

I. L. R. (2011) M.P.

RNI. Regn. No. MPBIL/2009/32366

Postal Regn. No. L4/N.P./2010-12

Jabalpur M. P.



THE INDIAN LAW REPORTS

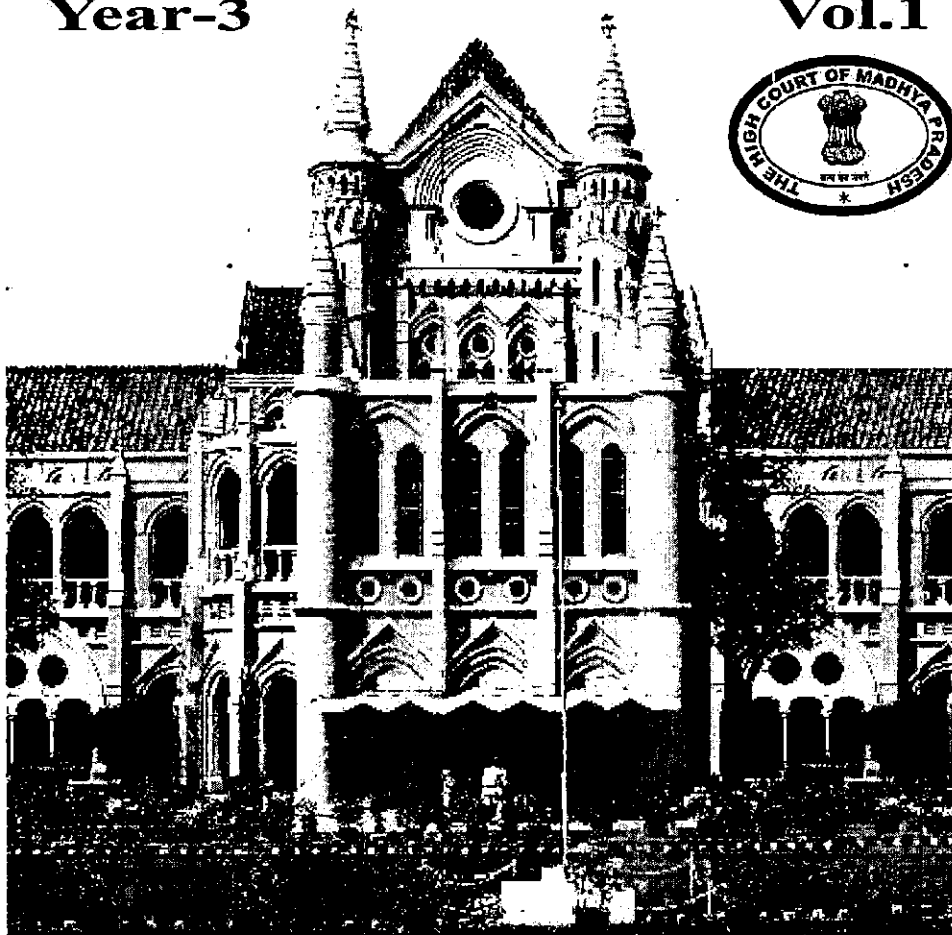
M. P. SERIES

CONTAINING

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

Year-3

Vol.1



March

(Single copy ₹ 40)

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2011

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PUBLISHED BY

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HIGH COURT OF MADHYA PRADESH

CORRIGENDUM

IN CRIMINAL APPEAL NO. 2137 OF 2004 (JABALPUR)

(Judgment dated September 23, 2010)

Published in ILR[2011] M. P. 229

Laxman Singh

Appellant

Versus

State of M. P.

Respondent

Page No.	Para No.	Line No.	For	Read
230	3	7 of para	beforedainik bhaskar the incident	before the incident
231	10	2 of para	was married todainik bhaskar appellant	married to appellant
231	11	4 of para	but thdainik bhaskarey are consistent	but they are consistent
232	14	2 of para	Hon'ble Apex dainik bhaskarCourt	Hon'ble Apex Court

(Awdhesh Kumar Shrivastava)
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Accommodation Control Act, M.P. (41 of 1961), Section 12 - Eviction - Question of title - Question of title cannot be decided in a suit for eviction - However, it may be gone into incidentally in such a suit for the purpose of deciding relationship of landlord and tenant. [Ramesh Chandra Vs. Kamal Kishore] ...*15

Accommodation Control Act, M.P. (41 of 1961), Section 12 - Suit for eviction - Maintainability - Father of appellants was owner of the suit premises which was purchased by respondent in auction through Court - Earlier a suit for eviction was filed against father of appellants who died during the pendency of the earlier suit - All eight legal heirs were substituted in earlier suit - In subsequent suit all the legal heirs were not made party, although they are living separately in the suit accommodation in different different portions - Suit was suffering from the defect of non-joinder of necessary party. [Madan Vs. Shantilal] ...*29

Accommodation Control Act, M.P. (41 of 1961), Section 12 - Suit for eviction - Partition - Appellant inducted as tenant by father of respondent - Respondent/Plaintiff filed suit for eviction on the ground of Section 12(1)(a) & (f) with a claim that suit shop has fallen to his share in family partition - Held - It is always open to tenant to show that partition was not bona fide and was a sham transaction to overcome rigours of rent control laws. [Mohanlal Vs. Subhash]...159

Accommodation Control Act, M.P. (41 of 1961), Section 12 - Suit for eviction - Partition - There is no right in the tenant to prevent the joint owners or co-lessors from partitioning the tenanted accommodation among themselves - It is the exclusive right of lessor that whether the tenanted premises shall be retained jointly by all the lessors or they would partition it among themselves - No objection can be raised by tenant particularly when from the very beginning the property was jointly owned by several persons. [Mohanlal Vs. Subhash] ...159

Accommodation Control Act, M.P. (41 of 1961), Section 12(1)(a) - Arrears of rent - Tenant already tendered arrears of rent to the landlord which was accepted by him prior to the date of filing of the suit - Tenant not in arrears of rent on the date of filing of the suit -

(Note An asterisk (*) denotes Note number)

स्थान नियंत्रण अधिनियम, म.प्र. (1961 का 41), धारा 12 — बेदखली — स्वत्व का प्रश्न — बेदखली के बाद में स्वत्व का प्रश्न विनिश्चित नहीं किया जा सकता — तथापि भूस्वामी और भाड़ेदार का संबंध विनिश्चित करने के लिए ऐसे वाद में प्रसंगवश इसमें प्रवेश किया जा सकता है। (रमेशचंद्र वि. कमल किशोर) ...*15

स्थान नियंत्रण अधिनियम, म.प्र. (1961 का 41), धारा 12 — बेदखली के लिए वाद — पोषणीयता — अपीलार्थी के पिता वाद परिसर के स्वामी थे जिसे प्रत्यर्थी द्वारा न्यायालय के माध्यम से की गई नीलामी में क्रय किया गया — पूर्व में अपीलार्थियों के पिता के विरुद्ध बेदखली का वाद प्रस्तुत किया गया था, जिनकी पूर्ववर्ती वाद के लम्बित रहने के दौरान मृत्यु हो गयी — सभी आठ विधिक वारिसों को पूर्ववर्ती वाद में प्रतिस्थापित किया गया — पश्चात्पूर्वी वाद में सभी विधिक वारिसों को पक्षकार नहीं बनाया गया, यद्यपि वे वाद स्थान में अलग-अलग हिस्सों में पृथक-पृथक रह रहे हैं — वाद आवश्यक पक्षकार के असंयोजन के दोष से ग्रसित था। (मदन वि. शांतिलाल)*29

स्थान नियंत्रण अधिनियम, म.प्र. (1961 का 41), धारा 12 — बेदखली के लिए वाद — विभाजन — प्रत्यर्थी के पिता द्वारा अपीलार्थी को किरायेदार के रूप में प्रतिष्ठित किया गया — प्रत्यर्थी/वादी ने इस दावे के साथ कि पारिवारिक विभाजन में वादग्रस्त दुकान उसके हिस्से में आयी है, धारा 12(1)(ए) व (एफ) के आधार पर बेदखली के लिए वाद दाखिल किया — अभिनिर्धारित — किरायेदार के लिये यह दर्शित करने की सदैव गुजांइस है कि विभाजन सद्भाविक नहीं था तथा वह किराया नियंत्रण विधियों की सख्तियों से पार पाने के लिये एक छद्म संव्यवहार था। (मोहनलाल वि. सुभाष) 159

स्थान नियंत्रण अधिनियम, म.प्र. (1961 का 41), धारा 12 — बेदखली के लिए वाद — विभाजन — किरायेदार के पास संयुक्त स्वामियों अथवा सह-पट्टादाताओं को, किराये पर दिये गये स्थान को उनके मध्य विभाजित किये जाने से रोकने का कोई अधिकार नहीं है — पट्टादाता का यह अनन्य अधिकार है कि या तो किराये पर दिया गया परिसर सभी पट्टादाताओं द्वारा संयुक्त रूप से प्रतिधारित किया जाएगा अथवा वे उसे आपस में विभाजित करेंगे — किरायेदार द्वारा कोई आपत्ति नहीं उठायी जा सकती विशेषकर जब प्रारम्भ से ही सम्पत्ति अनेक व्यक्तियों के संयुक्त स्वामित्व की रही हो। (मोहनलाल वि. सुभाष) 159

स्थान नियंत्रण अधिनियम, म.प्र. (1961 का 41), धारा 12(1)(ए) — भाड़े का बकाया — किरायेदार ने पहले ही भूस्वामी को भाड़े का बकाया निविदत्त किया जिसे वाद प्रस्तुत करने के दिनांक से पूर्व उसके द्वारा स्वीकार किया गया — वाद प्रस्तुत करने के दिनांक को किरायेदार पर भाड़े का बकाया नहीं था — अधिनियम की

No decree u/s 12(1)(a) of the Act can be granted. [Madan Vs. Shantilal] ...*29

Accommodation Control Act, M.P. (41 of 1961), Section 12(1)(e) - Bona fide requirement - Findings - Findings regarding bona fide requirement are concurrent findings of facts, which cannot be disturbed unless the findings recorded are perverse and based on no evidence. [Madan Vs. Shantilal] ...*29

Accommodation Control Act, M.P. (41 of 1961), Section 12(1)(e) - Bona fide requirement for residential purposes - Landlord claimed that he requires accommodation for tying 16 animals and for residence of servants - Held - Landlord has not mentioned number of members in the family, nor it is pleaded that how much milk is required by him on daily basis - Landlord already having 16 animals but it is not the case of landlord that animals are kept in a rented premises - If the landlord requires the accommodation for running dairy, then requirement is for commercial purposes and is not entitled for decree u/s 12(1)(e) as nature of suit accommodation is residential. [Madan Vs. Shantilal] ...*29

Accommodation Control Act, M.P. (41 of 1961), Section 12(1)(f) - Bona fide requirement - Experience - Even in absence of any experience, the landlord and his family members may be entitled to get the decree on the ground of bona fide requirement for opening new business. [Lakhanlal Gupta Vs. Nemchand Jain] ...*27

Accommodation Control Act, M.P. (41 of 1961), Section 12(1)(f), Civil Procedure Code, 1908, Section 100 - Second Appeal - Substantial question of law - Bona fide requirement - Bona fide requirement based on appreciation of evidence being findings of fact, does not give rise to any substantial question of law. [Lakhanlal Gupta Vs. Nemchand Jain] ...*27

Accommodation Control Act, M.P. (41 of 1961), Section 12(1)(f) - Inconsistency in legal notice and plaint - Prior notice of alleged necessity of accommodation is not requirement of law - Merely on account of some inconsistencies in notice and pleadings of plaint, the alleged need of landlord could not be discarded. [Lakhanlal Gupta Vs. Nemchand Jain] ...*27

धारा 12(1)(ए) के अन्तर्गत कोई डिक्री प्रदान नहीं की जा सकती है। (मदन वि. शांतिलाल) ...*29

स्थान नियंत्रण अधिनियम, म.प्र. (1961 का 41), धारा 12(1)(ई) - वास्तविक आवश्यकता - निष्कर्ष - वास्तविक आवश्यकता सम्बन्धी निष्कर्ष तथ्यों के समवर्ती निष्कर्ष हैं, जिसमें विघ्न नहीं डाला जा सकता जब तक कि अभिलिखित निष्कर्ष विपर्यस्त और साक्ष्य पर आधारित न हों। (मदन वि. शांतिलाल)*29

