest to be simple interest at the rate of 12 per cent. In the instant case, the accident took place after the amendment and, therefore, the rate of 12 per cent as fixed by the High Court cannot be faulted. But the period as fixed by it is wrong. The starting point is on completion of one month from the date on which it fell due. Obviously, it cannot be the date of accident. Since no indication is there as when it becomes due, it has to be taken to be the date of adjudication of the claim. This appears to be so because section 4-A (1) prescribes that compensation under section 4 shall be paid as soon as it falls due. The compensation becomes due on the basis of adjudication of the claim made. The Adjudication under section 4 in some cases involves the assessment of loss of earning capacity by a qualified medical practitioner. Unless adjudication is done, question of compensation becoming due does not arise. The position becomes clearer on a reading of sub-section (2) of section 4-A. It provides that provisional payment to the extent of admitted liability has to be made when employer does not accept the liability for compensation to the extent claimed. The crucial expression is 'falls due'. Significantly, legislature has not used the expression 'from the date of accident'. Unless there is an adjudication, the question of an amount falling due does not arise."

As therein this aspect of the matter has not been considered, we are of the opinion that interest will also be payable at the rate of 7½

per cent per annum from the date of filing of the application till the date of award. The rate of interest thereafter shall be payable in terms of the order passed by the Commissioner."

18. On consideration of the said judgments it is apparent that in the judgment of *Mubasir Ahmed and another*(supra), *Kamla Chaturvedi* (supra), *Pal Raj* (supra), *Mohd. Nasir* (supra), the Larger Bench judgment of the Hon'ble Apex Court in the case of *Pratap Narain Singh Deo* (supra), were neither brought to the notice nor considered. In the case of *Maghar Singh V. Jashwant Singh,* 1997 ACJ 517, the Supreme Court has awarded the interest at the rate of 9% from the date of accident till realization. In the case of *Kamla Chaturvedi* (supra), the judgment of the Apex Court in the case of *Ved Prakash Garg* (supra) has been taken note of in the context of liability of interest against insurance company distinguishing the judgment of *P.J. Narayan V. Union of India,* 2004 ACJ 452 (SC), and held that insurance company is liable to pay the interest in addition to the principal amount of the compensation but while dealing with the issue from which date it be payable, it is directed that it would be paid, as per the judgment of *Mubasir Ahmed and another* (supra). In the case of *Pal Raj* (supra) none of the aforesaid judgments were placed for consideration. While in the cases of *Mohd. Nasir* (supra), *Mubasir Ahmed and another* (supra) and *Maghar Singh*(supra) has been considered and said that the scheme of the Act does not prohibit grant of interest at reasonable rate from the date of filing of the claim application till order is passed and also from the date of award till its realization. In the aforesaid facts, the law laid down by the four Judges Bench of the Apex Court in the case of *Pratap Narain Singh Deo* (supra) has not been considered in the subsequent judgments. While in the three Judges Bench Judgment of *Maghar Singh* (supra), *Mohd. Nasir* (supra), *Mubasir Ahmed and another* (supra), it is held that the scheme of the Act does not prohibit to grant of interest at reasonable rate from the date of filing of claim application till the realization. However, this Court is bound to follow the earlier judgment of four Judges Bench of Hon'ble the Apex Court. In the said case it is held that the employer is liable to pay compensation until the right to pay was taken away under sub-section (5) of Section 3 of the Act because of the institution of civil suit. It has further been held that the employer became liable to pay the compensation as soon as the personal injury has caused to the workman in the accident took place during the course of employment. In the said context, the contention that interest shall fall due after adjudication under Section 19 of

the Act by Commissioner has been repealed. The question of liability or the quantum of amount or duration, default of agreement, is required to be settled by the Commissioner, however, as and when the injury occurred the liability to pay compensation under Section 3 is not suspended in view of the provisions of Section 19 of the Act. It has further been observed that it is the duty of employer to pay compensation after computing the amount under Section 4 to the extent of acceptance of liability. In default, interest and penalty may be directed from the date of accident. In the judgment of *Maghar Singh* (supra), the accident was prior to the date of amendment, and looking to the long pendency of the claim, interest @ 9% from the date of accident till realization has been paid. In the judgment of *Ved Prakash Garg* (supra), the Apex Court in reference to the provisions of Section 4A (3)(a) has held that where a provisional payment is made as per Section 4-A (2) of the Act, it may be the date of such provisional payment of compensation becomes due but when the employer do not accept his liability as a whole, then the period would start running from the date on which, it fall due, on adjudicated by the Commissioner, but in either case the Commissioner shall be justified directing the payment of compensation and interest not only from the date of award but also from the date of accident. It has further been held that the liability of payment of the penalty shall be only against the employer and not against insurer, after issuing a notice and furnishing an opportunity of hearing if there is no justification for delayed payment of compensation. In view of the said legal position the relevant provisions of section 4A of the Act of making payment of the interest on the amount of compensation is required to be considered which is reproduced as thus :

> **"4A. Compensation to be paid when due and penalty for default**-(1) Compensation under Section 4 shall be paid as soon as it falls due.
>
> (2) In cases where the employer does not accept the liability for compensation to the extent claimed, he shall be bound to make provisional payment based on the extent of liability which he accepts, and, such payment shall be deposited with the Commissioner or made to the workman, as the case may be, without prejudice to the right of the workman to make any further claim.
>
> (3) Where any employer is in default in paying the compensation due under this Act within one month from the date it fell due, the Commissioner shall-

(a) direct that the employer shall, in addition to the amount of the arrears, pay simple interest thereon at the rate of twelve per cent per annum or at such higher rate not exceeding the maximum of the lending rates of any scheduled bank as may be specified by the Central Government, by notification in the Official Gazette, on the amount due; and

(b) if, in his opinion, there is no justification for the delay, direct that the employer shall, in addition to the amount of the arrears, and interest thereon pay a further sum not exceeding fifty per cent of such amount by way of penalty.

Provided that an order for the payment of penalty shall not be passed under clause (b) without giving a reasonable opportunity to the employer to show cause why it should not be passed.

Explanation.- For the purpose of this sub-section, "scheduled bank" means a bank for the time being included in the Second Schedule to the Reserve Bank of India Act, 1934 (2 of 1934)."

19. In interpreting the said provision of interest, the reference of Sections 3, 4 and 19 of the Act is necessary. Section 3 indicates that if any personal injury or death caused to the workman in an accident arising out of and during the course of employment, payment of compensation is the liability of the employer as per the provisions of Chapter-II of the Act. In case of injury not resulting in death or permanent disablement, the probable defences may be set-forth that the workman at the time was under the influence of drink or drugs or willfully disobeyed the order, rules of the safety framed by employer and willful removal or disregard of any safety guard or other device which is required to be observed has not been followed. Section 4 specifies the various mode for computing the amount of compensation. Thus, from the facts of the case, if it is clear that the injury occurred to the injured arising out of and during the course of his employment resulting into permanent partial disablement, the payment of compensation is a liability of the employer and applying the mode of calculation as specified under Section 4 it be paid. As per Section 19 of the Act on making a reference to the Commissioner the issue regarding liability of any person to pay compensation including a person injured is a workman or not, amount to pay compensation, duration of compensation, nature and extent of disablement, be settled by the Commissioner in default of any agreement. Thus, by conjoint reading of Section

3 and 19 it is clear that if any personal injury is caused or of death of a workman in the accident as the case may be, in the course of employment it is the liability of the employer to pay the compensation as per the provisions of the Chapter-II of the Act and such liability shall not remain under suspension. The adjudication by the Commissioner shall be of the amount and duration of compensation, or a person injured is a workman and suffered injury in the accident arising out of and in the course of his employment the compensation be paid as soon as it falls due. Section 4A deals with the payment of compensation when it becomes due and penalty for default. Sub-section (1) of Section 4A makes it clear that amount of compensation as calculated as per section 4 of Act falls due be paid. Thus, sub-section (1) of Section 4A of the Act ensure the payment of compensation computed as per Section-4 and shall be paid as soon as it falls due. Sub-section (2) of Section 4A deals with contingency where the employer is not accepting the liability for payment of compensation to the extent claimed, then to the extent of the liability accepted by employer shall be paid by way of provisional payment either to the workman or by depositing it with the Commissioner. The said act shall not disqualify the claimant to claim higher amount, or his right to further claim, shall not be prejudiced. Sub -section (3) of Section 4A makes it clear when the compensation fall due not paid within one month, the Commissioner shall direct to pay simple interest on the amount of arrears at the rate of 12% per annum or at higher rate not exceeding the maximum of the lending rates of any scheduled bank. In view of the forgoing, it is apparent that specifying the probable legal defence to employer, Section 3(1)(a) (i) to (iii) has been inserted in the Act. On making a reference under Section 19 the Commissioner ought to have decide the issue of liability, nature and extent of disability, person injured is a workman or not and the amount of compensation, by adjudicating the plea so raised. However, legislative intent is clear that by furnishing due opportunity of hearing the said issues must be decided prior to settling the amount of compensation. In view forgoing to my mind the word compensation fall due as specified in Section4-A only indicates the date of accident caused, and from the said date the employer's liability to pay compensation must be discharged within the period of 30 days.. The date of settling of compensation under Section-19 having no relevance for the word falls due. My view fortifies from the judgment of the four Judges Bench of the Apex Court in the case of *Pratap Narain Singh Deo* (supra), three Judges Bench of *Maghar Singh* (supra) and *Ved Prakash Garg* (supra). The liability to pay interest on the amount of compensation is a legible claim payable to the injured. If the said liability has not been discharged partially or

fully the Commissioner is required to settle the amount of compensation with the direction to pay interest as per Section 4-A(3)(a) on the amount of 'arrears'. Thus, the intention of the legislature is apparent that if a compensation falls due and not paid it be termed as arrears and the Commissioner is mandatorily required to direct the payment interest at the rate so specified under sub Section (3) (a) of Section 4-A of the Act. Therefore, the amount 'fell due' is the date when the incident took place i.e the date of accident, and the interest is leviable on the amount of compensation not paid and become 'arrear'.

20. In the present case, it is not in dispute that on the date of incident FIR was lodged, MLC was performed, by submitting a claim form intimation to the insurance company was furnished through employer. Admittedly the liability of the employer has been indemnified by the insurance company. The Insurance Company has neither paid amount of compensation as claimed nor paid the amount so accepted by them within one month. Once the liability of the employer has been indemnified by the insurance company, the payment which is required to be made on behalf of the employer is to be paid by the insurance company. In default of payment of compensation which is fallen due, the Insurance Company is liable to pay interest. After adjudication the Commissioner, Workmen's Compensation found the incident, is correct. The injuries received to the injured falls at serial No.5 and 27 of Part -II of Schedule -I of the Act. The said percentage of disability relates to loss of earning capacity, however, the compensation fallen due ought to have been paid within one month from the date of accident. After submitting claim form, employer was under bona fide belief that the amount be paid by the Insurance Company indemnifying his liability. In absence of payment of compensation, the interest, as specified under Section 4A (3)(a) of the Act, shall be payable by Insurance Company:

21. Thus, in view of the earlier judgment of four Judges' Bench of Hon'ble Apex Court, in the case of *Pratap Narain Singh Deo* (supra), three Judges Bench of *Maghar Singh* (supra), I am not inclined to follow the subsequent two Judges' judgment in the case of *Pal Raj* (supra). Consequently, the insurance company is liable to pay the interest along with principal amount after one month from the date of accident @ 12% per annum till its realization. Substantial question No.(ii) as framed in the case is answered accordingly.

22. Consequently, M.A. No.4871/2010 filed by the Insurance Company is hereby dismissed. M.A. No.493/2011 filed by the claimant is hereby allowed in part, modifying the direction of the Commissioner, Workmen's Compensation

to pay interest. It is directed that the interest on the amount of compensation shall be payable after one month from the date of accident @ 12% per annum till its realization. In the facts and circumstances of the case, claimant shall also be entitled of cost which is quantified Rs.2.000/- in each of the case.

23. The Registrar General of this Court is directed to circulate this order to the Labour Courts of the State of Madhya Pradesh discharging the function of the Commissioner for Workmen's Compensation for guidance in the matter of award of interest because by passing inconsistent orders awarding interest, claimants are approaching this Court by filing appeals seeking interest from the date of accident. Thus, to maintain consistency on the said issue, circulation appears to be desirable.

Order accordingly.

I.L.R. [2011] M. P., 3135
APPELLATE CIVIL
Before Mr. Justice Abhay M. Naik
S.A. No. 393/1997 (Indore) decided on 6 September, 2011

DEVKARAN ...Appellant
Vs.
RAMESHWAR & ors. ...Respondents

***Succession Act (39 of 1925), Section 63, Evidence Act (1 of 1872), Section 68 - Will* - Will is to be duly proved in accordance with Section 63 of Act, 1925 and Section 68 of Act, 1872 - All the attending circumstances creating doubt must be made clear so as to satisfy conscience of the Court that the will was duly executed by testator.**
(Para 12)

उत्तराधिकार अधिनियम (1925 का 39), धारा 63, साक्ष्य अधिनियम (1872 का 1), धारा 68 – वसीयतनामा – वसीयत को अधिनियम 1925 की धारा 63 और अधिनियम 1872 की धारा 68 के अनुसार सम्यक रुप से साबित किया जाना चाहिये – संदेह पैदा करने वाली सभी उपस्थित परिस्थितियों को स्पष्ट करना चाहिये जिससे कि न्यायालय की अंतश्चेतना संतुष्ट हो कि वसीयत को वसीयतकर्ता द्वारा सम्यक रुप से निष्पादित किया गया था।

Cases referred :

(2009) 3 SCC 687, AIR 1980 SC 531, AIR 1977 SC 74, AIR 1998 MP 1.

M.L. Agrawal with *Ravi Shukla,* for the appellant.
H.Y. Mehta, for the respondents No. 1 to 7.

JUDGMENT

ABHAY M. NAIK, J.:–This second appeal has been preferred against dismissal of plaintiffs suit by Courts below in concurrent manner.

2. Short facts leading to this appeal are that the suit property was owned and possessed by Balmnukund, who happened to be brother of Keshav Ram, the original plaintiff. Basantibai, the original defendant No. 1, got her name mutated on the suit property, after the death of Balmukund in a road accident on 19.12.1984, on the strength of will dated 03.12.1984 (Ex.D/l) and further sold it to defendants No.2 to 4 vide registered sale-deed dated 15.01.1985. Plaintiff challenged the will as forged one and prayed for declaration of title and restoration of possession on account of succession by natural inheritance.

Defendants No.2 to 4 submitted a joint written statement stating therein that Keshav Ram had gone in adoption to Kalu Ram, and therefore, the plaintiff did not succeed to Balmukund's property. Moreover, Balmukund and Keshav Ram were not the members of joint family and resided separately throughout after adoption. Balmukund, during his life time, executed a will dated 03.12.1984 in village Barlai, Tahsil Sanver, District Indore in sound condition of mind in due manner in favour of Basantibai. After the death of Balmukund, last rites were performed by Basantibai's son, namely, Devilal. Mutation was also made on the strength of the said will on 09.01.1985. Thereafter, registered sale-deed was duly executed by Basantibai in favour of defendants No.2 to 4 on 15.12.1985. Basantibai was not a stranger but was daughter of sister of Balmukund's father. Wife of Balmukund had predeceased and thereafter Balmukund, having no issue, executed the will in favour of Basantibai, in due manner. Thus, the suit is liable to dismissal.

3. Learned trial Judge, after recording the evidence, held that the will was duly executed by Balmukund in favour of Basantibai. He further found that Keshav Ram was given in adoption by his father to Kalu Ram, and therefore, he did not acquire any right, title or interest in the suit property. Accordingly, suit was dismissed vide judgment and decree dated 19.02.1996. It is not out of place to mention here that original plaintiff Keshav Ram died during the trial and his widow Sitabai and his son, namely, Devkaran, were brought on record. Sitabai also died during the trial and her name was deleted.

4. Aggrieved by the aforesaid, Devkaran alone submitted Civil Appeal No.24-A/1997, which having been dismissed vide impugned judgment and

decree dated 23.07.1997, second appeal has been preferred, which has been heard on the following substantial questions of law: -

"1. Whether the finding as to the execution of the Will Ex.D/1 is perverse?

2. Whether the finding as to the execution of the Will has vitiated because of the non-considention of attending circumstances?

3. Whether the finding as to the valid attestation of the will is perverse?"

5. Shri M.L. Agrawal, learned senior advocate appearing for the appellant and Shri H.Y. Mehta, learned counsel appearing for respondents made their respective submissions, which have been considered in the light of material on record.

6. Bare perusal of all the three substantial questions of law makes it clear that they pertain to the evidence relating to execution of the will and the attending circumstances.

7. In order to establish a will in Court of law, same is required to be proved in accordance with Section 63 of the Indian Succession Act, 1925 and Section 68 of the Indian Evidence Act, 1872, which read as under: -

"Succession Act

63. Execution of unprivileged Wills.- Every testator, not being a soldier employed in an expedition or engaged in actual warfare, [or an airman so employed or engaged,] or a mariner at sea, shall execute his Will according to the following rules:-

(a) The testator shall sign or shall affix his mark to the Will, or it shall be signed by some other person in his presence and by his direction.

(b) The signature or mark of the testator, or the signature of the person signing for him, shall be so placed that it shall appear that it was intended thereby to give effect to the writing as a Will.

(c) The Will shall be attested by two or more witnesses, each of whom has seen the testator sign or affix his mark to the Will or has seen some other person sign the Will,

in the presence and by the direction of the testator, or has received from the testator a personal acknowledgment of his signature or mark, or the signature of such other person; and each of the witnesses shall sign the Will in the presence of the testator, but it shall not be necessary that more than one witness be present at the same time, and no particular form of attestation shall be necessary.

Evidence Act

68. Proof of execution of document required by law to be attested.- If a document is required by law to be attested, it shall not be used as evidence until one attesting witness at least has been called for the purpose of proving its execution, if there be an attesting witness alive, and subject to the process of the Court and capable of giving evidence:

Provided that it shall not be necessary to call an attesting witness in proof of the execution of any document, not being a Will, which has been registered in accordance with the provisions of the Indian Registration Act, 1908 (16 of 1908), unless its execution by the person by whom it purports to have been executed is specifically denied."

8. Shri M.L. Agrawal, learned senior advocate contended that the scribe Devilal is none else than the son of the beneficiary herself. Accordingly, it is argued that the will is suspicious.

It has been already held proved that Basantibai was not a stranger to Balmukund. She was daughter of sister of testator's father. Thus, obviously, she was a close relative. If her son was a professional scribe, this Court does not find it strange if will is drafted by her son. Moreover, it has also been held proved that Keshav Ram had gone in adoption in Kalu Ram's family and ceased to be a member of Balmukund's family. This being so, the will in question does not become suspicious, merely because it was scribed by Basantibai's son.

9. Will has been proved by scribe Devilal (PW-3) and attesting witnesses Ambaram (DW-1) and Hariram (DW-2). DW-3 has stated that Balmukund had no son and his wife had predeceased, therefore, he resided with Basantibai before his death for 40-45 years. He has further stated that Balmukund was looked after by Basantibai. This scribe has clearly stated that the will was prepared by Balmukund in a voluntary manner. It has been further argued by

Shri M.L. Agrawal, learned senior advocate that the attesting witnesses have not stated that the signatories in attestation of the will acted in presence of the testator. On perusal, it is found that the attesting witness Ambaram (DW-1) has stated in paragraph 6 that after complete drafting of the will, it was signed by Balmukund. He further stated that he and another attesting witness Hariram put their signatures, after reading the same. This version of the attesting witness is to be read in continuity with the earlier version that Balmukund put his signatures after the will was prepared completely. It would obviously mean that after the signatures were put by Balmukund, attesting witnesses in his presence read the same and put their signatures in attestation of the will. It has been further contended that will was not read over or explained to Balmukund. DW-2 has clearly stated in paragraph 2 that the will was dictated by Balmukund in voluntary manner. DW-1 stated in paragraph 2 of his statement that Balmukund had prepared the will that the property left by him was being bequeathed to Basantibai. Plaintiff in cross-examination failed to make out any such fact or circumstance that the will Ex.D/l was not prepared, according to the wishes of the testator or was prepared contrary to the wishes of the testator. On perusal of Ex.D/1, it is clearly found that there is specific allegation by Balmukund that Keshav Ram (i.e. plaintiff) had gone into adoption to Kalu Ram Sharma of village Sirolia and that the testator was residing in village Barlai for 35 years.

10. It has been further argued that the will Ex.D/1 does not bear signatures of Balmukund, the testator, but has been prepared in a forged manner.

Suffice it to say that signatures of Balmukund on EX.D/ 1 has been proved in due manner by the scribe as well as both the attesting witnesses. Additionally, the same has been got examined by the handwriting expert (Shri N. G. Deshpande). His report is on record as Ex.D/6. Expert (DW-8) has stated on oath that signatures on Ex.D/1 tallies with the standard signatures contained in the registered sale-deed dated 26.08.1980 and the signatures contained in the register maintained by the Office of Registrar. Tremors in the signatures are stated to be outcome of the aging process. Learned senior advocate for the appellant has failed to demonstrate any other significant deviation in the signatures of the testator on will in question Ex.D/1.

11. Learned senior advocate on behalf of the appellant further argued that the death of Balmukund occurred on 19.12.1984 whereas mutation was applied within 30 days from the death. Thereafter, the suit property was sold to

defendants on 15.01.1985. According to him, it is a major circumstance which creates doubt about the genuineness of the will.

Suffice it to say that death of Balmukund was not a case of young death. He was 75 years old. Prospective purchasers might have come forward with acceptable offer. Therefore, in such a situation, if application for mutation is made within 30 days after the death of testator, this by itself is not sufficient to discard the will, which has been duly proved by the scribe and attesting witnesses. On the other hand, it may be seen that the plaintiff has suppressed the factum that he had gone in adoption to Kalu Ram. He has mentioned name of his natural father Badrilal in the cause title, suppressing the fact that he had gone in adoption to Kalu Ram Sharma. Ex.D/3 is KISTBANDI KHATAUNI wherein name of Kalu Ram has been shown as father of the plaintiff Keshav Ram. Similarly, certificate marked as Ex. D/4 has been issued by Gram Panchayat, Sirolia that in the Panchayat record name of Kalu Ram is entered as father of Keshav Ram, plaintiff. Ex.D/5 is the voter list of the year 1975 of Hatpipliya Assembly seat, wherein Keshav Ram s/o Kalu Ram has been shown at Serial No. 5 01. Thus, finding of the Courts below that Keshav Ram had gone into adoption to Kalu Ram Sharma is found to have been recorded after correct appreciation of the evidence on record. Plaintiff has suppressed this important factor deliberately while making effort to challenge the will Ex.D/l. In the facts and circumstances, the will in favour of Basantibai to the exclusion of Keshav Ram cannot be considered with undue sensitivity, in view of the fact firstly that Keshav Ram, despite being real brother of Balmukund, had gone into adoption long back to Kalu Ram Sharma and secondly, that Balmukund was being looked after for 30-35 years before his death by Basantibai, who was daughter of sister of Balmukund's father.

12. Shri M.L. Agrawal, learned senior advocate placed reliance on (2009) 3 SCC 687 *(Bharpur Singh and others v. Shamsher Singh),* AIR 1980 SC 531 *(Murarilal v. State ofMP),* AIR 1977 SC 74 *(Smt. Jaswant Kaur v. Smt. Amrit Kaur and others),* AIR 1998 MP I *(Ku. Chandan & others v. Longa Bai and another),* to contend that will is to be duly proved in accordance with Section 63 of the Indian Succession Act and Section 68 of the Indian Evidence Act. All the attending circumstances creating doubt must be made clear so as to satisfy conscience of the Court that the will was duly executed by the testator.

On perusal and the appreciation of the evidence rightly made by the

Courts below and on further perusal of evidence by this Court itself, this Court is of the considered view that in view of the evidence on record there is no such suspicious circumstance, which may have the effect of vitiating the will in question. Accordingly, it is observed that the law relied upon by the learned senior advocate for the appellant does not render any assistance to him, in the facts and circumstances of the present case.

13. Accordingly, all the three substantial questions of law are answered against the appellant.

14. Resultantly, this Court does not find any force in the appeal. The same is hereby dismissed, however, without any order as to costs.

C. c. as per rules.

Appeal dismissed.

I.L.R. [2011] M. P., 3141
APPELLATE CIVIL
Before Mr. Justice K. K. Trivedi
S.A.No.46/1995 (Jabalpur) decided on 28 September, 2011

ANAND ALIAS CHHOTELAL SONI ... Appellant
Vs.
MAHAVIR PRASAD SHUKLA & anr. ... Respondents

A. ***Civil Procedure Code (5 of 1908), Order 7 Rule 3, Order 20 rule 9 - Description of Property - Sufficient to identify*** **- Sufficient description of suit property was given in the plaint, therefore, a decree as per provisions of O. 29 Rule 9 can be passed in compliance of O. 7 Rule 3.** (Para 11)

क. सिविल प्रक्रिया संहिता (1908 का 5), आदेश 7 नियम 3, आदेश 20 नियम 9 – संपत्ति का विवरण – पहचान के लिए पर्याप्त – वादपत्र में वाद सम्पत्ति का पर्याप्त विवरण दिया गया, इसलिए आदेश 7 नियम 3 के अनुपालन में, आदेश 29 नियम 9 के अनुसार डिक्री पारित की जा सकती है।

B. ***Civil Procedure Code (5 of 1908), Order 41 Rule 11 - Dismissal of Appeal without notice to respondent*** **- Appellate Court is required to consider the correctness of the judgment and decree challenged before it - Lower Appellate Court had considered all the objections after summoning and examining the record of the Trial Court**

- Findings were tested and thereafter first appellate court after marshalling the evidence came to a conclusion that there was no error of law or facts committed by trial court in passing the judgment and decree - Appeal dismissed. (Paras 13,14)

ख. सिविल प्रक्रिया संहिता (1908 का 5), आदेश 41 नियम 11 – प्रत्यर्थी को नोटिस दिए बिना अपील की खारिजी – अपीलीय न्यायालय को उसके समक्ष चुनौती दिये गये निर्णय एवं डिक्री की शुद्धता को विचार में लेना अपेक्षित है – निचले अपीलीय न्यायालय ने विचारण न्यायालय से अभिलेख बुलवाने के पश्चात् तथा उसके परीक्षण पश्चात् सभी आक्षेपों को विचार में लिया – निष्कर्षों का परीक्षण किया गया और तत्पश्चात् प्रथम अपीलीय न्यायालय, साक्ष्य के क्रमबंधन पश्चात् इस निष्कर्ष पर पहुंचा कि विचारण न्यायालय द्वारा निर्णय एवं डिक्री पारित करने में विधि अथवा तथ्यों की कोई त्रुटि कारित नहीं की गयी – अपील खारिज।

Cases referred :

AIR 1950 PATNA 306, 2001(3) MPHT 191.

Umesh Shrivastava, for the appellant.

Abhay Shankar Pathak, for the respondents.

JUDGMENT

K. K. TRIVEDI, J. :–This appeal under Section 100 of the Code of Civil Procedure has been filed challenging the judgment and decree dated 20.9.1994, passed in Civil Appeal No.52-A/1994, by the First Additional District Judge, Rewa, arising out of judgment and decree dated 30.7.1994, passed in Civil Suit No.445-A/1986, by the Second Civil Judge Class-II, Rewa, and has been admitted on the following substantial questions of law :-

> "(i) Whether decree can be passed without compliance of Order 7 Rule 3 and Order 20 Rule 9 of the C.P.C.?
>
> (ii) Whether the lower appellate Court can dismiss the appeal without giving notice to the other side ?

2. Brief facts leading to filing of this appeal are that respondents/ plaintiffs filed a suit in the Court of Second Civil Judge Class-II, Rewa, claiming that it be declared that they are the owner of the part of the land of Plot Nos. 2682 and 2683 situated at Mohalla Katra, Tehsil Huzur, District Rewa, and by removing the wall constructed by the appellant/ defendant, they be delivered back the possession of the said land with damages of Rs.2,000/-. It was categorically contended by the respondents/plaintiffs that they are the owner

of the plot over which a house No.16/209 was constructed by their father, who has expired. On the western side of the plot of the respondents/plaintiffs Plot No.2684 is situated which was earlier owned by one Jamuna Awadhiya and which has been purchased by the appellant/defendant by registered sale deed dated 2.12.1981. A temporary house was constructed on the said plot which has been demolished and a new house is constructed by the appellant/ defendant over the said plot. On the boundary of the said plot, a wall of stone was constructed over which further construction has been made and the house is constructed by the appellant/defendant exceeding the plot area purchased by him. In the plaint, description of the plot of the respondents/plaintiffs were given and in paragraph 2 of the plaint, it was categorically stated that the boundaries of the plots owned by the respondents/plaintiffs are marked as 'A', 'B', 'C', & 'D' in the plaint map which was annexed with the plaint. It was categorically said that the said plaint map is the part of the plaint. The disputed plot was shown with red colour and described by words 'Aa', 'Tha', 'Ga', 'Va', 'La', 'Ra', & 'Ya' in Hindi Devnagri. A further declaration was made in the plaint that the said area will be called as disputed land. In paragraph 4 of the plaint, the respondents/plaintiffs have categorically said that there was open land left between house constructed over the plots of the respondents/ plaintiffs and the temporary house constructed on Plot No.2684, which was on the plot of the respondents/plaintiffs and the said land was left open with an object to use the same as conservancy for draining out the rain water and cleaning of the latrine.

3. It was the categorical allegation made by the respondents/plaintiffs in the plaint that while making construction over the Plot No.2684, purchased by the appellant/defendant, the open area left by the respondents/plaintiffs was encroached upon and a house was constructed by erecting a wall just with the wall of the house of the respondents/ plaintiffs. It was said that such a construction was made with a deliberate intention to grab the land of the respondents/plaintiffs and, therefore, the respondents/plaintiffs were entitled to the decree of declaration of their rights over the disputed land and possession of the said land.

4. The suit was contested by the appellant/defendant and a written statement was filed. The learned trial Court considered it necessary to appoint a Commissioner for the inspection of the disputed plot and after getting the report from the Commissioner, recorded the evidence of the parties. The Commissioner was also examined as a witness, who gave a report to the effect that the appellant/

defendant has constructed the house on the land more than the land purchased by him under the registered sale deed. The said Commissioner was exhaustively cross-examined by the counsel of the appellant/defendant, but nothing contrary to commission report could be brought on record.

5. After recording of the evidence, learned trial Court reached to the conclusion that the appellant/defendant has in fact encroached upon the land of the respondents/plaintiffs and that because of such construction made by the appellant/defendant, the right of enjoying the light and air by the respondents/plaintiffs was violated. The privacy of the respondents/ plaintiffs was also disturbed. The suit was decreed in favour of the respondents/plaintiffs by the trial Court.

6. Against the judgment and decree, the appellant/defendant filed a Civil Appeal before the learned lower appellate Court which on consideration of the entire facts marshalling of the impugned judgment and decree passed in the Civil Suit and the entire evidence of parties came to the conclusion that there was no error on facts or law committed by the learned trial Court and, therefore, the appeal of the appellant/defendant was not to be admitted for final hearing. The same has been dismissed. Feeling aggrieved by such dismissal of the first appeal, the appellant/defendant has preferred this Second Appeal, which has been admitted on the aforesaid substantial questions of law.

7. The provisions of Order 7 Rule 3 of the Code of Civil Procedure, prescribe that where the subject-matter of the suit is immovable property, the plaint shall contain a description of the property **sufficient to identify it** and, in case such property can be identified by boundaries or numbers in a record of settlement or survey, the plaint shall specify such boundaries or numbers.

8. The provisions of Order 20 Rule 9 of the Code of Civil Procedure are para materia to the provisions of Rule 3 of Order 7 of C.P.C., the only difference is that such description is required to be given under Order 7 Rule 3 of the Code of Civil Procedure in the plaint and such description is required to be given in the decree for recovery of immovable property, under Order 20 Rule 9 of the Code of Civil Procedure.

9. The pleadings made by the respondents/plaintiffs have been described in aforesaid paras of this judgment. A plain and simple reading of the paras of the plaint and a perusal of the plaint map which has been marked and made a

part of the plaint, it is clear that identification of the suit land can be made from the said document and the statement and pleadings made in the plaint. Thus, it cannot be said that the plaint was having no specific description of the disputed property, so as to identify the same and in accordance to Order 7 Rule 3 of the Code of Civil Procedure, the pleadings were incomplete in the plaint and, accordingly, under Order 20 Rule 9 of the Code of Civil Procedure, the decree for immovable property of which identification was not possible, could not have been passed by the learned trial Court.