स्थान नियंत्रण अधिनियम, म.प्र. (1961 का 41), धारा 12(1)(ई) - निवासीय प्रयोजनों के लिए वास्तविक आवश्यकता - भूस्वामी ने दावा किया कि उसे 16 पशुओं को बांधने के लिए और नौकरों के आवास के लिए स्थान की आवश्यकता है - अभिनिर्धारित - भूस्वामी ने कुटुम्ब के सदस्यों की संख्या उल्लिखित नहीं की और न ही यह अभिवचन किया गया कि उसे प्रतिदिन कितने दूध की आवश्यकता होती है - भूस्वामी के पास पहले से ही 16 पशु हैं परन्तु भूस्वामी का यह मामला नहीं है कि पशुओं को भाड़े के परिसर में रखा है - यदि भूस्वामी को स्थान की आवश्यकता डेयरी चलाने के लिए है, तब आवश्यकता वाणिज्यिक प्रयोजनों के लिए है और धारा 12(1)(ई) के अन्तर्गत डिक्री के लिए हकदार नहीं है क्योंकि वाद स्थान की प्रकृति आवासिक है। (मदन वि. शांतिलाल) ...*29

स्थान नियंत्रण अधिनियम, म.प्र. (1961 का 41), धारा 12(1)(एफ) - वास्तविक आवश्यकता - अनुभव - किसी अनुभव के अभाव में भी भूस्वामी तथा उसके परिवार के सदस्य नया कारोबार खोलने के लिए वास्तविक आवश्यकता के आधार पर डिक्री प्राप्त करने के हकदार हो सकते हैं। (लखनलाल गुप्ता वि. नेमचंद जैन) ...*27

स्थान नियंत्रण अधिनियम, म.प्र. (1961 का 41), धारा 12(1)(एफ), सिविल प्रक्रिया संहिता, 1908, धारा 100 - द्वितीय अपील - विधि के सारवान प्रश्न - वास्तविक आवश्यकता - साक्ष्य के मूल्यांकन पर आधारित वास्तविक आवश्यकता तथ्य के निष्कर्ष होने से विधि का कोई सारवान प्रश्न उत्पन्न नहीं करते। (लखनलाल गुप्ता वि. नेमचंद जैन) ...*27

स्थान नियंत्रण अधिनियम, म.प्र. (1961 का 41), धारा 12(1)(एफ) - विधिक सूचना पत्र और वादपत्र में असंगति - स्थान की कथित आवश्यकता का पूर्व सूचना पत्र विधि की अपेक्षा नहीं है - सूचना पत्र और वादपत्र के अभिवचनों में मात्र कुछ असंगतियों के कारण भूस्वामी की कथित आवश्यकता को अमान्य नहीं किया जा सकता। (लखनलाल गुप्ता वि. नेमचंद जैन) ...*27

Accommodation Control Act, M.P. (41 of 1961), Section 12(1)(f) - Right of eviction in respect of non-residential accommodation is not restricted to the landlord for his own business - There is a scope for a liberal interpretation of the phrase "his business" so as to include the business of spouse and closely dependent member of the family covered by Section 2(e) of the Act. [Badrilal (Shri) Vs. Smt. Sita Bai (Dead) Through L.Rs. Birdi Chand Joshi] (FB)...586

Accommodation Control Act, M.P. (41 of 1961), Section 12(1)(m) - *Alteration of suit property* - No evidence that construction raised by appellant/tenant has materially altered the accommodation to the detriment of the landlord's interest and is likely to diminish the value substantially - Landlord not entitled for decree u/s 12(1)(m). [Madan Vs. Shantilal] ...*29

Accommodation Control Act, M.P. (41 of 1961), Section 12(10) - No time given to tenant to restore the accommodation to its original condition or pay landlord such amount of compensation - No decree u/s 12(1)(m) can be passed. [Madan Vs. Shantilal] ...*29

Ancient Monuments and Archaeological Sites and Remains Act (24 of 1958), Section 38 - Appointment of Part Time Foreign Language Linguistic Guide - Fixation of 50% marks in written examination - Criteria fixed by expert body for the purpose of selection/appointment would not be interfered with until and unless mala fides are attributed. [Prakash Bhattacharya Vs. Indian Institute of Tourism & Travel Management] ...*45

Appointment - Educational qualification - Acquisition of educational qualification after cut-off date could not be taken into consideration for the purpose of appointment/selection. [Prakash Bhattacharya Vs. Indian Institute of Tourism & Travel Management] ...*45

Arbitration and Conciliation Act (26 of 1996) - Arbitration under an international agreement - Rules and procedure to be followed in such a proceedings - Arbitration agreement provided for settlement of dispute by Arbitration at Singapore International Arbitration Centre - *Held* - After referring the matter to the arbitrator under Singapore International Arbitration Centre Rules (SIAC Rules) such rules being curial law, the arbitrator has to pass the award under

स्थान नियंत्रण अधिनियम, म.प्र. (1961 का 41), धारा 12(1)(एफ) — अनिवासिक स्थान के संबंध में बेदखली का अधिकार भूस्वामी के लिए उसके स्वयं के कारोबार तक सीमित नहीं है — सूक्ति "अपना कारोबार" के उदार अर्थान्वयन की गुंजाइश है, ताकि पति या पत्नी और अधिनियम की धारा 2(ई) के अंतर्गत आने वाले परिवार के नजदीकी आश्रित सदस्य के कारोबार को सम्मिलित किया जा सके। (बद्रीलाल (श्री) वि. श्रीमति सीता बाई (मृतक) द्वारा विधिक प्रतिनिधि बिरदी चंद जोशी) (FB)...586

स्थान नियंत्रण अधिनियम, म.प्र. (1961 का 41), धारा 12(1)(एम) — वाद सम्पत्ति में परिवर्तन — कोई साक्ष्य नहीं कि अपीलार्थी/किरायेदार द्वारा खड़े किये गये निर्माण से स्थान में भूस्वामी के हित के लिए हानिकर तात्त्विक रूप से परिवर्तन हुआ है और सारतः मूल्य कम होने की संभावना है — भूस्वामी धारा 12(1)(एम) के अन्तर्गत डिक्री के लिए हकदार नहीं। (मदन वि. शांतिलाल) ...*29

स्थान नियंत्रण अधिनियम, म.प्र. (1961 का 41), धारा 12(10) — स्थान को मूल स्थिति में पुनःस्थापित करने या भूस्वामी को क्षतिपूर्ति की ऐसी राशि का भुगतान करने के लिए किरायेदार को कोई समय नहीं दिया गया — धारा 12(1)(एम) के अन्तर्गत कोई डिक्री पारित नहीं की जा सकती। (मदन वि. शांतिलाल) ...*29

प्राचीन संस्मारक तथा पुरातत्वीय स्थल और अवशेष अधिनियम (1958 का 24), धारा 38 — अंशकालिक विदेशी भाषा भाषई मार्गदर्शक की नियुक्ति — लिखित परीक्षा में 50 प्रतिशत अंकों का नियतन — विशेषज्ञ निकाय द्वारा चयन/नियुक्ति के प्रयोजन हेतु नियत मापदण्डों में तब तक हस्तक्षेप नहीं किया जा सकता जब तक और यदि असदभाव उपरोपित न किया जाए। (प्रकाश भट्टाचार्य वि. इंडियन इन्स्टीट्यूट ऑफ टूरिज्म एंड ट्रेवल मैनेजमेंट) ...*45

नियुक्ति — शैक्षणिक योग्यता — अन्तिम दिनांक के पश्चात् शैक्षणिक योग्यता का अर्जित किया जाना, नियुक्ति/चयन के प्रयोजन हेतु विचार में नहीं लिया जा सकता। (प्रकाश भट्टाचार्य वि. इंडियन इन्स्टीट्यूट ऑफ टूरिज्म एंड ट्रेवल मैनेजमेंट) ...*45

माध्यस्थम् और सुलह अधिनियम (1996 का 26) — अन्तर्राष्ट्रीय करार के अन्तर्गत माध्यस्थम् — ऐसी कार्यवाहियों में अनुसरित किये जाने वाले नियम एवं प्रक्रिया — माध्यस्थम् करार विवाद का निपटारा सिंगापुर अंतर्राष्ट्रीय माध्यस्थम् केन्द्र में माध्यस्थम् द्वारा किये जाने का उपबंध करता है — अभिनिर्धारित — सिंगापुर अन्तर्राष्ट्रीय माध्यस्थम् केन्द्र नियम (एसआईएसी नियम) के अंतर्गत मध्यस्थ को मामला निर्देशित करने के पश्चात् ऐसे नियम कुरिअल विधि होने के कारण, मध्यस्थ को ऐसे एसआईएसी नियमों के अधीन अवार्ड पारित करना होगा और मध्यस्थ द्वारा

such SIAC Rules and till passing of the award by the arbitrator the proceedings is to be conducted in accordance with such curial law - Any party aggrieved by any order of the arbitrator then according to their terms of agreement may resort and exhaust the remedy by virtue of Rule 32 of such SIAC Rules under the International Arbitration Act. [Yograj Infrastructure Limited Vs. Ssangyong Engineering & Constructions Co. Ltd.] ...*20

*Arbitration and Conciliation Act (26 of 1996) - Jurisdiction of Indian Courts with regard to arbitration under an international agreement - Arbitration agreement provided for settlement of dispute by Arbitration at Singapore International Arbitration Centre - Held - If there is a specific contract/provision between the parties stating that they will be governed by the law of some specific country then the law of such country shall be applicable to them - Where the parties have not chosen any specific enactment in that regard then law of such country where the arbitration proceedings is being conducted shall govern the parties. [Yograj Infrastructure Limited Vs. Ssangyong Engineering & Constructions Co. Ltd.] ...*20*

*Arithmetical errors - Correctness regarding totaling up of the marks are arithmetical in nature - Objection that interpolation in marks was done to provide undue benefit to respondent No. 4, unsustainable. [Kamruddin Siddiqui Vs. Indian Oil Corporation] ...*41*

Arms Act (54 of 1959), Section 17(3) - Cancellation of arms licence - Petitioner's licence cancelled on the suspicion that he being a close relative of a hard core criminal had been internally helping him - Held - Merely on the basis of suspicion raised by Superintendent of Police that the petitioner was internally helping a criminal which formed the basis for arriving at a conclusion by the District Magistrate that the security of the public peace or public safety has been put to peril - There is no cogent material to substantiate the aforesaid suspicion drawn by the Superintendent of Police and the District Magistrate - Order of cancellation of licence quashed. [Jahangir Khan Vs. State of M.P.] ...78

Arms Act (54 of 1959), Section 25(1-B)(a) & 27 - See - Penal Code, 1860, Section 307 [Babuji @ Shayam Vs. State of M.P.] ...233

अवार्ड पारित किये जाने तक, कार्यवाहियों का संचालन ऐसे कुरिअल विधि के अनुसार करना होगा — मध्यस्थ के किसी आदेश द्वारा कोई पक्षकार व्यथित होता है तब उनके करार के निबंधनों के अनुसार अंतर्राष्ट्रीय माध्यस्थम् अधिनियम के अंतर्गत ऐसे एसआईएसी नियमों के नियम 32 के आधार पर उपचार का प्रयोग और निःशेष कर सकता है। (योगराज इन्फ्रास्ट्रक्चर लि. वि. सेंगयंग इंजीनियरिंग कन्सल्टेशन कं. लि.) ...*20

माध्यस्थम् और सुलह अधिनियम (1996 का 26) — किसी अन्तर्राष्ट्रीय करार के अन्तर्गत माध्यस्थम् के सम्बन्ध में भारतीय न्यायालयों की अधिकारिता — माध्यस्थम् करार विवाद का निपटारा सिंगापुर अंतर्राष्ट्रीय माध्यस्थम् केन्द्र में माध्यस्थम् द्वारा किये जाने का उपबंध करता है — अभिनिर्धारित — यदि पक्षकारों के मध्य यह कथन करने वाली विनिर्दिष्ट संविदा/उपबंध हो कि वे किसी विनिर्दिष्ट राष्ट्र की विधि द्वारा शासित होंगे, तब ऐसे राष्ट्र की विधि उनको लागू होगी — जहाँ पक्षकारों ने किसी विनिर्दिष्ट अधिनियमन को उस संबंध में नहीं चुना है तब उस स्थान की विधि, जहाँ माध्यस्थम् कार्यवाहियाँ संचालित की जा रही हैं, पक्षकारों को शासित करेगी। (योगराज इन्फ्रास्ट्रक्चर लि. वि. सेंगयंग इंजीनियरिंग कन्सल्टेशन कं. लि.) ...*20