10. Learned counsel for the appellant/defendant has placed reliance in the case of *Chutahru Bhagat and others Vs. Hialal Sah and others* (AIR 1950 Patna 306) and has contended that in view of the law laid down by the said High Court of Patna, no decree could have been passed in favour of the respondents/ plaintiffs. In view of this, it is submitted by the learned counsel for the appellant/ defendant that the legal aspect was not considered by the learned lower appellate Court and, as such, dismissal of the appeal in motion stage itself was not permissible. The facts of the said case relied by the learned counsel for the appellant/defendant are some what different. However, the proposition of law and the consideration done by the High Court of Patna was to the effect that a description must be there in the plaint either by means of boundaries or by means of a map so as to identify the property in suit. As has been pointed out hereinabove, not only the boundaries were shown by the respondents/ plaintiffs in the plaint, but a map of the disputed property was also prepared and filed along with the plaint, which was made part of the plaint and this fact was not denied specifically by the appellant/defendant. Therefore, in the considered opinion of this Court even the law laid down by the Patna High Court does not favour the appellant/defendant rather it helps the respondents/plaintiffs.

11. The first question of law is, thus, answered that since there was sufficient description of the suit property given in the plaint, in compliance of Order 7 Rule 3 of the Code of Civil Procedure, a decree as per the provisions of Order 20 Rule 9 of the Code of Civil Procedure could be passed by the learned trial Court in favour of the respondents/plaintiffs.

12. The second question of law is whether the learned lower appellate Court was having jurisdiction to dismiss the first appeal without issuing notices to other side ? the power of the appellate Court are enumerated under Rule 11 of Order 41 of the Code of Civil Procedure. The said provision clearly prescribes that the appellate Court, after sending for the record if it thinks fit

so to do and after fixing a day for hearing the appellant or his pleader and hearing him accordingly if he appears on that day may dismiss the appeal without sending notice to the Court from whose decree the appeal is preferred and without serving notice on the respondents or his pleader. Such a provision was in force before the amendment made in the Code of Civil Procedure on 1.7.2002. Since the power was very much available with the learned lower appellate Court, to dismiss the appeal at motion stage itself without sending notices to the respondents in appeal, it cannot be said that judgment was passed by the learned lower appellate Court without authority of law.

13. What is required to be seen is whether sufficiently the correctness of judgment and decree challenged before the learned lower appellate Court was considered by the learned lower appellate Court or not. In the impugned judgment, the learned lower appellate Court has considered all these facts, with respect to the objection under Order 7 Rule 3 or under Order 20 Rule 9 of the Code of Civil Procedure. A perusal of the impugned judgment clearly indicates that the record of the trial Court was summoned and examined. The findings were tested and then after framing a question whether there was any sufficient ground available to admit the first appeal or not, the learned lower appellate Court reached to the conclusion that no error of law or facts was committed by the learned trial Court in passing the judgment and decree which was impugned before the lower appellate Court. Not only this, the learned lower appellate Court marshalled the evidence adduced by the parties before the trial Court and came to the conclusion that after the specific commission report of the Commissioner appointed by the Court when the fact was found that house was constructed by the appellant/ defendant on more area of the land than purchased by him and obviously the over construction was made on the eastern side of the house constructed by the appellant/defendant where the land of the respondents/plaintiffs' lay. Thus, the learned lower appellate Court has rightly reached to the conclusion that there was no ground available to interfere in the judgment and decree of the learned trial Court and rightly dismissed the appeal of the appellant/ defendant at the motion stage.

14. This Court in the case of *Mangilal Vs. Manakchand* [2001(3) M.P.H.T.191], has categorically held that the first appellate Court has power to dismiss the appeal even in motion hearing under Order 41 Rule 11 of the Code of Civil Procedure if the learned lower appellate Court reaches to the right conclusion that the trial Court has properly appreciated the evidence, has rightly taken into

account the documents produced before the trial Court and has rightly taken into consideration the facts stated before the learned trial Court.

15. In view of this, the second question of law framed is also to be answered that first appellate Court has not committed any error in dismissing the appeal of the appellant/defendant in motion hearing.

16. Thus, answering the question of law framed in negative against the appellant/defendant, this appeal fails and is, hereby, dismissed. In the facts and circumstances, the parties will bear their own costs of this appeal.

Appeal dismissed.

I.L.R. [2011] M. P., 3147
APPELLATE CRIMINAL
Before Mr. Justice P.K. Jaiswal & Mr. Justice I.S. Shrivastava
Cr. A. No. 173/2001 (Indore) decided on 5 September, 2011

RAMCHANDRA ...Appellant
Vs.
STATE OF M.P. ...Respondent

Penal Code (45 of 1860), Section 302 - Proof of Murder **- The report does not reveal that appellant assaulted the deceased - The information memo and seizure memo not proved by the independent witnesses - The seized leg of cot was not produced before the Court at the time of evidence - Therefore, memo and seizure memo not legally proved - Finger prints of appellant were not collected during investigation to connect the appellant with the seized leg of cot - No evidence to connect the appellant with the murder of deceased or the appellant was guilty of murder - Appeal allowed.** (Para 14)

दण्ड संहिता (1860 का 45), धारा 302 – हत्या का सबूत – रिपोर्ट यह प्रकट नही करती कि अपीलार्थी ने मृतक पर हमला किया था – सूचना पत्र एवं जब्ती पत्र को स्वतंत्र साक्षियों द्वारा साबित नही किया गया – जब्त किये गये खाट का पाया, साक्ष्य के समय न्यायालय के समक्ष प्रस्तुत नही किया गया – अतएव, सूचना मेमो तथा जब्ती मेमो विधिक रूप से साबित नही किये गये – जब्तशुदा खाट के पाये के साथ अपीलार्थी को सम्बद्ध करने के लिए, अन्वेषण के दौरान अपीलार्थी की उंगलियों के छाप नही लियें गये – मृतक की हत्या के साथ अपीलार्थी को सम्बद्ध करने अथवा अपीलार्थी हत्या का दोषी होने की कोई साक्ष्य नहीं – याचिका खारिज।

Case referred :

1998 (1) JLJ 236.

None for the appellant.

Deepak Rawal, G.A. for the respondent/State.

JUDGMENT

The Judgment of the Court was delivered by **I.S. SHRIVASTAVA, J. :**–This appeal has been preferred by the appellant being aggrieved by the judgment dated 3.1.2001 passed by the Court of Shri A.K.Shrivastava, 3rd A.S.J., Ratlam in S.T. No.20/2000 by which the appellant Ramchandra has been convicted under S. 302 of the I.P.C. and sentenced to life imprisonment along with fine of Rs.500/-.

2. According to brief facts of the case, on 05.11.99 complainant Khushal lodged a report at Police Station, Sailana that in the morning when he was going to Narayangarh from his village his Bhabhi Baludi called him and told that her husband Lahling is lying dead in the Tapra (hut) of appellant Ramchandra. Therefore, he went there and saw that his brother Lahling was lying dead there. He informed Mansingh and Rangji and took them to lodge report at Police Station. On report, Merg No. 27/99 was registered. On the same day accused Ramchandra lodged report against deceased Lahling about the incident of 12.00 a.m. on 4.11.99 that deceased Lahling abused his mother and on protest by Ramchandra, he assaulted by wooden rod on his head due to which he sustained injury. He also rushed on his mother to assault her. Due to night he could not come to report immediately and at 8.15 a.m. on 5.11.99 he lodged report which was registered as non-cognizable report under S. 302 of I.P.C.

3. In the investigation of Merg report, it was found that in the night at the time of quarel in between Lahling and Ramchandra, Ramchandra caused dangerous injury in the head of Lahling due to which he died. Hence Crime No.154/99 was registered at Police Station, Sailana under S. 302 of I.P.C. On the information of the accused said leg of the cot by which he assaulted the deceased, was seized and after completion of the investigation, challan was filed against the appellant. After trial the appellant has been convicted and sentenced as mentioned above.

4. It has been argued by appellant's counsel that he has been falsely implicated in this case. There was no direct evidence but on the basis of circumstantial evidence, the appellant was involved in this case. The prosecution failed to prove the circumstantial evidence. It was not proved that the appellant was

seller of wine to whom deceased came to purchase it. It was not proved that in the night the appellant assaulted deceased and caused him dangerous injuries. The memo of seizure was not proved. The seized leg of cot was not produced in the evidence. The seizure memo was legally not proved. There is no evidence of last seen in this case. Under the circumstances, the appellant was not liable to be convicted on mere suspicion that since he had dispute with the deceased, therefore, he murdered the deceased. There was no evidence against the appellant. Hence appeal be allowed.

5. It has been argued by respondent's counsel that the case was proved against the appellant on the basis of evidence produced before the trial court. The appeal being devoid of merits, be dismissed accordingly.

6. Considered the arguments. Record of the trial Court perused.

7. According to the statement of Baludi (PW.2), her husband Lahling in the evening at about 7.00 p.m. went to the house of Ramchandra to purchase wine but he did not return. As she was having a small child, therefore, she did not go to search her husband. In the morning she sent her son Balu PW.14. He went there and on return he told that his father is lying dead having bleeding injury in his head. Thereafter she went there and saw her husband was lying there dead. Ramchandra was not at his home as he also had gone to lodge the report to police station. She informed her Jeth (elder brother of her husband) Rahling (PW.I) about the incident. Then he came to the place of incident and went to report to police. Balu (PW.14), 10 years old son of deceased, deposed that on the date of incident, his father came to house after fishing and asked her mother to cook and went to purchase wine at the house of Ramchandra but he did not return in the night. In the morning on instruction of his mother, he went to Tapra (hut) of Ramchandra and found that his father was lying dead there having bleeding injury in the head. Thereafter he returned and informed his mother. Rahling (PW.I) deposed that Bapu at about 8.00 a.m. informed him that Ramchandra and Lahling had quarelled with each other and Lahling is lying dead before the Tapra of Ramchandra. He also came to know that Ramchandra along with his mother and Chowkidar Nathu, had gone to report at the Police Station. He was informed by Baludi, the wife of Lahling that in the night her husband went to Ramchandra to purchase wine but he did not return. In the morning she sent her son Balu who on return informed that Lahling is lying dead there. He has been murdered by Ramchandra by leg of cot. He saw dead body of Lahling. He was having bleeding injury in his

head. Then he went to lodge report at Police Station. Khushal (PW.18) confirming above fact, deposed that Baludi informed about the death of Lahling. Hence he went on the spot and saw Lahling dead there. He was having two injuries on his head. Baludi (PW.2) told him that in the night Lahling went to the house of Ramchandra to purchase wine, who was selling it. She does not know who killed Lahling.

8. Ramesh (PW.8) did not support the fact that Ramchandra was selling something. He supported the fact that after arrival of the police in the village, he went to the Tapra (hut) of Ramchandra and saw Lahling was lying dead in the cotton field before the house of Ramchandra. Rangji (PW.10) deposed that he does not know that what happened in between Ramchandra and Lahling. Mansingh (PW.4) came to him and told that Lahling had died hence he accompanied him to report at the police station. Nathu (PW.11) also deposed same fact that in the morning he went to the police station at that time Mansingh, Rangji and Khushal came there and he came to know that they lodged report that in the field of Ramchandra, Lahling is lying dead. He has been declared hostile and did not support that any incident took place in the night.

9. Bapu (PW.13) was declared hostile. He has not supported the fact that Balu came to him and told anything about Ramchandra. He did not see dead body of Lahling. He came to know from the villagers that Lahling was dead. Then he went to the spot and saw that Lahling was lying dead. He did not talk to Chowkidar and Chowkidar did not tell him anything.

10. In this way all these witnesses have simply deposed the fact that dead body of Lahling was lying in the cotton field before the house of Ramchandra. There is no evidence that Ramchandra was selling wine. The wife of deceased Lahling, Baludi (PW.2) and son Balu (PW.14) deposed that on previous night, Lahaling went from the house saying that he was going to the house of Ramchandra to purchase wine and in the night he did not return and in the morning he was found dead.

11. According to Investigating Officer, Ramesh Javeriya (PW.15) during investigation he arrested accused Ramchandra and prepared arrest memo Ex.P.6. On the information of Ramchandra he prepared memo Ex.P.7 under S. 27 of Evidence Act and seized leg of the cot, prepared seizure memo Ex.P.8 before the witnesses. The independent witnesses of memo Ex:P.7 and seizure memo Ex.P.8 were Mansingh (PW.4) and Nathu (PW.11). They have not supported the prosecution case. According to Mansingh (PW.4) in

memo Ex.P.7 leg of cot was told to be hidden in the Tapra (hut) but this witness has not deposed that who gave this information and to whom this information was given about the seizure. He deposed that leg of cot was seized which was blood stained. But he did not depose that from the house of the accused it was seized and he went there. In cross examination he deposed that it is correct that the leg of cot was not recovered before him and nothing was seized and sealed before him. Nathu(PW.11) deposed in this respect that Ex.P.7 and Ex.P.8 bear his signatures. Ramchandra did not give any information about the leg of cot before him and it was not seized before him. On repeated questions, after being declared hostile, he reiterated that Ramchandra did not give any information before him and leg of cot was not seized before him. Police got papers signed from him. In this way both the witnesses did not support the fact that any information was given by the appellant Ramchandra on the recovery of leg of cot and it was seized before them. The leg of cot which was seized by the I.O., was not produced before the trial court at the time of evidence. Therefore, the memo Ex.P.7 and seizure memo Ex.P.8 were not legally proved as has been held in the case of *Raju Dube Vs. State of M.P.* - 1998(1) JLJ 236. From the seizure memo Ex.P.8 it does not reveal that it was sealed on the spot. Since it was a case of blind murder, hence it was the duty of the I.O. to find out whether any finger prints of the appellant were available on the leg of the cot, which could have been an important evidence in this respect. But no such steps were taken by the I.O.. In the absence of finger prints and any connecting evidence, it can not be presumed that by this leg of the cot, the appellant assaulted the deceased and caused his death. Therefore, prosecution has failed to prove that by seized leg of cot, deceased Lahling was murdered.

12. It was argued by respondent's counsel that the deceased was last seen with the appellant which is evident from the report Ex. P. 21 lodged by the appellant. Hence it was proved that the appellant, in quarel, asasulted the deceased and killed him. In reply it has been argued by the appellant's counsel that from the report Ex.P.21 it does not reveal that the appellant also assaulted Lahling.

13. Considered the arguments. From the report Ex.P.21 it revealed simply that in the night of 4.11.99 at 12.00 a.m. deceased Lahling came to the house of Ramchandra and without any reason he abused his mother and on protest, Lahling assaulted by wooden rod on the head of Ramchandra which caused him injury. He also rushed on his mother to assault her. Due to night he could not come to lodge report. This report does not reveal that

Ramchandra also assasulted Lahling at that time. Had there been a fact that Ramchandra also assaulted Lahling at that time, then it could have been possible to presume that Lahling could have died due to injuries caused by appellant Ramchandra. But since there is no whisper in the report Ex.P.21 that Ramchanra also assaulted Lahling to kill him then this fact could not be presumed automatically. There is no evidence of the prosecution that at the time of incident, when Lahling came to the house of Ramchandra and assaulted him Ramchandra also assaulted Lahling. Therefore, in the absence of any evidence to this fact it cannot be presumed that appellant Ramchandra assaulted Lahling due to which he succumbed.

14. Therefore, there was no evidence to connect the appellant with the murder of deceased Lahling. The information memo Ex.P.7 and seizure memo Ex.P.8 were not proved by the independent witnesses. The seized leg of cot was not produced before the Court at the time of evidence. Therefore, memo Ex.P.7 and seizure memo Ex.P.8 were not legally proved. The finger prints of appellant were not collected during investigation to connect the appellant with the seized leg of cot. Therefore, there was no evidence to prove that the appellant was guilty of murder of Lahling. Under the circumstances we are of the view that this appeal deserves to the allowed.

15. On the basis of above discussion, this appeal is allowed and appellant is acquitted from the charges of S. 302 of the I.P.C. He is in jail. Hence he should be released immediately. Fine, if any deposited, be returned to the appellant.

Appeal allowed.

I.L.R. [2011] M. P., 3152
APPELLATE CRIMINAL

Before Mr. Justice Rakesh Saksena & Mr. Justice M.A. Siddiqui

Cr. A. No. 2509/1998 (Jabalpur) decided on 28 September, 2011

DWARKA PRASAD MISHRA ...Appellant
Vs.
STATE OF M.P. ...Respondent

Prevention of Corruption Act (49 of 1988), Section 13(1)(d) - Illegal Gratification **- Mere receipt of money by the accused from the complainant will not be sufficient to fasten guilt in absence of any demand and acceptance of amount as illegal gratification - Appellant**

accepted the receipt of Rs. 50 from the complainant - Immediately after the trap, the appellant offered explanation that he had accepted the money towards loan transaction - The defence of appellant is corroborated by three receipts which have been brought forward by defence evidence and the complainant handed over Rs. 50 to him by way of installment of loan which he was legally entitled to receive - Explanation offered by appellant appears genuine, reasonable and probable - Appeal allowed. (Para 26)

भ्रष्टाचार निवारण अधिनियम (1988 का 49), धारा 13(1)(डी) – अवैध परितोषण – शिकायतकर्ता से अभियुक्त द्वारा रुपये की मात्र प्राप्ति, अवैध परितोषण के रुप में रकम की किसी मांग एवं स्वीकृति के अभाव में दोष लगाने के लिये पर्याप्त नहीं होगी – अपीलार्थी ने शिकायतकर्ता से रुपये 50 की प्राप्ति स्वीकार की – ट्रेप के तुरंत पश्चात अपीलार्थी ने स्पष्टीकरण दिया कि उसने रुपये ऋण संव्यवहार में स्वीकार किये थे – अपीलार्थी के बचाव की तीन रसीदों द्वारा पुष्टि होती है जिसे बचाव साक्ष्य द्वारा प्रस्तुत किया गया और शिकायतकर्ता ने उसे रुपये 50 ऋण की किस्त के रुप में दिये जिसे प्राप्त करने के लिये वह विधिक रुप से हकदार था – अपीलार्थी द्वारा प्रस्तुत स्पष्टीकरण सत्य, युक्तियुक्त एवं संभाव्य प्रतीत होता है – अपील मंजूर।

Cases referred :

(1995) 3 SCC 567, (2006) 11 SCC 473, (2006) 12 SCC 277, AIR 1979 SC 1408, (2001) 1 SCC 691, (2000) 9 SCC 752, AIR 1974 SC 1516, AIR 1979 SC 1191, AIR 2000 SC 3377, AIR 1976 SC 1497, AIR 2006 SC 836, AIR 2002 SC 486.

Anoop Nair with *Siddharth Datt*, for the appellant.

Aditya Adhikari, Spl. PP for the respondent.

JUDGMENT

The Judgment of the Court was delivered by **M.A. SIDDIQUI, J. :**–This appeal has been preferred by the appellant against the judgment dated 10.10.1998 of Special Judge, in Special Case No. 67/94 whereby the appellant has been convicted for alleged offence punishable under Section 7 (1) and Section 13(1)(a) (2) of the Prevention of Corruption Act, 1988 (hereinafter referred to as "the Act") and sentenced to R.I. for one year and fine of Rs.1,000/-, in default of payment of fine, further undergo R.I. for four months and R.I. for two years and fine of Rs.2,000/-, in default of payment of fine further undergo R.I. for six months respectively.

2. In short, the admitted facts of the case, are that appellant Dwarika Prasad Mishra was a Lower Division Clerk and complainant Ram Milan

Sharma (PW 3), was Peon, both were posted in the office of Lower Sihaval Canal Division, Churhat District-Sidhi. The appellant was also assigned additional charge to look after, preparation and passing of medical bills of department. Complainant presented a medical bill of Rs. 389.60p. which was pending with the appellant/accused for its preparation and passing. Previously also this medical bill was handed over to complainant with some objection and after removal of the objection he again submitted the bill for passing and reimbursement. The bill was to be passed by the then Executive Engineer of the department but necessary preparation and formalities were to be completed by the appellant/accused. Tainted notes were recovered vide Ex.P/4 from the accused and his pant was also seized vide Ex.P/5. Medical bill of complainant and Rs.1250/- were also seized from the house of accused/ appellant.

3. In short, the prosecution case are that demand of Rs.50/- was made by accused from the complainant to prepare the Medical bill. The complainant was not willing to give bribe hence he gave an application Ex.P/1 in writing on 3.6.1987 and requested to do needful to Dy. Superintendent of Special Police Establishment Lok Ayukta Office Rewa (in short 'police'), who entertained the application and called Shri Vijay Singh Parihar (PW 6) Investigation Officer and Panch witness R.K. Shrivastava (PW 1). They were introduced with complainant, who had given written complaint Ex.P/1. They enquired from complainant and when they satisfied then the raid was organized.

4. Complainant handed over two notes of Rs.20/- and one note of Rs.10/- in denomination of Rs.50 and numbers of the notes were noted down on a paper and phenolphthalein powder was applied on the notes by constable Omkar Prasad Mishra (PW 5) and after taking his search that except the tainted money no other amount was there. These tainted money were kept in the pocket of the shirt of complainant. He was strictly warned not to touch notes, before giving the same to the accused/appellant, for which panchnama Ex.P/2 was prepared then he was also asked to give the signal to trap party by scratching his head with his left hand. Hands of constable Omkar Prasad Mishra (PW 5) were washed with solution of sodium carbonate which turned pink the liquid was seized. Another sodium carbonate solution was prepared hands of complainant and other members of trap party were washed with it but colour of sodium carbonate solution did not changed and it remained white, it was also seized.

5. Trap party started from Rewa to Churhut at about 11.00 a.m. in Official vehicle with complainant including Investigating Officer Shri Vijay Singh Parihar (PW 6), Shri K.L Mishra Dy. S.P., Inspector R. R. Mishra witnesses R.K. Shrivastava and other member Sadhu Lal , they reached churhut at 1.00 p.m. At Churhat near garden behind Higher Secondary School Jeep was stopped. Complainant Ram Milan (PW 3) and constable Sadhulal were sent. Both went inside the office of appellant/accused. After some time they came with appellant/accused out of the office and they took tea in a hotel of Brahaspati Yadav. Meanwhile they were coming back, in the way, complainant given tainted amount to appellant/accused who kept them in the left pocket of pant. Constable SadhuLal saw that appellant/accused taken the tainted money from complainant and kept them in pocket. Then appellant/accused went in the office and took his seat. Complainant gave signal to the trap party. Thereafter Trap party reached there. Investigating Officer Shri Vijay Singh Parihar (PW 6) gave his introduction and introduced other members of trap party and both the hands of appellant/accused were caught by Inspector R.R. Mishra. R.K. Shrivastava asked appellant about the bribe money taken from complainant. Appellant accepted taken the money and kept them in his pocket of pant. He handed over them to the trap party.

6. After the trap tainted currency notes were recovered from appellant/ accused. Their numbers were tallied with the Preliminary Panchanama, seizure memo/panchanama of notes was prepared. They were washed with the solution of sodium carbonate which turned pink. Hands of appellant were washed with sodium carbonate solution which also turned into pink and it was seized. Hands of members of trap party were washed with sodium carbonate solution which did not turn and remained white the liquid was seized. Bottles of liquid and currency notes were seized and they were sealed in envelop. During investigation other articles solutions were separately seized and Panchanama trape was prepared vide Ex.P/3. Tainted money seized vide Ex.P/4 before the witnesses and pant of accused was also seized vide Ex.P/5. Accused informed that medical bill of complainant is at his residence. Trap party reached at the house of appellant and from there medical bill of complainant together Rs.1250/-seized and notes were given on suparadgi. Dehati Nalisi Ex.P/12 was prepared and it was sent for registration and it was registered vide Crime No. 159/87 Ex.P/13 by SPE Lokayukta. Spot map Ex.P/14 was prepared. Trap panchnama was prepared and documents were seized. Seized articles were sent to FSL Sagar vide Ex.P/15 from where

after examination positive report vide Ex.P/16 was received. Service record of complainant and appellant were seized vide Ex.P/7 to P/11. Appellant was arrested and was released on bail.

7. After usual investigation and obtaining requisite sanction Ex.P/17 from the competent authority/State Govt., charge-sheet was filed in the Court of concerned Special Judge.

8. On charges being framed, appellant pleaded false implication. His defence, as per his statement under Section 313 of Cr.P.C., is that complainant and prosecution witnesses are liar. On the date of incident Rs.50/- was taken by him but it was an installment of borrowed money, as on 13.1.1987 complainant Ram Milan had taken Rs.200/- on loan from him without interest vide Ex.D/3 Pronote, out of them he repaid Rs.100/- and Rs.50/- in installment of borrowed money. He has been falsely implicated. As the medical bill of complainant was remitted back to the complainant with objection, on 2.6.1987 the medical bill was again received in the office and he was going to prepare to pass so it was kept in the residence of appellant. The defence plea was also narrated before the Officers of Lok Ayukt in writing. An application together with written receipt of borrowed money was given to Executive Engineer of the department vide Ex/D4 on the same day. In defence four witnesses were examined.

9. Prosecution examined 7 witnesses to establish its case viz., Ramesh Kumar Shrivastava (PW.1), B.P. Khare (PW.2), Ram Milan Sharma (Tiwari) (PW 3) complainant, T.R. Pilley Executive Officer (PW 4), Constable Omkar Prasad Mishra (PW.5), Inspector Lok Ayukt Shri V. S. Parihar (PW 6) Investigation Officer and D.R. Yadav (PW 7) clerk Law department.

10. Appellant, to substantiate his defence, examined Yogendra Shekhar Tiwari U D C (DW 1), Ram Lakhan Sharma another UDC (DW 2) R.D. Verma Steno (DW 3) and Babulal Nayak (DW 4) Executive Engineer of the Department.

11. We have heard learned counsel for the parties and perused the record.

12. It was no longer disputed that at the relevant time, appellant was working as L D C, in the office of Executive Engineer, Sihaval Canal Division Churha District-Sidhi as such, he was a public servant within the meaning of this Act.

13. As far as sanction vide Ex.P/17 against the appellant is concerned, it is-

proved by D.R. Yadav (PW.7) who categorically stated that valid sanction vide Ex.P/17 was accorded by the Law Department, Bhopal to prosecute him under Section 7 (1) and Section 13(1)(a) (2) of the Prevention of Corruption Act, 1988. Even otherwise, learned counsel for appellant has not challenged the validity of sanction at all accorded by Law Department Bhopal, M.P. /State Government.

14. Complainant Ram Milan Sharma (Tiwari) (PW 3) says that Rs. 50/- was demanded to get the medical bill passed of Rs.389.60p. He did not want to give bribe so he approached to SPE Lok Ayukt Rewa and gave an application Ex.P/1 and Rs.50/- taken from him. They enquired from complainant and when they satisfied then task of raid was organized. Complainant given two notes of Rs.20/- and one note of Rs.10/- in denomination of Rs.50/- and numbers of the notes were noted down on a paper and phenolphthalein powder was applied on the notes by constable Onkar Prasad Mishra (PW 5) and handed over to him (complainant) after taking his search that except the tainted money no other amount was there. These tainted money were kept in the pocket of the shirt. He was strictly warned not to touch notes, before giving the same to the accused/appellant, for which primary panchnama Ex.P/2 was prepared then he was asked to give the signal to trap party by scratching his head with his left hand. Hands of constable Onkar Prasad Mishra (PW 5) were washed with sodium carbonate solution which also turned pink the liquid was seized. Another sodium carbonate solution was prepared hands of complainant and other members of trap party were washed with it but colour of sodium carbonate solution was not turned it remained white it was also seized.

15. Ramesh Kumar Shrivastava (PW 1) tried to support the version of complainant and said that he was called by Dy. S.P. of Special Police Establishment Rewa and application Ex.P/1 was handed over to him. He gone through it and after enquiring from the complainant and after satisfying a trap was organized and complainant given two notes of Rs.20/- each and one note of Rs.10/- in denomination of Rs.50/- and numbers of the notes were noted down on a paper and phenolphthalein powder was applied on the notes by constable Omkar Prasad Mishra (PW 5) and handed over to him (complainant) after taking his search that except the tainted money no other amount was there. These tainted money were kept in the pocket of the shirt. He was strictly warned not to touch notes, before giving the same to the accused/appellant, for which primary panchnama Ex.P/2 was prepared. The

complainant was asked to give special signal to trap party by scratching his head with his left hand. Hands of constable Omkar Prasad Mishra (PW 5) were washed with sodium carbonate solution which also turned pink the liquid was seized. They reached at 1.00 p.m. to Churhat. Tainted amount of Rs.50/- Ex.P/3 given to accused/appellant and they were recovered from him vide Ex.P/4 Hands of appellant and pocket of pant of appellant were washed with sodium carbonate solution which also turned pink the liquid was seized. Tainted amount of Rs.50/- were also washed with sodium carbonate solution which also turned pink the liquid was seized. His signature is also obtained at A to A portion of Ex.P/4. Pant of appellant was seized vide Ex.P/5 and his signature is also obtained at A to A portion of Ex.P/5. A medical bill was also seized vide Ex.P/6 his signature is also obtained at A to A portion of Ex.P/6.

16. Since appellant in his statement under Section 313 of the Code of Criminal Procedure admitted the fact of his accepting Rs.50/- from the complainant (PW-3), therefore, there remains no dispute about the proof of acceptance of money. In the above circumstances, the main question before this Court for deciding the guilt of appellant would be, whether the appellant accepted or obtained the aforesaid sum from the complainant (PW-3) by way of illegal gratification for passing his medical bill.

17. On the other hand, learned Special Public Prosecutor for the SPE Lokayukta, submitted that once it was established that appellant voluntarily or consciously accepted the money, there was no further burden cast on the prosecution to prove by the direct evidence the demand or motive on the part of appellant. He submitted that conviction of appellant was also justified due to statutory presumption under Section 20(1) of the Prevention of Corruption Act. He submitted that the evidence of complainant cannot be discarded because of minor and immaterial discrepancies. He justified the conviction of appellant recorded by the trial Court. He placed reliance on *M.W. Mohiuddin v. State of Maharashtra*-(1995) 3 SCC 567, *Pudukottai, T.N. v. A. Parthiban*-(2006) 11 SCC 473 and *B.Noha v. State of Kerala and another*-(2006) 12 SCC 277.

18. Learned Special Public Prosecutor submitted that in *Mohiuddin* (supra), in the context of word "obtains the pecuniary advantage" in Section 7 and 13(d) of the Prevention of Corruption Act, the Apex Court held that once the accused comes into possession of the tainted money, the only inference is that he accepted the same and thus 'obtained' the pecuniary advantage. In our

opinion, the above proposition pertained to a particular situation under which it could be held that the accused came to hold and/or came in control of the tainted money. It has further been explained by the Apex Court in Para-7 of the decision that whether there was an acceptance of what is given as a bribe and whether there was an effort on the part of the receiver to obtain the pecuniary advantage by way of acceptance of the bribe depends on the facts and circumstances in each case. In the case of *Mohiuddin* (supra), it was proved that the accused made a demand and also got the affirmation from other witness that he had brought the demanded money. In case of *Surajmal v. State (Delhi Administration)*-AIR 1979 SC 1408, the Apex Court held that in a case of bribery, mere recovery of money divorced from the circumstances under which it is paid is not sufficient to convict the accused when substantive evidence in the case is not reliable. In case of A. *Parthiban* (supra), the Apex Court held that every acceptance of "illegal gratification" whether preceded by a demand or not, would be covered by Section 7 of the Act, but if the acceptance of an illegal gratification is in pursuance of a demand by the public servant, then it would also fall under Section 13(1)(d) of the Act. In case of *B. Noha* (supra), the Apex Court held that when it is proved that there was voluntary and conscious acceptance of money by the accused, there is no further burden cast on the prosecution to prove by direct evidence the demand or motive. It has only to be deduced from the facts and circumstances obtained in the particular case, but in Paragraph-11 of the same decision the Apex Court clarified that there was no case of the accused that the said amount was received by him as the amount which he was legally entitled to receive or collect from PW-1. When an amount is found to have been passed to public servant, the burden is on public servant to establish that it was not by way of illegal gratification. Thus, from the above propositions, it appears essential to examine whether appellant received, accepted or obtained the money by way of illegal gratification or bribe.

19. In the case of *B. Noha* (supra), the Apex Court observed that when it is proved that there was a voluntary and conscious acceptance of the money, there is no further burden cast on the prosecution to prove by direct evidence, the demand or motive. It has only to be deduced from the facts and circumstances obtained in the particular case. In cases of *M. Narsingarao v. State of Andhra Pradesh*-(2001)1 SCC 691 and *State of Andhra Pradesh v. Kumma Raju Gopal*- (2000) 9 SCC 752 Apex Court held that when amount is found to have been passed to public servant, the burden is on public

servant to establish that it was not by of illegal gratification. If this burden was not discharged, it was to be presumed that he accepted the money as illegal gratification.