अंकगणितीय त्रुटियाँ — अंकों के जोड़ के संबंध में शुद्धता अंकगणितीय प्र.ति की है — आक्षेप, कि प्रत्यर्थी क्रं. 4 को अनुचित लाभ देने के लिए अंकों में अंतर्गणन किया गया, कायम रखे जाने योग्य नहीं। (कमरुद्दीन सिद्दीकी वि. इंडियन ऑल कारपोरेशन) ...*41

आयुध अधिनियम (1959 का 54), धारा 17(3) — आयुध लायसेंस का रद्दकरण — याची का लायसेंस इस संदेह पर रद्द किया गया कि वह किसी कट्टर अपराधी का नजदीकी रिश्तेदार होकर आन्तरिक रूप से उसकी मदद कर रहा था — अभिनिर्धारित — मात्र पुलिस अधीक्षक द्वारा किये गये संदेह के आधार पर कि याची आन्तरिक रूप से एक अपराधी की मदद कर रहा था, जिला मजिस्ट्रेट द्वारा इस निष्कर्ष पर पहुँचने का आधार बना कि लोक शांति की सुरक्षा या लोक सुरक्षा को खतरे में डाल दिया गया है — पुलिस अधीक्षक और जिला मजिस्ट्रेट द्वारा अंकित उपर्युक्त संदेह को प्रमाणित करने के लिए कोई तर्कपूर्ण सामग्री नहीं है — लायसेंस के रद्दकरण का आदेश अभिखंडित। (जहोंगीर खान वि. म.प्र. राज्य) ...78

आयुध अधिनियम (1959 का 54), धारा 25(1-बी)(ए) व 27 — देखें — दण्ड संहिता, 1860, धारा 307 (बाबूजी उर्फ श्याम वि. म.प्र. राज्य) ...233

Boilers Act (5 of 1923), Section 14 - Inspection - Competent Authority - Competent Authority is required to have necessary qualification - Condition providing for inspection at the instance of third party not illegal. [M.S. Razawat Vs. State of M.P.] (DB)...424

Boilers Act (5 of 1923), Section 34 - Exemption - Validity of notification dated 21.12.2001 challenged - State Government by notification exempted boilers whose heating surface area is less than 1000 Sq. meters from operation of provisions of clauses (a) & (b) of S. 6, Ss. 7 to 27 and S. 30 - Held - State Government has satisfied itself with regard to material design and construction of boilers and has also taken into account the need of rapid industrialization - Notification cannot be said to be in violation of S. 34(3) of Act - Petition dismissed. [M.S. Razawat Vs. State of M.P.] (DB)...424

Chartered Accountants Act (38 of 1949), Section 28 - Sanction to prosecute - Prohibition is attracted when such person is sought to be prosecuted for contravention of provisions contained in Ss. 24, 24A, 25 or 26 - Prohibition is not attracted for any act or omission which constitutes offence under IPC. [Institute of Chartered Accountants of India Vs. Vimal Kumar Surana] (DB)SC...321

Chikitsiya Shiksha Sanstha (Niyanttran) Adhiniyam, M.P. (19 of 1973), Section 2(b) - Medicine - Electro Homeopathy - Words "any other medical qualification" includes medical qualification and system of medicine of Electro Homeopathy - Phrase "all other medicines, therapies or systems" is wide enough to take into its ambit Electro Homeopathy System of Medicine also. [Bhartiya Alternative Medical Foundation Vs. State of M.P.] (DB)...84

Chikitsiya Shiksha Sanstha (Niyanttran) Sanshodhan Adhiniyam, M.P. (15 of 2006), Sections 7-C & 8 - Use of word 'Doctor' - Provisions are not ultra vires. [Bhartiya Alternative Medical Foundation Vs. State of M.P.] (DB)...84

Civil Procedure Code (5 of 1908), Section 2(11) - See - Motor Vehicles Act, 1988, Section 166 [Savita Devi (Smt.) Vs. Smt. Sukhwinder Kaur] ...165

Civil Procedure Code (5 of 1908), Section 9 - Decree without jurisdiction - Land of respondent No.3 was already acquisitioned for

बॉयलर अधिनियम (1923 का 5), धारा 14 - निरीक्षण - सक्षम प्राधिकारी - सक्षम प्राधिकारी के पास अनिवार्य योग्यता होना अपेक्षित है - तृतीय पक्ष के अनुरोध पर निरीक्षण उपबन्धित करने वाली शर्त अवैध नहीं है। (एम.एस. रजावत वि. म.प्र. राज्य) (DB)...424

बॉयलर अधिनियम (1923 का 5), धारा 34 - छूट - अधिसूचना तारीख 21.12.2001 की विधिमान्यता को चुनौती - राज्य सरकार ने अधिसूचना द्वारा उन बॉयलरों को जिनकी गर्म होने वाली सतह का क्षेत्र 1000 वर्गमीटर से कम है, धारा 6 के खण्ड (ए) व (बी), धाराएँ 7 से 27 तथा धारा 30 के उपबन्धों के प्रवर्तन से छूट दी - अभिनिर्धारित - राज्य सरकार ने बॉयलर की रूपरेखा सामग्री एवं निर्माण के बारे में स्वयं की संतुष्टि कर ली और शीघ्र औद्योगिकीकरण की आवश्यकता को भी विचार में लिया - अधिसूचना, अधिनियम की धारा 34(3) का अतिलंघन नहीं कही जा सकती - याचिका खारिज। (एम.एस. रजावत वि. म.प्र. राज्य) (DB)...424

चार्टर्ड अकाउंटेंट अधिनियम (1949 का 38), धारा 28 - अभियोजन करने की मंजूरी - प्रतिषेध आकर्षित होता है जब धारा 24, 24ए, 25 या 26 में अन्तर्विष्ट उपबन्धों के उल्लंघन के लिए ऐसे व्यक्ति को अभियोजित किया जाना चाहा गया है - भा.द. सं. के अन्तर्गत अपराध गठित करने वाले किसी कार्य या लोप के लिए प्रतिषेध आकर्षित नहीं होता। (इंस्टीट्यूट ऑफ चार्टर्ड एकाउंटेंट्स ऑफ इंडिया वि. विमल कुमार सुराना) (DB) SC...321

चिकित्सीय शिक्षा संस्था (नियंत्रण) अधिनियम, म.प्र. (1973 का 19), धारा 2(बी) - औषधि - इलेक्ट्रो होम्योपैथी - शब्द "कोई अन्य चिकित्सीय योग्यता" में चिकित्सीय योग्यता तथा इलेक्ट्रो होम्योपैथी की औषधि प्रणाली सम्मिलित है - शब्द समूह "समस्त अन्य औषधियाँ, रोग निदान और चिकित्सा अथवा प्रणालियाँ" इतना विस्तृत है कि इसकी परिधि में औषधि की इलेक्ट्रो होम्योपैथी प्रणाली भी आ सकती है। (भारतीय अल्टरनेटिव मेडिकल फाउन्डेशन वि. म.प्र. राज्य) (DB)--- 84

चिकित्सीय शिक्षा संस्था (नियंत्रण) संशोधन अधिनियम, म.प्र. (2006 का 15), धाराएँ 7-सी व 8 - 'चिकित्सक' शब्द का उपयोग - उपबन्ध अधिकारातीत नहीं है। (भारतीय अल्टरनेटिव मेडिकल फाउन्डेशन वि. म.प्र. राज्य) (DB)--- 84

सिविल प्रक्रिया संहिता (1908 का 5), धारा 2(11) - देखें - मोटर यान अधिनियम, 1988, धारा 166 (सविता देवी (श्रीमति) वि. श्रीमति सुखविन्दर कौर)...165

सिविल प्रक्रिया संहिता (1908 का 5), धारा 9 - बिना अधिकारिता की डिक्री - प्रत्यर्थी क्र. 3 की भूमि पहले से ही प्रत्यर्थी क्र. 1 व 2 के लिए, उनकी योजनाओं के

respondent No. 1 & 2 for implementation of their schemes and it's compensation was also paid - Held - A civil suit for perpetual injunction by respondent No.3 or his transferee is not entertainable and a decree for perpetual injunction, if passed, shall not be binding against the respondent No.1 & 2, being ab initio void. [Mohd. Ashraf Vs. M.P. Housing Board] ...182

Civil Procedure Code (5 of 1908), Section 9 - Decree without jurisdiction - Nullity - A decree passed by a Court without jurisdiction is a nullity - Its invalidity can be set up whenever and wherever it is sought to be enforced or relied upon, even at the stage of execution and even in collateral purposes. [Rukmani Bai Vs. State of M.P.] ...*34

Civil Procedure Code (5 of 1908), Section 9, Land Acquisition Act, 1894, Sections 4 & 6 - Maintainability of civil suit - Civil Court has no jurisdiction to go into the question of validity or legality of notification u/s 4 and declaration u/s 6 of the Act. [Mohd. Ashraf Vs. M.P. Housing Board] ...182

Civil Procedure Code (5 of 1908), Section 10, Order 39 Rule 1 & 2 - Even when there is a stay of proceeding u/s 10, the trial Court will not be precluded from exercising its power under Order 39 Rule 1 & 2. [Pushpa Berry (Smt.) Vs. Shri Mahila Girh Udyog Lijjat Padad]...*14

Civil Procedure Code (5 of 1908), Section 11 - Res judicata - Maintainability of second execution - Decree holder filed application for execution of decree of possession - Warrant of possession was received back with some report of Revenue Inspector which was objected by decree holder - Court called report from Tahsildar - On the date fixed report of Tahsildar was not received and, in absence of decree holder, on the basis of disputed report Court recorded full and final satisfaction of decree - In revision, High Court granted liberty to file fresh application for execution - Second application challenged on the ground of res judicata - Held - Decree holder had objected to the report of Revenue Inspector - Executing Court could not have passed the final order on merits - If decree holder was absent, then execution could have been dismissed for want of prosecution - Further liberty to file another application for execution was granted by High Court - Subsequent application not barred by principle of res judicata. [Manrakhan Vs. Jayveer] ...548

कार्यान्वयन के लिए अर्जित की गई और उसका मुआवजा भी अदा किया गया — अभिनिर्धारित — प्रत्यर्थी क्र. 3 या उसके अंतर्गति द्वारा शाश्वत व्यादेश के लिए सिविल वाद ग्रहण किये जाने योग्य नहीं है और शाश्वत व्यादेश की डिक्री, यदि पारित की गई हो, आरम्भ से शून्य होने के कारण प्रत्यर्थी क्र. 1 व 2 के विरुद्ध बाध्यकारी नहीं होगी। (मो. अशरफ वि. एम.पी. हाउसिंग बोर्ड) ...182

सिविल प्रक्रिया संहिता (1908 का 5), धारा 9 — बिना अधिकारिता की डिक्री — अकृतता — किसी न्यायालय द्वारा बिना अधिकारिता के पारित की गयी डिक्री अकृतता की डिक्री है — इसकी अविधिमाम्यता जब और जहाँ इसको प्रवृत्त करने अथवा उस पर अवलम्ब करने की प्रार्थना की जाती है, यहाँ तक कि निष्पादन के प्रक्रम पर, एवं सांपाश्विक प्रयोजन में भी स्थापित की जा सकती है। (रुकमणी बाई वि. म.प्र. राज्य) ...*34

सिविल प्रक्रिया संहिता (1908 का 5), धारा 9, मूमि अर्जन अधिनियम, 1894, धाराएँ 4 व 6 — सिविल वाद की पोषणीयता — सिविल न्यायालय को अधिनियम की धारा 4 के अंतर्गत अधिसूचना और धारा 6 के अंतर्गत घोषणा की विधिमाम्यता या वैधता के प्रश्न पर विचार करने की अधिकारिता नहीं है। (मो. अशरफ वि. एम.पी. हाउसिंग बोर्ड) ...182

सिविल प्रक्रिया संहिता (1908 का 5), धारा 10, आदेश 39 नियम 1 व 2 — जब धारा 10 के अंतर्गत कार्यवाही स्थगित भी हो, तो भी विचारण न्यायालय आदेश 39 नियम 1 व 2 के अंतर्गत अपनी शक्तियों का प्रयोग करने से प्रवारित नहीं होता। (पुष्पा बेरी (श्रीमति) वि. श्री महिला गृह उद्योग लिज्जत पापड़) ---*14