20. Learned counsel for the appellant submitted that about demand of the money by appellant there was only evidence of complainant (PW-3). According to prosecution, though Sadhu Lal accompanied complainant as a shadow witness, but he was not produced in the court to show the demand of money by appellant. He submitted that the evidence of complainant as a sole witness of transaction of demand of money by accused was not reliable. He cited case of *Raghubir Singh v. State of Haryana*-AIR 1974 SC 1516 wherein the Apex Court observed that in a bribery case payer's testimony carries little conviction in the absence of re-assuring support. In case of *Pannalal Damodar v. State of Maharashtra*-AIR 1979 SC 1191 while examining the evidentiary value of the evidence of complainant, the Apex Court observed that complainant is in no better position than an accomplice and the corroboration of his evidence in material particulars was necessary. In case of *Smt. Meena Balwant Hemke v. State of Maharashtra*-AIR 2000 SC 3377 the Apex Court held the evidence of complainant untrustworthy in view of contradictory version of the incident given by him when he was examined in the departmental proceedings and also on the ground that the shadow witness, who accompanied complainant, did not support the prosecution case.

21. Learned counsel for the appellant has submitted that as per version of Ram Lakhan Sharma (DW 2), he put his signature on Ex.D/3 at s to s portion and Rs.200/- were given on loan to complainant before him and it was written by Yogendra Shekhar Tiwari (DW 1). Learned counsel for the appellant has further submitted that Ex.D/3 was written by Yogendra Shekhar Tiwari (DW 1) and signatures of the complainant and Yogendra Shekhar Tiwari (DW 1) are on receipt in English. Learned counsel for the respondent/State has submitted that signature of the complainant on the complaint Ex.P/1 is in Hindi. As per contra, learned counsel for the appellant has submitted that as per version of R.D.Verma (DW 3) who has produced various documents of payment and signatures of complainant which he used to put sign in English and these documents are exhibited from Ex. D-6 to Ex.D/10. From perusal of them it is very much clear that signatures on Ex. D-6 to Ex.D/10 are similar and they are of the same person. Moreover, Ex.D/6 to D-10 are documents of receipts of acquaintance role register by which payment was taken by complainant and he put his signature in English. Learned counsel for

the appellant has further submitted that medical bill was produced on 2.6.1987 and trap was organized on 3.6.1987 so there was no occasion and time arises to demand bribe money as there was only one day, no body is expecting to prepare bill and ask for bribe money.

22. Learned counsel for the appellant has vehemently argued that actually the complainant used to put his signatures in English and he also put his signature in English on Ex.D/3 receipt after taking loan of Rs.200/- from appellant but he intentionally put his signature in Hindi in concerned complaint Ex.P/1 in order to mislead.

23. Another defence witness produced by appellant is Babulal Naik (DW 4) the then Executive Engineer head of the office who has categorically stated that on 3.6.1987 i.e. on the date of incident appellant gave an application Ex.P/4 complaining about false case brought forward by complainant and fact of the trap together with copy of Ex.D/3. Learned counsel for the appellant has submitted that Babulal Naik (DW 4) is the then Executive Engineer head of the office, he is a responsible officer and his version can not be discarded. According to him, on the date of incident appellant brought forward facts in the knowledge of Babulal Naik (DW 4) the then Executive Engineer head of the office that he has been falsely implicated by complainant and there was a transaction of loan between them and complainant paid installment of loan and not the bribe money to appellant.

24. In *Chaturdas Bhagwandas Patel v. State of Gujrat*-AIR 1976 SC 1497 the Apex Court held that burden that rests on an accused to displace the statutory presumption i.e. raised under Section 4(1) of the Prevention of Corruption Act is not onerous as that casts on the prosecution to prove its case. But such burden has to be discharged, by bringing on record evidence, either direct or circumstantial, to establish with reasonable probability that money was accepted by him than as a motive or reward as is referred to in Section 161 of IPC. In case of *T. Subramanian* (supra), Apex Court accepted the explanation given by the appellant immediately after the incident holding that it clearly explains all the circumstances and raises not only a serious but very serious doubt about the amount having been received by him as an illegal gratification.

25. Evaluating the nature of explanation offered by the appellant, the Apex Court in case of *T.Subramanian v. The State of T.N.*-AIR 2006 SC 836 observed that mere receipt of money by the accused from the complainant (admitted by the accused) will not be sufficient to fasten guilt under Section

5(1)(a) or 5(1)(d) of the Act in the absence of any demand and acceptance of amount as illegal gratification. If the amount had been paid as lease rent arrears due to the temple or even if it was not so paid, but the accused was made to believe that payment was towards lease rent due to the temple, he could not be said to have committed any offence. If the reason for receiving the amount is explained and the explanation is probable and reasonable, then the accused had to be acquitted. The Apex Court approved the proposition laid down in the decision of *Punjabrao v. State of Maharashtra*-AIR 2002 SC 486 holding that explanation, though not offered immediately, but given only in the statement under Section 313 Cr.P.C., can also be accepted. It was held that "it is too well settled that in a case where accused offers an explanation for receipt of the alleged amount, the question that arises for consideration is whether that explanation can be said to have been established. It is further clear that the accused is not required to establish his defence by proving beyond reasonable doubt as prosecution, but can establish the same by preponderance of probability".

26. On examining the facts and circumstances of the instant case in the light of the above propositions, we find that it was established that appellant immediately after the incident offered explanation to the head of office that he accepted the money towards loan transaction and not by way of illegal gratification for passing medical bill. The appellant reiterated the same defence in his statement under Section 313 of the Code of Criminal Procedure. It also stood corroborated by three receipts which has been brought forward by defence evidence and the complainant handed over Rs.50/- to him by way of installment of loan, which he was legally entitled to receive. The explanation offered by the appellant appears genuine, reasonable and probable. Learned Special Judge committed error in not accepting the said explanation. In the above circumstances, we are compelled to hold that prosecution failed to establish beyond doubt that appellant received Rs.50/- from the complainant as illegal gratification as a motive or reward for preparation of medical bill.

27. For the aforesaid reasons the impugned judgment of conviction and sentence of appellant under Section of the Prevention of Corruption Act, 1988 passed by learned Special Judge is set aside. Appellant is acquitted. Personal and surety bonds of appellant are discharged.

28. Appeal allowed.

Appeal allowed.

I.L.R. [2011] M. P., 3163
APPELLATE CRIMINAL
Before Mr. Justice Rakesh Saksena
Cr.A. No.982/1996 (Jabalpur) decided on 14 October, 2011

CHHOTELAL LODH ...Appellant
Vs.
STATE OF M.P. ...Respondent

***Narcotic Drugs and Psychotropic Substances Act (61 of 1985), Section 8 r/w Section 20(b)(i)* - For holding a person cultivator of plants, it has to be established that he deliberately developed and maintained the plants by cultivation using agricultural techniques or he prepared the land or soil for growing such crops - In the absence of such evidence, it can not be held that cannabis plants were being cultivated - Conviction set aside.**

Mere growing of stray cannabis plants in the field midst of number of other plants will not amount to cultivation of the said plants.
(Para 10)

स्वापक औषधि और मनःप्रभावी पदार्थ अधिनियम (1985 का 61), धारा 8 सहपठित धारा 20(बी)(ए) – किसी व्यक्ति को वनस्पतियों का कृषक होने की धारणा करने हेतु यह स्थापित करना होगा कि उसने कृषि तकनीकों के उपयोग द्वारा वनस्पतियों का जानबूझकर विकास एवं संधारण किया या ऐसी फसल की पैदावार हेतु भूमि एवं मिट्टी को उसने तैयार किया – ऐसी साक्ष्य की अनुपस्थिति में यह धारणा नहीं की जा सकती कि गांजे के पौधों की खेती की जा रही थी – दोषसिद्धि अपास्त।

अनेक अन्य पौधों के बीच खेत में बिखरे हुये गांजे के पौधों का उगना, उक्त पौधों की खेती करने की कोटि में नहीं आयेगा।

Vineet Kumar Pandey, for the appellant.
Pramod Kumar Chaurasiya, PL for the respondent.

JUDGMENT

RAKESH SAKSENA, J.:–Appellant has filed this appeal against the judgment dated 20.5.1996 passed by Additional Sessions Judge, Panna in Special Case No.33/1995 convicting him under Section 8 read with section 20(b)(i) of the Narcotic Drugs and Psychotropic Substances Act, 1985 and sentencing him to rigorous imprisonment for 1 year with fine of Rs.2000/-. In default of payment of fine further rigorous imprisonment for 3 months.

2. According to prosecution, on 11.4.1995, Station Officer of police station Dharampur received information from an informer that appellant had grown cannabis plants in his field. After recording the said information, Sub Inspector K.P.Mishra (PW-9) along with other constables reached at the field of appellant situated in village Banki and found that midst of other plants of tomato, pumpkin and other vegetables three small plants of cannabis were growing. After arranging for the security of the above plants, the message of the above fact was communicated to other officers through wireless. On 12.4.1995, in presence of Head Master of the school namely C.P.Yadav (PW-5) panchnama Ex.P/2 was prepared. On the same day at about 12:10 p.m. the aforesaid three green plants of cannabis were seized and sealed. Appellant was arrested. The aforesaid plants were sent for examination to Forensic Science Laboratory. The report of Forensic Science Laboratory Ex.P/19 was received whereby it was confirmed that the seized plants were of cannabis. During investigation, Khasra Panchshala of the year 1994-95 was obtained from Ram Sajiwan, Patwari (PW-7). Dehati Nalishi Ex.P/13 was recorded at the spot, on the basis of which first information report Ex.P/14 was registered at the police station. After requisite investigation, charge sheet was filed and the case was put up for trial before the Court of Special Judge.

3. Defence of the appellant was that of false implication. According to appellant, the said land did not belong to him and he was not in possession of the field. He did not know about the growing of cannabis plants.

4. During trial, prosecution examined nine witnesses and exhibited documents Ex.P/1 to Ex.P/19. Relying on the prosecution evidence, learned Special Judge held the appellant guilty of the charge under section 20(b)(i) of the Narcotic Drugs and Psychotropic Substances Act and sentenced the appellant as mentioned earlier.

5. Learned counsel for the appellant submitted that it was not established by the evidence adduced in the case that the land on which cannabis plants were growing belonged to appellant or that he was in possession of the said land. The evidence of Patwari (PW-7) that appellant was in possession of the land was not reliable in view of the fact that he stated that the field belonged to one Rameshwar. Learned counsel further submitted that in a big field if 2-3 plants of cannabis were found growing, it cannot be presumed that appellant was cultivating them. On the other hand, learned Panel Lawyer submitted that from the evidence adduced by the prosecution, it was clearly

established that appellant was in possession of the field and that he cultivated cannabis plants.

6. I have heard the learned counsel for the parties and perused the evidence and material on record.

7. Ramnarayan Singh (PW-1), a witness of seizure who had taken photographs of the plants, did not support the prosecution case. According to him, he saw 3-4 plants but the said plants were not seized by the police before him. He had merely taken photographs. Other witnesses of seizure namely Ladku (PW-2), Ramkishore (PW-3), Bhaiyalal (PW-4) and Santkumar (PW-6) also did not support the prosecution case about the seizure of cannabis plants from the said field. C.P.Yadav (PW-5), Head Master of Higher Secondary School, however, deposed that police called him from his house and seized three plants before him which smelt like cannabis. He stated that though appellant was sitting there and the police force was present there beforehand, but he did not ask him as to why he was sitting there or the bagiya from which the plants were seized belonged to whom. Thus, this witness though stated about the seizure of plants from the bagiya but he did not say that the said bagiya belonged to appellant. In cross-examination, he stated that when he reached there, 2-3 other persons were also sitting at the bagiya. He did not know where the appellant resided. Some other vegetables plants were also growing there.

8. Ramsajiwan Singh, Patwari (PW-7) deposed that on 18.4.1995 on the requisition by Inspector Mishra he drew a map of the field. That was the field of Rameshwar. He drew the spot map Ex.P/10. He deposed that the said field was recorded in the name of Rameshwar but it was in possession of appellant Chhote. In cross-examination, he, however, admitted that though the name of person in possession of the land is recorded in Col.12 of Khasra but he had not recorded the said fact in Khasra. He had no record that appellant was in possession of the said field Khasra No.60/3. He further admitted that he even did not note the possession of appellant in his diary. He stated that the attesting witnesses of panchnama told to him that the said field was in possession of appellant.

9. Investigating Officer K.P.Mishra (PW-9) deposed that when he went to inspect the bagiya he found three green plants of cannabis growing amongst the plants of tomato and other vegetables. On 11.4.1995, he sent a wireless message to gazetted officers but they did not come, therefore, on the next day i.e. on

12.4.1995 he drew panchnama in presence of Head Master C.P.Yadav and other persons and seized plants of cannabis vide seizure memo Ex.P/3. He admitted that on 12.4.1995, when Head Master reached at the spot, he called the appellant. He did not know whether there was hedge around the bagiya. Except the Head Master no other officer was present when the plants were seized.

10. On appraisal of the evidence of aforesaid witnesses, it transpires that there is no cogent and convincing evidence that appellant was in possession of the land in which cannabis plants were found growing. None of the independent witnesses said that the field in which the plants were detected belonged to appellant or was in his possession. Even Head Master C.P.Yadav (PW-5) did not say that he knew that the said bagiya was in possession of the appellant. According to him, when he reached the field on being called by the police officer, appellant was also called. Patwari (PW-7) stated that the said field was recorded in the name of Rameshwar, but it was in possession of the appellant. He, however, in cross-examination, admitted that there was nothing in the record to show that appellant was in possession of the said field. He stated merely on the basis of statements made by other witnesses. However, he did not record any such statement in the panchnama drawn by him. In these circumstances, the evidence about the fact that the field in which the plants were found growing was in possession of appellant, does not appear trustworthy. In my opinion, it was not established beyond doubt that the field belonged to appellant or he was in possession of the field from which the cannabis plants were seized. Apart from it, it is also to be noted that if only 2-3 plants of cannabis were found growing in an open field along with other vegetable plants, it cannot be presumed and held that the said plants were being cultivated. For holding a person cultivator of plants, it has to be established that he deliberately developed and maintained the plants by cultivation using agricultural techniques or he prepared the land or soil for growing such crops. In the absence of such evidence, it cannot be held that cannabis plants were being cultivated. Mere growing of stray cannabis plants in the field midst of number of other plants will not amount to cultivation of the said plants.

11. In the aforesaid circumstances, I am of the view that the prosecution has failed to prove beyond doubt that the appellant cultivated cannabis plants in the field. The Court below did not appreciate the evidence in correct perspective and erred in holding the appellant guilty of the offence under section 20(b)(i) of the Narcotic Drugs and Psychotropic Substances Act. It is also to

be noted that the Court below framed incorrect charge, as for cultivating cannabis plants the correct provision is section 8 read with section 20(a)(i).

12. Accordingly, impugned judgment of conviction and sentence of appellant is set aside. He is acquitted. His bail bond and surety bond stands discharged.

13. Appeal allowed.

Appeal allowed.

I.L.R. [2011] M. P., 3167
APPELLATE CRIMINAL
Before Mr. Justice Rakesh Saksena
Cr. A. No.1133/1996 (Jabalpur) decided on 19 October, 2011

RAM NARAYAN RAIKWAR ...Appellant
Vs.
STATE OF M.P. ...Respondent

***A. Narcotic Drugs and Psychotropic Substances Act (61 of 1985), Section 42* - If a police officer does not record the information at all and does not inform the official superior, it will be a clear violation of Section 42 of the Act.** (Para 11)

क. स्वापक औषधि और मनःप्रभावी पदार्थ अधिनियम (1985 का 61), धारा 42 – यदि पुलिस अधिकारी सूचना को दर्ज ही नहीं करता और वरिष्ठ अधिकारी को सूचित नही करता, तब यह अधिनियम की धारा 42 का स्पष्ट उल्लंघन होगा।

***B. Narcotic Drugs and Psychotropic Substances Act (61 of 1985), Section 20(b)(i) - Offence under - Proof* - Investigation Officer not complying with the provision of Section 42 of the Act - He did not weigh the seized Ganja before seizure - The seized material was also not produced in the Court - No independent witness from adjoining shop was taken for search of contraband - No other witness supported the evidence of Investigation Officer - Held - The prosecution failed to prove beyond a reasonable doubt that Ganja/contraband was seized from the shop or possession of the appellant - Conviction set aside.** (Paras 10, 12)

ख. स्वापक औषधि और मनःप्रभावी पदार्थ अधिनियम (1985 का 61), धारा 20 (बी)(i) – के अन्तर्गत अपराध – सबूत – अन्वेषण अधिकारी द्वारा अधिनियम की धारा 42 के उपबंध का अनुपालन नहीं किया गया – उसने जब्तशुदा गांजे को जब्ती से पूर्व तौल नहीं किया – जब्तशुदा सामग्री न्यायालय में भी प्रस्तुत नहीं की गई – विनिषिद्ध

पदार्थ की तलाशी हेतु निकटवर्ती दुकान से कोई स्वतंत्र साक्षी नही लिया गया – अन्वेषण अधिकारी की साक्ष्य की पुष्टि किसी अन्य साक्षी ने नही की – अभिनिर्धारित – अभियोजन युक्तियुक्त संदेह से परे साबित करने मे असफल रहा कि गांजा/विनिषिद्ध पदार्थ अपीलार्थी की दुकान से अथवा उसके कब्जे से जब्त किया गया था – दोषसिद्धि अपास्त।

Cases referred :

(2009) 8 SCC 539, (2004) 10 SCC 562, (2011) 5 SCC 123.

S.K.P. Verma with *Jai Singh Rajput*, for the appellant.

Pramod Kumar Chaurasiya, PL for the respondent.

JUDGMENT

Rakesh Saksena, J. :–Appellant has filed this appeal against the judgment dated 17.6.1996 passed by I Additional Sessions Judge and Special Judge, Satna in Special Case No.114/93 convicting him under section 20(b)(i) of the Narcotic Drugs and Psychotropic Substances Act, 1985 and sentencing him to rigorous imprisonment for 6 months with fine of Rs.300/-. In default of payment of fine further rigorous imprisonment for one month.

2. In short, prosecution case is that on 10.11.1993, ASI of police station Nagod district Satna, Rajmani Singh received information from an informer that accused who was running a tea and betel shop near the bus stand crossing Nagod, was selling *Ganja* illegally. Rajmani along with head constables Ramsundar Shukla and Jai Singh reached at his shop. After giving his own search and obtaining the consent of the accused, he searched the shop in presence of Sharad Singh and Indrajit Singh and recovered a paper packet containing 25 gms of *Ganja*. Since accused had no licence for possessing *Ganja*, he seized the said *Ganja* and arrested the accused. He recorded the first information report Ex.P/11 under section 20(b)(i) of the Narcotic Drugs and Psychotropic Substances Act (for brevity NDPS Act) and sent a sample of seized contraband to Forensic Science Laboratory for chemical examination. On receiving the FSL report Ex.P/10 that the seized article was *Ganja*, he filed the charge sheet before the Court.

3. Learned Special Judge framed charge under section 20 of the NDPS Act. The accused denied the charge and pleaded false implication. According to him, Inspector Rajmani and other police officers used to consume tea and betels from his shop without payment. Whenever he demanded money for the same they threatened him to see.

4. Prosecution, to substantiate its case, examined Sharad Singh (PW-1), Indrajit Singh (PW-2) and Inspector Rajmani (PW-4) for proving the search and seizure of the contraband. Patwari Prabhakar Pandey (PW-3) was examined to prove the map about the location of the shop. In his defence, accused examined Safi Ahmad (DW-1). Independent witnesses Sharad Singh (PW-1) and Indrajit Singh (PW-2) did not support the prosecution case, however, relying on the evidence of Inspector Rajmani, learned Special Judge holding the appellant guilty, convicted him under section 20(b)(i) of NDPS Act and sentenced him as mentioned above. Aggrieved by his conviction and sentence, accused/appellant has filed this appeal.

5. Learned counsel for the appellant submitted that it was a clear case of false implication of accused by Inspector Rajmani because he was annoyed with him on his demanding money for tea and betels consumed by him frequently. He submitted that the independent witnesses Sharad Singh and Indrajit Singh did not support the prosecution case. No other local shopkeeper was made witness of the search and seizure. The provisions of section 42 of the NDPS Act were not complied. No information received by informer was recorded nor any intimation in this regard was sent to any superior officer. No other constable or other senior officer was examined in the Court. The *Ganja*, allegedly seized from the shop of accused, was not produced in the Court. In these circumstances, he submitted that the trial Court committed error in convicting the accused. On the other hand, learned Panel Lawyer submitted that the evidence of Inspector Rajmani (PW-4) was reliable. His evidence was corroborated by the seizure memorandum Ex.P/1, Ex.P/2, Ex.P/3 and FSL report Ex.P/10 whereby it was confirmed that the seized article was *Ganja*.

6. I have heard the learned counsel for the parties and carefully perused the impugned judgment, evidence and record of the case.

7. On perusal of the evidence of Sharad Singh (PW-1) and Indrajit Singh (PW-2), it is apparent that they were taxi drivers who used to come at the bus stand. It was admitted by Sharad Singh and also by Inspector Rajmani Singh (PW-4) that there were number of other shops near the shop of accused, but it appears strange that no shopkeeper from those shops was made witness of search and seizure. Sharad Singh (PW-1) stated that police raided the shop of accused and seized a paper packet, but its seizure memorandum Ex.P/1 was made at the police station. He stated that no search of the person of

accused was taken before him. He denied that 25 gms of *Ganja* was seized from the shop of accused. This witness was declared hostile. In cross-examination, he admitted that search and seizure memorandum Ex.P/1, Ex.P/2 and Ex.P/3 were not recorded before him. His signatures were obtained in the police station. According to him, paper packet, which was taken to police station, was not opened before him. Indrajit Singh (PW-2) was also declared hostile. He denied that *Ganja* was seized from the shop of accused.

8. Now there remained solitary evidence of ASI Rajmani (PW-4). He deposed that on receiving information from an informer that accused was selling *Ganja* in his Gumti at bus stand, he informed to his senior officer. This information was sent to SDO Police, but since he was not available, he along with head constables Ramsunder and Jai Singh went to the shop of accused. After obtaining the consent letter for the search from accused and giving their personal search to him, he entered the shop and searched it. They found a paper packet in the shop containing 25 gms of *Ganja*. The *Ganja* was seized in front of Sharad Singh and Indrajit Singh and seizure memorandum Ex.P/1, Ex.P/2 and Ex.P/3 were recorded. Through the office of Superintendent of Police, a sample of *Ganja* was sent to Forensic Science Laboratory for examination. He received the report Ex.P/10 from the Laboratory confirming the seized article to be *Ganja*. After investigation, he filed the charge sheet in the Court.

9. Learned counsel for the appellant submitted that the evidence of Inspector Rajmani Singh (PW-4) was not corroborated by any other independent source. He happened to be a police officer who himself recorded the first information report, conducted investigation and filed charge sheet. The independent witnesses before whom the said search and seizure of contraband was made, did not support the case of prosecution. In view of the fact that accused alleged that Inspector Rajmani frequently used to consume tea and betels from his Gumti without payment and that he used to intimidate him of dire consequences on his demanding price, his evidence was not worthy of reliance. This witness also acted in clear violation of the provisions of section 42 of the NDPS Act.

10. On perusal of the evidence of Rajmani Singh (PW-4), it is apparent that he did not record the information allegedly received by him from the informer. There appeared no evidence on record to indicate that he sent any such

information in writing about the commission of the offence to any of his superior officers. Section 42 of the NDPS Act provided that if any officer authorised under section 42 of the Act had reason to believe from personal knowledge or the information given by any person, he had to take down in writing that the offence punishable under the NDPS Act has been committed. If such officer had reason to believe that a search warrant or authorisation could not be obtained without affording opportunity for the concealment of evidence or facility for the escape of an offender, he may enter and search such building, conveyance or enclosed place at any time between sunset and sunrise after recording the grounds of his belief. In the present case, the seizure is said to have been made at about 8:30 p.m. but it is strange that it was not taken down in writing by the Inspector that he received any such information. Under provision of sub-section (2) of Section 42, it was also incumbent on the investigating officer to send a copy of the information taken down by him to his immediate official superior.

11. In case of *Karnail Singh Vs. State of Haryana* - (2009) 8 SCC 539, a constitution bench of the Apex Court observed that the officer authorised by Section 42 of the Act on receiving the information from any person had to record it in writing in the register concerned and forthwith send a copy to his immediate official superior, before proceeding to take action in terms of clauses (a) to (d) of Section 42(1). If it was not feasible or practical to take down in writing the said information, in such a situation, he could take action as per clauses (a) to (d) of Section 42(1) and thereafter, as soon as it was practicable, record the information in writing and forthwith inform the same to the official superior. Thus, writing down the information received and sending a copy thereof to the superior officer, should normally precede the entry, search and seizure by the officer. But in special circumstances involving emergent situations, the recording of the information in writing and sending a copy thereof to the official superior may get postponed by a reasonable period, that is, after the search, entry and seizure. While total non-compliance with requirement of sub-sections (1) and (2) of Section 42 is impermissible, delayed compliance with satisfactory explanation about the delay may be acceptable compliance with Section 42. If a police officer does not record the information at all and does not inform the official superior, it will be a clear violation of Section 42 of the Act. The question about adequate or substantial compliance with Section 42 would be question of fact to be decided in each case.

12. From the record, there appears no evidence about the deposition of the

seized material in the Malkhana and about it being taken out for production before the Court. It has been admitted by Inspector Rajmani (PW-4) that though he filed the charge sheet in the Court, but he did not produce the seized material in the Court. He could not give any explanation as to why he did not take any witness from the neighbouring shops and selected only taxi drivers who used to park their taxis at the bus stand. He admitted that he did not weigh the seized *Ganja*. It is also important to note that this witness stated that he and other police constables who accompanied him gave their personal search to accused but no memorandum in this regard was recorded and produced in the Court. Sharad Singh (PW-1) and Indrajit Singh (PW-2) denied that Inspector Rajmani and other witnesses gave their personal search before entry and search for the recovery of *Ganja*.

13. Learned counsel for the appellant placed reliance on the decision rendered by the Apex Court in the case of *Jitendra and another Vs. State of M.P.* -(2004) 10 SCC 562 wherein it was observed that non-production of seized drugs (charas and ganja) before the trial Court was not a mere procedural irregularity, it caused prejudice to the accused, hence was fatal to the prosecution case. Similar view was taken by the Apex Court in the case of *Ashok Alias Dangra Jaiswal Vs. State of Madhya Pradesh*- (2011) 5 SCC 123.

14. On a critical scrutiny of the evidence of Inspector Rajmani (PW-4), it seems that he is not a trustworthy or reliable witness. After receipt of the information about the commission offence by the accused, he did not record the said information in Roznamcha. Though he stated before the Court that he informed about the said information to SDO Police but the said SDO Police was not examined in the Court. He did not take any independent witness from the adjoining shops for search of the contraband in the shop of accused, instead he picked up taxi drivers from the bus stand. The aforesaid witnesses also did not support the case of prosecution in the Court. No record of the police station was produced in the Court to show that the seized article was deposited in the Malkhana. Allegedly seized *Ganja* which was said to be about 25 gms in quantity, was not weighed before its seizure. The seized *Ganja* was not produced in the trial Court. Inspector Rajmani (PW-4) was himself the person who received information, conducted the raid, seized the contraband, sent the contraband for examination to Forensic Science Laboratory and filed the charge sheet. Not even other police constables who accompanied him in search and seizure were produced before the Court in evidence. In such circumstances,

the solitary evidence of Inspector Rajmani Singh (PW-4), in my opinion, does not inspire confidence, especially in view of the allegation made by the accused that he was annoyed with him because of his making demand of the price of tea and betels which he used to consume frequently.

15. In the aforesaid circumstances, I am of the view that the prosecution failed to prove beyond a reasonable doubt that 25 gms of *Ganja* was seized from the shop or possession of appellant. Learned Special Judge did not appreciate the prosecution evidence in correct perspective in holding the appellant guilty. Accordingly, the impugned judgment of conviction and sentence of the appellant passed by the trial Court under section 20(b)(i) of the NDPS Act is set aside. He is acquitted. Bail bond and surety bond of the appellant stand discharged.

16. Appeal allowed.

Appeal allowed.

I.L.R. [2011] M. P., 3173
APPELLATE CRIMINAL

Before Mrs. Justice Sushma Shrivastava & Mr. Justice R.C. Mishra

Cr.A. No. 2719/2000 (Jabalpur) decided on 21 October, 2011

BABUJI & anr. ... Appellants

Vs.

STATE OF M.P. ... Respondent

***A. Penal Code (45 of 1860), Sections 302, 397 - Murder - Circumstantial Evidence - Dog Tracking* - Picking of smell and pointing towards appellant by sniffer dog is not a circumstance which could exclude the possibility of guilt of another person - This circumstance alone not sufficient to hold the appellants guilty.** (Para 12)

क. दण्ड संहिता (1860 का 45), धाराएँ 302, 397 – हत्या – परिस्थितिक साक्ष्य – कुत्तों द्वारा खोज – खोजी कुत्तें द्वारा गंध पकड़कर अपीलार्थी की ओर इशारा किया जाना ऐसी परिस्थिति नही है जो अन्य व्यक्ति के दोषी होने की संभावना को अपवर्जित कर सके – केवल यह परिस्थिति अपीलार्थीगण के दोषी होने की धारणा करने के लिए पर्याप्त नही है।

***B. Evidence Act (1 of 1872), Section 9 - Identification of ornaments* - Witness admitted that the no ornaments were mixed with the ornaments identified by her - Police party was also present at the**

time of identification and women of her caste wear similar type of ornaments - Identification not proper. (Para 17 to 19)

ख. साक्ष्य अधिनियम (1872 का 1), धारा 9 – आभूषणों की पहचान – साक्षी ने स्वीकार किया कि उसके द्वारा पहचाने गये आभूषणों के साथ कोई आभूषण नही मिलाये गये थे – पहचान के समय पुलिस दल भी उपस्थित था और उसकी जति की महिलायें एक जैसे आभूषण पहनती है – पहचान अनुचित।

Cases referred :

AIR 1993 SC 1723, 2001 (6) SCC 205,AIR 1952 SC 343, (1838) 2 LEWIN 227, (2009) 15 SCC 418.

S. Mukharjee, for the appellants.

Ashok Chourasiya, G.A. for the respondent/State.

JUDGMENT

The Judgment of the Court was delivered by **R.C. Mishra, J. :**–This appeal has been preferred against the judgment-dated 31.08.2000 passed by First Additional Sessions Judge, Burhanpur Distt. Khandwa in S.T. No.149/99, whereby the appellants, who are respectively father and son, were convicted and sentenced as under-

No. & name of appellant	Convicted under Section	Sentenced to
(1) Babuji (for short 'A1')	302 of the IPC *(for committing murder of his mother Sunderbai)*	undergo life imprisonment and to pay a fine of Rs.1000/- and in default, to suffer R.I. for 2 months.
	397 of the IPC	undergo R.I. for 7 years.
(2) Ramu (hereinafter referred to as 'A2')	302 of the IPC *(for committing murder of his grandfather Raoji*	undergo life imprisonment and to pay a fine of Rs.1000/- and in default, to suffer R.I. for 2 months.
	397 of the IPC	undergo R.I. for 7 years.

with the direction that the jail sentences were to run concurrently.

2. Prosecution story, in short, may be narrated thus -

(i) Even after receiving 19 acres of lands in partition, A1 was not

maintaining cordial relations with his parents namely Raoji and Sunderbai, aged about 80 and 75 years respectively. Bitterness had crept in their personal relationship in view of the facts that (a) nearly 2 years prior to the incident in question, A1 had refused to re-transfer a flourmill purchased by Raoji in his name, (b) Raoji had given the agricultural lands falling in his share on crop-sharing basis to Sheikh Kalu (PW9) & Bhaiyalal and (c) Raoji was inclined to transfer the lands in favour of his daughter Ramkali (PW3).

(ii) At the relevant point of time, Raoji was residing with his wife Sundarbai and A2 separately in a house located near the residence of A1 in village Khadki.

(iii) About a fortnight before being killed, Raoji had gone to village Tajnapur to meet his daughter Ramkali and son-in-law Shivram (PW6). Expressing his intention to give away his share in the lands to Ramkali, he insisted upon them to take possession thereof. However, Shivram refused to accept the proposal saying that the lands were subject matter of the dispute in the family.

(iv) In the night intervening 30th and 31st of March, 1999, with a view to keeping watch over the crop of gram, Raoji along with Sundarbai had gone to sleep in the barn of his agricultural field situated at a distance of 100 meters from Ranghai-Khadki Main Road. On the following morning, both of them were found murdered on respective cots and silver ornaments worn by Sundarbai were also found missing.

(v) Upon the FIR (Ex.P-29) lodged by A1 to the effect that it was A2 who, at about 6 in the morning, on his visit to the barn, had found his grandparents lying dead, a case under Sections 302 and 397 of the IPC was registered at P.S. Khaknar against unknown offender. After inquest proceedings, the dead bodies were sent to local Community Health Center for post-mortem examination. Autopsy Surgeon Dr. S.P. Sharma (PW4) opined that common cause of death of Raoji and Sundarbai was shock due to injuries to vital organs caused respectively by hard & blunt and sharp margin objects. He also preserved bloodstained clothes worn by Raoji and Sundarbai for chemical examination.

(vi) During investigation, Sub-Inspector Lalit Singh Dagur (PW14) inspected the spot. Details of seized blood stained articles may be tabulated as under -

Recovered from the dead body of Raoji or his cot	Recovered from the dead body of Sundarbai or her cot
(a) pagdi worn by him	*(a) Gamchha tied over her head*
(b) Dari (a carpet)	*(b) Godri (mattress) lying on the cot*
(c) cotton bag kept below dari and lying on the cot	

(vii) On 31.03.1999 only, the police dog under the command of Sub-Inspector Amresh Singh (PW15) was taken to the spot. Dog, after being let loose to pick up the smell, voluntarily proceeded towards the house of A1 and started barking and from there, the trained dog went into the adjacent house wherein A2 was living. Accordingly, as suspects, the appellants were interrogated.

(viii) Upon the information given by A1, Sub-Inspector Lalit Singh (PW14) recovered - (a) a daranti concealed in Kachra (rubbish) collected beneath a tree in the barn belonging to him only, (b) Sundarbai's silver tagli, dand and kodle (bracelet) from heap of gram-fodder collected in the same barn. A pair of silver kade said to have been worn by Sundarbai along with cash amount of Rs.3230/- kept in a gunny bag was also recovered at the instance of A1 from his house. Upon information given by A2, two bloodstained stones were recovered from the heap only.

(ix) The above-mentioned articles except the ornaments were forwarded to Regional FSL, Indore for forensic examination. Corresponding report (Ex.P-36) indicated presence of human blood on each one of the articles. However, Serologist and Chemical Examiner to the Government of India, Calcutta, to whom the articles were sent for ascertaining the origin and group of blood, could only determine that gamchha seized from the spot and blouse worn by Sundarbai were stained with blood of B-group.

(x) In the test identification proceedings conducted by Sanu, the

Sarpanch, Ramkali identified the ornaments seized from the possession of A1 as those belonging to their mother Sundarbai.

3. The appellants abjured the guilt. In the cross-examination of Lala (PW1), it was suggested that they were falsely implicated at the instance of Baban in view of the fact that Raoji had not only refused to give his land on crop sharing basis for cultivation of sugarcane to Baban and his companions namely Ravindra and Mahesh but also declined to sell his crop to Baban on the day preceding the fateful night whereas the cross-examination of Ramkali (PW3) and Shivram (PW6) included the suggestion that, being in collusion with Baban, they were also involved in roping appellants in the murders with a view to taking hold of entire lands belonging to Raoji. A2, in his examination, under Section 313 of Code of Criminal Procedure (for short 'the Code'), further asserted that the seized ornaments belonged to his mother and not to his grandmother.

4. Legality and propriety of the convictions in question have been challenged mainly on the ground of what has been termed as mis-appreciation of the circumstantial evidence on record. According to learned counsel for the appellants, there is no direct evidence connecting anyone of them with the murders and the circumstances, from which the conclusion of guilt is drawn are not complete and conclusive in nature. In response, learned Government Advocate, while making reference to the pieces of incriminating evidence, has contended that the convictions were fully justified.

5. Even though, it is not in dispute that each one of the deceased viz. Raoji and Sundarbai met with a homicidal death yet, in order to appreciate the rival contentions in a proper perspective, it is necessary to first advert to the medical evidence.

6. Testimony of Dr. S.P. Sharma (PW4) relates to the post-mortem examinations on the dead bodies of Raoji and Sundarbai as conducted on 01.04.1999. In the following words, he described the related facts and ante-mortem injuries found -

On the body of Raoji (as described in Ex.P-10)

Lower jaw of right side is fractured at middle of its length. Right temporo mandibular joint is also fractured. Bony arch of outer side of right eye socket is also fractured. Right maxillary prominence is also fractured but in position. Lower jaw at left side

is broken near the angle of the mandible. Skin over the above parts is intact. Right side of the bridge of nose is fractured. On pressing finger firmly over right temporal side, it peels broken piece of bones, scrotal skin is turged with serous fluid.

Blood streaks and clots present in both nostrils and left angle of mouth. Pinna of right ear is stained with blood clots and also present in ear canal.

On the body of Sundarbai (as described in Ex.P-11)

(i) Incised wound 3" x ¾" horizontally placed over the right side of forehead.

(ii) Incised wound ½" x ½", oblique in direction present slight below injury no.(i).

(iii) Bone below injury (i) & (ii) is fractured and slight gap is present between broken pieces of bone.

(iv) Incised wound 2½" x 1", going obliquely upward, present over outer side of left eyebrow over forehead.

(v) Incised wound ½" x ½", present below the outer border of left side eye lower eyelid.

The Autopsy Surgeon further stated that on opening skin, muscle of face and skull of Sundarbai, he had noticed that (a) left temporo-parietal bone below injury no.(iv) & (v) [above] was fractured (b) right temporo-mandibular joint was fractured & dislocated (c) lower jaw is fractured and dislocated at mid line (d) vault of skull is fractured at fronto-parietal area across from left to right side and (e) frontal table is slightly displaced down the parietal table of both sides. He categorically opined that common cause of death was shock due to injuries on vital organs of -

(i) Raoji caused by forceful blow of hard and blunt object.

(ii) Sundarbai caused by a sharp object.

7. Thus, in the face of the medical evidence on record, the deaths were rightly held to be homicidal in nature.

8. Coming to the other evidence on record, it may be observed that the prosecution case is based on circumstantial evidence only. Circumstances as

highlighted by the prosecution and found established by learned trial Judge may be discussed under the following heads -

EXISTENCE OF BITTERNESS BETWEEN THE APPELLANTS AND THE DECEASED

9. Entry in the Rojnamcha (Ex.P-27A) proved by Investigating Officer Lalit Singh (PW14) indicated that proceedings, under Section 107 read with 116(3) of the Code, were initiated against A1 and his father Raoji in view of apprehension of breach of the peace due to dispute regarding partition of property. However, there was not even an iota of evidence to show that relations between the deceased and A2 were also strained. Moreover, evidence of Sub-Inspector Amresh Singh (PW15) indicated that the appellants were residing in separate though adjacent houses.

10. Ramkali (PW3) came forward to corroborate the circumstance pertaining to animosity between her parents and the appellants. According to her, a dispute had ensued between A1 and Raoji regarding a flourmill, that was ultimately taken by A1 and at that time, her father Raoji had expressed intention to gift the agricultural lands to her and also asked A1 to return the flourmill. Shivram (PW6) duly supported her version and their testimony also received some corroboration from statement of Lala (PW1) to the effect that the flourmill was the subject matter of the dispute between A1 and Raoji, who also used to say that he would transfer the lands in her favour.

11. All this evidence was rightly considered as sufficient to establish the circumstance showing unpleasantness between the appellants and the deceased.

TRACING OF SCENT BY SNIFFER DOG FROM THE PLACE OF INCIDENT TO THE RESPECTIVE HOUSES OF APPELLANTS.

12. Amresh Singh (PW15), posted as Sub-Inspector of the dog squad, described as to how the trained dog namely Flex taken by him to the spot was able to reach the appellants' houses situated at a distance of half kilometer therefrom. As per his version, - the dog first entered into the house in occupation of A1 and had started barking and after making exit from that house, the dog went into the house wherein A2 was living. He was emphatic in stating that the dog had not gone into any other house. His evidence drew ample support from the statement of ASI Virendra Pratap Singh, who had scribed the relevant panchnama (Ex.P-28) suggesting that the entire exercise was completed within

a period of 40 minutes. However, picking up of the smell by the dog and pointing towards the appellants, by itself, was not a circumstance, which could exclude the possibility of guilt of any person other than that of the appellants or be compatible only with hypothesis of guilt of the appellants, particularly when their visit to the place of occurrence immediately after the murders was quite natural and probable. For this, reference may be made to the decisions of the Apex Court in *Surinder Pal Jain v. Delhi Administration* AIR 1993 SC 1723 and *Gade Lakshmi Mangaraju alias Ramesh v. State of A.P* 2001 (6) SCC 205.

RECOVERY OF WEAPONS OF OFFENCES

13. Investigating Officer Lalit Singh (PW14) claimed to have recovered, upon information given by A1, a daranti from rubbish heap stocked beneath a tree in Raoji's barn. Corresponding memorandum (Ex.P-18) and list of seizure (Ex.P-23) indicating that the daranti could be seized at about 2.30 p.m. on 01.04.1999 were also tendered in evidence. Amongst the panch witnesses, the prosecution preferred to examine only Mahesh as PW11. Even though, he deposed that A1 had taken the Police Officer to the place located in the barn yet, his evidence ran contradictory to the contents of the seizure memo inasmuch as it suggested that the daranti was found concealed in the heap of gram-fodder. This apart, S.I. Amresh Singh (PW15) completely shattered the discovery evidence by stating that daranti, that was found lying near the cots, was one amongst the articles sniffed by the dog on 31.03.1999 at about 4 p.m. Since this witness was not declared hostile by the prosecution, his evidence could be relied on by the defence.

14. Lalit Singh (PW14) also asserted that as per the information recorded in the relevant memorandum (Ex.P-19), A2 had discovered two stones stained with blood from the heap of gram fodder in the barn but, according to Mahesh, A2 had taken out the stones from the agricultural field. Thus, his evidence was also inconsistent with the related extract of seizure memo (Ex.P-24).

15. In the light of serious infirmities in the corresponding evidence, the circumstance concerning discovery of daranti and stones respectively at the instance of A1 and A2 ought to have been held as doubtful. As such, learned trial Judge committed an illegality in taking a contrary view.

16. Non-forwarding of seized daranti and stones to Autopsy Surgeon for examination and opinion on the point as to whether the injuries found

respectively on the bodies of Raoji and Sunderbai could be inflicted by these weapons, is also a disturbing aspect of the matter.

DISCOVERY OF ORNAMENTS BELONGING TO SUNDARBAI AS WELL AS IDENTIFICATION THEREOF

17. According to Sub-Inspector Lalit Singh (PW14), in pursuance of information given by A1 and recorded in memorandum (Ex.P-18), he could recover ornaments said to have been worn by Sundarbai at the time of her murder. He further added that information had led to recovery of silver tagli, one pair of silver dand and a pair of silver kangan (bracelet) along with cash amount of Rs.3230/- from heap of gram fodder in the field and two silver kada from a sack containing Arhar in A1's house. However, statement of panch witness Mahesh was not in full conformity with recitals of corresponding lists of seizure (Ex.P-25 and P-26) simply because it suggested that all the ornaments were found in A1's house only. As pointed out already, this witness was not declared hostile and Ravindra Mahajan, the other panch witness to the recovery of the ornaments, was not examined. In such a situation, evidence regarding recovery of ornaments at the instance of A1 was also shrouded with suspicion.

18. Evidence as to identification of the ornaments as those of Sunderbai was also fragile. While asserting that nearly 3 days after the incident, she had identified, before Sarpanch of the village, Hasli (Article 'A'), Kade (Article 'B' and 'C'), Kade (Article 'D' and 'E') and Kade (Article 'F' and 'G'), which were normally worn by her mother Sundarbai, Ramkali (PW3) categorically admitted the following facts-

(i) House of the Sarpanch was situated in front of her parental house at village Khadki.

(ii) Police personnel were also present at the time of identification.

(iii) Ornaments identified by her were not found mixed up with any other ornament.

(iv) Women belonging to her community usually wear such ornaments and ornaments similar to those identified by her were possessed by Jhumki Bai, wife of A1.

19. Further, neither Sarpanch namely Sanu, the author of identification memo

(Ex.P-13) nor anyone of the panch witnesses viz. Baban and Rahim was produced by the prosecution. All these facts were suggestive of inference that requirements of the law in regard to holding of identification parade were not satisfied. In other words, there was neither proper nor legal identification of the ornaments allegedly recovered at the instance of A1. Accordingly, it was not possible to presume that he must have killed and robbed his mother of the ornaments.

PROBABILITY OF THE DEFENCE

20. On one hand, Ramkali (PW3) and her husband Shivram (PW6) refuted the suggestion that they had falsely implicated the appellants at the instance of one Baban and on the other, they clearly admitted that agricultural fields previously in possession of Raoji, were given to Baban for cultivation for a consideration of Rs.12,000/-. A natural query as to why they did not prefer to hand over the fields to Kalu (PW2), the younger son of A1, remained unexplained. Ramkali further acknowledged that she was interested in getting 20 acres of lands, which were recorded in the name of her father Raoji. As pointed out already, the prosecution did not prefer to examine Baban in evidence.

21. These circumstances preceding and succeeding the murders clearly established probability of the defence that Ramkali and her husband Shivram, being desirous of getting the lands and Baban, being interested in cultivating the land on contract basis, were instrumental in falsely implicating the appellants in this case.

22. To sum up, -

(i) Existence of animosity in the wake of dispute as to property between A1 and Raoji was established.

(ii) Dog tracking evidence pointing towards involvement of the appellants was not a circumstance compatible with the hypothesis of their guilt.

(iii) Evidence concerning recovery of daranti at the instance of A1 and bloodstained stones from the possession of A2 suffered from serious infirmities and further, these weapons of offence were not sent to Autopsy Surgeon for examination & opinion.

(iv) Evidence as to recovery of ornaments said to have been worn by Sunderbai from the possession of A1 within a short time after

her murder was also shrouded with doubt. Moreover, testimony of Ramkali regarding identification of the seized ornaments as belonging to Sunderbai could not be relied upon.

(v) Probability of the defence was established from the facts and circumstances brought on record.

23. It is the fundamental rule of criminal jurisprudence for appreciation of circumstantial evidence that in cases where the evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should, in the first instance, be fully established, and the circumstances so established should be consistent only with the hypothesis of the guilt of the accused person, that is, the circumstances should be of such a nature as to reasonably exclude every hypothesis but the one proposed to be proved. To put it in other words the chain of evidence must be so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused person (*Hanumant v. State of Madhya Pradesh,* AIR 1952 SC 343 referred to). In that case, observing that in such cases there is always the danger that conjecture or suspicion may take the place of legal proof, the Apex Court recalled the warning addressed by Baron Alderson to the jury in *Reg. v. Hodge,* (1838) 2 Lewin 227 where he said :

> *"The mind was apt to take a pleasure in adapting circumstances to one another, and even in straining them a little, if need be, to force them to form parts of one connected whole; and the more ingenious the mind of the individual, the more likely was it, considering such matters, to overreach and mislead, itself to supply some little link that is wanting, to take for granted some fact consistent with its previous theories and necessary to render them complete."*

24. The above rule has been reiterated in all subsequent decisions on the point including the recent one rendered in *State of Maharashtra v. Mangilal,* (2009) 15 SCC 418 that was also a case of multiple murders and based on circumstantial evidence including evidence of dog tracking.

25. Having thus re-analyzed the entire evidence on record in the light of well-settled principle stated above, we are of the opinion that chain of circumstances found proved was not so complete as to be consistent only with the hypothesis of the guilt of the appellants and did not show that, in all

human probabilities, they had committed murders of Raoji and Sundarbai. Further, the possibility that the entire case was built up after the dog pointed towards them, could not be ruled out. The appellants, therefore, were entitled to benefit of doubt.

26. Accordingly, the appeal is allowed. The impugned convictions and consequent sentences passed against the appellants are hereby set-aside. Instead, they are acquitted of the offences. Fine amount, if deposited, be refunded.

27. The appellants are in jail. They be released forthwith if not required in any other case.

Appeal allowed.

I.L.R. [2011] M. P., 3184

APPELLATE CRIMINAL

Before Mr. Justice P.K. Jaiswal & Mr. Justice I.S. Shrivastava

Cr.A.No.1420/2001 (Indore) decided on 21 October, 2011

BHURSINGH & ors. ...Appellants

Vs.

STATE OF M.P. ... Respondent

A. ***Penal Code (45 of 1860), Section 302 - Murder*** **- Discrepancies with regard to the roles played by accused A and B in the F.I.R. and Court evidence of the complainant - Fact of assault by accused A and B to the husband of the complainant not proved.** (Para 13)

क. दण्ड संहिता (1860 का 45), धारा 302 – हत्या – अभियुक्त ए और बी द्वारा निभायी गई भूमिका के संबंध में एफ.आई.आर. व शिकायतकर्ता की न्यायालयीन साक्ष्य में असंगतियां – अभियुक्त ए व बी द्वारा शिकायतकर्ता के पति पर हमला करने के तथ्य को साबित नहीं किया गया।

B. ***Evidence Act (1 of 1872), Section 27 - Seizure of weapon - Non- production*** **-Stones alleged to have been used for committing crime were not produced in evidence - Seizure memo was not legally proved.**(Para 19)

ख. साक्ष्य अधिनियम (1872 का 1), धारा 27 – हथियार की जब्ती – प्रस्तुत नही किया जाना – अभिकथित रूप से अपराध कारित करने हेतु उपयोग किये गये पत्थरों को साक्ष्य में प्रस्तुत नहीं किया गया – जब्ती मेमो विधिक रूप से साबित नहीं किया गया।

Case referred :

1998 (1) JLJ 236.

Bhagwan Singh, for the appellants.

Deepak Rawal, G.A.for the respondent/State.

JUDGMENT

The Judgment of the Court was delivered by **I.S. SHRIVASTAVA, J. :**–This appeal has been preferred by the appellants being aggrieved by the judgment dated 18/10/2001 passed by the Court - of Shri B. L. Jatwa, Additional Sessions Judge, Jobat, District-Jhabua in S.T. no. 101/1999, by which the appellants have been convicted under sections 148, 302/149 and 506 (part-ll) of the IPC and sentenced to rigorous imprisonment of two years each and life imprisonment with fine of Rs.2000/- each and rigorous imprisonment of two years each respectively.

2. According to the prosecution story, on 24/09/1998 at about 5.15 pm, Dungriya, husband of complainant Nahju returned to home from Udaygarh and said to his wife Nahju that he would take bath in Nala and she would wash the clothes there. Thereafter, both of them went to the Nala. She was washing the clothes and Dungriya was smocking bidi. Nagariya, younger brother of her husband and her son Teniya were sitting there. At about 5.30 pm, accused Jalam, Bhursiya, Khelu, Mangtiya, Bhudhiya, Kalsingh, Kishan and Kasturi armed with bow and arrows and faliya came there and surrounded her husband, at that time, Nahju ran towards the Nala. Accused Bhursiya, Jalam and Mangtiya shot Dungriya by bow and arrows which caused injuries to his chest, hands and face. Accused Kasturi, Bhudiya and Khelu assaulted by faliya in the head of Dungriya, due to which he fell down, then accused Kalsingh and Kishan assaulted by stone to his head till his death. The remaining accused persons surrounded Dungriya. After the death of Dungriya, accused Jalam ran towards Nagriya to kill him. Kelsingh caught hold of him, then Nagriya got rid of him and ran away. On the cries of Nahju, her mother-in-law Rukhama, sister-in-law Hajri came there, then accused persons ran away. Due to the old enmity of land, the accused persons killed her husband. The accused persons also threatened that in case of report, they would finish whole of the family. Hence on report on 25/09/1998 at 6.30 am, crime no. 156/1998 was registered under sections 147, 148, 149, 302 and 506 of the IPC. After investigation, challan was filed against the appellants. Accused Kishan was juvenile, hence challan was filed against him in Juvenile Court. The

appellants / accused have been convicted and sentenced after trial as mentioned herein above.

3. It has been argued by the appellants' counsel that all the prosecution witnesses have improved their statements from their police statements during trial. The evidence was not appreciated in proper perspective. As per medical report and the statement of Dr. Prakash Dhoke PW-5, no injury was found on the back side of the head of the deceased Dungriya and there was no injury on the waist and stomach; there was no injury of faliya. No independent witness was produced before the trial Court. Hence the appeal deserves to be allowed.

4. It has been argued by the respondent's counsel that the case was proved on the basis of the evidence produced before the Trial Court, hence this appeal being devoid of merits, be dismissed accordingly.

5. Considered the arguments and record of the trial Court perused.

6. At the time of the trial, Nahju PW-I, Nagriya PW-2, Rukhma PW-3, Hajaribai PW-8 and Teniya PW-9 were produced in supported of the prosecution story.

Hajaribai PW-8 was not the eye witness, but according to her statement, on the cries of Nahju, she reached on the spot and saw her brother Dungriya; he was having injuries on his chest, abdomen and mouth. On inquiry, Nahju told her that accused Bhursingh, Jalam, Khelu, Mangtiya, Kasturi, Kalsingh, Kishan and Bhudhiya killed Dungriya by bow arrows and stones. According to her police statement Ex.-D/4, at the time of the incident, she was at her house and on hearing the cries of Nehju, she went to the spot, but in court statement, she deposed that at the time of the incident, she was grazing her cattle near the place of incident and on the cries of Nahju, she reached the spot. In cross-examination,, she deposed that Nahju told her about the incident, when police picked up the dead body of Dungriya. According to Nahju PW-1, at 3 am, police came and took the dead body to police station; she also accompanied them. This shows that she did not reach the spot immediately after the incident, otherwise, naturally in the evening when she reached the spot, naturally Nahju,wife of Dungariya should have told her about the incident. Therefore, the presence of witness Hajribai PW-8 is doubtful. She has not given detail information that which accused assaulted in which way to the deceased. Hence the statement of this witness is not reliable.

7 Kamru PW-6 deposed that he reached the spot at about 11 - 11.30 pm on receiving the information that Dungariya has been killed. He went with other persons by Jeep there. Nahju, wife of Dungariya told him that Dungariya was killed by accused Jalam, Khelu, Kasturibai, Kishan and others in all eight persons. In cross-examination, he deposed that he remembered only names of the four accused, even Nahju told him the names of all the eight accused persons. Hence this is hearsay witness.

8. Rukhma P.W-3 deposed that at about 5.30 pm, she was grazing her cattle, at that time, accused Khelsingh, Bhursiya, Jalam and Mangtiya, Bhudhiya, Kalsingh, and Kasturi came there. Accused Khelsingh and Bhursingh caught hold of Dungariya and accused Jalam assaulted by bow and arrows, which caused him injury to his chest. Accused persons assaulted him by stones, due to which, he sustained injuries in his chest and other parts of the body and died on the spot. According to her police statement, she was not on the spot. At the time of the incident, she was grazing her cattle near the Nala and on the cries of Nahju, when she was going towards Nala, she saw accused Bhudhiya, Khelsingh, Kasturi, Jalam, Bhursiya, Mangtiya, Kalya armed with bow and arrows and accused Kalsingh and Kishan with empty hands rushed towards their homes. She wanted to talk with them, but they did not stop. When she reached the Nala, she saw Dungariya was lying dead and Nahju, Teniya and Hajribai were weeping. In this way, she was not the eye witness of the incident, but she has deposed being as eye witness. In cross-examination, she deposed that she did not gave portion A to A of her police statement Ex.-D/3. In portion B to B of police statement Ex.-D/3, it was mentioned that Nahju told her that Bhursiya, Jalam, Mangtiya, Bhudhiya, Khelsingh, Kasturi, Kishan and Kalsingh killed Dungariya by bow & arrows and stones and faliya, but she has denied her deposition and said that she did not inform the police about it. She further deposed that on the cries of Teniya and Nagriya , she reached the spot. Teniya and Nargiya reached the spot and at the same time, she reached the spot. In this way, from the statement of this witness, it seems that she has produced herself as eye witness while she was not the eye witness, therefore the statement of this witness Rukhma PW-3 is not reliable.

9. Nagriya PW-2 deposed that on the date of the incident, he along with Teniya was fishing at the Nala, at that time, Dungariya and Nahju came there. Nahju was washing clothes in the Nala and Dungariya was smocking bidi. At that time, accused Khelu and Bhursiya came and caught Dungariya. Along with them, accused Jalam, Mangtiya, Bhudhiya, Kalsingh, Kasturi and Kishan

came there and at the same time, accused Jalam, Bhursiya and Mangtiya assaulted by bow and arrows to Dungariya which caused injury to his abdomen; he fell down. Accused Kasturi and Kalsingh assaulted Dungariya by stones, due to which Dungariya died. Thereafter, Jalam and Mangtiya aimed their arrows towards him, hence he ran away from the spot.

10. It has been argued with respect to this witness that his statement does not support the prosecution case as stated in the police statement Ex.-D/2. According to his police statement, he was sitting at the Nala for fishing. It was 5.30 pm. Accused Jalam, Bhursiya and Mangtiya armed with bow and arrows; accused Bhudhiya, Kasturi, Khelsingh armed with faliya and accused Kalsingh and Kishan came there and circumscribed Dungariya. Accused Bhursiya, Jalam and Mangtiya assaulted him by bow and arrows,, which caused injury to his chest, abdomen and hands and mouth. Accused Kasturi, Bhudhiya and Khelsingh assaulted by faliya on his head, then Dungariya fell down. Thereafter, Kishan and Kalsingh assaulted him by big stone of Nala on the face. Till the death of Dungariya, all the accused persons remained there. After the death of Dungariya, Jalam and Khelsingh came to him and Khelu tried to catch him, but he ran away after releasing himself from them. They chased him, but could not succeed. In this way, he has given different story. The fact that Kelsingh and Bhursiya caught hold of Dungariya, was not in his police statement and is an improvement, hence his statement is not reliable.

11. As regard to the assault by Kasturi, Bhudhiya and Kelsingh by faliya, this witness has not deposed anything. The assault of stone by Kasturi is a new fact which was not in the police statement Ex.-D/2. Accused Jalam, Mangdiya aimed arrows towards him, is a new fact which was not in his police statement. He further deposed in cross-examination that when Teniya ried, then he went to the spot after the fall of Dongariya; the assailants chased him. In this way, from the contradictions and omissions in the statement of this witness, it seems that he was not present on the spot and being the cousin of the deceased, he has become eye witness, otherwise, such type of contradiction would not have occurred from the statement, hence the statement of this witness is not reliable.

12. Nahju PW-1 deposed that at the time of the incident, she went along with her husband Dungriya to the Nala and she was washing clothes and her husband was smocking bidi. At that time, Nagriya and Teniya were in the same vicinity. Accused Kasturi, Bhudhiya, Kishan, Kalsingh, Jalam, Mangtiya,

Khelu and Bhursiya armed with bow arrows, faliya came there. Accused Kelsingh and Bhursiya caught hold of her husband and accused Jalam, Mangtiya and Bhudhiya inflicted arrows on her husband, due to which, he fell down. Accused Kasturi assaulted by faliya, which caused injury on the back side of the head of her husband. Accused Bhursiya assaulted by faliya on his chest; accused Khelsingh assaulted by faliya on his waist. Accused Kalsingh threw stone on the head of her husband and accused Kishan assaulted by stone to her husband. Accused Kasturi was saying to accused Kishan to assault Dungariya by stone. The statement of this witness is not with the conformity with the police statement Ex.-D/l. The fact that Rukhma was in the same vicinity, at that time, accused Bhudhiya assaulted by arrow and Kasturi assaulted by faliya on the back side of the - head of her husband and Bhursiya assaulted by falyia on the chest of her husband and accused Khelsingh by faliya on the waist of her husband and the fact that accused Kasturi was saying to Kishan to assault her husband by stone and Bhursiya ran towards Nagriya and the fact that Bhursiya caught hold of her husband, have not been mentioned in her police statement. These are the improvement, which are not reliable.

13. In FIR, it was mentioned that Bhursiya, Jalam and Mangtiya assaulted by arrows to her husband, which caused injury in the chest and hands, but in court statement, she has not named Bhursiya and Bhudhiya who assaulted arrows on the chest of Dungariya along with accused Jalam, Mangtiya, therefore, the fact that accused Bhudiya assaulted by arrows, is not reliable and Bhursiya assaulted by arrows, has not been stated by this witness hence, this fact is not proved. This witness has deposed that Bhursiya assaulted her husband by faliya at his chest, is not in FIR and the fact of the FIR that accused Bhudhiya assautled her husband by faliya has not been deposed by this witness in court statement., hence both these facts are not proved. The fact that accused Kasturi said to Kishan to assault by stone, is not reliable, because it is not in the FIR and police statement Ex.-D/l.

14. According to Dr. Prakash Dhoke PW-5, he did not find any injury on the backside of the head and abdomen and on waist, therefore, the fact that Kasturi assaulted by faliya on the backside of the head; Khelu assaulted by faliya on the waist, are not reliable. The fact that Bhursiya assaulted by faliya to her husband, which caused injury on his chest, are an improvement because in FIR, it was mentioned that Bhursiya assaulted her husband by arrow, hence this witness is not believable for this fact.

Therefore on the basis of the above discussion, it seems that Jalam, Mangtiya assaulted her husband by arrows, due to which her husband fell down. This fact is supported by the evidence of Dr. Prakash Dhoke PW-5 and postmortem report Ex.-P/2. According to the statement of Prakash Dhoke PW-5, injury no. 8 was incised wound on the left side of the chest, which was 4cm x lcm x 10 cm deep. In this injury, the heart was perforated with arrow from its upper end to lower end of heart and 5 cm x 1 cm iron made arrow 10 cm x 3 cm was found inside the heart. By this injury, death of the deceased Dungriya was possible. According to the opinion given in postmortem report, cause of death is cardiac respiratory failure, due to hemorrhage and shock and injury to vital organ (breast), therefore this injury was responsible for the death of the deceased. Since Jalam and Mangtiya inflicted arrows on the deceased, therefore, they are responsible for the death of Dungariya.

15. Teniya PW-9 is the ten year's child of deceased Dungariya. At the time of the incident, he was with Nagariya at the Nala for fishing. At the time of the incident, his father was smocking bidi and mother was washing, then accused Bhursiya, Jalam, Khelu, Khelsingh, Bhudiya, Kishan, Kasturi, Mangtiya and Kalsingh came there and as soon them came, accused Bhudhiya assaulted by arrows on his father which caused injury in the chest. Accused Jalam assaulted by arrow on his father, which caused him injury in the armpit. Thereafter, his father fell down, then accused Kalsingh and Bhursiya assaulted him by faliya and other accused persons also assaulted by stones, due to which, he died. According to the police statement Ex.-D/5, all these accused Bhursiya, Jalam, Mangtiya came with bow and arrows from the front side; accused Bhudhiya, Khelsingh and Kasturi came with faliya from the back side and Kishan and Kalsingh came with stones from the front side. They circumscribed his father and assaulted him by bow & arrows, faliya and stones, due to which, he fell down. Thereafter, Kishan and Kalsingh assaulted by stone on his mouth, due to which his father died. Thereafter, the accused persons ran away. The fact that accused Bhudhiya assaulted his father by arrow, is not reliable because according to his police statement Ex.-D/5, accused Bhudhiya was having faliya. The fact that Bhursiya assaulted his father by faliya is not reliable because in Ex.-D/5, the police statement, accused Bhursiya was having bow and arrows. The fact that all the accused persons assaulted to his father by stones, is not reliable, because according to his police statement Ex.-D/5 only Kishan and Kalsingh came with stones and assaulted his father at the mouth. Hence in the Court statement, this witness

has not supported the fact that Kishan and Kalsingh assaulted by stones to his father therefore, the fact that accused Jalam assaulted his father by bow & arrows, is reliable.

16. On the basis of the above discussions, the position comes that accused Jalam and Mangtiya assaulted by bow & arrows to deceased Dungariya, due to which he died. Khelsingh and Bhursiya are said to have caught hold of the deceased, but this fact is not believable as it is not in the statement under section 161 of the Cr.P.C Ex-D/l of Nahju, Ex.-D/2 of Nagriya, and Ex.-D/3 of Rukhma.

17. During the investigation, vide seizure memo Ex.-P/6, bow & arrows was seized from the accused Jalam; vide seizure Ex.P/8, bow & arrows was seized from the accused Mangtiya. This confirmed the prosecution story. Faliya was seized from accused Bhudiya, hence the statement of Teniya PW-9 that accused Bhudhiya assaulted by arrow to his father is not believable.

18. It has been argued by the appellant's counsel that during investigation, vide seizure memo Ex.-P/5, two stones blood stained , out of which one was pointed weighing 2 kg and other stone was weighing 500 grams, were seized from the spot, but they have not been produced in the evidence. Hence it cannot be said that they were used as a weapon of assault in the incident. Hence it was not proved that the stones were used in the incident.