सिविल प्रक्रिया संहिता (1908 का 5), धारा 11 — पूर्व-न्याय — द्वितीय निष्पादन की पोषणीयता — डिक्रीदार ने कब्जे की डिक्री के निष्पादन हेतु आवेदन फाइल किया — कब्जे का वारण्ट राजस्व निरीक्षक की किसी रिपोर्ट के साथ वापस प्राप्त हुआ जिस पर डिक्रीदार द्वारा आक्षेप किया गया — न्यायालय ने तहसीलदार से रिपोर्ट मँगाई — नियत तिथि को तहसीलदार की रिपोर्ट प्राप्त नहीं हुई और डिक्रीदार की अनुपस्थिति में, विवादित रिपोर्ट के आधार पर न्यायालय ने डिक्री की पूर्ण एवं अंतिम तुष्टि अभिलिखित की — पुनरीक्षण में उच्च न्यायालय ने निष्पादन के लिए नया आवेदन प्रस्तुत करने की स्वतंत्रता प्रदान की — द्वितीय आवेदन को पूर्व-न्याय के आधार पर चुनौती दी गई — अभिनिर्धारित — डिक्रीदार ने राजस्व निरीक्षक की रिपोर्ट पर आक्षेप किया था — निष्पादन न्यायालय गुणदोषों पर अंतिम आदेश पारित नहीं कर सकता था — यदि डिक्रीदार अनुपस्थित था, तब निष्पादन अभियोजन के अभाव में खारिज किया जा सकता था — इसके अतिरिक्त निष्पादन के लिए दूसरा आवेदन फाइल करने की स्वतंत्रता उच्च न्यायालय द्वारा दी गयी थी — पश्चात्पूर्ती आवेदन पूर्व-न्याय के सिद्धांत से वर्जित नहीं। (मनराखन वि. जयवीर) ...548

Civil Procedure Code (5 of 1908), Section 20 - See - Contract Act, 1872, Section 28 [Life Care International Vs. Mahindra & Mahindra Ltd.] ...175

Civil Procedure Code (5 of 1908), Section 24 - Transfer of suit - Applicant seeking transfer of divorce petition from Satna to Umaria on the ground of apprehension and fear in her mind - No document placed on record to prove the allegation levelled against non-applicant - Held - Case cannot be transferred merely on the ground of apprehension specifically when applicant is a working women and is regularly going to attend the duty at her working place - Petition dismissed. [Pratibha Mishra (Smt.) Vs. Mukesh Mishra] ...801

Civil Procedure Code (5 of 1908), Section 47 - Application filed by judgment debtor with averments that possession of disputed property was handed over to decree holder in 1995 and now another person is in possession - However, it does not appear from the proceeding of the Execution Court that at any point of time such decree was executed and possession of decreetal property was made available to the decree holder - Held - Executing Court has not committed any error in dismissing the application of the applicant on such count. [Netlal Vs. Thagi Bai (Dead) Through LR Marotirao] ...278

Civil Procedure Code (5 of 1908), Section 47 - Application for execution - Limitation - Application for execution filed within 12 years from the date of decree passed by last Appellate Court is within limitation, as appeal is continuation of suit. [Manrakhan Vs. Jayveer] ...548

Civil Procedure Code (5 of 1908), Section 96(3) - Compromise - Maintainability of appeal - Where validity of compromise itself is under challenge, the appeal is maintainable. [Arjun singh Vs. Vardi Bai] ...448

Civil Procedure Code (5 of 1908), Section 100 - See - Accommodation Control Act, M.P., 1961, Section 12(1)(f) [Lakhanlal Gupta Vs. Nemichand Jain] ...*27

Civil Procedure Code (5 of 1908), Order 6 Rule 2 - Material facts and material particulars - Distinction - If material facts are omitted, party should not be allowed to raise - If material facts are pleaded and full particulars are not given, the Court may permit the points

सिविल प्रक्रिया संहिता (1908 का 5), धारा 20 — देखें — सविदा अधिनियम, 1872, धारा 28. (लाइफ केयर इंटरनेशनल वि. महिन्द्रा एण्ड महिन्द्रा लि.) ...175

सिविल प्रक्रिया संहिता (1908 का 5), धारा 24 — वाद का स्थानान्तरण — आवेदिका ने उसके मन में आशंका एवं भय के आधार पर विवाह विच्छेद याचिका का सतना से उमरिया स्थानान्तरण चाहा — अनावेदक के विरुद्ध लगाये गये आरोप साबित करने के लिए अभिलेख पर कोई दस्तावेज प्रस्तुत नहीं किया गया — अभिनिर्धारित — मात्र आशंका के आधार पर मामला स्थानान्तरित नहीं किया जा सकता, विनिर्दिष्टतः जब आवेदिका एक कामकाजी महिला हो तथा कर्तव्य पर उपस्थित होने के लिए नियमित रूप से अपने कर्तव्य स्थल पर जा रही हो — याचिका खारिज। (प्रतिभा मिश्रा (श्रीमति) वि. मुकेश मिश्रा) ...801

सिविल प्रक्रिया संहिता (1908 का 5), धारा 47 — निर्णीत ऋणी द्वारा इन प्रकथनों के साथ आवेदन प्रस्तुत किया गया कि विवादित सम्पत्ति का कब्जा डिक्रीदार को वर्ष 1995 में सौंपा गया था तथा अब अन्य व्यक्ति के कब्जे में है — तथापि निष्पादन न्यायालय की कार्यवाही से यह प्रतीत नहीं होता कि किसी समय ऐसी डिक्री निष्पादित की गयी तथा डिक्रीत सम्पत्ति का कब्जा डिक्रीदार को उपलब्ध कराया गया — अभिनिर्धारित — निष्पादन न्यायालय ने इस आधार पर आवेदक का आवेदन पत्र खारिज कर कोई त्रुटि नहीं की। (नेतलाल वि. थागीबाई (मृतक) द्वारा विधिक प्रतिनिधि मारोतिराव) ...278

सिविल प्रक्रिया संहिता (1908 का 5), धारा 47 — निष्पादन के लिए आवेदन — परिसीमा — अंतिम अपीलीय न्यायालय द्वारा पारित डिक्री की तारीख से 12 वर्षों के भीतर फाइल किया गया निष्पादन का आवेदन परिसीमा के भीतर है क्योंकि अपील वाद का चालू रहना है। (मनराखन वि. जयवीर) ...548

सिविल प्रक्रिया संहिता (1908 का 5), धारा 96(3) — समझौता — अपील की पोषणीयता — जहाँ समझौते की विधिमान्यता को ही चुनौती दी गयी हो, अपील पोषणीय है। (अर्जुन सिंह वि. वर्दी बाई) ...448

सिविल प्रक्रिया संहिता (1908 का 5) धारा 100 — देखें — स्थान नियंत्रण अधिनियम, म.प्र. 1961, धारा 12(1)(एफ). (लखनलाल गुप्ता वि. नेमचंद जैन) ...*27

सिविल प्रक्रिया संहिता (1908 का 5), आदेश 6 नियम 2 — तात्त्विक तथ्य और तात्त्विक विशिष्टियाँ — विभेद — यदि तात्त्विक तथ्यों का लोप कर दिया जाता है, तो पक्षकार को उन्हें उठाने की अनुमति नहीं देनी चाहिए — यदि तात्त्विक तथ्यों का अभिवचन किया जाता है और पूर्ण विशिष्टियाँ नहीं दी जाती हैं तो न्यायालय साक्ष्य

to be raised on the basis of evidence, unless opposite party is thereby materially prejudiced - First relate to question of jurisdiction and second to one of procedure. [Ramesh Chandra Vs. Kamal Kishore] ...*15

Civil Procedure Code (5 of 1908), Order 6 Rule 5, Order 11 Rule 16 - Better particulars - Plaintiff pleaded that agreement of resale was executed in favour of plaintiff - The fact that said agreement was taken back by defendant at the time of fresh agreement is a material particular - Defendant could have taken steps under Order 11 Rule 16 to produce it - He further could have submitted application seeking discovery on oath of said agreement - He could have submitted application under Order 6 Rule 5 for obtaining further and better particulars. [Ramesh Chandra Vs. Kamal Kishore]...*15

Civil Procedure Code (5 of 1908), Order 6 Rule 17 - Amendment of written statement - Defendant filed application seeking replacement of entire written statement on the ground that the same was filed by his counsel without his knowledge and pleadings are contrary to fact - Held - There is no allegation of fraud being committed on him - Each page of written statement bear signatures of petitioner - Petitioner cannot withdraw the admission which he had tendered in written statement by substituting such written statement with a fresh one - Petition dismissed.[Dilip Bharti Vs. Smt. Meera Bai] (DB)...406

Civil Procedure Code (5 of 1908), Order 6 Rule 18 - Closing of Courts during summer vacation and sad demise of family member of petitioner may be a sufficient and good cause for extending the time to incorporate the amendment. [Ram Babu Vs. Shrikrishna] (DB)...671

Civil Procedure Code (5 of 1908), Order 7 Rule 11 - Cause of action - Election petition filed challenging the election on the ground of non-compliance of rules, and intermixing of postal ballot boxes - Held - Respondent already filed written statement - Cause of action in petition challenging election on the ground of corrupt practice cannot be equated with cause of action in the case in hand. [Kusum Singh Mehdele Vs. Shri Shrikant Dubey] ...*44

Civil Procedure Code (5 of 1908), Order 8 Rule 1 - Written statement - Case fixed for filing of written statement - Defendant

के आधार पर बिंदुओं को उठाने की अनुज्ञा दे सकती है जब तक कि तद्वारा विरोधी पक्षकार पर तात्त्विक रूप से प्रतिकूल प्रभाव न पड़ता हो — पहला अधिकारिता के प्रश्न से संबंधित है और दूसरा प्रक्रिया से। (रमेशचंद्र वि. कमल किशोर) ...*15

सिविल प्रक्रिया संहिता (1908 का 5), आदेश 6 नियम 5, आदेश 11 नियम 16 — अधिक अच्छी विशिष्टियाँ — वादी ने अभिवचन किया कि पुनः विक्रय का करार वादी के पक्ष में निष्पादित किया गया — यह तथ्य कि उक्त करार प्रतिवादी द्वारा नये करार के समय वापस ले लिया गया, तात्त्विक विशिष्ट है — प्रतिवादी आदेश 11 नियम 16 के अंतर्गत उसे पेश करने के लिए कदम उठा सकता था — इसके अतिरिक्त वह उक्त करार का शपथ पर प्रकटीकरण चाहते हुए आवेदन प्रस्तुत कर सकता था — वह अतिरिक्त और अधिक अच्छी विशिष्टियाँ अभिप्राप्त करने के लिये आदेश 6 नियम 5 के अंतर्गत आवेदन प्रस्तुत कर सकता था। (रमेशचंद्र वि. कमल किशोर) ...*15

सिविल प्रक्रिया संहिता (1908 का 5), आदेश 6 नियम 17 — लिखित कथन का संशोधन — प्रतिवादी ने सम्पूर्ण लिखित कथन का प्रतिस्थापन चाहने वाला आवेदन इस आधार पर प्रस्तुत किया कि उसे उसके वकील द्वारा उसकी जानकारी के बिना प्रस्तुत किया गया और अभिवचन तथ्य के विपरीत हैं — अभिनिर्धारित — उसके साथ कपट किये जाने का कोई अभिकथन नहीं — लिखित कथन के प्रत्येक पृष्ठ पर याची के हस्ताक्षर हैं — याची ने जो स्वी.ति लिखित कथन में प्रस्तुत की थी, उसे वह ऐसे लिखित कथन को नये लिखित कथन से प्रतिस्थापित कर वापस नहीं ले सकता — याचिका खारिज। (दिलीप भारती वि. श्रीमति मीराबाई) (DB)...406

सिविल प्रक्रिया संहिता (1908 का 5), आदेश 6 नियम 18 — ग्रीष्मकालीन अवकाश में न्यायालयों का बंद होना और याची के परिवार के सदस्य का दुःखद निधन संशोधन समाविष्ट करने का समय बढ़ाने के लिए पर्याप्त और अच्छे कारण हो सकते हैं। (राम बाबू वि. श्रीकृष्ण) (DB)...671