19. Considered the arguments. Investigating Officer Shri S. K. Mishra PW-10 deposed that from the spot, vide panchanama Ex.- P/5, he seized two stones blood stained and prepared panchanama Ex.-P/5, which bears his signatures. The independent witnesses of this seizure was Kamru PW-6 and Vesta PW-7. Kamru PW-6 has been examined by the prosecution. He deposed that from the spot, 5-6 stones small and big in size were seized. The seizure memo Ex.- P/5 bears his signatures. In this way, this witness has not supported the fact that two stones blood stained , out of which one was pointed weighing 2 kg and other was weighing 500 grams was seized from the spot. The other independent witness was not examined by the prosecution. In this way from the statement of Kamru PW-6, it was not proved, that these two stones were seized vide panchanama Ex.-P/5. These stones have not been produced in evidence, therefore, the seizure memo was legally not proved asheld in the case of *Raju Dubey Vs. State of M.P.* [1998(1) JLJ 236]. Therefore, it was not proved that by these two stones, accused Kalsingh and Kishan assaulted the deceased Dungariya. Since Kishan was not tried in this

case, therefore, it was not proved that kalsingh assaulted the deceased by these two stones.

20. Therefore, on the basis of the above discussions, we are of the view that from the prosecution evidence, the offence was proved against the accused Jalam and Mangtiya only and there was no evidence against the accused Bhudhiya, Kasturi, Bhursiya, Khelsingh and Kalsingh, hence they are liable to be acquitted.

21. Therefore, on the basis of the above discussions, this appeal is partly allowed and the conviction and sentence of the appellants Jalam and Mangtiya is hereby confirmed and the remaining accused Bhudhiya, Kasturi, Bhursiya, Khelsingh and Kalsingh are acquitted from the charged under sections 148, 302/149 and 506 (part-ll) of the IPC. Accused Kasturi and Kalsingh are on bail; their bail bonds stand discharged and the remaining accused except accused Jalam and Mangtiya be released, if not required in any other offence. The fine, if deposed, be returned to them.

Appeal partly allowed.

I.L.R. [2011] M. P., 3192
ARBITRATION CASE
Before Mr. Justice Rajendra Menon
Arb. Case No. 123/2010 (Jabalpur) decided on 19 October, 2011

GEI INDUSTRIAL SYSTEMS LTD. ...Appellant
Vs.
BHARAT HEAVY ELECTRICALS LTD. ...Respondent

Arbitration and Conciliation Act (26 of 1996), Section 11(6) - Scope **- In absence of an arbitration agreement, the application for appointment of an Arbitrator is not maintainable - Application dismissed.**

There must be an intention of the parties to settle the dispute or difference by private Tribunal - Even though there may not be any specific form of an arbitration agreement, the words and conduct of the parties should disclose a determination and obligation to go for arbitration and not merely contemplation or a possibility of going for arbitration.

(Paras 11 & 12)

माध्यस्थम् और सुलह अधिनियम (1996 का 26), धारा 11 (6) – विषयक्षेत्र – माध्यस्थम करार की अनुपस्थिति में, माध्यस्थ की नियुक्ति हेतु आवेदन पोषणीय नहीं है – आवेदन खारिज।

Cases referred :

(2010) 3 SCC 1, (2000) 7 SCC 497, (2009) 7 SCC 350, (2003) 10 SCC 51, (2005) 8 SCC 618, (2011) 7 SCC 406, (2007) 5 SCC 719.

Brian D' Silva with *V. Bhide*, for the appellant.

Ashok Lalwani & S. Khare, for the respondent.

ORDER

RAJENDRA MENON, J.:–Seeking constitution of an Arbitral Tribunal for adjudication of the dispute between the parties, this application is filed by the petitioner under section 11(6) of the Arbitration and Conciliation Act, 1996.

2. Petitioner company claims to be a company incorporated under the Companies Act having its registered office in 26-A, Industrial Area, Govindpura, Bhopal. It is stated that the petitioner is a reputed company involved in heavy engineering works and has executed various contracts even for the respondent. It is stated that the parties are having long standing business relationship. According to the petitioner, the Oil and Natural Gas Corporation (hereinafter referred to as 'ONGC' for short), a Government of India undertaking, placed certain contract with the respondent, for the purpose of supplying Process Gas Compressor Coolers. The respondent, therefore, invited a limited public tender, where the offer of the petitioner was found to be the lowest and technically acceptable. It is the case of the petitioner that on account of their reputation and finding their product to be good and the rate reasonable, their tender was accepted and a standard agreement of contract executed, which included an arbitration clause. However, vide letter dated 14.7.2001, respondent placed an order for 12 Coolers with the petitioner, to be supplied in two stages of 6 Coolers each. The respondent placed the order and time was the essence of contract. The petitioner immediately procured sufficient raw materials for manufacturing 12 Coolers, the cost of each ran into Crores of rupees. However, by a subsequent communication arbitrarily the number of coolers was reduced to 8 i.e... 4 Coolers in each of the two stages. In view of the above, it seems that certain disputes arose and when the same was not resolved, petitioner sought appointment of an arbitrator for resolution of the dispute and when the same was not accepted, this application is filed.

3. Shri Brian D'Silva, learned Senior Advocate appearing for the petitioner, invited my attention to the material available on record and made an oral submission to the effect that the contract was executed in the standard form, which had an arbitration agreement, but the said agreement is not available with the petitioner. Learned Senior Advocate submits that the existence of the arbitration agreement can be inferred from the communications available on record. He points out that when the dispute had arisen, communications were made between the parties and vide order-dated 28.11.2001 - Annexure P/5, certain claims were raised by the petitioner, due to change in the contract set up by the reduction of coolers. Correspondence took place and by referring to the various correspondence with regard to settlement of the issues, Shri Brian D'Silva, learned Senior Advocate, emphasized that the respondent having admitted the position of getting the dispute resolved by arbitration cannot now say that there is no arbitration agreement. Inviting my attention to the communication Annexure P/10, dated 7.5.2007, seeking nomination of an arbitrator by the respondent and the corresponding reply of the respondent as contained in Annexures P/13, P/14 and P/15, learned Senior Advocate argued that the respondents having accepted for amicable resolution of dispute by arbitration cannot now contend that an arbitration clause is not in existence. Placing reliance on the following judgments Shri B.D. Silva, learned Senior Advocate, argues that from the correspondences available on record, existence of an arbitration agreement can be inferred. The judgment relied upon are *Trimex International FZE Limited, Dubai Vs. Vedanta Aluminium Limited, India,* (2010) 3 SCC 1; and, *Nimet Resources Inc. and another Vs. Essar Steels Limited,* (2000) 7 SCC 497, to canvass the contention that existence of an arbitration agreement can be inferred from the correspondence and transaction between the parties: *Union of India and others Vs. Onkar Nath Bhalla and sons,* (2009) 7 SCC 350; and, *Angang Group International Trade Corporation Vs. Pipavav Railway Corporation Limited,* (2003) 10 SCC 51, to canvass the contention that even if there is any dispute with regard to existence of an arbitration agreement, it is for the arbitrator to decide the matter and on such ground constitution of an arbitral Tribunal cannot be refused.

4. Shri Ashok Lalwani, learned counsel for the respondent, refuted the aforesaid and argued that there is no arbitration agreement at all. Respondent have specifically denied the existence of any arbitration agreement, they specifically say that what was issued to the petitioner was only a purchase order as is filed by the petitioner vide Annexures P/2 and P/3, and in the

entire purchase order there is no arbitration clause. That apart, Shri Ashok Lalwani, learned counsel, taking me through the documents available on record, the wordings of the communications - Annexures P/13, P/14 and P/16, argued that these documents do not indicate that the respondents have admitted to the existence of an arbitration agreement. They only indicate that the respondents were considering the claim of the petitioner and the possibility of arbitration was also under consideration. It is emphasized by him that in the absence of any arbitration agreement being available, the proceeding under section 11 is not maintainable. Referring to the judgment of the Supreme Court, in the case of *SBP & Company Vs. Patel Engineering Limited and another,* (2005) 8 SCC 618, and a recent judgment of the Supreme Court in the case of *State of Orissa and others Vs. Bhagyadhar Dash,* (2011) 7 SCC 406, Shri Ashok Lalwani argues that in the absence of there being an arbitration agreement between the parties, this application is not maintainable.

5. That apart, on merits Shri Ashok Lalwani points out that the dispute between the parties has already been settled due to final settlement being made. The contract being concluded, on the ground of delay no case is made out for arbitration. Accordingly, Shri Ashok Lalwani, learned counsel, submits that the application be dismissed.

6. Having heard learned counsel for the parties and on a perusal of the records, it is the considered view of this Court that at the very outset the question as to whether an arbitration agreement exists between the parties, which is a pre-condition for exercising jurisdiction under section 11(6) has to be examined.

7. Even though in paragraph 3 of the application, the petitioner says that after negotiation various terms were settled and a standard contract was executed, respondent in the reply has specifically denied the same, they have stated that no such contract was ever executed. In the petition, the petitioner does not say that the executed contract is lost or that it is not available with them. It is only said that the contract was executed, but they do not say as to when it was executed, between whom it was executed and who signed the contract and what were the terms of contract or what happened to this document, no such contract is available on record and it is a case where the existence of the arbitration agreement itself becomes very doubtful. The petitioner wants this Court to draw an inference with regard to existence of an arbitration agreement on the basis of certain communications available on record

i.e... Annexures P/13, P/14 and P/15. Annexure P/13 is a letter written by one Shri S.K. Uppal, Deputy General Manager, BHEL, Bhopal to the President Finance of the petitioner company and the said letter reads as under:

> "Pl. refer to your letter GEI/BHEL-BPL/2369/06/08 dtd. 05.05.2008 regarding appointment of Arbitration.
>
> Kindly recall discussion during last year wherein it was decided to first discuss at lower level for amicable solution before proceeding for arbitration. Hence, your above letter is not acceptable to us. Pl. let us know the date of your visit at our office."

If the aforesaid letter is perused, it only indicates that the parties were to discuss the matter at the lower level before proceeding for arbitration. This letter does not indicate that there is any arbitration agreement or that respondents have agreed to get the dispute settled by arbitration, it only indicates that efforts should be made for an amicable solution before arbitration can be thought of.

8. Similarly, Annexure P/14 is another communication from the respondent company to the petitioner and this also talks about discussion for appointment of arbitrator and the fact that the matter is under consideration. From this letter also, it cannot be inferred that there is an arbitration agreement. Similar is the wording of the letter - Annexure P/15, in which it is indicated that the HR Department and the respondent company is processing the case for appointment of arbitrator by BHEL to resolve the issue. A combined reading of these letters indicates that the respondents were considering resolving the dispute by arbitration, it does not mean that they had agreed for resolution of the dispute by arbitration and a concluded arbitration agreement came into existence between the parties.

9. In the judgments relied upon by Shri Brian D'Silva, the principle laid down is that in the absence of an arbitration agreement, in writing, existence of an agreement can be inferred from the correspondence. To that effect there is no dispute, but the question is as to whether in the present case on the basis of the communication made in Annexures P/13, P/14 and P/15, execution of an arbitration agreement between the parties is established.

10. The question as to what are the essentials to be considered to constitute an arbitration agreement has been considered recently by the Supreme Court, in the case of *Bhagyadhar Dash* (supra) and in paragraphs 2, 3, 4 and 15,

after referring to various judgments of the Supreme Court, the following observations are made:

"The essentials of an arbitration agreement.

2. In *K.K. Modi vs. K.N. Modi,* (1998) 3 SCC 573, this court enumerated the following attributes of a valid arbitration agreement:

"(1) xxx xxx xxx,

(2) xxx xxx xxx,

(3) xxx xxx xxx,

(4) xxx xxx xxx,

(5) that the agreement of the parties to refer their disputes to the decision of the Tribunal must be intended to be enforceable in law, and lastly,

(6) the agreement must contemplate that the tribunal will make a decision upon a dispute which is already formulated at the time when a reference is made to the Tribunal."

3. Following *K.K. Modi* (supra) and other cases, *Bihar State Mineral Development Corporation Vs Encon Builders (I) (P) Limited,* (2003) 7 SCC 418, this court listed the following as the essential elements of an arbitration agreement:

"(1) There must be a present or a future difference in connection with some contemplated affair;

(2) There must be the intention of the parties to settle such difference by a private tribunal;

(3) The parties must agree in writing to be bound by the decision of such tribunal; and,

(4) The parties must be ad idem."

4. In *Jagdish Chander vs. Ram Chander,* (2007) 5 SCC 719, this Court, after referring to the cases on the issue, set out the following principles in regard to what constitutes an arbitration agreement:

"(i) The intention of the parties to enter into an arbitration agreement shall have to be gathered from the terms of the agreement. If the terms of the agreement clearly indicate an intention on the part of the parties to the agreement to refer their disputes to a private tribunal for adjudication and an willingness to be bound by the decision of such tribunal on such disputes, it is arbitration agreement. While there is no specific form of an arbitration agreement, the words used should disclose a determination and obligation to go to arbitration and not merely contemplate the possibility of going for arbitration. Where there is merely a possibility of the parties agreeing to arbitration in future, as contrasted from an obligation to refer disputes to arbitration, there is no valid and binding arbitration agreement.

(ii) xxx xxx xxx

(iii) xxx xxx xxx

(iv) But mere use of the word 'arbitration' or 'arbitrator' in a clause will not make it an arbitration agreement, if it requires or contemplates a further or fresh consent of the parties for reference to arbitration. For example, use of words such as "parties can, if they so desire, refer their disputes to arbitration" or "in the event of any dispute, the parties may also agree to refer the same to arbitration" or "if any disputes arise between the parties, they should consider settlement by arbitration" in a clause relating to settlement of disputes, indicate that the clause is not intended to be an arbitration agreement. Similarly, a clause which states that "if the parties so decide, the disputes shall be referred to arbitration" or "any disputes between parties, if they so agree, shall be referred to arbitration" is not an arbitration agreement. Such clauses merely indicate a desire or hope to have the disputes settled by arbitration, or a tentative arrangement to explore arbitration as a mode of settlement if and when a dispute arises. Such clauses require the parties to arrive at a further agreement to go to arbitration, as and when the disputes arise. Any agreement or clause in an agreement requiring or contemplating a further consent or consensus before a reference to arbitration, is not an arbitration agreement, but an agreement to enter into an arbitration agreement in future."

15. In *Rukmanibai Gupta Vs Collector, Jabalpur,* (1980) 4 SCC 566, this Court considered whether the following clause amounted to an arbitration agreement:

> "15. Whenever any doubt, difference or dispute shall hereafter arise touching the construction of these presents or anything herein contained or any matter or things connected with the said lands or the working or non-working thereof or the amount or payment of any rent or royalty reserved or made payable hereunder the matter in difference shall be decided by the lessor whose decision shall be final".

This Court held that Arbitration agreement is not required to be in any particular form. What is required to be ascertained is whether the parties have agreed that if disputes arise between them in respect of the subject matter of contract such dispute shall be referred to arbitration; and if the answer was in the affirmative, then such an arrangement would spell out an arbitration agreement. Applying the said test, this court held that the aforesaid clause is an arbitration agreement, as it (a) made a provision for referring any doubt, difference or dispute to a specified authority for decision and (b) it made the "decision" of such authority final." (Emphasis supplied)

11. If the aforesaid principles laid down are taken note of, it would be seen that there must be an intention of the parties to settle the dispute or difference by private Tribunal. Even though there may not be any specific form of an arbitration agreement, the words and conduct of the parties should disclose a determination and obligation to go for arbitration and not merely contemplation or a possibility of going for arbitration. It is held by the Supreme Court in the case of *Jagdish Chander Vs. Ramesh Chander and others*, (2007) 5 SCC 719, that a mere possibility by parties agreeing to arbitration cannot be construed to be an arbitration agreement. If the correspondence available on record and relied upon by Shri Brian D'Silva are taken note of, they only suggest that the parties were negotiating the possibility of resolution of their dispute through arbitration. It would not mean that a concluded arbitration of agreement exists between the parties.

12. Keeping in view the principles of law as detailed hereinabove and the law laid down by the Supreme Court in the backdrop of the facts and circumstances of the present case, I am of the considered view that there was no arbitration agreement between the parties and in the absence of an arbitration

agreement, this application is not maintainable. Having held so, it is not necessary now for this Court to go into the various other questions on merit canvassed at the time of hearing, as the jurisdiction of this Court to refer the dispute for arbitration is available only if the arbitration agreement is proved. In view of the law laid down in the case of *Patel Engineering Limited* (supra), this Court cannot exercise the said jurisdiction under section 11 of the Act, once it is found that there is no arbitration agreement existing between the parties.

13. Accordingly, finding no case for considering and allowing the prayer of the petitioner, the application is dismissed.

Application dismissed.

I.L.R. [2011] M. P., 3200
CRIMINAL REVISION
Before Mr. Justice G.D. Saxena
Cr. Rev. No. 536/2011 (Gwalior) decided on 4 August, 2011

RINKU @ YATENDRA ...Applicant
Vs.
STATE OF M.P. ...Non-applicant

***Evidence Act (1 of 1872), Section 73 - Comparison of signature, handwriting etc.* - Applicant filed application for sending the Dehati Nalishi, F.I.R. and other documents to handwriting expert as according to him it were written by same person- These documents are very much available before the Trial Court - There is no rule of law that Court is precluded from coming to its own conclusion in such cases where it is fully familiar with language and script of document which is under scrutiny - Where the Court considers that opinion of a handwriting expert would be of assistance to it in coming to a decision, it may call for the evidence of an expert - Trial Court is not bound to refer the matter to the handwriting expert when by itself it can note dissimilarity in the handwritings - Revision allowed with direction to Trial Court to either itself compare the handwriting and if it considers that opinion of handwriting expert is necessary then it shall call for the evidence of an expert.** (Paras 16 &17)

साक्ष्य अधिनियम (1872 का 1), धारा 73 – हस्ताक्षर, हस्तलेख इत्यादि का मिलान

– आवेदक ने हस्तलेख विशेषज्ञ को देहाती नालिशी, एफआईआर तथा अन्य दस्तावेजों को भेजने हेतु आवेदन प्रस्तुत किया क्योंकि उसके अनुसार वह एक ही व्यक्ति द्वारा लेख किये गये थे – यह दस्तावेज न्यायालय के समक्ष भलिभांति उपलब्ध हैं – विधि का कोई नियम नहीं कि न्यायालय पर ऐसे मामलों में अपने स्वयं के निष्कर्ष पर पहुंचने पर रोक है, जहां वह संविक्षाधीन दस्तावेज की लिपि एवं भाषा से पूर्णतः परिचित है – जब न्यायालय यह मानता है कि निष्कर्ष पर पहुंचने के लिये हस्तलेख विशेषज्ञ की राय उसे सहायक हो सकती है, वह विशेषज्ञ की साक्ष्य बुला सकता है – मामला हस्तलेख विशेषज्ञ को निर्देशित करने के लिये विचारण न्यायालय बाध्य नहीं है जब वह स्वयं हस्तलेखों में असमानता को नोट कर सकता है – विचारण न्यायालय को या तो स्वयं हस्तलेख का मिलान करने और यदि उसके मत में हस्तलेख विशेषज्ञ की राय आवश्यक है तब विशेषज्ञ की साक्ष्य बुला सकने के निर्देश के साथ पुनरीक्षण मंजूर।

Cases referred :

AIR 1979 SC 14, AIR 1992 SC 2100, 1992 AIR SCW 2486, (1997) 7 SCC 110, AIR 2004 SC 2294, AIR 1997 SC 3255, 1997 AIR SCW 3315.

Atul Gupta with *A.R. Shivhare*, for the applicant.

Mukund Bhardwaj, PP for the non-applicant/State.

ORDER

G.D. SAXENA, J.:–This revision petition under Section 397/401 of the Code of Criminal Procedure 1973, preferred by the petitioner-accused is directed against an order dated 10th February 2011 passed in Sessions Case No. 114/2005 by the Seventh Addl. Sessions Judge Gwalior (M.P.) refusing thereby prayer of the petitioner/accused for getting the disputed handwritings of Ex.P/2, P/3 and P/4 compared by a Handwriting Expert with the words or figures alleged to have been made by such person.

2. The facts, in short, are that the petitioner/accused in the present case is facing prosecution for commission of offence punishable under Section 302 of I.P.C. It is contended by the learned counsel that on receiving information about the commission of alleged offence, the ASI O.P. Yadav rushed to the spot and reduced in writing the Dehati Nalishi and Marg, marked as Ex.P/4 and Ex.P/2. On the basis of the aforesaid, an FIR was written by Ramlakhan (PW-2) at police station which is marked as Ex.P/3. It is alleged that all these reports have been written by the same person and with a view to prove this fact the accused prayed for calling services of the Handwriting Expert to bring out the truth in the prosecution case, but unfortunately, his prayer was rejected by the trial court under the impugned order. Therefore, by filing the instant revision it is prayed that the same may be allowed in the interest of

justice in order to establish defence and false implication by the accused after examination by the Handwriting Expert. In support of his submission, learned counsel placed reliance on the decisions of the *Apex Court in the cases of State of Delhi Vs. Patiram* (1979 AIR SC 14), *State of Maharashtra Vs. Sukh Dev Singh* (1992 AIR SC 2100), *Ajeet Sawant Vs. State of Karnataka* (1997) 7 SCC 110).

3. Per contra, the learned Panel Lawyer appearing for the respondent/State, opposed the prayer of the petitioner/accused and supported the impugned order passed by the trial court. He, therefore, requested to dismiss the revision petition.

4. Heard the learned counsel for the parties and also perused the copies of the charge-sheet papers containing the statements of the witnesses recorded by the learned trial court alongwith relevant provisions of law applicable to the case in hand.

5. In the case of *Anil Sharma Vs. State of Jharkand* (AIR 2004 SC 2294), the Apex Court held:-

> "It was held that the plea appeared to be afterthought and there was no cogent reason for accepting the prayer. It is true that in a given case the accused can make an application for adducing additional evidence to substantiate his claim of innocence. Whenever any such application is filed before the Court, acceptability of the prayer in question is to be objectively considered. The High Court has elaborately dealt with this issue and concluded as to how the prayer was rightly held to be not tenable."

6. Further in the case of *State (Delhi Administration) Vs. Pali Ram* (AIR 1979 SC 14) the Apex court observed:-

> "Section 73 is therefore to be read as a whole, in the light of Sec. 45. Thus read, it is clear that a Court holding an inquiry under the Code of Criminal Procedure in respect of an offence triable by itself or by the Court of Session, does not exceed its powers under Section 73 if, in the interests of justice, it directs an accused person appearing before it, to give his sample writing to enabling the same to be compared by a handwriting expert chosen or approved by the Court, irrespective of whether his name was suggested by the prosecution or the defence, because even in adopting this course,

the purpose is to enable the Court before which he is ultimately put up for trial, to compare the disputed writing with his (accused's) admitted writing, and to reach its own conclusion with the assistance of the expert. "

7. In the case of *Ajit Savant Majagavi Vs. State of Karnataka* (AIR 1997 SC 3255)=1997 AIR SCW 3315, the Apex Court held:-

"The Section does not specify by whom the comparison shall be made. However, looking to the other provisions of the Act, it is clear that such comparison may either be made by a handwriting expert under Section 45 or by anyone familiar with the handwriting of the person concerned as provided by Section 47 or by the Court itself. As a matter of extreme caution and judicial sobriety, the Court should not normally take upon itself the responsibility of comparing the disputed signature with that of the admitted signature or handwriting and in the event of slightest doubt, leave the matter to the wisdom of experts. But this does not mean that the Court has not the power to compare the disputed signature with the admitted signature as this power is clearly available under Section 73 of the Act. (See *State (Delhi Administration) v. Pali Ram,* AIR 1979 SC 14: ((1979) 2 SCC 158)). "

8. In the case of *State of Maharashtra Vs. Sukhdeo Singh* (AIR 1992 SC 2100)=1992 AIR SOW 2486,the Apex court held:-

"It was then submitted, relying on S. 73 of the Evidence Act, that we should compare the disputed material with the specimen/ admitted material on record and reach our own conclusion. There is no doubt that the, said provision empowers the court to see for itself whether on a comparison of the two sets of writing signature, it can safely be concluded with the assistance of the expert opinion that the disputed writings are in the handwriting of the accused as alleged. For this purpose we were shown the enlarged copies of the two sets of writings but we are afraid we did not consider it advisable to venture a conclusion based on such comparison having regard to the state of evidence on record in regard to the specimen, admitted writings of the accused Nos. 1 and 2. Although the section specifically, empowers the court to compare the disputed writings with the specimen/admitted writings shown to be genuine, prudence

demands that the Court should be extremely slow in venturing an opinion on the basis of mere comparison, more so, when the quality of evidence in respect of specimen/ admitted writings is not of high standard. We have already pointed out the state of evidence as regards the specimen/admitted writings earlier and we think it would be dangerous to stake any opinion on the basis of mere comparison. We have, therefore, refrained from basing our conclusion by comparing the disputed- writings with the specimen/ admitted writings."

9. Perused the record of the case containing the copies of the charge sheet, copy of F.I.R. and "Dehati Nalishi, purported to have been written or made by the same person together with their respective statements recorded before the trial Judge.

10. Ram Lakhan (PW-2) states in para 2 of his statement that on 27/5/04, Constable Suresh Singh appeared before him and furnished Dehati Nalishi on the basis of which he registered the Crime No 95/2004 for offence punishable under Sections 302, 307/34 of I.P.C. read with Section 25/27 of the Arms Act against Tinku s/o Hirasingh, Rinku s/o Hira Singh (present revisionist), Jeetu @ Jitendra and Monu and consequently registered F.I.R., vide Ex.P/3. He sighed the FIR (Ex.P/3) at portion "A" to "A". He admitted that the FIR (Ex.P/3) contains the details as were mentioned in the Dehati Nalishi. He further stated that after registration a copy of the FIR was sent to the court of Judicial Magistrate First Class and the endorsement thereof is effected in the Dak book of the police station. He further stated that immediately after receiving the information, the police force proceeded to the spot consisting of Suresh Singh constable and ASI O.P. Yadav. During his cross-examination, the witness admitted that the writings of both these documents (Ex.P/3 and Ex.P/5) are appeared to be same, but he denied that the FIR (Ex.P/3) was written by O.P. Yadav. He admitted his signature on the document (Ex.P/3) and its registration by him at the concerning police station.

11. O.P. Yadav, Assistant Sub Inspector (PW-10) stated that on 27th May 04, he was posted as Assistant Sub-Inspector at the police station. During patrolling, he got an information through wireless-set at 7-30 p.m. from police control room about the incident. He was ordered to immediately reach to Sahara Hospital where the injured was brought for medical treatment. When he reached the hospital, he met with complainant Virendra alias Pappu and on

his oral report the witness has recorded "Dahati Nalish" (Ex.P/4) at 8-45, which bears his signatures as well as signatures of the complainant. On the information of the complainant that the injured succumbed to death and the dead body of him was sent to JAH Gwalior for post mortem, he reduced the information in writing as per Ex.P/5 and went to JAH Gwalior. He further stated that he conducted preliminary investigation of the case and recorded statements of the witnesses. In cross examination, he states that on 27th May 2004 after a making an entry of departure at Serial No. 869/27-5-2009 in Rojnamcha, he alongwith Constable Suresh Singh left the police station Maharajpura and went back at 23.25 hours alongwith Suresh Singh and also made an entry to that effect at Serial No. 900/27-5-2004 of his return in Rojnamcha of the Police Station Maharajpura.

12. It is true that in a given case the accused in order to substantiate his claim of innocence can very well make an application for adducing additional evidence and whenever any such application is filed before the Court, acceptability of the prayer in question is to be objectively considered by the court.

13. After going minutely through the statements of the witnesses named above and "Dehati Nalishi, written by O.P. Yadav,(PW-10) and the FIR (Ex.P/3), written by Ram Lakhan (PW-2), it appears that after return by O.P Yadav, who recorded the "Dehati Nalishi alongwith Suresh Singh Constable, the same was produced for registration of the FIR by them at 23.30 hours at Police Station Maharajpura, then F.I.R. was written in the presence of witness O.P.Yadav, scribe of "Dehati Nalishi" by Ram Lakhan (PW-2). Therefore, the possibility of witting Dehati Nalishi and the F.I.R. by one person cannot be ruled out.

14. Now, the sole question for consideration of this court is that in what circumstances, the court is entitled to compare the disputed and admitted signatures and handwriting for coming to a conclusion and whether the expert's opinion should be obtained for assistance after exercising powers under Section 73 of the Indian Evidence Act.

15. It is trite law that a comparison of the disputed with admitted writings is a piece of evidence on record and it is a method of examining the internal evidence of a document and of judging whether it finds support from other evidence which is external qua the document containing the disputed writing.

16. On coming to the case, it appears that Dehati Nalishi, the FIR and other documents purported to have been written and made by same person are

very much available before the trial court. There is no rule of law that the court is precluded from coming to its own conclusion in such cases where it is fully familiar with the language and script of the document which is the subject matter of scrutiny before it and where it has the assistance in such scrutiny of the counsel of the parties, but where the court considers that the opinion of a Handwriting Expert would be of assistance to it in coming to a decision, it may call for the evidence of an expert and in that event, exercise of powers under Section 73 of the Indian Evidence Act, 1872 can be invoked. Therefore, in order to compare the admitted handwritings with disputed one on the documents to prove whether the documents, i.e., "Dehati Nalishi" and FIR are written by one person, i.e., O.P. Yadav (PW-10) or another person named Ram Lakhan (PW-2), the trial court is not bound to refer the matter to a handwriting expert when by itself it can note dissimilarity in the handwritings.

17. Under the peculiar facts and circumstances of case as noticed above, it is directed that the trial court before passing final judgment shall either by itself compare the handwriting of the witnesses above mentioned and reach on a conclusion and if it considers that the opinion of Handwriting Expert is essential in coming to a conclusion, it shall call for the evidence of an Expert in that eventuality.

18. In the result, this revision petition deserves to be and is hereby allowed in the manner aforesaid. The impugned order dated 10th February 2011 passed by the trial court stands set aside subject to above directions.

Revision allowed.

I.L.R. [2011] M. P., 3206
CRIMINAL REVISION
Before Mr. Justice G.D. Saxena
Cr. Rev. No. 26/2011 (Gwalior) decided on 18 August, 2011

VIJAY KUMAR JAIN ...Applicant
Vs.
STATE OF M.P. ...Non-applicant

Motor Vehicles Act (59 of 1988), Sections 66 & 192 - Using Vehicle without registration/permit **- Co-accused carrying crackers in a jeep without valid license - Driver of the jeep was also not possessing the permit to drive the motor vehicle - Co-accused informed that crackers**

were being carried for Applicant - Held - Applicant is neither owner nor driver of the jeep therefore, no charge under Section 66/192 of the Act can be framed - Order framing charge under Section 66/192 set aside - Trial would proceed for other charges. (Paras 6 & 10)

मोटर यान अधिनियम (1988 का 59), धाराएँ 66 व 192 – रजिस्ट्रेशन/परमिट के बगैर वाहन का उपयोग – सह–अभियुक्त बिना वैध लाईसेंस के जीप में पटाखे ले जा रहा था – जीप के चालक के पास भी मोटर यान चलाने का परमिट नही था – सह–अभियुक्त ने सूचना दी कि पटाखे आवेदक के लिये ले जाये जा रहे थे – अभिनिर्धारित – आवेदक न तो जीप का स्वामी है, न ही चालक अतएव, अधिनियम की धारा 66/192 के अंतर्गत कोई आरोप विरचित नहीं किये जा सकते – धारा 66/192 के अंतर्गत आरोप विरचित करने वाला आदेश अपास्त – अन्य आरोपों हेतु विचारण जारी रहेगा।

R.K. Sharma, for the applicant.

R.K. Shrivastava, PL for the non-applicant.

ORDER

G.D. Saxena, J.:–This revision under Section 397/401 of the Code of Criminal Procedure 1973 preferred by the petitioner/accused is directed against an order dated 9th November 2010 passed in Criminal Case No. 7718/2010, by the Judicial Magistrate First Class, Gwalior framing thereby charges for commission of offence punishable under Section 9-B of the Explosive Substances Act read with Sections 66/192 of the Motor Vehicles Act against the petitioner/accused.

2. The facts in short, just for the decision of this revision petition are that on 8th May 2010 in front of the gate of J.A. Hospital, on the road of Mandre Ki Mata Gwalior, the checking was made by the Police Squad. During the course of checking, the accused Vallabha @ Balram was found carrying Crackers without valid licence in a Marshal Jeep and the driver was also found not possessing the permit to drive the motor vehicle. The vehicle and the crackers carried illegally were seized and the accused Vallabha @ Balram was arrested on the spot who informed that the crackers were being carried for petitioner Vijaya Kumar Jain at Karhaiya district Gwalior. Accordingly, on the report the FIR was lodged against accused-persons including the present petitioner and after investigation the charge-sheet was filed before the criminal court. During trial, the charges as above were framed against the petitioner/accused, hence this revision before this court.

3. The contention of the learned counsel for the petitioner is that the impugned order passed by the trial court is neither legal nor proper. It is submitted that on perusal of the charge-sheet papers and the evidence collected during investigation, no offence under Section 9-B of the Explosive Substances Act read with Section 66/192 of the Motor Vehicles Act is made out against the accused. It is further pointed out that the statement regarding discovery of facts is not admissible against other accused. In fact, this is a case of no evidence against the petitioner. Therefore, it is requested that by allowing the revision petition, the petitioner/accused be discharged of the alleged charges.

4. Learned Panel Lawyer for the respondent/State on the other hand, supported the impugned order and prayed for dismissal of the revision being found without force.

5. Heard the Learned counsel for the parties and also perused the case-diary of the relevant crime and the law applicable to the present case.

6. On perusal of the provisions contained in Section 66 of the Motor Vehicles Act, there appears mandatory requirement for having permit to owners of the vehicles used in transport or carrying passengers in public place. Violation of provisions using the transport or carrying passengers in public place by such owners or drivers of such transport or passenger vehicle is punishable under Section 192-A of the Motor Vehicles Act. The petitioner is neither driver nor owner of the transport vehicle carrying the fire works in the vehicle. Hence, the charge for commission of offence under Section 66/192 of the Motor Vehicles Act can not be framed against him

.7. Next submission of the learned counsel for the petitioner is that except the Memorandum under Section 27 of the Evidence Act that the Fire works were being carried at the behest of the petitioner in the loading vehicle, no other cogent evidence is available on record to establish the guilt of the petitioner and statement of other co-accused regarding discovery of facts is not admissible against the petitioner.

8. To this context, it may be mentioned here that where the words spoken by the accused do not implicate him with the commission of offence but refer only to the nature of property hidden by him, they are admissible in evidence. The fact said to have been discovered in consequence of information received from a person accused of an offence, must be of a kind which such information really helps to bring to light and which it would be difficult to find out otherwise

before it can be treated as of any substantial probative value. Hence, the important condition embedded in the section is that only so much of the information as relates distinctly to the fact thereby discovered is admissible. Further, Section 9-B of the Act enacts the violation/contravention of rules made under the provision of Section 5 or of the conditions granted under rules made thereunder and prescribes the punishment for illegal possession, use, sells, transport,import or export of the explosive.

9. The learned trial court on perusal of the charge-sheet and the statements etc. placed before it found prima facie material against the accused-petitioner for the violation/contravention of the relevant rules in respect of having licence for possession, use, sale, transport, import, and export of the explosives. Therefore, if on the basis of materials on record, the trial court comes to the conclusion that commission of offence under the Act is probable offence, it cannot be said to have committed any illegality. The truthfulness or otherwise of the documents is not required to be judged at the initial stage of framing of charge.

10. Consequently, the revision petition succeeds in part. The charge framed against the petitioner for commission of offence under Section 66/192 of the Motor Vehicles Act is set aside. However, the trial against him for other charges shall continue.

Order accordingly.

I.L.R. [2011] M. P., 3209
CRIMINAL REVISION
Before Mr. Justice G.D. Saxena
Cr. Rev. No. 672/2010 (Gwalior) decided on 26 August, 2011

NARESH KUMAR ...Applicant
Vs.
SMT. PRABHABAI ...Non-applicant

Negotiable Instruments Act (26 of 1881), Section 141 - Person In charge and Responsible **- Notice was issued to all the partners but no reply was sent stating that applicant was only a sleeping partner and not in charge of management, control or conduct of business or having any responsibility in management and administration of Company - Complaint specifically mentions that all are responsible for non-payment of cheque amount after receipt of notice - Whether a person is**

not such person responsible for the offence is a question of fact to be proved at the stage of trial - Revision dismissed. (Para 11)

परक्राम्य लिखत अधिनियम (1881 का 26), धारा 141 – प्रभारी एवं उत्तरदायी व्यक्ति – सभी भागीदारों को नोटिस जारी किया गया था परंतु कोई उत्तर नहीं भेजा गया इस कथन के साथ कि आवेदक केवल निष्क्रिय भागीदार था और वह व्यवसाय के प्रबंधन, नियंत्रण अथवा कार्य संचालन का प्रभारी नहीं था और कंपनी के प्रबंधन एवं प्रशासन में उसका कोई उत्तरदायित्व नहीं था – शिकायत विनिर्दिष्ट रुप से उल्लिखित करती है कि नोटिस प्राप्ति पश्चात चेक रकम के असंदाय हेतु सभी उत्तरदायी हैं – क्या कोई व्यक्ति अपराध के लिये उत्तरदायी व्यक्ति है अथवा नहीं, तथ्य का प्रश्न है जिसे विचारण के प्रक्रम पर साबित करना होगा – पुनरीक्षण खारिज।

Cases referred :

AIR 2005 SC 2436, 2005 AIR SCW 2364, (2011) 3 SCC 351.

Sushil Goswami, for the applicant.

S.K. Shrivastava, for the non-applicant.

ORDER

G.D. SAXENA, J.:–This revision petition under Section 397/401 of the Code of Criminal Procedure 1974 preferred by the petitioner/accused is directed against an order dated 4th June 2010 passed in Criminal Case No. 914/2007 by the Judicial Magistrate First Class, Ganj Basoda, district Vidisha, rejecting thereby a petition for recalling process issued by the trial court.

2. The brief facts, just for the decision of this revision petition, are that accused Sanjay Mahalwar being a Partner of firm named "Pyarelal Tarachand Mahalwar" Ganjbasoda issued a cheque No. 1366904, dated 30th July, 2006 for a sum of Rs. 1,12,000/- and a cheque No.1481590, dated 20th October 2006 for a sum of Rs.1,12,000/-, to be drawn at Bhopal Regional Gramin Bank, Branch Basoda, in favour of the complainant against a borrowed money received by him for the need of the business of the said firm as well as for his personal ground. When the complainant presented these two cheques for encashment at the bank, same were returned for want of sufficient fund in the account of the holder. Then, the complainant sent a legal notice to the petitioner-accused, through registered A/d post. Despite service of notice, the accused did not bother to pay the amount. Consequently, the complaint against the firm and its partners was filed before the trial court under Section 138 of the Negotiable Instruments Act in which cognizance has been taken against the petitioner-accused for the alleged offence. Being aggrieved by the said order, the petitioner filed a petition under Section 482 of Cr.P.C. (Misc.

Cr. Case No. 3460/2009) before this court and by an order dated 23rd September 2009 this court disposed of the same with a following directions :-

> "From perusal of the record, it is clear that upon a complaint by respondent, learned trial court has taken cognizance against the petitioner by the impugned order. In such circumstances, petition is disposed of with a direction that the petitioner shall move an application before the trial court wherein he shall mention all the facts regarding the innocence. If such application is filed by the petitioner then the learned trial court after hearing the respondent, shall pass a reasoned order in accordance with law."

3. It is contended by the learned counsel appearing for the petitioner that in compliance with the directions aforesaid of this court, the petitioner filed an application before the trial court concerned, which was rejected under the order impugned, hence, this revision.

4. The contention of the learned counsel for the petitioner is that the impugned order passed by the trial court is manifestly illegal and against the principles of natural justice. It is submitted by the counsel that as per averments of the complaint the questioned cheques were signed and issued by Sanjay Mahalwar, Partner of the Firm. The said firm was in the sole Proprietorship of one Late Tara Chand Mahalwar and after his death, the business of the firm was under the control of Sanjay Mahalwar, therefore, the petitioner is not at all responsible for the deeds of Sanjay Mahalwar, Partner of the Firm. Hence, it is prayed that the order dated 4th June, 2010 passed by the trial court be quashed and the petitioner be discharged of the alleged offence.

5. Per contra, the learned counsel appearing on behalf of respondent supported the impugned order under revision and requested to dismiss the revision being found without substance.

6. Heard the learned counsel for the parties. Also perused the documents and certified/photo copies of the orders filed with the revision for consideration by the parties and the law applicable to the case.

7. On perusal of the complaint case, it appears that accused Sanjay Mahalwar, the Partner of Firm "Pyarelal Tarachand Mahalwar", received Rs. 2,24,000/- on credit for the need of the business of the said firm as well as for his personal ground from the complainant. For discharging the liability of the said loan, accused Sanjay Maharwal issued duly signed in the capacity of Partner and

under the seal of the Firm Pyarelal Tata Chand two cheques Nos. 1366904 and 1481590 each for sum of Rs. 1,12,000/-, to be drawn at Bhopal Regional Gramin Bank branch Basoda. When both these cheques were presented for collection, same were returned with a note" Insufficient fund in account". Consequently, notices were sent to the Firm through all of its partners by registered post. After receipt of notices, the cheque amount was not paid to the complainant nor was the reply to the notice submitted. On perusal of the cheques, it seems that the cheques were issued under the seal of Firm "Pyarelal Tara Chand Proprietor" duly signed by Sanjay Mahalwar. It is admitted that in the complaint the averments about the Partnership Firm and the names of the petitioner and others as Partners of the said Firm were mentioned. It is said that the sole Proprietor Tara Chand Mahalwar died and after his death, the Firm came under the control of said Sanjay Mahalwar. It is true that notices to Firm and its partners were sent as per law. The copy of the Ledger Savings Bank Account issued by the concerning bank clearly shows that said savings bank account was in the name of M/S P.T.Mahalwar [Proprietor Tara Chand Mahalwar]. In compliance with the directions issued by this court in Misc. Cri.Case No. 3440/2009, certain documents were filed before the trial court. Those documents, on perusal, also show that the business of the Firm, after death of the sole Proprietor Tara Chand Mahalwar, was continued by the heirs of the deceased but there is no document filed on record showing that the petitioner had no connection with the Firm or the accused Sanjay Mahalwar, who was discharging Proprietorship in place of his predecessor-deceased Tara Chand Mahalwar.

8. Section 141(2) starts with a non-obstante clause. Under sub-section (1) of Section 141, the person in charge of and responsible to the company shall be deemed to be guilty of the offence, but under sub-section (2) even persons who are not stated to be in charge of and responsible to the company can be prosecuted if it is alleged and proved that the offence has been committed with the consent or connivance of, or is attributable to, any neglect on the part of any of those persons prosecuted. Hence, a bare perusal of sub-section (1) of Section 141 of the Act makes it clear that when the offence is alleged to have been committed by a Firm, every person who at the time the offence was committed, was in charge of and was responsible to the Firm for conduct of its business as well as the Firm shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished.

(9) In the case of *S. V. Muzumdar Vs. Gujarat State Fertilizer Co. Ltd.* (AIR 2005 SC 2436) = 2005 AIR SCW 2364 the Apex court held:-

> "We find that the prayers before the courts below essentially were to drop the proceedings on the ground that the allegations would not constitute a foundation for action in terms of Section 141 of the Act. These questions have to be adjudicated at the trial. Whether a person is in charge of or is responsible to the company for conduct of the business is to be adjudicated on the basis of materials to be placed by the parties. Sub- section (2) of Section 141 is a deeming provision which as noted supra operates in certain specified circum tances. Whether the requirements for the application of the deeming provision exist or not is again a matter for adjudication during trial. Similarly, whether the allegations contained are sufficient to attract culpability is a matter for adjudication at the trial."

10. In the case of *Harshendra Kumar D. Vs. Rebatilala Koley and others* (2011)3 SCC 351 the Apex Court held:-

> "It is not the law that in a criminal case where trial is yet to take place and the matter is at the stage of issuance of the summons or taking cognizance, material relied upon by the accused which are in the nature of public documents or the materials which are in the nature of public documents or the material which are beyond suspicion or doubt, in no circumstance, can be looked into by the High Court in exercise of its jurisdiction under Section 482 or for that matter in exercise of its jurisdiction under Section 397 of the Code. It is fairly settled now that while exercising inherent jurisdiction under Section 482 or revision jurisdiction under Section 397 of the code in a case where complaint is sought to be quashed it is not proper for High Court to consider the defence of the accused or embark upon inquiry in respect of merits of the accusations."

11. It appears that the petitioner has been involved in the alleged offence on the basis of his being one of the Partners of the said Firm. A specific notice had been issued to all. of the partners including the present petitioner, but he had not even sent a reply stating that he was only a sleeping partner or dominant partner and not in charge of management, control or conduct of the business or having any responsibility in the management and administration of the company. On the other hand, it is specifically mentioned in the complaint that

they all were responsible for the non-payment of the cheque amount after receipt of notice within the statutory period. The provision of Section 141 of the Act postulates that every person in charge of the company is also responsible for the offence. The question whether he or she is not such person responsible for the offence is a question of fact to be proved at the stage of trial. At this juncture, the petitioner/accused by cogent and reliable evidence could not get success to prove that at relevant time he was not the Partner of the Firm Pyarelal Tarachand Mahalwar.

12. In the result, this revision petition fails and is hereby dismissed.

Revision dismissed.

I.L.R. [2011] M. P., 3214
CRIMINAL REVISION
Before Mr. Justice U.C. Maheshwari
Cr. Rev. No. 857/2008 (Jabalpur) decided on 28 September, 2011

PRAVEEN CHOUBE (DR.) & ors. ...Applicants
Vs.
STATE OF M.P. & anr. ...Non-applicants

A. Penal Code (45 of 1860), Section 498A - **Respondent No.2 alleged that the applicant No.1 got married with her after concealing the factum of 1st marriage which is still subsisting - Such marriage could be declared to be void by competent Court in a petition filed in this regard - As neither of the parties have filed such petition under Hindu Marriage Act therefore, it shall be assumed that alleged marriage of parties is still subsisting and can not be treated as void - Court is not required to decide the validity of alleged marriage at the stage of framing of charge - It can not be said that respondent No.2 being illegally wedded wife, the applicants can not be prosecuted for offence of 498-A of I.P.C.** (Para 10)

क. दण्ड संहिता (1860 का 45), धारा 498ए – प्रत्यर्थी क्र. 2 ने अभिकथन किया कि आवेदक क्र. 1 ने प्रथम विवाह जो अब तक भी अस्तित्व में है के तथ्य को छुपाने के पश्चात उसके साथ विवाह किया – ऐसे विवाह को, सक्षम न्यायालय द्वारा उसके संबंध में प्रस्तुत याचिका में, शून्य घोषित किया जा सकता है – चूंकि किसी भी पक्षकार ने हिन्दू विवाह अधिनियम के अंतर्गत ऐसी याचिका प्रस्तुत नहीं की है इसलिये, यह अवधारणा की जायेगी कि पक्षकारों का अभिकथित विवाह अभी तक अस्तित्वमान है और शून्य नहीं माना जा सकता – आरोप विरचित करने के प्रक्रम

पर अभिकथित विवाह की विधि मान्यता निर्धारित करने की न्यायालय से अपेक्षा नहीं है – यह नहीं कहा जा सकता कि प्रत्यर्थी क्र. 2 अवैध रुप से विवाहित पत्नी होते हुये, आवेदकों को भा.द.सं. की धारा 498–ए के अपराध के लिये अभियोजित नहीं किया जा सकता।

***B. Penal Code (45 of 1860), Section 420 - Cheating - Concealment of first subsisting marriage* - Applicant No.1 got married with respondent No.2 by concealing the fact that his 1st marriage is still subsisting - Offence under Section 420 I.P.C. made out.** (Paras 11 to 18)

ख. दण्ड संहिता (1860 का 45), धारा 420 – छल – प्रथम अस्तित्वमान विवाह का छिपाव – आवेदक क्र. 1 ने प्रत्यर्थी क्र. 2 से विवाह किया, इस तथ्य को छुपाकर कि उसका प्रथम विवाह अस्तित्व में है – भा.द.सं. की धारा 420 के अंतर्गत अपराध गठित होता है।

Cases referred :

AIR 2005 SC 359, (2011) 7 SCC 616, AIR 2001 SC 3014, 2010 (1) ANJ (Supp) 80(SC), 2010(6) Supreme Today 312, Cr.A. No. 1745/2010 decided on 13.09.2010 (SC), Cr.A. No. 2008/2007 decided on 24.10.2008(SC), 2008(III) MPWN 89.

A.K. Pathak, for the applicants.
Nirmala Nayak, G.A. for the non-applicant No.1.
S.S. Tiwari, for the non-applicant No.2.

ORDER

U.C. MAHESHWARI, J. :–The applicants/ accused have preferred this revision under Section 397/401 of Cr. P. C. being aggrieved by the order dated 3.4.2008 passed by Chief Judicial Magistrate, Hoshangabad in Criminal Case No. 15/2008, framing the charge against each of them for the offence under Section 420/34, 498-A of Indian Penal Code (for short "the Code") and Section 3/4 of Dowry Prohibition Act (for short "the Act").

2. The facts giving rise to this revision in short are that on a written report of respondent No.2 Ku. Archana Shukla at Police Station Hoshangabad a crime No.879/07 for the offence of Sections 498-A, 420 of the Code and 3/4 of the Act was registered against the applicants. According to such FIR the respondent No.2 complainant got married before six years with the applicant No. 1 Dr. Praveen Choube in accordance with Hindu rite and rituals. Subsequent to marriage the applicant No. 1, his family members the parents and brother used to make the demand and insisted her to bring rupees five

lacs and one Ford Car in dowry from her father saying that nothing had been given to them by her father on marriage in the dowry. In response of it on asking by complainant that her father had already given the articles and cash amount to them and now he being retired person does not have any capacity to fulfill their demand, on which the applicants by treating her to be a servant of the family, also administered the poisons substance in March, 2007, however she could save herself by taking the medical treatment at Jabalpur Hospital. During such treatment in the hospital she came to know that the applicants by practicing a fraud and giving false information to her that applicant No.1 had taken divorce from his first wife got her married with him while no such divorce had taken place. The applicants also told her that whatsoever had done by them with the first wife of the applicant No.1, they will repeat the same with her and thereafter they will carry out his third marriage. After the aforesaid incident under compulsion she is residing with the family of her father at Hoshangabad. On 30.9.2007 applicant No.1 along with his parents the applicant No.3 and 4 came to Hoshangabad and demanded rupees five lacs from her parents to open the clinic for applicant No. 1 saying that if he being doctor will not open the clinic then what he will do, also made the demand of vehicle saying that the same is a necessity of a doctor. They also gave a threat that on non-fulfilling their such demand the marital relation of the respondent No.2 with the applicant No.1 shall not survive. On which her father and the brother asked them to fulfill their demand according to their capacity, on which the applicants said that they will not further talk with them unless their demand is fulfilled. It is also sated that the applicant No.2 the brother of applicant No. 1 also gave her a criminal threat on telephone that on non fulfilling their demand they will search a bride and got married the applicant No.1 third time, in which, the applicant No.1 being doctor, they may get dowry of rupees ten to twenty lacs.

3. After holding investigation the applicants were charge sheeted for the offence of Section 498-A and 420 of the Code and Section 3/4 of the Act. Considering the papers of charge sheet on framing the charge of such offence against the applicants, they abjured the guilt, on which the trial was directed against them. Being dissatisfied with such order the applicants came to this court with this revision for setting aside the same and discharging them from the case.

4. Shri A. K. Pathak, learned appearing counsel of the applicants' after taking me through copy of the charge sheet and other papers placed on record

said that even on taking into consideration the face value of the charge sheet the ingredients of alleged offence of Section 420, 498-A of the Code and 3/4 of the Act are not made out to frame such charge against any of the applicants. In continuation he said that as per FIR itself the applicant No.1 was already got married with some other long before from the date of the alleged marriage of respondent No.2 with him, therefore in the lack of any decree of divorce between the applicant No. 1 and his first wife in her life time in view of the provision of Section 5 (i) r/w 11 of Hindu Marriage Act the applicant No. 1 could not be deemed or treated to be the husband of respondent No.2. In such factual matrix of FIR the charge of Section 498-A of the Code and Section 3/4 of the Act which are available only to the legally wedded wife could not be upheld against any of the applicants. He also argued that in the light of aforesaid argument on examining the evidence collected by the investigating agency, then there is no prima-facie evidence showing that the applicants or any of them at any point of time by practicing fraud concealing the fact of first and subsisting marriage of the applicant No. 1 after taking the respondent No.2 in their confidence got her married with applicant No. 1 and by placing his reliance on the decided cases of the Apex Court in the matters of *M. Krishnan Vs. Vijay Singh* AIR 2001 SC 3014, *Koppisetti Subbharao @ Subramaniam Vs. State of A. P.* {2010 (1) ANJ (Supp) 80 (SC)}, *Preeti Gupta & another Vs. State of Jharkhand and another* 2010 (6) Supreme Today, 312, unreported case of the Apex Court in the matters of *Sunita Jha Vs. State of Jharkhand & another* decided vide dated 13.9.2010 in Cr. Appeal No. 1745/2010, *State of A. P. Vs. M. Madhusudhan Rao* decided on 24.10.2008 in Cr. Appeal No.2008/07 and in the matter of *Priya Vrat Singh Vs. Shyamji Sahai,* 2008 (III) MPWN 89, prayed for setting aside the impugned order and discharge the applicants by admitting and allowing this revision.

5. On the other hand Smt. Nirmala Nayak, learned GA by justifying the impugned order framing the charge against the applicants, said the same being in consonance with the evidence collected by the investigation agency, and placed with the police report under Section 173 of Cr. P. C. showing the prima-facie ingredients of such offence, does not require any interference at this stage and prayed for dismissal of this revision.

6. While supporting the argument of said State counsel Shri S. S. Tiwari, learned counsel of respondent No.2, additionally said that whatsoever arguments advanced by the applicants' counsel that may be the defence for

the applicants and could be taken by them at appropriate stsge of the trial but at this stage on such arguments the applicants could not be discharged contrary to the prima-facie evidence available in the the charge sheet and prayed for dismissal of this revision.

7. Having heard the counsel at length, I have carefully gone through the papers of the charge sheet, impugned order along with the charge framed and also other papers placed on record, which are not the part of the charge sheet.

8. In view of law laid down by the Constitutional Bench of Apex Court in the matter of *State of Orissa Vs. Devendra Nath Padhi* reported in AIR 2005 SC 359 the papers placed on behalf of the applicant which are not the part of the charge sheet could not be taken into consideration at the stage of framing the charge, the same may be used by the accused at the appropriate stage of the trial in their defence. Besides this as per settled proposition at the stage of framing the charge the evaluation of the charge sheet could not be carried out keeping in view whether the case will be culminated in the conviction of the accused or not, if the prima-facie ingredients of the alleged offence are made out from such papers then there is no option with the Court except to frame the charge of such offence and proceed with the trial.

9. From the aforesaid factual matrix of the charge sheet it has been prima-facie established that respondent No.2 believing bonafide on the applicants fraudulent statements that applicant No. 1 had taken divorce from his first wife gave her consent and got married with the applicant No. 1 in accordance with the rite and rituals of Hindu Community and thereafter being his legally wedded wife also resided with him in his family along with the other applicants for years together and also suffered their alleged cruel treatment on account of aforesaid demand of dowry, in continuation of the same she was administered the poisonous substance by the applicants on which for treatment she remained admitted in the Jabalpur Hospital, where she came to know that the applicants by giving false information to her that applicant No. 1 is a divorcee from his first wife and thereby practicing the fraud got her married with applicant No.1. Therefore, under compulsion she is residing with her parents at Hoshangabad, where also she was subjected to cruelty on account of demand of dowry by the applicant No.1, 3 and 4, as stated above. In such premises the Court has to examine the sustainability of the impugned charges of Section 498-A and 420 of IPC framed against the applicants.

10. In the life time of spouse if any of them either husband or wife got married with other then by virtue of Section 5 (i) r/w Section 11 of Hindu Marriage Act 1955 such marriage could be declared to be void by the competent Court in a petition filed in this regard. But unless obtaining such degree from the competent Court in appropriate petition in this regard mere relying on the oral submission of any of the party at the stage of framing the charge the alleged marriage could not be held to be a void marriage. It is apparent from the facts of the case at hand that neither the applicant No. 1 nor the respondent No.2 had filed any such petition and got such decree of divorce till today, thus in such premises, at this stage it shall be assumed that the aforesaid alleged marriage of respondent No.2 with applicant No. 1 is still subsisting and could not be treated to be void. At the stage of the framing the charge the court has not to decide the validity of the alleged marriage of respondent No.2 with applicant No. 1 but in view of their marital relation as husband and wife and available situation of the case according to which the applicant No. 1 by getting married with respondent No.2 in accordance with the rite and ritual of Hindu Community placed the stigma on her life. Thus, before recording the evidence and adjudication of the case on merits at the stage of framing the charge it could not be said that she being illegally wedded wife on her report the applicants could not be prosecuted for the offence of 498-A of the Code and Section 3/4 of the Act. As such till declaration of their alleged marriage void by the competent Court they should be treated to be husband and wife.

11. So far the charge of Section 420 of the Code is concerned, I have found prima-facie evidence in the charge sheet showing that at the time of alleged marriage of applicant No. 1 with respondent No.2 the applicants had concealed the fact of subsisting the earlier marriage of applicant No. 1 by supplying her wrong information that applicant No. 1 had already taken divorce from his first wife and thereby taking her into confidence by practicing fraud got her married with applicant No. 1. She came to know such fraudulent acts of the applicants at subsequent stage, after consuming the marital relationship with applicant No. 1. Accordingly, prima-facie evidence for framing the charge of Section 417 r/w 420 of the Code against the applicants are made out from the charge sheet. In such premises, under the revisional jurisdiction such charge could neither be quashed nor set aside.

12. Under the revisional jurisdiction of this Court in the available scenario of the case, I would like to examine the same with some other angle also keeping

in view provisions of Section 494 and 495 of IPC. Thus as ready reference such sections are being reproduced here. The same are read as under :-

494. Marrying again during lifetime of husband or wife :

Whoever, having a husband or wife living, marries in any case in which such marriage is void by reason of its taking place during the life of such husband or wife, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

495. Same offence with concealment of former marriage from person with whom subsequent marriage is contracted :

Whoever commits the offence defined in the last preceding section having concealed from the person with whom the subsequent marriage is contracted, the fact of the former marriage, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

13. In view of the aforesaid. Sections of the IPC on examining the case at hand then in the light of the above mentioned factual matrix in which the applicants under their conspiracy during subsisting the first marriage of the applicant No. 1 fraudulently by supplying wrong information of divorce got married the applicant No. 1 with respondent No.2 and thereby placed her life in untold hardship and miseries with several legal disabilities. Say for example, she would not be entitled to claim maintenance from her husband even if she is inhumanly treated, subjected to mental and physical cruelty of variety of kinds, etc. and is not able to maintain herself. The law of inheritance would prejudicially operate against her. She herself would suffer outrageous, wrong and absurd social stigma of being another woman in the life of the male who contracts second marriage with her. The members of the cruel society including her kith and kin like parents, brother, sister, etc. would look down upon her and she would be left in the lurch by one and all. In such premises the applicant No. 1 besides the alleged offence also committed the offence of Section 494 and 495 of the IPC also, for which prima-facie evidence is available in the charge sheet. Although neither the charge sheet has been filed by the prosecution by mentioning these sections nor the charge of such offence have been framed by the trial Court against the applicants and in this regard no proceeding has been initiated by any of the respondents in this Court.

14. My aforesaid approach is fully fortified by the decision of the Apex Court in the matter of *A Subash Babu Vs. State of A. P. and another* reported in (2011) 7 SCC 616, the relevant paras of the same are as under:

> 18. As far as Section 494 IPC is concerned, the criminality attaches to the act of second marriage either by a husband or by a wife who has a living wife or husband, in a case in which the second marriage is void by reason of its taking place during the life of such husband or wife. When a law, such as Section 11 of the Hindu Marriage Act, 1955 declares that a second marriage by a husband, who has a living wife, with another woman is void, for breach of Section 5(i) of the said Act, it brings/attaches several legal disabilities to the woman with whom the second marriage is performed. Say for example, she would not be entitled to claim maintenance from her husband even if she is inhumanly treated, subjected to mental and physical cruelty of variety of kinds, etc. and is not able to maintain herself. The law of inheritance would prejudicially operate against her. She herself would suffer outrageous, wrong and absurd social stigma of being another woman in the life of the male who contracts second marriage with her. The members of the cruel society including her kith and kin like parents, brother, sister, etc. would look down upon her and she would be left in the lurch by one and all.
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> 19. When a court of law declares second marriage to be void on a petition presented by husband who contracts the second marriage on the ground that he has a spouse living at the time of marriage, it only brings untold hardships and miseries in the life of the woman with whom the second marriage is performed apart from shattering her ambition to live a comfortable life after marriage.
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> 21. Section 494 introduces monogamy which is essentially voluntary union of life of one man with one woman to the exclusion of all others. It enacts that neither party must have a spouse living at the time of marriage. Polygamy was practiced in many sections of Hindu society in ancient times. It is not a matter of long past that in India, hypergamy brought forth wholesale polygamy and along with it misery, plight and ignominy to woman having no parallel in the world. In post-Vedic India a king could take and generally used to have more than one wife. Section 4 of the Hindu Marriage Act

nullifies and supersedes such practice all over India among the Hindus. Section 494 IPC is intended to achieve the laudable object of monogamy. This object can be achieved only by expanding the meaning of the phrase "aggrieved person".

22. For a variety of reasons the first wife may not choose to file a complaint against her husband e.g. when she is assured of re-union by her husband, when the husband assures to snap the tie of second marriage, etc. Non-filing of the complaint under Section 494 IPC by the first wife does not mean that the offence is wiped out and monogamy sought to be achieved by means of Section 494 IPC merely remains in statute book. Having regard to the scope, purpose, context and object of enacting Section 494 IPC and also the prevailing practices in the society sought to be curbed by Section 494 IPC, there is no manner of doubt that the complainant should be an aggrieved person. Section 198(l)(c) of the Criminal Procedure Code, amongst other things, provides that where the person aggrieved by an offence under Section 494 or Section 495 IPC is the wife, complaint on her behalf may also be filed by her father, mother, sister, son, daughter, etc. or with the leave of the court, by any other person related to her by blood, marriage or adoption.

23. In *Gopal Lal v. State of Rajasthan* this Court has ruled that in order to attract the provisions of Section 494 IPC both the marriages of the accused must be valid in the sense that the necessary ceremonies required by the personal law governing the parties must have been duly performed.

24. Though Section 11 of the Hindu Marriage Act provides that any marriage solemnised, if it contravenes the conditions specified in clause (i) of Section 5 of the said Act, shall be null and void, it also provides that such marriage may on a petition presented by either party thereto, be so declared. Though the law specifically does not cast an obligation on either party to seek declaration of nullity of marriage and it may be open to the parties even without recourse to the court to treat the marriage as a nullity, such a course is neither prudent nor intended and a declaration in terms of Section 11 of the Hindu Marriage Act will have to be asked for, for the purpose of precaution and/or record. Therefore, until the

declaration contemplated by Section 11 of the Hindu Marriage Act is made by a competent court, the woman with whom second marriage is solemnised continues to be the wife within the meaning of Section 494 IPC and would be entitled to maintain a complaint against her husband.

25. Even otherwise, as explained earlier, the second wife suffers several legal wrongs and/or legal injuries when the second marriage is treated as a nullity by the husband arbitrarily, without recourse to the court or where a declaration sought is granted by a competent court. The expression "aggrieved person" denotes an elastic and an elusive concept. It cannot be confined within the bounds of a rigid, exact and comprehensive definition. Its scope and meaning depends on diverse, variable factors such as the content .and intent of the statute of which the contravention is alleged, the specific circumstances of the case, the nature and extent of complainant's interest and the nature and the extent of the prejudice or injury suffered by the complainant. Section 494 does not restrict the right of filing complaint to the first wife and there is no reason to read the said section in a restricted manner as is suggested by the learned counsel for the appellant. Section 494 does not say that the complaint for commission of offence under the said section can be filed only by the wife living and not by the woman with whom the subsequent marriage takes place during the lifetime of the wife living and which marriage is void by reason of its taking place during the life of such wife. The complaint can also be filed by the person with whom the second marriage takes place which is void by reason of its taking place during the life of the first wife.

26. A bare reading of the complaint together with the statutory provisions makes it abundantly clear that the appellant having a wife living, married with Respondent 2 herein by concealing from her the fact of former marriage and th«efore her complaint against the appellant for commission of offence punishable under Sections 494 and 495 IPC is maintainable and cannot be quashed on this ground. To hold that a woman with whom second marriage is performed is not entitled to maintain a complaint under Section 494 IPC though she suffers legal injuries would be the height of perversity.