सिविल प्रक्रिया संहिता (1908 का 5), आदेश 7 नियम 11 — वाद हेतुक — नियमों के अपालन एवं डाक मत पेटियों के अन्तर्भिश्चित हो जाने के आधार पर चुनाव को चुनौती देते हुये निर्वाचन याचिका दाखिल की गयी — अभिनिर्धारित — प्रत्यर्थी ने पूर्व में ही लिखित कथन प्रस्तुत कर दिया — याचिका में चुनाव को दूषित कार्यप्रणाली के आधार पर चुनौती देने के वाद हेतुक को प्रस्तुत प्रकरण के वाद हेतुक के समान नहीं माना जा सकता। (कुसुम सिंह मेहदेले वि. श्री श्रीकांत दुबे) ...*44

सिविल प्रक्रिया संहिता (1908 का 5), आदेश 8 नियम 1 — लिखित कथन — मामला लिखित कथन प्रस्तुत करने के लिए नियत — प्रतिवादी सायं 4 बजे तक

absent upto 4 p.m. when ex parte proceedings were drawn - Later on defendant filing written statement and counter claim on the same day - Trial Court was justified in taking the same on record - Insertion of a sentence in order sheet about closure of defendant's right to submit written statement without initials of presiding judge is inconsequential .[Gulzarilal jain Vs. Ravikant Shirke] (DB)...*24

Civil Procedure Code (5 of 1908), Order 8 Rule 6A - Counter claim
- Defendant filing counter claim for eviction against plaintiff as well as against co-defendant - Such counter claim is maintainable - Counter claim solely against co-defendant is not maintainable. [Gulzarilal jain Vs. Ravikant Shirke] (DB)...*24

Civil Procedure Code (5 of 1908), Order 9 Rule 9 - Restoration of suit - Suit dismissed due to gross-negligence of next friend of minor - Suit liable to be restored.[Harishankar Arora Vs. Smt. Vedbati]...*25

Civil Procedure Code (5 of 1908), Order 9 Rule 13 - Absence of counsel
- Counsel did not appear on one date - Before proceeding ex parte against applicant, a fresh notice of hearing by fixing a date was required to be given. [Pushkar Singh Tomar Vs. K.P. Sharma] ...*46

*Civil Procedure Code (5 of 1908), Order 9 Rule 13, Municipal Corporation Act, M.P. 1956, Section 441-F(2) - Application for setting aside ex parte decree and revision under Act, 1956 simultaneously filed - Application for setting aside ex parte decree withdrawn without liberty to raise such grounds in other pending proceedings - Such grounds cannot be allowed to be raised in revision. [Pushkar Singh Tomar Vs. K.P. Sharma] ...*46*

Civil Procedure Code (5 of 1908), Order 11 Rule 12 - Every document which will throw any light on the case is a document relating to a matter in dispute in the proceedings, though it might not be admissible in evidence. [Narendra Gole Vs. Ram Krishna Sharma] (DB)...682

Civil Procedure Code (5 of 1908), Order 14 Rule 5 - Issues already framed by trial Court cover the proposed issues - Trial Court did not commit any error in rejecting the application.[Khamir Singh Vs. Radheshyam Bansal] (DB)...387

अनुपस्थित रहा जब एकपक्षीय कार्यवाही लेखबद्ध की गयी — बाद में प्रतिवादी ने उसी दिन लिखित कथन तथा प्रतिदावा प्रस्तुत किया — विचारण न्यायालय द्वारा उसे अभिलेख पर लिया जाना न्यायसंगत — आदेश पत्रिका में पीठासीन न्यायाधीश के हस्ताक्षर बिना प्रतिवादी के लिखित कथन प्रस्तुत करने के अधिकार की समाप्ति के सम्बन्ध में वाक्य जोड़ना महत्वहीन है। (गुलजारीलाल जैन वि. रविकांत शिरके) (DB)...*24

सिविल प्रक्रिया संहिता (1908 का 5), आदेश 8 नियम 6ए — प्रतिदावा — प्रतिवादी द्वारा वादी तथा सह-प्रतिवादी के विरुद्ध बेदखली का प्रतिदावा प्रस्तुत — ऐसा प्रतिदावा पोषणीय है — केवल सह-प्रतिवादी के विरुद्ध प्रतिदावा पोषणीय नहीं है। (गुलजारीलाल जैन वि. रविकांत शिरके) (DB)...*24

सिविल प्रक्रिया संहिता (1908 का 5), आदेश 9 नियम 9 — वाद का पुनःस्थापन — अवयस्क के वाद मित्र की घोर उपेक्षा के कारण वाद खारिज — वाद पुनःस्थापन किये जाने योग्य है। (हरीशंकर अरोरा वि. श्रीमति वेदवती) ...*25

सिविल प्रक्रिया संहिता (1908 का 5), आदेश 9 नियम 13 — अधिवक्ता की अनुपस्थिति — एक तारीख पर अधिवक्ता उपस्थित नहीं हुआ — आवेदक के विरुद्ध एकपक्षीय कार्यवाही करने से पूर्व, तारीख नियत कर सुनवाई की नई सूचना देना अपेक्षित था। (पुष्कर सिंह तोमर वि. के.पी. शर्मा) ...*46

सिविल प्रक्रिया संहिता (1908 का 5), आदेश 9 नियम 13, नगरपालिक निगम अधिनियम, म.प्र. 1956, धारा 441-एफ(2) — एक पक्षीय डिक्री अपास्त किये जाने के लिए आवेदन तथा अधिनियम, 1956 के अंतर्गत पुनरीक्षण एक साथ प्रस्तुत — एक पक्षीय डिक्री अपास्त किये जाने के लिए प्रस्तुत आवेदन ऐसे आधारों को अन्य लंबित कार्यवाहियों में उठाये जाने की स्वतंत्रता के बिना वापस ले लिया गया — ऐसे आधारों को पुनरीक्षण में उठाये जाने की अनुमति नहीं दी जा सकती। (पुष्कर सिंह तोमर वि. के.पी. शर्मा) ...*46

सिविल प्रक्रिया संहिता (1908 का 5), आदेश 11 नियम 12 — प्रत्येक दस्तावेज जो मामले पर कोई प्रकाश डालता है, वह कार्यवाही में विवादित विषय से संबंधित दस्तावेज है, यद्यपि वह साक्ष्य में ग्राह्य न हो। (नरेन्द्र गोले वि. रामकृष्ण शर्मा)(DB)...682

सिविल प्रक्रिया संहिता (1908 का 5), आदेश 14 नियम 5 — विचारण न्यायालय द्वारा पूर्व से विरचित विवाद्यक प्रस्तावित विवाद्यकों को आच्छादित करते हैं — विचारण न्यायालय ने आवेदन नामंजूर करने में कोई त्रुटि नहीं की। (खमीर सिंह वि. राघेश्याम बंसल) (DB)...387

Civil Procedure Code (5 of 1908), Order 18 Rule 4 & 13 - See - Municipal Corporation Act, M.P., 1956, Section 441-C [Pushkar Singh Tomar Vs. K.P. Sharma] ...*46

Civil Procedure Code (5 of 1908), Order 23 Rule 3 - Compromise - Where it is alleged by one party and denied by other party about compromise, the Court has to decide the question, but for that no adjournment should be granted, unless the Court for reasons to be recorded, thinks fit to grant such adjournment. [Arjun Singh Vs. Vardibai] ...448

Civil Procedure Code (5 of 1908), Order 23 Rule 3-A - If a person is not a party to the decree and the decree is void, then certainly a suit is maintainable and the bar of Order 23 Rule 3-A would not be applicable in that case. [Santosh Kumar Vs. Hachchu] ...*17

Civil Procedure Code (5 of 1908), Order 29 Rule 1 - See - Transfer of Property Act, 1882, Section 106 [Dena Bank Vs. Municipal Corporation, Burhanpur] ...466

Civil Procedure Code (5 of 1908), Order 32 Rule 3 - Next friend - Court is guardian of minor and is obliged to take care of minor's interest - Next friend remaining persistently absent - Court not to dismiss the suit in default, but may appoint another next friend to protect minor's interest. [Harishankar Arora Vs. Smt. Vedbati]...*25

Civil Procedure Code (5 of 1908), Order 39 Rule 1 & 2, Contract Act, 1872, Section 55 - Suit for specific performance of agreement of sale of land - Entire consideration amount received by defendant - Agreement nowhere records the specific time within which sale deed was to be executed - Suit filed within limitation of refusal of performance of contract - Held - Time was not essence of contract - Plaintiff being in possession and plea of limitation being raised, the status quo as was existing on the date of institution of suit ought to have been ordered by trial Court - Order rejecting application under Order 39 Rule 1 & 2 set aside - Appeal allowed. [Saroj Gautam (Smt.) Vs. Laxmi Prasad] ...*18

Civil Procedure Code (5 of 1908), Order 39 Rule 1 & 2 - Temporary injunction against alienation of Hindu Undivided Family Property -

सिविल प्रक्रिया संहिता (1908 का 5), आदेश 18 नियम 4 व 13 — देखे — नगरपालिक निगम अधिनियम, म.प्र., 1956, धारा 441—सी (पुष्कर सिंह तोमर वि. के. पी. शर्मा)
...*46

सिविल प्रक्रिया संहिता (1908 का 5), आदेश 23 नियम 3 — समझौता — जहाँ एक पक्षकार द्वारा समझौते के बारे में अभिकथन किया जाता है तथा अन्य पक्षकार द्वारा इंकार किया जाता है, वहाँ न्यायालय को प्रश्न का विनिश्चय करना होगा, किन्तु उसके लिये कोई स्थगन तब तक प्रदत्त नहीं किया जाना चाहिए जब तक न्यायालय अभिलिखित किये जाने वाले कारणों से ऐसा स्थगन प्रदत्त करना उचित नहीं समझता हो। (अर्जुन सिंह वि. वर्दी बाई)
...448

सिविल प्रक्रिया संहिता (1908 का 5), आदेश 23 नियम 3—ए — यदि कोई व्यक्ति डिक्री का पक्षकार नहीं है और डिक्री शून्य है, तब निश्चित रूप से वाद पोषणीय है और आदेश 23 नियम 3—ए का वर्जन उस मामले में लागू नहीं होगा। (संतोष कुमार वि. हच्छू)
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सिविल प्रक्रिया संहिता (1908 का 5), आदेश 29 नियम 1 — देखें — सम्पत्ति अन्तरण अधिनियम, 1882, धारा 106 (देना बैंक वि. म्युनिसिपल कॉरपोरेशन, बुरहानपुर)
...466

सिविल प्रक्रिया संहिता (1908 का 5), आदेश 32 नियम 3 — वाद मित्र — न्यायालय अवयस्क का संरक्षक है तथा अवयस्क के हित का ध्यान रखने हेतु बाध्य है — वाद मित्र बार-बार अनुपस्थित रहा — न्यायालय को व्यतिक्रम में वाद खारिज नहीं करना चाहिए, बल्कि अवयस्क के हित के संरक्षण के लिए दूसरा वाद मित्र नियुक्त कर सकता है। (हरीशंकर अरोरा वि. श्रीमति वेदवती)
...*25

सिविल प्रक्रिया संहिता (1908 का 5), आदेश 39 नियम 1 व 2, संविदा अधिनियम, 1872, धारा 55 — भूमि विक्रय के करार के विनिर्दिष्ट पालन के लिए वाद — प्रतिवादी द्वारा सम्पूर्ण प्रतिफल प्राप्त कर लिया गया — करार में कहीं भी विनिर्दिष्ट समय अभिलिखित नहीं जिसके भीतर विक्रय विलेख निष्पादित किया जाना था — वाद संविदा के पालन से इनकारी से परिसीमा के भीतर दाखिल किया गया — अभिनिर्धारित — समय संविदा का सार नहीं था — वादी के कब्जे में होने और परिसीमा का अभिवचन उठाये जाने से विचारण न्यायालय द्वारा वाद संस्थित किये जाने की तारीख को विद्यमान यथास्थिति आदेशित की जानी चाहिए थी — आदेश 39 नियम 1 व 2 के अन्तर्गत आवेदन नामंजूर करने वाला आदेश अपास्त — अपील मंजूर। (सरोज गौतम (श्रीमति) वि. लक्ष्मी प्रसाद)
...*18

सिविल प्रक्रिया संहिता (1908 का 5), आदेश 39 नियम 1 व 2 — हिन्दू अविभाजित परिवार की सम्पत्ति के अन्य संक्रामण के विरुद्ध अस्थायी व्यादेश — वाद

Suit property which is recorded jointly in the name of plaintiff and defendants No.1 & 2, for the purpose of deciding the application of temporary injunction, shall be deemed to be the property of HUF. [Dharmdev Singh Rajput Vs. Kavindra Singh] (DB)...676