27. Section 495 IPC provides that if a person committing the

offence defined in Section 494 IPC conceals from the person with whom the subsequent marriage is contracted, the fact of the former marriage, the said person is liable to be punished as provided therein.

28. The offence mentioned in Section 495 IPC is an aggravated form of bigamy provided in Section 494 IPC. The circumstance of aggravation is the concealment of the fact of the former marriage to the person with whom the second marriage is contracted. Since the offence under Section 495 IPC is in essence bigamy, it follows that all the elements necessary to constitute that offence must be present here also. A married man who by passing himself off as unmarried induces an innocent woman to become, as she thinks his wife, but in reality his mistress, commits one of the grossest forms of frauds known to law and therefore severe punishment is provided in Section 495 IPC.

29. Section 495 begins with the words "whoever commits the offence defined in the last preceding section...." The reference to Section 494 IPC in Section 495 makes it clear that Section 495 is an extension of Section 494 and part and parcel of it. The concealment spoken of in Section 495 would be from the woman with whom the subsequent marriage is performed. Therefore, the wife with whom the subsequent marriage is contracted after concealment of the former marriage, would also be entitled to lodge a complaint for commission of offence punishable under Section 495 IPC. Where the second wife alleges that the accused husband had married her according to Hindu rites despite the fact that he was already married to another lady and the factum of the first marriage was concealed from her, the second wife would be an aggrieved person within the meaning of Section 198 CrPC.

53. This Court finds that the High Court has quashed the proceedings pending before the learned Magistrate under Section 498-A IPC on the spacious ground that the marriage of the appellant with Respondent 2 is void and as Respodent 2 is not the wife, she was not entitled to lodge the first information report with the police for commission of offence under Section 498-A IPC and on the basis of the police report, cognizance of the said offence against the appellant could not have been taken by the learned Magistrate. Such reasoning is quite contrary to the law declared by this Court in *Reema Aggarwal v. Anupam*:-[4]

54. After examining the scope of Section 498-A of the Penal Code and holding that a person who enters into marital arrangement cannot be allowed to take shelter behind the smokescreen of contention that since there was no valid marriage the question of dowry does not arise, this Court speaking through Hon'ble Arijit Pasayat, J. has held as under: (*Reema Aggarwal case*[4], SCC p. 210, para 18)

"18. ... Such legalistic niceties would destroy the purpose of the provisions. Such hair-splitting legalistic approach would encourage harassment to a woman over demand of money. The nomenclature 'dowry' does not have any magic charm written over it. It is just a label given to demand of money in relation to marital relationship. The legislative intent is clear from the fact that it is not only the husband but also his relations who are covered by Section 498-A. The legislature has taken care of children born from invalid marriages. Section 16 of the Marriage Act deals with legitimacy of children of void and voidable marriages. Can it be said that the legislature which was conscious of the social stigma attached to children of void and voidable marriages closed its eyes to the plight of a woman who unknowingly or unconscious of the legal consequences entered into the marital relationship? If such restricted meaning is given, it would not further the legislative intent. On the contrary, it would be against the concern shown by the legislature for avoiding harassment to a woman over demand of money in relation to marriages. The First Exception to Section 494 has also some relevance. According to it, the offence of bigamy will not apply to 'any person whose marriage with such husband or wife has been declared void by a court of competent jurisdiction'. It would be appropriate to construe the expression 'husband' to cover a person who enters into marital relationship and under the colour of such proclaimed or feigned status of husband subjects the woman concerned to cruelty or coerces her in any manner or for any of the purposes enumerated in the relevant provisions Sections 304-B/498-A, whatever be the legitimacy of the marriage itself for the limited purpose of Sections 498-A and 304-B IPC. Such an interpretation, known and recognised as purposive construction has to come into play in a case of this nature. The absence of a definition of 'husband' to specifically include such persons who contract marriages ostensibly

and cohabit with such woman, in the purported exercise of their role and status as 'husband' is no ground to exclude them from the purview of Section 304-B or 498-A IPC, viewed in the context of the very object and aim of the legislations introducing those provisions."

55. In view of the firm and clear law laid down on the subject, this Court is of the confirmed view that the High Court was not justified at all in quashing the proceedings initiated against the appellant under Section 498-A of the Penal Code on the ground that Respondent 2 was not "wife" within the meaning of Section 498-A IPC and was not entitled to maintain a complaint under the said provision. The question therefore which arises for consideration of the Court is whether the said finding recorded by the High Court can and should be set aside in the present appeal which is filed by the husband.

58. There may be several reasons due to which the State might not have challenged that part of the judgment of the learned Single Judge quashing the complaint filed by Respondent 2 under Section 498-A of the Penal Code. So also because of several reasons such as want of funds, distance, non-availability of legal advice, etc. the original complainant might not have approached this Court to challenge that part of the judgment of the learned Single Judge which is quite contrary to the law declared by this Court. However, this Court while entertaining an appeal by grant of special leave has the power to mould relief in favour of the respondents notwithstanding the fact that no appeal is filed by any of the respondents challenging that part of the order which is against them. To notice an obvious error of law committed by the High Court and thereafter not to do anything in the matter would be travesty of justice.

62. Though challenge was not made by any of the two respondents to the finding recorded by the learned Single Judge that the complaint lodged by Respondent 2 for alleged commission of offence punishable under Section 498-A of the Penal Code is not maintainable because she is not a wife, this Court feels that absence of challenge either by the State or by the original complainant should not persuade or prevent this Court from doing justice between the parties by restoring the complaint filed by Respondent 2 under Section 498-A of the Penal Code on the file of the learned Magistrate.

63. The conclusion airived at by the High Court is such as to shake the conscience and sense of justice and therefore it is the duty of this Court to strike down the finding recorded with respect to the offence punishable under Section 498-A, irrespective of technicalities. The judgment of the High Court quashing the proceedings initiated by the learned Magistrate for commission -of the offence punishable under Section 498-A is tainted with serious legal infirmities and is founded on a legal construction which is wrong.

64. So the technical plea advanced by the learned counsel for the appellant that in the absence of an appeal by any of the respondents, quashing of proceedings with respect to the offence punishable under Section 498-A IPC, cannot be set aside, is hereby rejected.

15. In the aforesaid cited case a private complaint was filed by the wife,stating that the appellant in the life time of his first wife by supplying her wrong and false information that he is not married got married with her by practicing fraud, for taking cognizance against the applicant for the offence of Section 498-A, 494, 495, 417 and 420 of the Code. In such complaint on taking the cognizance by the trial court against the applicant he came to the High Court with a petition under Section 482 of Cr. P. C. for quashment of entire proceeding of such complaint. On consideration taking into consideration the facts that in the life time of first wife of the appellant she is not a legally wedded wife of appellant the cognizance of the offence of Section 498-A of the Code taken by the trial Court was quashed while the order of the trial court taking cognizance for other offence was affirmed. Being dissatisfied with such order of the High Court the appellant approached to the Apex Court for quashment of the proceeding/ complaint with respect of other offence of Section 494, 495, 417 and 420 of the Code also. On consideration, taking into consideration the identical scenario like the case at hand not only the appeal was dismissed but even in the lack of any appeal either by the State or the complainant herself the cognizance of 498-A of the Code, which was quashed by the High Court, was restored suo-moto by the Apex Court.

16. In view of the, principles laid down in the aforesaid cited case the impugned order of the trial Court framing charges against the applicants does not require any interference under the revisional jurisdiction of this Court. Pursuant to it, this revision deserves to be dismissed.

17. So for the case law cited on behalf of the applicants are concerned, the same are taken into consideration one by one.

(a) The case of *M. Krishnan Vs. Vijay Singh* AIR 2001 SC 3014, speaks that Revisional or inherent powers for quashing the proceedings at the initial stage can be exercised only where the allegations made in the complaint or the first information report, even if taken at their face value of accepted in their entirety, do not prima facie disclose the commission of an offence or where the uncontroverted allegations made in the FIR or complaint and the evidence relied in support of the same do not disclose the commission of any offence against the accused, or the allegations are so absurd and inherently improper that on the basis of which no prudent person could have reached a just conclusion that there were sufficient grounds in proceeding against the accused or where there is an express legal bar engrafted in any provisions of the Code or any other statute to the institution and continuance of the criminal proceedings or where a criminal proceeding is manifestly actuated with mala fide and has been initiated maliciously with the ulterior motive for wrecking vengeance on the accused and with a view to spite him due to private and personal grudge.

In view of the cited case on examining the case at hand there is sufficient prima-facie evidence in the charge sheet showing the ingredients of the alleged offence against the applicants, and considering the same in view of the dictum of the Apex Court announced in the matter of *A Subash Babu* (Supra), the trial Court has not committed error in framing the impugned charge. Thus, in such premises the cited case *M. Krishnan* (Supra), is not helping to the applicants.

(b) In the case of *Koppisetti Subbharao @ Subramaniam Vs.State of A. P.* (2010 (1) ANJ (Supp) 80 (SC), the appellant of this case approached to the High Court of Andhra Pradesh for quashment of charges of Section 498-A of the Code stating that he being already married man the complainant was not his legally wedded wife but on consideration such petition was dismissed by the High Court, against such order of the High Court the appellant went to the Apex Court. On consideration holding that the factual matrix being sub-judice is to be examined after recording the evidence by affirming the order of the High Court such appeal was dismissed. In the case at hand, also in which the story and allegations put forth by the prosecution against the applicants are yet to be

examined and appreciated after recording the evidence by the trial Court, therefore this cited case is not helping to the applicants.

(c) In the case of *Preeti Gupta & another Vs. State of Jharkhand and another* 2010 (6) Supreme Today, 312, the Supreme Court while giving the interpretation of the inherent power of the Court enumerated under Section 482 of Cr. P. C. said the same should be exercised to prevent injustice and secure justice and some guidelines for exercising such power of Section 482 of Cr. P. C has also been given in it. In view of aforesaid discussion and the law laid down by the Apex Court in the matter of A. *Subash Babu* (Supra), this citation is also not helping to the applicants.

On the cost of the repeatation again it is stated that in the case at hand prima-facie ingredients of the alleged offence for framing the charge are made out from the charge sheet against the applicants.

(d) The unreported case of the Apex Court in the matter of *Sunita Jha Vs. State of Jharkhand & another,* decided vide dated 13.9.2010 in Cr. Appeal No. 1745/2010, was decided taking into consideration the factual matrix that one Asha Rani Pal respondent No.2 of such appeal filed a private complaint against her husband Mukund Chandra Pandit and the appellant to prosecute them for the offence of Section 498-A of the Code, in which after appearance of the accused and recording the before charge evidence at that stage of framing the charge appellant Sunita filed an application to discharge her from the case stating that she is neither wife nor relatives or member of the family of said Mukund Chandra Pandit. On consideration such application was dismissed by the trial court. On which she approached the Jharkhand High Court with criminal revision, the same was also dismissed, then she went to the Apex Court. The Supreme Court considering the circumstance that such appellant does not fall under the category of member or relative of Mukund Chandra husband of respondent No.2 by allowing her appeal discharged her from such case while in the case at hand no such situation is existing. In the present case the respondent No.2/ complainant filed the complaint against the applicants stating the applicant No. 1 being her husband the applicant No.2 to 4 his brother and parents come under the purview of the family of his husband family. Hence, this cited case is also not helping to the applicants.

(e) The another unreported case law of *State of A. P. Vs. M. Madhusudhan Rao* decided on 24.10.2008 in Cr. Appeal No.2008/07, is concerned, such case was decided by the Apex court taking into consideration the evidence available on the record led by the prosecution also after delivery of the judgment on merits by the Courts below. In such case the respondent No. 1 was convicted by the trial Court for the offence under Section 498-A of the Code but on his appeal the High Court of Andhra Pradesh has acquitted him, against that acquittal State went to the Apex Court, where on consideration the same was dismissed. While in the .case at hand the evidence is yet to be recorded, hence the case being distinguishable on facts and stage of the trial is also not helping to the applicants.

(f) In the case of *Priya Vrat Singh Vs. Shyamji Sahai,* 2008 (III) MPWN 89, the Apex Court categorically held that inherent power vested under Section 482 of Cr. P. C. should not be invoked for stifle legitimate prosecution. Such provision should be exercised ex debito justitiae to do real and substantial justice. In the available facts and circumstances of the case at hand and also in view of the aforesaid decision of the Apex Court in the matter of *A Subash Babu* (Supra), this cited case is also not helping to the applicants.

18. In view of the aforesaid discussion, I have not found any perversity, illegality, irregularity or any thing against the propriety of law in the orders impugned requiring any interference at this stage under the revisional jurisdiction of this Court to discharge the applicants or any of them from the charges framed. Hence, this revision being devoid of any merits is hereby dismissed. However., the trial Court is directed to proceed with the trial in accordance with the prescribed procedure also keeping in view the above mentioned principle laid down by the Apex Court in the matter of *"A Subash Babu"* (Supra). In view of this cited case the trial Court shall be at liberty to consider the circumstances of the case for modification of the charge after extending the opportunity of hearing to the parties in this regard.

19. Revision is dismissed with aforesaid observation and direction.

Revision dismissed.

I.L.R. [2011] M. P., 3231
CRIMINAL REVISION
Before Mr. Justice U.C. Maheshwari
Cr. Rev. No. 731/2011 (Jabalpur) decided on 12 October, 2011

BHAGBAI & anr. ...Applicants
Vs.
STATE OF M.P. ...Non-applicant

Penal Code (45 of 1860), Section 306, Criminal Procedure Code, 1973 (2 of 1974), Section 228 - Abetment of Suicide - Charge under - **Making allegations against the character of the deceased with a threat and intimidation to lodge a false report against him for committing the rape and due to such act of the applicants, the deceased was instigated to commit suicide and ultimately committed the same - Held - Once, any of the ingredients of abetment defined under Section 107 of the IPC, is revealed then it could be assumed that prima facie ingredient for framing the charge of Section 306 IPC is available in the matter - Revision dismissed.**

Making allegations against the character and reputation of the person in the aforesaid manner, is sufficient to draw inference that due to such false allegations, the deceased might have come in depression and thereby committed suicide - Person, against whom such allegations were made and due to such allegations under such abetment and instigation, if the person like the deceased, has committed suicide then it could not be said that the ingredients of the offence of abetment to commit suicide are not made out. (Paras 6 & 7)

दण्ड संहिता (1860 का 45), धारा 306, दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 228 – आत्महत्या का दुष्प्रेरण – के अन्तर्गत आरोप – मृतक के विरुद्ध बलात्कार कारित करने की मिथ्या रिपोर्ट दर्ज करने की धमकी एवं अभित्रास के साथ उसके चरित्र पर आरोप लगाये गये तथा ऐसे कृत्य के कारण मृतक आत्महत्या करने के लिये दुष्प्रेरित हुआ और उसने अंत में आत्महत्या कारित की – अभिनिर्धारित – एक बार जब भा.द.सं. की धारा 107 के अन्तर्गत परिभाषित दुष्प्रेरण के घटकों में से कोई घटक प्रकट किया जाता है, तब यह धारणा की जा सकती है कि मामले में भा.द.सं. की धारा 306 के आरोप विरचित किये जाने हेतु प्रथम दृष्ट्या घटक उपलब्ध हैं – पुनरीक्षण खारिज।

Cases referred :

AIR 2002 SC 1998, 2008(3) ILR SN 74, (2010) 1 SCC 750.

Priyank Choubey, for the applicants.
Nirmala Nayak, G.A.for the non-applicant.

ORDER

U.C. MAHESHWARI , J.:–This revision is directed on behalf of the applicants under section 397/401 of the Cr.P.C, being aggrieved by the judgment dated 10.3.2011 passed by the Addl. Judge, Rehli to the Court of VIIth Addl.Sessions Judge (Fast Track Court), Sagar, in S.T No.46/11 framing the charges against them for the offence under section 306/34 of the IPC.

2. The facts necessary to consider the question of admission of this revision in short are that on dated 10.3.2010 one Bhagat S/o Nabblu Lodhi R/o village Kheri Navda lodged marg intimation report at Police Station Garhakota contending that his son Raju had consumed poison, on which, for treatment he was taken to Garhakota, from where he was referred to Sagar, but on the way to Sagar, he died. In the course of inquiry of such marg, the spot-map and panchnama of the dead body was prepared. On sending the body to hospital its postmortem was also carried-out. After preserving the viscera of the deceased, the same was sent to Forensic Laboratory Sagar. On examination, in the viscera, Aluminum Phosphide, the poisonous substance was found. In further inquiry of said marg, it was revealed that before consuming the poisonous substance, the present applicants had made allegations against his character with a criminal threat that they will lodge a false report against him alleging to have committed rape (jana) and, thereby they committed the act of harassment and cruelty. Due to such allegation the deceased was instigated to commit suicide and by consuming poisonous substance committed the same, on which, a crime of the offence of section 306 and 34 of IPC was registered against the applicants

3. In investigation, the interrogatory statements of the witnesses were recorded, other papers were prepared. On establishing the prima facie circumstance against the applicants for committing the offence of section 306 and section 34 of the IPC, they were charge-sheeted for the same. Subsequent to filing the charge-sheet, on committing the case to the Sessions Court, the charge of section 306 read with section 34 of the IPC was framed against the applicants. They abjured the guilt, on which, the trial has been directed. Being dissatisfied with such order, the applicants have come forward to this court with this revision.

4. Shri Priyank Choubey, learned counsel for the applicants after taking

me through the papers of the charge sheet along with the impugned order and the framed charges, argued that even on taking into consideration the face value of the papers of the charge sheet and accepting it in its entirety, the ingredients of the offence, for which the charges have been framed, are not made out against the applicants and by placing his reliance on a reported decision of the Apex Court in the matter of *Sanju alias Sanjay Singh Sengar Vs. State of M.P.*-AIR 2002 SC 1998 and decision of this Court in the matter of *Sita Vs. State of M.P.*-2008(3) ILR S.N.74 prayed to discharge the applicants from the aforesaid charge by admitting and allowing this revision.

5. Keeping in view the arguments advanced by the counsel, after perusing the papers of the charge sheet along with the impugned order and the framed charges placed on the record, I am of the considered view that there is sufficient evidence in the charge sheet collected by the investigating agency for framing the aforesaid charges and, in such premises, the impugned order does not require any interference at this stage.

6. As per the papers of the charge sheet, immediately after consuming the poisonous substance by deceased Raju, he was taken to the hospital by his father but after providing preliminary treatment at Garhakota, he was referred to Sagar for further treatment, on the way to Sagar, he died, on which his father Bhagat lodged the marg intimation report. In its inquiry, besides spot-map, the panchnama of the dead body was prepared and postmortem was also carried-out. On sending the viscera to the Forensic Laboratory Sagar, it was revealed that the applicant committed suicide by consuming the poisonous substance having the chemical of aluminum phosphide. On making further inquiry of such marg, some interrogation of the witnesses was made, on which, it was revealed that before consuming some poisonous substance by the deceased, on account of some quarrel, the present applicants, who are the husband and wife in relation, made serious allegations against the character of the deceased Raju and had also given criminal threat to lodge the false report against him for committing rape (Jana) and, due to such allegation and criminal threat, immediately after such incident, he consumed the alleged poisonous substance and thereby committed suicide, on which, crime No.251/2010 was registered at the Police Station Garhakota against the applicants for the offence under section 306 read with section 34 of the IPC. In investigation, the interrogatory statement of various witnesses, namely, Laxmi Bai the mother of the deceased, Leela Bai, Ishwarlal, Gop Singh, Nanhe, Pintoo alias Bhagwan Das, the nearest relatives of the deceased, were recorded. In these

interrogation, prima facie reveals that the present applicants had made false allegations against deceased Raju that he entered in their house and, therefore, the applicants are going to lodge a report against him for committing the rape (Jana). On asking by the deceased not to defame him in this manner otherwise he will commit suicide; the applicants became angry and asked the deceased to die if he is from his real father. It is not the case that only some casual quarrel took-place between the parties in which deceased was asked by the applicants that he may go and die but it is the case of making allegations against the character of the deceased with a threat and intimidation to lodge a false report against him for committing the rape and due to such act of the applicants, the deceased was instigated to commit suicide and ultimately committed the same. Making allegations against the character and reputation of the person in the aforesaid manner, is sufficient to draw inference that due to such false allegations, the deceased might have come in depression and thereby committed suicide. So, in such factual matrix, the case law cited on behalf of the applicants in the matter of *Sanju alias Sanjay Singh Sengar* (supra) and decision of this Court in the matter of *Sita Vs. State of M.P.*) (supra) being distinguishable on facts and circumstances are not helping to the applicants in the present matter for discharging him from the aforesaid alleged charge.

7. The allegations against the character, conduct and morality of the person are sufficient circumstances to draw an inference that the person who made such allegations has abetted the person, against whom such allegations were made and due to such allegations under such abetment and instigation, if the person like the deceased, has committed suicide then it could not be said that the ingredients of the offence of abetment to commit suicide are not made out. Once, any of the ingredients of abetment defined under section 107 of the IPC, is revealed then it could be assumed that prima facie ingredient for framing the charge of section 306 IPC is available in the matter. In the present case, in view of the aforesaid discussion, sufficient prima facie evidence, showing that the deceased was instigated by the present applicants, is available in the charge sheet and, therefore, the case is squarely covered under section 107 read with section 306 of the IPC. The aforesaid act was committed by both the applicants in furtherance of their common intention and, therefore, the charge of section 34 of the IPC could not be said to be contrary to the available circumstance and the existing legal position.

8. My aforesaid approach is fully fortified by the decision of the Apex

Court in the matter of *Gangula Mohan Reddy Vs. State of Andhra Pradesh*- (2010) 1 SCC 750 in which it was held that on the allegations made by the accused applicants, against the character, conduct and morality of the deceased and due to such allegations, being hypersensitive the person like the deceased could not tolerate such allegations and by instigation of such allegation, proceeded to end his life and committed suicide, then prima facie it should be deemed that the person concerned who made the allegation against the deceased has instigated and abetted the deceased to commit suicide and, in such premises, on examining the case at hand, the ingredients of abetment defined under section 107 of the IPC were found to be made out against the applicants.

9. In view of the aforesaid, I have not found any perversity, illegality, irregularity or any thing contrary to the propriety of the law in the order impugned framing the charge against the applicants requiring any interference under the revisional jurisdiction of this court. Consequently, this revision being devoid of any merit is hereby dismissed at the stage of motion hearing.

Revision dismissed.

I.L.R. [2011] M. P., 3235

CRIMINAL REFERENCE

Before Mrs. Justice Sushma Shrivastava & Mr. Justice R.C. Mishra

Cr. Ref. No. 1/2011 (Jabalpur) decided on 12 September, 2011

IN REFERENCE ...Applicant

Vs.

MAGANLAL ...Non-applicant

A. Penal Code (45 of 1860), Section 302 - Murder - Circumstantial Evidence - **Appellant alleged to have killed his five daughters as his proposal to sell the land was not accepted by his wives - P.W. 1 admitted that after seeing the dead bodies she started shouting that appellant had cut down the girls - Specific information that appellant had killed five daughters in his residence was given to police which was entered in the Rojnamchasanha - As information received by police was not vague or cryptic but contained precise particulars therefore, it could be treated as F.I.R. - Information given immediately after the commission of the crime so as to form part of the same transaction was relevant under Section 6 of Evidence Act - Subsequent conduct of**

appellant, another circumstance that he was found tied to a teak tree by means of a rope and same blood group was found on his pant as that of one of his daughter, presence of blood on the nail clipping and falsity of defence are circumstances which clearly prove the guilt of the appellant - Appeal dismissed. (Para 12A)

क. दण्ड संहिता (1860 का 45), धारा 302 – हत्या – परिस्थितिजन्य साक्ष्य – अपीलार्थी ने अभिकथित रुप से अपनी पांच पुत्रियों की हत्या की क्योंकि उसकी पत्नियों ने भूमि को विक्रय करने के उसके प्रस्ताव को अस्वीकार किया था – अ.सा. 1 ने स्वीकार किया कि मृत शरीरों को देखने के पश्चात वह चिल्लाने लगी कि अपीलार्थी ने बच्चियों को काट डाला – विनिर्दिष्ट सूचना कि अपीलार्थी ने अपने घर में पांच पुत्रियों को मार दिया है, पुलिस को दी गई जिसकी रोजनामचासान्हा में प्रविष्टि की गयी – चूंकि पुलिस द्वारा प्राप्त सूचना अस्पष्ट अथवा गुप्त नहीं थी बल्कि यथावत् विशिष्टियां अंतर्विष्ट थी इसलिये, उसे प्रथम सूचना रिपोर्ट माना जा सकता है – अपराध कारित होने के तुरंत पश्चात दी गयी सूचना जो उसी संव्यवहार का भाग बनती है, साक्ष्य अधिनियम की धारा 6 के अंतर्गत सुसंगत है – अपीलार्थी का पश्चातवर्ती आचरण, अन्य परिस्थिति कि वह सागौन के वृक्ष पर रस्सी द्वारा बंधा हुआ पाया गया था और उसकी पतलून पर वही रक्त श्रेणी पायी गयी थी जो कि उसकी एक पुत्री की थी, नाखूनों की कतरन में रक्त की उपस्थिति तथा बचाव की असत्यता ऐसी परिस्थितियां है जो अपीलार्थी की दोषिता को स्पष्ट रुप से साबित करती है – अपील खारिज।

***B. Penal Code (45 of 1860), Section 302 - Sentence - Rarest of Rare Case* - Appellant killed his five minor daughters as his proposal to sell the land was objected by his two wives - The aggravating circumstances overwhelmingly outweigh the mitigating circumstances - Considering the personalities of victims, age of appellant, manner of commission of crime, its magnitude and surrounding circumstances suggesting that he had committed murders of innocent children brutally neither under duress nor on provocation, the case fall under the category of rarest of rare case - Death sentence awarded to appellant confirmed.** (Paras 22 to 33)

ख. दण्ड संहिता (1860 का 45), धारा 302 – दण्डादेश – विरल से विरलतम मामला – अपीलार्थी ने अपनी पांच अवयस्क पुत्रियों की हत्या की क्योंकि उसकी दो पत्नियों ने भूमि विक्रय के उसके प्रस्ताव का विरोध किया – गुरुतरकारी परिस्थितियों का भार, कम करने वाली परिस्थितियों से अधिक है – पीड़ितों का व्यक्तित्व, अपीलार्थी की आयु, अपराध का स्वरुप, उसका पैमाना और यह दर्शाने वाली बाहरी परिस्थितियां कि उसने न तो विबाध्यता के आधीन और न ही किसी प्रकोपन पर उसने निरपराध बालिकाओं की पाश्विक रुप से हत्या कारित की है, को विचार में लेते हुये प्रकरण विरल

से विरलतम मामले की श्रेणी में आता है – अपीलार्थी को दिये गये मृत्युदण्ड की अभिपुष्टि की गयी।

Cases referred :

AIR 1976 SC 202, AIR 1997 SC 940, AIR 1930 Madras 632(2),AIR 1960 SC 391, AIR 1954 SC 15, (2002) 1 SCC 702, AIR 1939 Lahore 149, (2003) 9 SCC 310, AIR 2004 SC 3562, AIR 1984 SC 1622, AIR 1998 SC 3317, AIR 1952 SC 343, (2011) 6 SCC 350, AIR 2009 SC (Supp) 748, AIR 2008 SC 1537, AIR 1980 SC 898, AIR 1983 SC 957, AIR 2001 SC 2342, (2002) 3 SCC 76, (2002) 4 SCC 679, (2003) 7 SCC 141, AIR 2010 SC 942, AIR 2011 SC 803, AIR 1996 SC 787, (1996) 8 SCC 110, 1995 Supp (1) SCC 80, (2009) 6 SCC 498, AIR 2008 SC 3040.

Umesh Pandey, GA for the applicant/State.

S.C. Datt with *Siddharth Datt,* for the non-applicant.

JUDGMENT

The Judgment of the Court was delivered by **R.C. Mishra, J. :**–This judgment shall govern disposal of death reference and criminal appeal as they arise from the judgment-dated 03.02.2011 passed by the Sessions Judge, Sehore in S.T. No. 185/2010, whereby Maganlal (hereinafter referred to as the 'appellant') was convicted and sentenced as under -

Convicted under Section	Sentenced to
302 of the IPC (on five counts)	death.
309 of the IPC	undergo R.I. for 1 year.

2. The appellant is the father of Jamuna, Leela, Aarta, Savita and Phool Kunwar who, at the time of their untimely deaths, were aged about 1 year, 3 years, 4 years, 5 years and 6 years. Amongst these, Jamuna, Leela & Savita were born through his second wife namely Basanti (PW1) while he got the other two from his first wife viz. Santo (PW2), the cousin of Basanti. Appellant's children also include three sons; Shriram from Basanti and Ajay & Vijay from Santo. He was tried not only for committing murders of all the five daughters but also for making an attempt to commit suicide.

3. Prosecution case may briefly be stated thus -

(i) At the relevant point of time, the appellant was residing in a

one-room house situated on forest-land in village Kaneria along with his wives and children. His elder brother Chhagan and younger brothers Jagan (PW3) and Agan (PW8) were also living in the same vicinity but in different houses constructed on the forest-land only.

(ii) During the period of nearly a month preceding the incident in question, the appellant proposed to sell his land in favour of one Ramlal, a co-villager. However, his wives as well as brothers were opposed to the proposal. They persuaded him not to sell the land saying that 'how would he maintain the children after doing so'. Against this backdrop, the appellant, being annoyed with the attitude of his wives and brothers, did not take meals in the night intervening 10th and 11th of June, 2010. On the following morning, he again refused to eat food and started moving around carrying an axe. However, ignoring his displeasure, Basanti and Santo went to agricultural field located behind their house to pick up pieces of stones, leaving all the children playing in the house of Agan.

(iii) On 11.06.2010, at about 5 p.m., the appellant called on his daughters to return home. As the girls including Jamuna, who was being carried by Phool Kunwar in her lap, entered into the house, the appellant closed the door from inside and exterminated each one of them by cutting her throat with the axe after causing the same to be placed on a wooden plank.

(iv) Hearing alarms, Basanti and Santo rushed to the house; peeped thereinto through the closed door and found that all the five daughters, stained with blood, were lying dead and the appellant, wearing only a pant, was also present there with axe in his hand. Basanti immediately shouted to Agan and Jagan that the appellant had cut down the girls but before their arrival at the scene, the appellant opened the door and attempted to kill Basanti and Santo, who were able to run away. At this point of time, the appellant climbed over nearby Teak Tree and tried to hang himself by tying a rope around his neck. Agan and Jagan immediately aborted appellant's attempt to commit suicide by climbing over the tree and bringing him down after cutting the rope. They then tied up the appellant with a rope to the tree.

(v) Agan (PW8) informed Radheshyam (CW1), the husband of

Sarpanch about the incident. Radheshyam, in turn, apprised V.K. Jain (PW9), the then SHO of P.S. Ichhawar accordingly on cell-phone. After recording the corresponding information at Serial No.705 of the Roznamcha (Ex.32-C and D-2), V.K. Jain immediately proceeded to the spot where he scribed Dahati Nalishi (Ex.P-1) upon information given by Basanti (PW1).

(vi) After inquest proceedings, dead bodies were sent for post-mortem examinations, that was conducted by Dr. B.B. Sharma (PW4). He opined that common cause of deaths was shock due to excessive haemorrhage. The medical expert also preserved bloodstained clothes worn by each one of the deceased for forensic examination.

(vii) During investigation, SHO V.K. Jain (PW9) inspected the spot and seized the following articles therefrom -

(a) ordinary soil (b) bloodstained soil
(c) piece of wood (d) rope in four pieces
(e) bloodstained axe

He also seized bloodstained pant worn by the appellant at the place of occurrence only. The appellant was subjected to medical examination. All the seized articles were forwarded to Regional FSL, Bhopal for forensic examination. The corresponding report (Ex.P-40) indicated that except the ordinary soil, all the articles contained human blood and also that blood found on the frock and underwear of Phool Kunwar and on appellant's pant was of the same group i.e. AB.

4. The appellant abjured the guilt. In his examination, under Section 313 of the Code of Criminal Procedure (for short 'the Code'), he further pleaded that someone else had killed his daughters. However, the defence did not prefer to adduce any supportive evidence presumably in view of categorical admissions made by Basanti (PW1), Santo (PW2), Jagan (PW3) and Agan (PW8) to the effect that on being asked about the gruesome incident, the appellant disclosed that some unknown persons had not only murdered his daughters but also tied him to the tree.

5. Let us first deal with the appeal against the convictions, which are apparently based on circumstantial evidence only.

6. Legality and propriety of the impugned convictions have been challenged on the following grounds -

(i) Chain of circumstances relied upon by learned trial Judge was not so complete and connected with the charges as to establish the guilt of the appellant.

(ii) Witnesses, whose presence around the spot was natural and probable, viz. Basanti, Santo, Jagan and Agan, on one hand, did not corroborate the prosecution case and on the other, supported the defence that some unknown persons after killing his daughters, had tied the appellant to the tree.

In response, learned Government Advocate, while making reference to the incriminating pieces of evidence, has contended that the convictions were fully justified.

7. The sole line of defence suggested that each one of the deaths in question was homicidal in nature. Further, no serious dispute was raised questioning veracity of the medical evidence as to the number, situs and nature of injuries found on the persons of Jamuna, Leela, Aarta, Savita and Phool Kunwar and those received by the appellant. Still, in order to appreciate the rival contentions in the right perspective, it would be necessary to advert to testimony of the medical expert.

8. Evidence of Dr. B.B. Sharma (PW4) relates to the post-mortem examinations on the dead bodies of Aarta, Savita, Leela, Jamuna and Phool Kunwar as conducted on 12.06.2010. According to him, he had found the following ante-mortem injuries -

on the body of Aarta (as described in Ex.P-18)

(i) Incised wound 8 x 4 cm bone deep at the back of neck. Vertebral artery, fascia, underlying muscles and IInd cervical vertebra are being cut.

(ii) Incised wound 6 x 3 cm bone deep at the lower occipital part of skull. Occipital bone is cut in lower part.

(iii) Incised wound 5 x 2 x 2 cm at upper part of back left side.

on the body of Savita (as described in Ex.P-19)

(i) Incised wound 8 x 5 cm bone deep at the back of the neck. Vertebral artery, fascia, underlying muscle and cervical vertebra are being cut.

(ii) Incised wound 5 x 2 cm bone deep at the lower part of occipital bone at the back of skull.

(iii) Incised wound (obliquely) 6 x 2 x 2 cm at right side of back at supra scapular region.

on the body of Leela (as described in Ex.P-20)

Incised wound; 10 x 8 cm at back of the neck. Neck is cut through and head is attached to the body with skin only from front side. Oesophagus, trachea, all vessels and nerve with vertebrae are being cut.

Brain matter is exposed and meninges is cut.

Occipital bone in lower half and Ist cervical vertebrae are also cut.

on the body of Jamuna (as described in Ex.P-21)

Incised wound 10 x 7 cm at the back of the neck. Neck is cut through and head is attached to the body with skin only from front side. Oesophagus, trachea, all vessels and nerve with vertebrae are being cut.

Brain matter is exposed and meninges is cut.

Occipital bone in lower part of skull and Ist cervical vertebrae are also cut.

on the body of Phool Kunwar (as described in Ex.P-22)

(i) Incised wound 6 x 3 cm bone deep lower occipital part of the skull.

(ii) Incised wound 10 x 5 x 4 cm extending from back to the left side of the neck (oblique). External jugular vein, fascia, muscle (underlying) and cervical vertebra are being cut.

(iii) Incised wound 4 x 2 x 1 cm at the supra scapular region on the back of right side.

The Autopsy Surgeon categorically opined that all the abovementioned

injuries were caused by hard, sharp and heavy object and the common cause of deaths was shock due to excessive haemorrhage. He further deposed that the injuries received by the deceased could be inflicted by the axe, referred to him for examination by the SHO on 14.06.2010 by way of memo (Ex.P-25). Corresponding report (Ex.P-26) was also tendered in evidence.

9. In the face of all this evidence, learned trial Judge did not commit any illegality in holding that each one of the deceased had met with a homicidal death that was caused by cutting her neck by means of the axe.

10. Dr. B.B. Sharma also proved existence of the following injury, as reflected in the report (Ex.P-24), on the neck of the appellant -

> "A ligature mark all around the neck above the thyroid cartilage oblique, 36 cm long 1.5 cm wide, ligature mark starting from back of the neck to angle to mandible left side. Ligature mark is missing on left side back of the neck and below left ear".

In the cross-examination, the medical expert ruled out the possibility that the neck injury could be sustained due to tying of rope around the neck. According to him, ligature mark was caused by hanging only.

11. Coming to the other evidence on record, it may be observed that one of the incriminating circumstances relied on by the prosecution, that related to extra-judicial confession said to have been made by the appellant before Ratan Singh (PW7) was discarded by learned trial Judge as inadmissible. Moreover, as pointed out already, the mothers and uncles of the deceased had not supported the prosecution version as to involvement of the appellant in the offences charged with.

12. Evidence concerning remaining circumstances, as highlighted by the prosecution and found proved by learned trial Judge, may be re-appreciated in the light of the rival contentions in the following manner: -

(A) CIRCUMSTANCES RELATING TO THE OFFENCE OF MURDER.

(1) The first circumstance held proved is in the form of admission made by Basanti (PW1) to the effect that seeing dead bodies of the daughters, she had started shouting that the appellant had cut down the girls. Learned Senior Counsel has submitted that the admission, being inconsistent with a categorical assertion to the effect that she

did not know as to who had killed the girls, could not be relied upon as an incriminating circumstance. However, it was not possible to reject corresponding part of Basanti's deposition on the ground that she was declared hostile by the prosecution (*Bhagwan Singh v. State of Haryana* AIR 1976 SC 202 relied on) particularly when she was not cross-examined by the defence in respect of this constituent incident of the transaction. Needless to say, this fact was admissible under Section 6 of the Evidence Act as res gestae.

(2) The next circumstance found established is that an entry (Ex.P-32-C as well as D-2) in the Rojnamcha (Daily Diary) of the police station was made by SHO V.K. Jain (PW9), upon the cell-phonic information said to have been given by Radheshyam (CW1) suggesting that Maganlal Barela viz. the appellant had killed five daughters in his residence located at village Kaneria and was also attempting to hang himself. Since the telephonic information received by the police officer was not vague or cryptic, but contained precise particulars of the offending acts committed by the appellant, it could be treated as an FIR (*Sunil Kumar v. State of M.P.* AIR 1997 SC 940 referred to).

Learned Senior Counsel, while making reference to decision of the Madras High Court in *Sankaralinga Tevan v. Emperor* AIR 1930 Madras 632 (2) and that of the Supreme Court in *State of Bombay v. Rusy Mistry* AIR 1960 SC 391, has still contended that the entry in the Roznamcha could not be used as substantive evidence. Attention has also been invited to the fact that Radheshyam, summoned as a Court Witness but permitted to be declared as hostile by the prosecution, clearly asserted that he had only communicated the information received from Jagan (PW3) to the effect that mutilated dead bodies of all the five daughters were lying in appellant's house and not that it was the appellant who had murdered them. Nevertheless, in absence of any prejudice or bias towards the appellant, statement of V.K. Jain that he had made the aforesaid entry only upon the information conveyed by Radheshyam, could not be disbelieved simply because he happens to be a police officer. The information so given immediately after the commission of the crime so as to form part of the same transaction was also relevant under Section 6 of the Evidence Act. The circumstance

that investigation against appellant started on the basis of the aforesaid information was rightly held to be established.

(3) The next circumstance on which reliance has been placed is the appellant's conduct subsequent to murders of all the five daughters. Learned Senior Counsel has urged that an indifferent attitude of the appellant after witnessing the murders was not unnatural or improbable as no fixed pattern of natural conduct can be laid down as different witnesses would react in different manner in the same situation. According to him, apparently, the appellant, after seeing the ghastly incident, had become stunned and therefore, was not in a position to raise alarm. Making reference to evidence of Basanti, Santo, Jagan and Agan, he has further pointed out that all of them duly substantiated the defence by deposing that while denying his complicity in the murders, the appellant revealed that someone else had not only killed his daughters but also tied him to the tree. Citing the decision of the Supreme Court in *Zwinglee Ariel v. State of M.P.* AIR 1954 SC 15, learned Senior Counsel has also contended that any statement made by the accused after being apprehended by the police was also not admissible under Section 8 of the Evidence Act.

However, fact of the matter is that evidence of the relatives suffered from inconsistency regarding information given by the appellant as to number of persons involved in killing of his daughters. According to Basanti, Santo and Jagan, on being asked, the appellant disclosed that some unknown person, after killing his daughters, had tied him to the tree whereas as per statement of Agan, the appellant's explanation suggested role of as many as four/five persons in the incident. Besides this, non-explanation on their part as to why even after knowing about the innocence of the appellant, they, instead of informing the police about the incident or untying the rope to set him free, had waited for police to arrive at the spot. It was, therefore, apparent that all of them were interested in screening the appellant from the penal consequences of the murders of his daughters. Had his plea been true, the appellant, in the ordinary course of human affairs, as a father witnessing brutal murders of all the five daughters by someone else, would certainly have raised hue and cry and taken steps to apprise the police of the incident. In this view of the matter,

his conduct of non-reaction even after seeing merciless killing of his female off-springs was rightly considered as an incriminating circumstance relevant under Section 8 of the Evidence Act to the fact in issue.

(4) Another circumstance found established is that the appellant was found tied to the teak tree by means of a rope. SHO V.K. Jain (PW9) was emphatic in stating that when he reached the spot, he had found the appellant tied to the tree, located near the place of occurrence, by means of a rope and this fact was also admitted by the appellant in his examination, under Section 313 of the Code. As concluded already, his non-explanation that he was made to stand tied to the tree by some unknown person/persons was not convincing in the facts and circumstances of the case.

(5) The fifth circumstance held proved against the appellant is that blood of same group was found on his pant and on the frock and underwear worn by Phool Kunwar. Investigating Officer V.K. Jain clearly deposed that along with the axe lying near the dead bodies of appellant's daughters, he had also seized (a) dust-coloured pant worn by the appellant by way of memo (Ex.P-30) and (b) bloodstained wooden plank, ordinary & bloodstained soil and pieces of rope as per memo (Ex.P-31). Contents of these documents were not challenged in his cross-examination. They also drew adequate support from the evidence of panch witness Ratan Singh (PW7). Further, no dispute was raised as to statement made by Autopsy Surgeon Dr. B.B. Sharma (PW4) that he had sealed the clothes worn by each one of the deceased separately for chemical examination. According to V.K. Jain, he had forwarded all the seized articles along with a memo, copy of which was placed on record as Ex.P-39, to Regional FSL, Bhopal. Corresponding report (Ex.P-40) authored by M.P. Bhaskar, Senior Scientific Officer and Assistant Chemical Examiner, indicated that wooden plank, axe, pant & frock and underwear said to have been worn by Phool Kunwar, were found to contain same group of blood namely AB.

Learned Senior Counsel, while placing reliance on a decision of the Apex Court in *Subhash Chand v. State of Rajasthan* (2002) 1 SCC 702, has submitted that in absence of evidence as to appellant's

blood group, presence of Group AB bloodstain on the pant did not assume any significance. However, the contention is not acceptable in view of the fact that no bleeding injury corresponding to the bloodstain on the pant was found on the person of the appellant. In these circumstances, matching of blood on the clothes worn by Phool Kunwar and those found on the pant was correctly taken into account as one of the incriminating circumstances against the appellant.

(6) Presence of human blood on the nail clipping is yet another circumstance found established against the appellant. While terming this circumstance as useless and deceptive, learned Senior Counsel has invited attention to the decision in *Ujagar Singh v. Emperor* AIR 1939 Lahore 149 wherein it was held that evidence of blood-stained nails is not only of no medico-legal value but may be extremely dangerous to the innocent persons. However, as explained by the Supreme Court in *Dayanidhi Bisoi v. State of Orissa* (2003) 9 SCC 310, presence of blood in the nail clipping may not be sufficient by itself to fasten guilt on the accused; but when it is considered with other evidence and found acceptable can provide additional weightage to the prosecution case. This view was re-affirmed in *Vilas Pandurang Patil v. State of Maharashtra* AIR 2004 SC 3562.

(7) The seventh circumstance found proved is the falsity of the defence. It is well settled that the false answers given by the accused with reference to the charge or questions posed in his examination may also serve as an additional link in the chain of circumstance to bring home the charge. However, as explained by Fazal Ali, J., in *Sharad Biridhichand Sarda v. State of Maharashtra* AIR 1984 SC 1622-

> *"Before a false explanation can be used as additional link, the following essential conditions must be satisfied:*
>
> *(1) various links in the chain of evidence led by the prosecution have been satisfactorily proved.*
>
> *(2) the said circumstances point to the guilt of the accused with reasonable definiteness, and*

(3) the circumstances is in proximity to the time and situation. If these conditions are fulfilled only when a Court can use a false explanation or a false defence as an additional link to lend as assurance to the Court and not otherwise"

Turning to the facts of the instant case, it may be observed that there was not even an iota of evidence to probablise the suggestion made by the appellant as to involvement of someone else in causing deaths of his female offsprings. He was not able to explain as to how the dead bodies, the axe and bloodstained wooden plank were found in his house. But, even excluding the circumstance relating to falsity of the defence, the conclusion would be irresistible that all other circumstances proved by the prosecution pointed towards the guilt of the accused and were inconsistent with his innocence.

(8) Appellant's annoyance over the disagreement expressed by his wives viz. Basanti (PW1) and Santo (PW2) over the proposal to transfer the land in favour of one Ramlal is the last circumstance projected as motive of the crime. Jagan (PW3) clearly admitted that the appellant wanted to sell his land to Ramlal whereas Basanti, while supporting the aforesaid fact, further asserted that she and Santo had always advised the appellant not to sell the land as they were under an obligation to bring up their children. As explained by the Apex Court in *Uday Kumar v. State of Karnataka* AIR 1998 SC 3317, motive though is one of the circumstances, which assume importance but it cannot be said that in absence thereof, proved circumstances would be of no consequence.

(B) CIRCUMSTANCE AS TO THE OFFENCE OF ATTEMPT TO COMMIT SUICIDE.

Existence of ligature mark on the neck of the appellant is the only circumstance found proved against him. As indicated already, Dr. B.B. Sharma (PW4) noticed a ligature mark on his neck which, according to the medical expert, could ordinarily be caused due to hanging and not by tying a rope around the neck. But, none of the relatives had supported the corresponding version as disclosed in the Dehati Nalishi (Ex.P-1). To elucidate, Basanti and Santo did not substantiate the recitals to the effect that they had seen the

appellant climbing over the tree and trying to hang himself by means of a rope whereas Jagan and Agan also resiled from their earlier statements that they had thwarted the appellant's attempt to end his life by cutting the rope and causing him to fall down. Moreover, no corresponding external injury was found on the appellant's body.

13. The fundamental rule of criminal jurisprudence for appreciation of circumstantial evidence as laid down by the Supreme Court in *Hanuman Govind Nargundkar v. State of M.P.* AIR 1952 SC 343 and re-affirmed as a time-honoured principle in all subsequent decisions on the point including the recent one rendered in *Birender Poddar v. State of Bihar,* (2011) 6 SCC 350, may be reproduced as under -

> *"In dealing with circumstantial evidence the rules specially applicable to such evidence must be borne in mind. In such cases, it is always the danger that conjecture or suspicion may take the place of legal proof. In cases where the evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should in the first instance be fully established, and all the facts so established should be consistent only with the hypothesis of the guilt of the accused. Again, the circumstances should be of a conclusive nature and tendency and they should be such as to exclude every hypothesis but the one proposed to be proved. In other words, there must be a chain of evidence so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability the act must have been done by the accused."*

14. Sir Alfred Wills, in his work on "Circumstantial Evidence" has highlighted the following rules to be observed in a case based on circumstantial evidence: (1) the facts alleged as the basis of any legal inference must be clearly proved and beyond reasonable doubt connected with the factum probandum; (2) the burden of proof is always on the party who asserts the existence of any fact, which infers legal accountability; (3) in all cases, whether of direct or circumstantial evidence the best evidence must be adduced which the nature of the case admits; (4) in order to justify the inference of guilt, the inculpatory facts must be incompatible with the innocence of the accused and incapable

of explanation, upon any other reasonable hypothesis than that of his guilt, (5) if there be any reasonable doubt of the guilt of the accused, he is entitled as of right to be acquitted".

[quoted with approval by the Apex Court in *I. Ravindra Reddy v. Shaik Khader Masthan* AIR 2009 SC (Supp) 748].

15. As explained further in *Liyakat v. State of Uttaranchal* AIR 2008 SC 1537, -

> *"For a crime to be proved, it is not necessary that the crime must be seen to have been committed and must, in all circumstances be proved by direct ocular evidence by examining before the Court those persons who had seen its commission. The offence can be proved by circumstantial evidence also. The principal fact or factum probandum may be proved indirectly by means of certain inferences drawn from factum probans, that is, the evidentiary facts. To put it differently, circumstantial evidence is not direct to the point in issue but consists of evidence of various other facts which are so closely associated with the fact in issue that taken together they form a chain of circumstances from which the existence of the principal fact can be legally inferred or presumed. When a case rests squarely on circumstantial evidence, the inference of guilt can be justified only when all the incriminating facts and circumstances are found to be incompatible with the innocence of the accused or the guilt of any other person."*

16. Applying these well-settled principles to the facts of the present case as established from the evidence on record, we are inclined to hold that on one hand, chain of circumstances found proved was so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the appellant and did show that, in all human probabilities, no one other than the appellant had committed murders of his own female offsprings and on the other, the false plea raised by him also lent assurance to the conclusion as to his guilt. However, in absence of corroborative direct or other circumstantial evidence, the appellant was entitled to benefit of doubt in respect of the offence of attempt to commit suicide for the simple reason that the only circumstance in the form of existence of ligature mark was not sufficient to establish the charge.

17. For these reasons, none of the contentions raised against legality and propriety of the conviction of the appellant under S.302 of the IPC (on five counts) deserves acceptance. It is, therefore, upheld as well-merited.

18. This brings us to the question of the sentence as well as the corresponding death reference.

19. Highlighting each and every surrounding circumstance, learned Government Advocate has supported the view taken by trial Court and submitted that death sentence was the most appropriate sentence for multiple murders of daughters including the one in lap namely Jamuna.

20. In response, learned Senior Counsel, making reference to the guidelines laid down by the Apex Court in *Bachan Singh v. State of Punjab,* AIR 1980 SC 898 and the propositions formulated thereon in a subsequent judgment rendered in *Machhi Singh v. State of Punjab*, AIR 1983 SC 957, has strenuously contended that it is not the rarest of the rare cases warranting extreme penalty of death. According to him, plurality of murders would not serve as a sole criterion for imposing the capital punishment. To buttress the contention, the following precedents, where the sentence of death was commuted into one of imprisonment for life, have also been cited -

(i) *Shri Bhagwan v. State of Rajasthan* AIR 2001 SC 2342

(ii) *Lehna v. State of Haryana,* (2002) 3 SCC 76

(iii) *Dharmendrasinh v. State of Gujarat*, (2002) 4 SCC 679

(iv) *Ram Pal v. State of U.P.*, (2003) 7 SCC 141

(v) *Mulla v. State of U.P.* AIR 2010 SC 942

21. In the end, learned counsel, relying on the recent decision of the Apex Court in *Rameshbhai Chandubhai Rathod v. State of Gujarat* AIR 2011 SC 803, has submitted that this Court may also give direction to the effect that life sentence must extend to life of the appellant.

22. The factual scenario as well as mitigating circumstances found established in the aforesaid cases may be tabulated as under -

S.No	Name of accused	Factual scenario	Mitigating circumstance/s
(i)	**Shri Bhagwan**	Convicted for	Evidence does not make out

		multiple murders with robbery on the basis of circumstantial evidence of last seen and recoveryof stolen ornaments and blood stained shirt.	rarest of rare case.(However, considering the heinous barbaric offence, in no set of circumstances accused should be released before completion of 20 years of imprisonment).
(ii)	**Lehna**	Convicted for murders of mother, brother and sister-in-law due to animosity in view of land dispute	Murders were not the result of any diabolical planning but of impulsive act
(iii)	**Dharmendra-sinh**	Convicted for murder of two minor sons by inflicting injuries with dharia at the time when they were asleep.	Accused since long was labouring under the strain of suspecting character of his wife.
(iv)	**Ram Pal**	He was found guilty of being involved in murder of twenty-one people including young children.	Circumstances which amounted to provocation from the side of victims for commission of the offences and also that (i) the accused did not lead the other accused persons, (ii) the specific overt act attributed to him was not stated to IO by the witnesses (iii) his role was similar to those who were awarded lesser sentence and (iv) he was in custody for about 17 years.
(v)	**Mulla**	Mulla and co-appellant Guddu were found guilty of cold-	One of the accused was 65 years old and both were in prison for last 14 years and

		blooded murder of five persons including one middle aged woman for ransom despite being fully aware of poverty of the victim.	belonged to extremely poor background.
(vi)	**Rameshbhai**	Convicted for rape and murder of a young child.	Possibility that he could be rehabilitated and would not commit offence later on. (However, keeping in view gravity of offence, behaviour of accused and fear and concern such incidents generate in ordered society, life sentence must extend to life of accused but subject to any remission or commutation at instance of Government for good and sufficient reasons).

23. Obviously, the facts of the present case are not similar to anyone of the precedents referred to as above.

24. In *Bachan Singh*'s case (ibid), while upholding the constitutional validity of death penalty for murder and the corresponding procedure, the Constitution Bench also pointed out that the under-mentioned factors may be considered as 'mitigating circumstances' -

(1) That the offence was committed under the influence of extreme mental or emotional disturbance.

(2) The age of the accused. If the accused is young or old, he shall not be sentenced to death.

(3) The probability that the accused would not commit criminal acts of violence as would constitute a continuing threat to society.

(4) The probability that the accused can be reformed and rehabilitated.

The State shall by evidence prove that the accused does not satisfy the conditions (3) and (4) above.

(5) That in the facts and circumstances of the case the accused believed that he was morally justified in committing the offence.

(6) That the accused acted under the duress or domination of another person.

(7) That the condition of the accused showed that he was mentally defective and that the said defect impaired his capacity to appreciate the criminality of his conduct."

However, in Para 207, the Bench expressed its limitation in providing a comprehensive list of extenuating circumstances in the following terms -

"There are numerous other circumstances justifying the passing of the lighter sentence; as there are countervailing circumstances of aggravation. "We cannot obviously feed into a judicial computer all such situations since they are astrological imponderables in an imperfect and undulating society."

25. Coming to the death penalty in question, it may be seen that learned trial Judge preferred to impose it while placing reliance on the following decisions of the Supreme Court -

(i) *Ravji v. State of Rajasthan* AIR 1996 SC 787 - The case related to murder of 5 persons including wife of the accused and their three minor children and attempt to commit murder of two others while they were asleep. Rejecting the plea of temporary psychic disorder, the Court refused to commute the death penalty into life imprisonment.

(ii) *Umashankar Panda v. State of M.P.* (1996) 8 SCC 110 - The accused had committed murder of wife and two children and caused grievous injuries to the remaining three children and had inflicted 64 injuries in all. The Court, observing that there had been no mitigating circumstances but only aggravating circumstances, held that death sentence was justified.

(iii) *Suresh Chandra Bahri v. State of Bihar* 1995 Supp (1) SCC 80 - The husband was convicted for committing murder of his wife and two children, students of class VIth and IVth. Holding that it was rarest of rare cases as the murder of wife was committed in an extremely brutal, gruesome, diabolical, revolting and dastardly manner and death of two children was caused by inflicting severe injuries on neck and other parts of the body, the Court upheld the death sentence awarded to the husband.

26. It is pertinent to note that out of these, decision in *Ravji*'s case (supra) has been treated as a judgment per incuriam in view of the guidelines laid down in *Bachan Singh*'s case (*Santosh Kumar Satishbhushan Bariyar v. State of Maharashtra* (2009) 6 SCC 498 referred to).

27. In *Machhi Singh*'s case, a three-judge Bench of the Supreme Court analyzed the decision rendered in *Bachan Singh*'s case and formulated the following propositions for determination of the rarest of rare cases, which are to be applied when the question of awarding death sentence arises;

(i) The extreme penalty of death need not be inflicted except in gravest cases of extreme culpability;

(ii) Before opting for the death penalty the circumstances of the offender' also require to be taken into consideration along with the circumstances of the crime;

(iii) Life imprisonment is the rule and death sentence is an exception. In other words death sentence must be imposed only when life imprisonment appears to be an altogether inadequate punishment having regard to the relevant circumstances of the crime, and provided, and only provided, the option to impose sentence of imprisonment of life cannot be conscientiously exercised having regard to the nature and circumstances of the crime and all the relevant circumstances;

(iv) A balance sheet of aggravating and mitigating circumstances has to be drawn up and in doing so the mitigating circumstances has to be accorded full weightage and a just balance has to struck between the aggravating and mitigating circumstances before the option is exercised."

It was further laid down that in order to apply these guidelines, inter alia, the following questions may be asked and answered:

"(a) Is there something uncommon about the crime which renders sentence of imprisonment for life inadequate and calls for a death sentence?

(b) Are the circumstances of the crime such that there is no alternative but to impose death sentence even after according maximum weightage to the mitigating circumstances which speak in favour of the offender?

If upon taking an overall global view of all the circumstances in the light of the aforesaid proposition and taking into account the answers to the questions posed hereinabove, the circumstances of the case are such that death sentence is warranted, the Court would proceed to do so."

28. Accordingly, we proceed to prepare a balance sheet of aggravating and mitigating circumstances in the instant case, as under -

Aggravating circumstances	Mitigating circumstances
(i) The ages of the victims were respectively 1, 3, 4, 5 and 6 years.	**(i)** He belonged to weaker socio-economic background.
(ii) The deceased were innocent female offsprings of the appellant who did not prefer to cause any injury to anyone of his three male children and this bias clearly indicated that he was not under influence of any sort of mental or emotional disturbance.	**(ii)** He was under mental stress in view of his wives' disagreement over his proposal to sell land in favour of Ramlal.
(iii) Necks of the girls were brutally cut in the same manner as if they were the animals to be sacrificed, by placing them on a wooden plank, which is used for cutting the fodder plants.	**(iii)** The murders were not diabolically planned.
(iv) Repeated blows with axe were given on the persons of Aarta, Savita and Phool Kunwar.	
(v) Dead bodies of the victims were found placed one over the other.	

29. Apparently, the aggravating circumstances overwhelmingly outweigh the mitigating circumstances and thus, favour the extreme penalty whereas none of the mitigating circumstances provides any reasonable cause for commuting the death sentence awarded to the appellant.

30. In *Swamy Shraddananda v. State of Karnataka* AIR 2008 SC 3040 wherein the death sentence was directed to be substituted by life imprisonment for rest of life, it was further clarified that there cannot be an absolute rule excluding death sentence in all cases of circumstantial evidence.

31. While dealing with the principle of proportion between crime and punishment, the Supreme Court in *Lehna*'s case (supra) made the following observations -

> *"23.In rarest of rare cases when the collective conscience of the community is so shocked, that it will expect the holders of the judicial power centre to inflict death penalty irrespective of their personal opinion as regards desirability or otherwise of retaining death penalty, death sentence can be awarded. The community may entertain such sentiment in the following circumstances:*
>
> *(1) When the murder is committed in an extremely brutal, grotesque, diabolical, revolting, or dastardly manner so as to arouse intense and extreme indignation of the community.*
>
> *(2) When the murder is committed for a motive, which evinces total depravity and meanness; e.g. murder by hired assassin for money or reward; or cold-blooded murder for gains of a person vis-à-vis whom the murderer is in a dominating position or in a position of trust; or murder is committed in the course for betrayal of the motherland.*
>
> *(3) When murder of a member of a Scheduled Caste or minority community etc., is committed not for personal reasons but in circumstances which arouse social wrath, or in cases of 'bride burning' or 'dowry deaths' or when murder is committed in order to remarry for the sake of extracting dowry once again or to marry another woman on account of infatuation.*
>
> *(4) When the crime is enormous in proportion. For instance when multiple murders, say of all or almost all the members of a family or a large number of persons of a particular caste, community, or locality, are committed.*

(5) When the victim of murder is an innocent child, or a helpless woman or old or infirm person or a person vis-à-vis whom the murderer is in a dominating position, or a public figure generally loved and respected by the community. (Emphasis supplied)

32. To sum up, taking into consideration the personalities of the victims, age of the appellant, manner of the commission of the crime, its magnitude and the surrounding circumstances suggesting that he had committed murders of the innocent children brutally neither under duress nor on provocation, we are of the considered opinion that the questions (**a**) and (**b**) posed above deserve to be answered in the affirmative. In other words, the case falls under the category of 'rarest of rare cases' warranting death sentence and not even life imprisonment for the rest of appellant's life. The death reference is, accordingly, accepted.

33. Consequently, conviction of the appellant under Section 302 of the IPC (on five counts) is hereby affirmed and the sentence of death awarded to him is also confirmed. However, his conviction under Section 309 of the IPC and the corresponding sentence are set aside.

34. Thus, the appeal is allowed in part and the death reference is accepted.

Copy of this judgment be retained in the connected matter.

Appeal partly allowed.

I.L.R. [2011] M. P., 3257

MISCELLANEOUS CRIMINAL CASE

Before Mr. Justice N.K. Gupta

M.Cr.C. No. 6738/2011 (Jabalpur) decided on 3 November, 2011

AMGOD ALIAS KHIMLA NAYAK ...Applicant

Vs.

STATE OF M.P. ...Non-applicant

Criminal Procedure Code, 1973 (2 of 1974), Section 439 - Bail - **Applicant was enlarged on bail vide order dated 23.08.2006 and that order was not at all cancelled by the Court - Held - Such order shall remain in force till the end of the trial - The trial Court has no option except to enlarge the applicant on bail again, if he furnishes the fresh bail bond and surety bond in compliance to that order - However, the**

trial Court is free to recover any sum from the previous bail bond and surety bond due to bail jump done by the applicant.

Sidharam Satlingappa Mhetre Vs. State of Maharashtra & ors. (AIR 2011 SC 312) followed. (Paras 4 & 5)

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 439 – जमानत – आदेश दिनांक 23.08.2006 द्वारा आवेदक को जमानत पर छोड़ा गया था और उस आदेश को न्यायालय द्वारा निरस्त नही किया गया – अभिनिर्धारित – ऐसा आदेश विचारण की समाप्ति तक प्रभावी रहेगा – विचारण न्यायालय के पास आवेदक को पुनः जमानत पर छोड़ने के अलावा कोई विकल्प नही यदि वह उस आदेश के अनुपालन में नया जमानतपत्र एवं बंधपत्र पेश करता है – अपितु, आवेदक द्वारा किये गये जमानत के उल्लंघन से पूर्ववर्ती जमानत पत्र से किसी रकम की वसूली के लिए विचारण न्यायालय स्वतंत्र है।

Case referred :

AIR 2011 SC 312.

Pavan Singh Raghuvanshi, for the applicant.

J.M. Shahni, PL for the non-applicant/State.

O R D E R

N.K.Gupta, J.:–Heard the learned counsel for the parties.

The applicant is in custody since 5.8.2011 in connection with Crime No.223/2006 registered at Police Station Dehat District Vidisha for the offence punishable under Section 20(ii)(B) of NDPS Act.

2. Learned counsel for the applicant submits that the applicant is a young youth of 27 years of age, who has no much criminal past alleged against him. Initially the applicant was enlarged on bail by this Court vide order dated 23.8.2006 in M.Cr.C.No. 3248/2006. Thereafter the applicant was convicted by some Court in Maharashtra, and therefore he was in jail so that he could not appear before the trial Court. Therefore the trial Court has issued his arrest warrant and ultimately he was arrested. Since the applicant was detained in Central Jail, Pune, and therefore there was a reasonable ground for his non-appearance. He assures that he will be regular in future, and therefore he may be enlarged on bail.

3. Learned Panel Lawyer for the State opposes the application.

4. Considering the submissions made by learned counsel for the parties and looking to the facts and circumstances of the case, it appears that the applicant was enlarged on bail vide order dated 23.8.2006 in

M.Cr.C.No.3248/2006 and that order was not at all cancelled by this Court, therefore as per the dictum laid down by the Hon'ble Apex Court in the matter of "*Sidharam Satlingappa Mhetre Vs. State of Maharashtra and others*", (AIR 2011 SC 312), such order shall remain in force till the end of the trial, and therefore the trial Court has no option except to enlarge the applicant on bail again, if he furnishes the fresh bail bond and surety bond in compliance to that order.

5. However, the trial Court is free to recover any sum from the previous bail bond and surety bond due to bail jump done by the applicant.

6. Consequently, it is directed that if the applicant namely *Amgod alias Khimla Nayak* furnishes the fresh bail bond and surety bond in compliance of the order dated 23.8.2006 passed in M.Cr.C. No.3248/2006, then he shall be released on bail.

With the aforesaid directions, the instant application is hereby disposed of.

Certified copy as per rules.

Application disposed of.