Civil Procedure Code (5 of 1908), Order 39 Rule 1 & 2 - Temporary injunction restraining appellant using trade mark - Appellant has not independent right to use trade mark which is owned by respondent - Use of trade mark is permissive - Order of trial Court justified - Appeal dismissed. [Pushpa Berry (Smt.) Vs. Shri Mahila Girh Udyog Lijjat Padad] ...*14

Civil Procedure Code (5 of 1908), Order 41 Rule 5 - First appellate Court while allowing the application, directed the appellant to deposit mesne profit at the rate of Rs.7000/- p.m. - *Held* - While exercising power under Order 41 Rule 5, the appellate Court did not err in imposing the condition as there is overwhelming material placed on record that the suit shop would fetch more than the rent of Rs.7000/- p.m. if it is let out today - Petition dismissed. [Shabbar Hussain Vs. Ramdayal] (DB)...*35

Civil Services (Classification, Control and Appeal) Rules, M.P. 1966, Rules 29(1) & 31 - Non obstante clause in Rule 29(1) will have overriding effect over the provisions of Rule 31 and except for in cases falling under Rule 11, nothing in the Rule 31 will apply to a proceeding under Rule 29. [Rajesh Henry Vs. State of M.P.] ...96

Civil Services (Classification, Control and Appeal) Rules, M.P. 1966, Rules 29(1) & 31 - *Review* - The competent authority exercising power under Rule 29 has to take a decision for reviewing the matter within a period of six months from the date of passing of the order proposed to be reviewed and thereafter the proceedings for review can continue till finalization - The action for review taken after six months could be unsustainable - Particularly where no plausible explanation or justification is given for the delay warranting its relaxation or condonation. [Rajesh Henry Vs. State of M.P.] ...96

Commercial Tax Act, M.P. 1994 (5 of 1995), Section 2(u) - *Sale price* - *Transit fee* - Transit fee for transit of forest produce is in the form of regulatory measure and same is required to be paid along

सम्पत्ति जो कि वादी एवं प्रतिवादी क्र. 1 एवं 2 के नाम पर संयुक्त रूप से दर्ज थी, अस्थायी व्यादेश के आवेदन का निराकरण करने के प्रयोजन हेतु हिन्दू अविभाजित परिवार की सम्पत्ति समझी जावेगी। (धर्मदेव सिंह राजपूत वि. कवीन्द्र सिंह)(DB)...676

सिविल प्रक्रिया संहिता (1908 का 5), आदेश 39 नियम 1 व 2 - व्यापार चिह्न का प्रयोग करने से अपीलार्थी को रोके जाने हेतु अस्थायी व्यादेश - अपीलार्थी को उस व्यापार चिह्न का प्रयोग करने का स्वतन्त्र अधिकार नहीं है जो प्रत्यर्थी के स्वामित्व का है - व्यापार चिह्न का प्रयोग अनुज्ञेय है - विचारण न्यायालय का आदेश न्यायसंगत - अपील खारिज। (पुष्पा बेरी (श्रीमति) वि. श्री महिला गृह उद्योग लिज्जत पाण्डे) ...*14

सिविल प्रक्रिया संहिता (1908 का 5), आदेश 41 नियम 5 - प्रथम अपीली न्यायालय ने आवेदन मंजूर करते समय अपीलार्थी को निदेशित किया कि 7000/- रुपये मासिक की दर से अन्तःकालीन लाभ जमा करे - अभिनिर्धारित - आदेश 41 नियम 5 के अन्तर्गत शक्ति का प्रयोग करते समय अपीलीय न्यायालय ने शर्त अधिरोपित करने में त्रुटि नहीं की क्योंकि अभिलेख पर दुर्दमनीय सामग्री उपलब्ध है कि यदि वाद दुकान को आज किराये पर दिया जाता है तो उसका 7000/- रुपये मासिक से अधिक किराया प्राप्त होगा - याचिका खारिज। (शम्भार हुसैन वि. रामदयाल) (DB)...*35

सिविल सेवा (वर्गीकरण, नियंत्रण और अपील) नियम, म.प्र. 1966, नियम 29(1) व 31 - नियम 29(1) के सर्वोपरि खंड का नियम 31 के उपबंधों पर अध्यारोही प्रभाव होगा और नियम 11 के अंतर्गत आने वाले मामलों के सिवाय नियम 29 के अंतर्गत कार्यवाही को नियम 31 में से कुछ भी लागू नहीं होगा। (राजेश हेनरी वि. म.प्र. राज्य) ...96

सिविल सेवा (वर्गीकरण, नियंत्रण और अपील) नियम, म.प्र. 1966, नियम 29(1) व 31 - पुनर्विलोकन - नियम 29 के अधीन शक्ति का प्रयोग करने वाले सक्षम प्राधिकारी को पुनर्विलोकन के लिये प्रस्तावित आदेश के पारित होने की तारीख से छः महीनों के भीतर मामले का पुनर्विलोकन करने का निर्णय लेना होगा और तत्पश्चात् पुनर्विलोकन की कार्यवाहियाँ अंत तक जारी रह सकती हैं - पुनर्विलोकन के लिये छः माह बाद की गयी कार्यवाही अपोषणीय हो सकती है - विशिष्ट रूप से जहाँ विलम्ब में शिथिलता अथवा माफी देने के लिये विलम्ब का कोई युक्तियुक्त स्पष्टीकरण या न्यायोचित्य नहीं दिया गया हो। (राजेश हेनरी वि. म.प्र. राज्य) ...96

वाणिज्यिक कर अधिनियम, म.प्र., 1994 (1995 का 5), धारा 2(यू) - विक्रय मूल्य - परिवहन शुल्क - वनोपज के परिवहन हेतु परिवहन शुल्क विनियामक उपाय के रूप में है तथा रॉयल्टी के साथ उसका अग्रिम भुगतान किया जाना आवश्यक है -

with royalty in advance - Transit fee forms part of sale price - It has been rightly included in the turnover by assessing officer - Petition dismissed. [Northern Coalfields Ltd. Vs. Addl. Commissioner, Commercial Tax, Jabalpur] (DB)...*31

Commercial Tax Act, M.P. 1994 (5 of 1995), Sections 9 & 9B - Section 9B is not a part & parcel of Section 9, but is a separate Section applicable to the separate class of dealers covered by it. [Ghanshyamdas & Co. (M/s.) Vs. Commissioner of Commercial Tax, M.P.] (DB)...*6

Constitution, Article 12 - State - Judicial review - S.E.C.L. is an instrumentality of State - Action of State and its instrumentality must conform to rule of law and must be informed by reasons - Actions are subject to judicial review on touchstone of relevance, reasonableness, fair play, natural justice, equality and non-discrimination - Unfettered discretion is a sworn enemy of Constitutional Guarantee against discrimination. [Rashtriya Colliery Majdoor Congress Vs. South Eastern Coalfields Ltd.] (DB)...*364

Constitution, Articles 14 & 16 - Pick and Choose - Petitioners appointed to work in IREP whereas other employees were appointed to the services of Urja Vikas Nigam and were subsequently asked posted to work in IREP - Retention of employees appointed into the service of Nigam - *Held* - It cannot be said that the respondents have adopted the policy of pick and choose. [Vijay Kumar Bajpayee Vs. M.P. Urja Vikas Nigam Ltd.] ...*51

Constitution, Articles 14 & 16 - Right of equality - Forbids class legislation but does not forbid reasonable classification - Classification in order to be reasonable must be founded on intelligible differentia and that differentia must have rational relation to the object sought to be achieved - Object of Article 14 & 16 is to ensure equality to all those who are similarly situated. [Satyendra Pratap Singh Vs. State of M.P.] (DB)...400

Constitution, Article 16 - Reservation - If there is only one post, the same could not be reserved for a reserved candidate. [Hari Charan Soni Vs. State of M.P.] ...*8

Constitution, Article 20(2) - See - Criminal Procedure Code, 1973,

परिवहन शुल्क विक्रय मूल्य का भाग होता है — निर्धारण अधिकारी द्वारा उसे विक्रय राशि में उचित रूप से सम्मिलित किया गया है — याचिका खारिज। (नार्दन कोलफील्ड्स लि. वि. एडीशनल कमिशनर, कमर्शियल टैक्स, जबलपुर) (DB)...*31

वाणिज्यिक कर अधिनियम, म.प्र., 1994 (1995 का 5), धाराएँ 9 व 9बी — धारा 9बी धारा 9 का अभिन्न अंग नहीं है, बल्कि इसके अन्तर्गत आने वाले व्यापारियों के पृथक वर्ग को लागू एक पृथक धारा है। (घनश्यामदास एण्ड कं. (मे.) वि. कमिशनर ऑफ कमर्शियल टैक्स, एम.पी.) (DB)—*6

संविधान, अनुच्छेद 12 — राज्य — न्यायिक पुनर्विलोकन — एस.ई.सी.एल. राज्य का एक अभिकरण है — राज्य एवं उसके अभिकरण की कार्यवाही विधि के नियमानुरूप होनी चाहिए और कारणों द्वारा सूचित होनी चाहिए — कार्यवाहियाँ सुसंगति, व्यक्तियुक्तता, नियमानुरूपता, नैसर्गिक न्याय, समानता और अविभेद की कसौटी पर न्यायिक पुनर्विलोकन के अधीन हैं — बंधनमुक्त विवेकाधिकार, विभेद के विरुद्ध संवैधानिक गारंटी का घोर शत्रु है। (राष्ट्रीय कोल्लेरी मजदूर कांग्रेस वि. साउथ इस्टर्न कोलफील्ड्स लि.) (DB)...364

संविधान — अनुच्छेद 14 व 16 — छाँटना और चुनना — याचियों को आई.आर. ई.पी. में कार्य करने हेतु नियुक्त किया गया जबकि अन्य कर्मचारियों को ऊर्जा विकास निगम की सेवाओं के लिए नियुक्त किया गया और तत्पश्चात् आई.आर.ई.पी. में कार्य करने के लिए पदस्थ करने को कहा गया — निगम की सेवा में नियुक्त कर्मचारियों को रख लिया गया — अभिनिर्धारित — यह नहीं कहा जा सकता कि प्रत्यर्थियों ने छाँटने और चुनने की नीति अपनायी है। (विजय कुमार वाजपेयी वि. एम.पी. ऊर्जा विकास निगम लि.) ...*51

संविधान, अनुच्छेद 14 व 16 — समानता का अधिकार — वर्ग विधान का निषेध करता है किन्तु व्यक्तिगत वर्गीकरण का निषेध नहीं करता — वर्गीकरण, व्यक्तिगत रहने के लिये सुग्राह्य अन्तर पर आधारित होना चाहिए तथा उस अन्तर का पूर्ति किये जाने वाले उद्देश्य से व्यक्तिगत संबंध होना चाहिए — अनुच्छेद 14 एवं 16 का उद्देश्य उन सब लोगों के प्रति समानता सुनिश्चित करना है, जो समान रूप से स्थित हैं। (सत्येन्द्र प्रताप सिंह वि. म.प्र. राज्य) (DB)...400

संविधान, अनुच्छेद 16 — आरक्षण — यदि केवल एक ही पद है तो उसे आरक्षित उम्मीदवार के लिये आरक्षित नहीं रखा जा सकता। (हरिचरण सोनी वि. म.प्र. राज्य) ...*8

संविधान, अनुच्छेद 20(2) — देखें — दण्ड प्रक्रिया संहिता, 1973, धारा 300,

Section 300, [Institute of Chartered Accountants of India Vs. Vimal Kumar Surana] (DB)SC...321

Constitution, Article 21 - Blacklisting a Contractor - Is serious action as after blacklisting, he would not be able to take part in submitting tenders in future, which directly hits his right to life including right of meaningful livelihood enshrined under Article 21.[Industrial Security Association Vs. State of M.P.] (DB)...392

Constitution, Article 21 - Handcuffing of prisoners - Permission has to be obtained from concerned Magistrate before putting fetters or handcuffs to convict or undertrial prisoners - When person is arrested without warrant, the concerned police officer may handcuff him till taking to police station and thereafter to Magistrate if it is necessary to do so - After production before Magistrate, handcuff can be used only after obtaining orders from the Magistrate. [Mukesh Vs. State of M.P.] (DB)...*11

Constitution, Article 21 - Life - Basic amenities in residential colony - Word 'life' has much wider meaning which includes right to livelihood, better standard of living, hygienic conditions in workplace and leisure - Non-providing of basic amenities in residential colony by concerned authority or agency would be violative of Article 21. [Mohd. Nanhe Vs. State of M.P.] (DB)...693

Constitution, Article 215 - Contempt - Applicant while making a prayer for expeditious disposal not apprising the Court of earlier order staying the proceedings - Such suppression may amount to contempt of Court - Contempt Petition dismissed with an exemplary cost of Rs.5000/-.[Arun Kumar Vs. S.K. Shrivastava] ...444

Constitution, Article 215 - Contempt - Further proceedings before Trial Court stayed in civil revision filed by applicant - Applicant made prayer for speedy disposal of suit in another pending civil revision - Direction for early disposal preferably within six months given - Suit decided by Trial Court accordingly - Applicant did not bring the order of stay into notice of Court - Trial Court not found to have deliberately violated the earlier stay order - No contempt is made out.[Arun Kumar Vs. S.K. Shrivastava] ...444

Constitution, Article 226 - Alternative and efficacious remedy -

(इंस्टीट्यूट ऑफ चार्टर्ड एकाउंटेंट्स ऑफ इंडिया वि. विमल कुमार सुराना) (DB)SC...321

संविधान, अनुच्छेद 21 — ठेकेदार को वर्ज्यसूची में डालना — गंभीर कार्यवाही है क्योंकि वर्ज्यसूची में डालने के बाद वह भविष्य में निविदाएँ प्रस्तुत करने में भाग लेने योग्य नहीं होगा, जो कि प्रत्यक्ष रूप से उसके जीवन के अधिकार पर प्रहार करता है जिसमें अनुच्छेद 21 के अन्तर्गत सुरक्षित महत्वपूर्ण जीविका का अधिकार भी सम्मिलित है। (इंडस्ट्रियल सिक्योरिटी एसोशियेशन वि. म.प्र. राज्य) (DB)...392

संविधान, अनुच्छेद 21 — बंदियों को हथकड़ी डालना — दोषसिद्ध या विचाराधीन बंदियों को बेड़ियाँ अथवा हथकड़ियाँ डालने से पूर्व संबंधित मजिस्ट्रेट से अनुमति अभिप्राप्त करनी होगी — जब व्यक्ति को वारंट के बिना गिरफ्तार किया जाता है, तब संबंधित पुलिस अधिकारी उसे पुलिस थाना और तत्पश्चात् मजिस्ट्रेट के समक्ष ले जाने तक उसे हथकड़ी डाल सकता है, यदि ऐसा करना आवश्यक हो — मजिस्ट्रेट के समक्ष प्रस्तुत करने के पश्चात्, केवल मजिस्ट्रेट से आदेश अभिप्राप्त करने पर ही हथकड़ी का प्रयोग किया जा सकता है। (मुकेश वि. म.प्र. राज्य) (DB)---*11

संविधान, अनुच्छेद 21 — जीवन — आवासिक कॉलोनी में मूलभूत सुविधाएँ — शब्द 'जीवन' का बहुत व्यापक अर्थ है जिसमें जीविका का अधिकार, निर्वाह का बेहतर स्तर, कार्यस्थल में स्वास्थ्यकर हालात तथा अवकाश सम्मिलित है — सम्बंधित प्राधिकारी अथवा एजेंसी द्वारा आवासिक कॉलोनी में मूलभूत सुविधाएँ प्रदान न करना अनुच्छेद 21 का उल्लंघन होगा। (मोहम्मद नन्हे वि. म.प्र. राज्य) (DB)...693

संविधान, अनुच्छेद 215 — अवमानना — आवेदक ने शीघ्र निपटारे के लिए प्रार्थना करते समय न्यायालय को कार्यवाहियों के स्थगन के पूर्ववर्ती आदेश से अवगत नहीं कराया — इस प्रकार का छिपाव न्यायालय की अवमानना की कोटि में आ सकता है — अवमानना याचिका 5000/- रुपये के उदाहरणात्मक खर्च के साथ खारिज। (अरुण कुमार वि. एस.के. श्रीवास्तव) ...444

संविधान, अनुच्छेद 215 — अवमानना — आवेदक द्वारा प्रस्तुत सिविल पुनरीक्षण में विचारण न्यायालय के समक्ष की अग्रिम कार्यवाहियाँ स्थगित — अन्य लम्बित सिविल पुनरीक्षण में आवेदक ने वाद के शीघ्र निपटारे के लिए प्रार्थना की — वरीयता से छः माह के अन्दर शीघ्र निपटारे के लिए निदेश दिये गये — तदनुसार विचारण न्यायालय द्वारा वाद का विनिश्चय किया गया — आवेदक स्थगन आदेश न्यायालय के ध्यान में नहीं लाया — विचारण न्यायालय द्वारा जानबूझकर पूर्व स्थगन आदेश का उल्लंघन किया जाना नहीं पाया गया — कोई अवमानना नहीं बनती। (अरुण कुमार वि. एस.के. श्रीवास्तव) ...444

संविधान, अनुच्छेद 226 — वैकल्पिक तथा प्रभावी उपचार — याची ने अनुशासनिक

Petitioner has challenged the disciplinary proceedings and dismissal from service - Petitioner has efficacious and alternative remedy of raising dispute u/s 2(A) of Industrial Disputes Act - Petition disposed off with liberty to take recourse of remedy available under Industrial Disputes Act. [Kamlesh Sharma Vs. Divisional Manager] ...703

Constitution, Article 226 - Delay & laches - Petitioner came to know about the promotion of the respondent No.5 in the year 2006 - He submitted an application dated 11.08.2006 to the Municipal Council for supply of certain documents - Thereafter he filed the present petition - The petition could not be dismissed on the ground of delay and laches. [Hari Charan Soni Vs. State of M.P.] ...*8

Constitution, Article 226 - It is not permissible to invoke jurisdiction under Article 226, by-passing the machinery designated for determination of the election dispute. [Sukhendra Singh Vs. State of M.P.] (DB)...687

Constitution, Article 226 - Judicial review - In a matter of punishment awarded by disciplinary authority, the scope of judicial review is limited and unless and until it is borne out that the punishment is shockingly disproportionate, the same cannot be interfered with while exercising writ jurisdiction under Article 226 - The scope is still more narrower in intra-court appeal. [Ramswaroop Vs. State of M.P.] (DB)...351

Constitution, Article 226 - Jurisdiction - Court exercising jurisdiction in a petition interferes with in such (service) matter only if constitutional provisions are found to be breached, rights statutory in nature taken away or action impugned is found to be in contravention of statutory rules or regulations. [Subhash Kumar Dwivedi Vs. State of M.P.] ...441

Constitution, Article 226, Payment of Wages Act, 1936, Sections 9(2) & 15 - Writ Petition - Challenging the orders proposing to make recovery of salary for the period, employees of the petitioners' union remained on strike and a further proposal to recover 8 days salary - Held - Petitioners have a efficacious statutory remedy available - No case is made out for interference - That apart enquiry into certain factual aspects of the matter are to be determined and Labour Court

कार्यवाही तथा सेवा से बर्खास्तगी को चुनौती दी - याची के पास औद्योगिक विवाद अधिनियम की धारा 2(ए) के अन्तर्गत विवाद प्रस्तुत करने का प्रभावी तथा वैकल्पिक उपचार है - याचिका औद्योगिक विवाद अधिनियम के अन्तर्गत उपलब्ध उपचार का आश्रय लेने की स्वतंत्रता के साथ निरात। (कमलेश शर्मा वि. डिवीजनल मैनेजर) ...703

संविधान, अनुच्छेद 226 - विलम्ब एवं उपेक्षा - याची को प्रत्यर्थी क्र. 5 की पदोन्नति के बारे में वर्ष 2006 में पता लगा - उसने कतिपय दस्तावेज प्रदाय करने के लिए नगर पालिका परिषद में आवेदन पत्र दिनांक 11.08.2006 प्रस्तुत किया - उसके पश्चात उसने वर्तमान याचिका प्रस्तुत की - याचिका विलम्ब एवं उपेक्षा के आधार पर खारिज नहीं की जा सकती। (हरिचरण सोनी वि. म.प्र. राज्य) ...*8

संविधान, अनुच्छेद 226 - निर्वाचन विवाद के अवधारण के लिये विहित तंत्र की अवहेलना कर, अनुच्छेद 226 के अंतर्गत अधिकारिता का अवलंब लेना अनुज्ञेय नहीं है। (सुखेन्द्र सिंह वि. म.प्र. राज्य) (DB)...687

संविधान, अनुच्छेद 226 - न्यायिक पुनर्विलोकन - अनुशासनात्मक प्राधिकारी द्वारा दिये गये दण्ड के मामले में न्यायिक पुनर्विलोकन का विस्तार सीमित है तथा यदि और जब तक यह धारित नहीं किया जाए कि दण्ड आघातीय रूप से अनुपातहीन है, तब तक अनुच्छेद 226 के अन्तर्गत रिट अधिकारिता का प्रयोग करते समय उसमें हस्तक्षेप नहीं किया जा सकता - अन्तःन्यायालयीन अपील में अब तक विस्तार अति संकीर्ण है। (रामस्वरूप वि. म.प्र. राज्य) (DB)...351

संविधान, अनुच्छेद 226 - अधिकारिता - किसी याचिका में अधिकारिता का प्रयोग करने वाला न्यायालय ऐसे (सेवा) मामलों में तभी हस्तक्षेप करेगा यदि संवैधानिक उपबंधों का उल्लंघन होना पाया जाता है, कानूनी प्र.ति के अधिकारों का हनन होता है अथवा आक्षेपित कार्यवाही कानूनी नियमों या विनियमों की उल्लंघनकारी होनी पायी जाती है। (सुभाष कुमार द्विवेदी वि. म.प्र. राज्य) ...441

संविधान, अनुच्छेद 226, मजदूरी संदाय अधिनियम, 1936, धाराएँ 9(2) व 15 - रिट याचिका - अवधि, जिस दौरान याची संघ के कर्मचारी हड़ताल पर रहे, के वेतन की वसूली करने के लिए प्रस्तावित आदेश और 8 दिनों के वेतन की वसूली के एक और प्रस्ताव को चुनौती देकर - अभिनिर्धारित - याचियों के पास प्रभावी कानूनी उपचार उपलब्ध है - हस्तक्षेप के लिए कोई मामला नहीं बनता - इसके अलावा मामले के कतिपय तथ्यात्मक पहलुओं पर जांच कर निर्धारण करना है और श्रम

can deal in the matter more properly - Petition dismissed. [Hind Khadan Mazdoor Federation Vs. Coal India Ltd.] ...147

Constitution, Article 226 - Policy matter - Judicial review - If policy is irrational, arbitrary or perverse, interference can be made by Court in exercise of powers of judicial review. [Rashtriya Colliery Majdoor Congress Vs. South Eastern Coalfields Ltd.] (DB)...364

Constitution, Article 226 - Public Interest Litigation - Maintainability - Direction prayed for to take suitable action against the Tahsildar for alleged various financial irregularities - *Held* - The allegations made by the petitioner required to be enquired into in the appropriate forum by detailed enquiry and the petitioner has remedy, at first instance, to agitate his grievance under the provisions of the M.P. Lokayukt and Up-Lokayukt Adhiniyam, 1981 - In such a case, the Public Interest Litigation should not be entertained - Petition dismissed. [Kanhaiyalal Vishwakarma Vs. State of M.P.](DB)...124

Constitution, Article 226 - Reasons given that why State has not considered to give recognition to such system of medicine (Electro Homeopathy) - Court cannot compel State Government to legislate to recognize particular system of medicine. [Bhartiya Alternative Medical Foundation Vs. State of M.P.] (DB)...84

Constitution, Article 226 - See - Service Law [R.R. Nihare Vs. State of M.P.] (DB)...111

Constitution, Article 226, State Bank of India Act, 1955, Sections 35(1) & 35(2) - Petition challenging acquisition of State Bank of Indore by State Bank of India - *Held* - Procedure u/s 35(1) & 35(2) of State Bank of India Act, 1955 has been followed - Acquisition order u/s 35(2) of the Act, 1955 has been issued by Central Government and majority of share holders, officers, employees of State Bank of Indore have not agitated any grievance before Grievance Redressal Forum - Petition dismissed.[All India Bank Officers' Association Vs. State Bank of India] (DB)...*22

Constitution, Article 226 - Territorial jurisdiction - Cause of action - Letter issued by General Manager from Bilaspur, S.E.C.L. challenged - Check-off facility is not available only at headquarter level - It is prevalent at various unit sub areas - Collieries of

न्यायालय मामले को मली प्रकार निपटा सकता है - याचिका खारिज। (हिन्द खदान मजदूर फेडरेशन वि. कोल इंडिया लि.) ...147

संविधान, अनुच्छेद 226 - नीति संबंधी विषय - न्यायिक पुनर्विलोकन - यदि नीति असंगत, मनमानी या विपर्यस्त है, तो न्यायालय द्वारा न्यायिक पुनर्विलोकन की शक्तियों के प्रयोग में हस्तक्षेप किया जा सकता है। (राष्ट्रीय कोल्यैरी मजदूर कांग्रेस वि. साउथ इस्टर्न कोलफील्ड्स लि.) (DB)...364

संविधान, अनुच्छेद 226 - लोकहित वाद - पोषणीयता - कथित विविध वित्तीय अनियमितताओं के लिए तहसीलदार के विरुद्ध उचित कार्यवाही किये जाने के निदेश के लिए प्रार्थना - अभिनिर्धारित - याची द्वारा लगाये गये आरोपों की विस्तृत जाँच उचित अधिकरण में करायी जानी अपेक्षित थी तथा याची के पास प्रथम बार में म.प्र. लोकायुक्त एवं उप-लोकायुक्त अधिनियम, 1981 के अन्तर्गत अपनी शिकायत प्रस्तुत करने का उपचार उपलब्ध है - ऐसे मामले में लोकहित वाद ग्रहण नहीं किया जाना चाहिये - याचिका खारिज। (कन्हैयालाल विश्वकर्मा वि. म.प्र. राज्य) (DB)...124

संविधान, अनुच्छेद 226 - कारण दिये गये कि राज्य ने ऐसी औषधि प्रणाली (इलेक्ट्रो होम्योपैथी) को मान्यता देने हेतु विचार क्यों नहीं किया - न्यायालय राज्य सरकार को विशेष औषधि प्रणाली को मान्यता देने हेतु विधि बनाने के लिए विवश नहीं कर सकता। (भारतीय अल्टरनेटिव मेडिकल फाउन्डेशन वि. म.प्र. राज्य)(DB)—84

संविधान, अनुच्छेद 226 - देखें - सेवा विधि (आर.आर. निहारे वि. म.प्र. राज्य) (DB)---111

संविधान, अनुच्छेद 226, भारतीय स्टेट बैंक अधिनियम, 1955, धाराएँ 35(1) व 35(2) - भारतीय स्टेट बैंक द्वारा स्टेट बैंक ऑफ इन्दौर के अर्जन को चुनौती देने वाली याचिका - अभिनिर्धारित - भारतीय स्टेट बैंक अधिनियम की धारा 35(1) व 35(2) के अन्तर्गत प्रक्रिया का पालन किया गया है - अधिनियम, 1955 की धारा 35(2) के अन्तर्गत अर्जन आदेश केन्द्र सरकार द्वारा जारी किया गया है तथा स्टेट बैंक ऑफ इन्दौर के अधिकांश अंशधारियों, अधिकारियों, कर्मचारियों ने शिकायत निवारण मंच के समक्ष कोई शिकायत प्रस्तुत नहीं की है - याचिका खारिज। (ऑल इंडिया बैंक ऑफीसर्स एसोशियेशन वि. स्टेट बैंक ऑफ इंडिया) (DB)...*22

संविधान, अनुच्छेद 226 - क्षेत्रीय अधिकारिता - वाद हेतुक - बिलासपुर, एस. ई.सी.एल. से महाप्रबंधक द्वारा जारी पत्र को चुनौती - केवल मुख्यालय स्तर पर चैक-ऑफ सुविधा उपलब्ध नहीं है - वह अनेक उपक्षेत्रों की इकाईयों में विद्यमान -

respondent No.1 also situated within State of M.P. - Part of cause of action has arisen within territorial jurisdiction of Court - High Court of M.P. has territorial jurisdiction to adjudicate the controversy. [Rashtriya Colliery Majdoor Congress Vs. South Eastern Coalfields Ltd.] (DB)...364

Constitution, Article 226 - Validity of Rule - Challenge as to validity of rule can be entertained only where it is found that it suffers from legal infirmity, being wholly beyond the scope of rule making power, or being inconsistent with any provision of Parent Act or amounts to infraction of any provision of Constitution. [Pooja Mathur (Dr.) Vs. State of M.P.] (DB)...410

Constitution, Article 226 - Vires - Challenged as to a provision - Held - In absence of any foundation in the pleadings with regard to the provision, vires of the provision cannot be examined. .[All India Bank Officers' Association Vs. State Bank of India] (DB)...*22

Constitution, Article 226 - Vires of G.O.P. dated 07.06.2008 (new policy of promotion) challenged on ground that the same is discriminatory, arbitrary and violative of Article 14 - Held - Policy introduced with the object of betterment of the force and to promote energetic persons who can deal with in the difficult law and order situations on the field. The aforesaid classification has been made by taking into account the factor of physical efficiency, ability and nature of duties. Thus, the classification cannot be said arbitrary or unreasonable. [Satyendra Pratap Singh Vs. State of M.P.] (DB)...400

Constitution, Article 226 - Writ of quo warranto - Can be issued by the Court when a person in a public office has been appointed in violation of statutory provisions - Availability of an alternative remedy is not a bar. [Virendra Tyagi Vs. State of M.P.] ...117

Constitution, Article 226 - Writ Petition - Challenging blacklisting a Contractor - Before taking a drastic and harsh action of blacklisting a Contractor, an opportunity of hearing should have been provided, and having not done so, he is entitled to relief. [Industrial Security Association Vs. State of M.P.] (DB)...392

Constitution, Article 226 - Writ Petition - Return filed by State - State cannot take whatever stand they want to take on the same set

प्रत्यर्थी क्र. 1 की कोयला खानें भी म.प्र. राज्य के भीतर स्थित — वाद हेतुक का माग न्यायालय की अधिकारिता के भीतर उत्पन्न हुआ है — म.प्र. उच्च न्यायालय को संविवाद न्यायानिर्णीत करने की क्षेत्रीय अधिकारिता है। (राष्ट्रीय कोल्लेरी मजदूर कांग्रेस वि. साउथ इस्टर्न कोलफील्ड्स लि.) (DB)...364

संविधान, अनुच्छेद 226 — नियम की विधिमान्यता — नियम की विधिमान्यता संबंधी चुनौती को केवल वहीं ग्रहण किया जा सकता है जहाँ यह पाया जाता है कि वह नियम बनाने की शक्ति के विषयक्षेत्र से पूर्णतः परे होकर अथवा मूल अधिनियम के किसी उपबंध से असंगत होकर किसी विधिक दोष से ग्रसित है अथवा संविधान के किसी उपबंध के उल्लंघन की कोटि में आता है। (पूजा माथुर (डॉ.) वि. म.प्र. राज्य) (DB)...410

संविधान, अनुच्छेद 226 — शक्तिमत्ता — किसी उपबंध के बारे में चुनौती — अभिनिर्धारित — उपबंध के संबंध में अभिवचनों में किसी आधार के अभाव में उपबंध की शक्तिमत्ता का परीक्षण नहीं किया जा सकता। (ऑल इंडिया बैंक ऑफीसर्स एसोशियेशन वि. स्टेट बैंक ऑफ इंडिया) (DB)...*22

संविधान, अनुच्छेद 226 — जी.ओ.पी. तारीख 07.06.2008 (पदोन्नति की नवीन नीति) की शक्तिमत्ता को इस आधार पर चुनौती दी गयी कि यह विभेदकारी, मनमानी तथा संविधान के अनुच्छेद 14 की उल्लंघनकारी है — अभिनिर्धारित — नीति बल की बेहतरी के तथा ऊर्जावान व्यक्तियों, जो क्षेत्र में कठिन कानून एवं व्यवस्था की स्थितियों से निपट सकें, को प्रोत्साहित करने के उद्देश्य से पेश की गयी। पूर्वोक्त वर्गीकरण शारीरिक क्षमता, काबिलियत तथा कर्तव्य की प्रति के कारक का ध्यान रखकर किया गया है। इस प्रकार वर्गीकरण मनमाना अथवा अयुक्तियुक्त नहीं कहा जा सकता। (सत्येन्द्र प्रताप सिंह वि. म.प्र. राज्य) (DB)...400

संविधान, अनुच्छेद 226 — अधिकार पृच्छा की रिट — न्यायालय द्वारा तब जारी की जा सकती है जब कोई व्यक्ति किसी लोक पद पर कानूनी उपबंधों के उल्लंघन में नियुक्त किया गया हो — वैकल्पिक उपधार की उपलब्धता वर्जन नहीं है। (वीरेन्द्र त्यागी वि. म.प्र. राज्य) ...117

संविधान, अनुच्छेद 226 — रिट याचिका — ठेकेदार को वर्ज्यसूची में डालने को चुनौती — ठेकेदार को वर्ज्यसूची में डालने की कड़ी और कठोर कार्यवाही करने से पूर्व सुनवाई का एक अवसर दिया जाना चाहिए था और ऐसा न किये जाने से, वह अनुतोष का हकदार है। (इंडस्ट्रियल सिक्वोरिटी एसोशियेशन वि. म.प्र. राज्य)(DB)...392

संविधान, अनुच्छेद 226 — रिट याचिका — राज्य द्वारा रिटर्न प्रस्तुत — राज्य भिन्न समय बिन्दुओं पर एक समान नियमों तथा समान तथ्यों पर जो कुछ आधार वह

of rules and on same facts at different points of time. [Shyam Narayan Sharma Vs. State of M.P.] (DB)...*36

Constitution, Articles 226 & 227, Uchcha Nyayalaya (Khand Nyaypeeth Ko Appeal) Adhiniyam, M.P. 2005 (14 of 2006), Section 2(1) - Writ petition under Article 226 as well as 227 seeking the writ of certiorari for quashing of the order passed by Board of Revenue and a declaration that the auction of agricultural land by Tahsildar is illegal & invalid - Held - The order passed by the learned Single Judge is in exercise of powers under Article 226 and an appeal against the said order is maintainable. [Sadhna Chourasia (Smt.) Vs. Panjab National Bank] (DB)...61

Constitution, Article 311 - Equivalency of two posts - Not to be judged by sole fact of equal pay but many factors other than pay will have to be taken into consideration like (i) nature and duties of a post, (ii) responsibilities and powers exercised by officer holding post, (iii) extent of territorial or other charge held or responsibilities discharged, (iv) minimum qualification prescribed for recruitment, (v) Salary. [Shyam Narayan Sharma Vs. State of M.P.] (DB)...*36

Constitution, Article 311 - Executive policy - When executive power of Union of India is not trammelled by any statute or rule is wide, and pursuant to its power, it can make executive policy. [Shyam Narayan Sharma Vs. State of M.P.] (DB)...*36

Constitution, Article 311 - Merger of two departments - Merger is essentially a policy decision. [Shyam Narayan Sharma Vs. State of M.P.] (DB)...*36

Constitution, Article 311 - Policy decision - Questions relating to constitution, pattern, nomenclature of posts, cadres, categories, their creation/abolition, prescription of qualifications and other conditions of service including avenues of promotions and criteria for promotion pertain to the field of policy which is exclusive discretion and jurisdiction of State Government. [Shyam Narayan Sharma Vs. State of M.P.] (DB)...*36

Constitution, Article 311 - See - Education Service (School Branch) Recruitment and Promotion Rules, M.P. 1982, [Shyam Narayan Sharma Vs. State of M.P.] (DB)...*36

लेना चाहता है, नहीं ले सकता। (श्याम नारायण शर्मा वि. म.प्र. राज्य) (DB)...*36

संविधान, अनुच्छेद 226 व 227, उच्च न्यायालय (खण्ड न्यायपीठ को अपील) अधिनियम, म.प्र. 2005 (2006 का 14), धारा 2(1) — अनुच्छेद 226 तथा 227 के अन्तर्गत रिट याचिका राजस्व मण्डल द्वारा पारित आदेश को अभिखण्डित किये जाने हेतु उत्प्रेषण की रिट और यह घोषणा चाहते हुए कि तहसीलदार द्वारा कृषि भूमि की नीलामी अवैध एवं अविधिमान्य है — अभिनिर्धारित — एकल न्यायाधीश द्वारा पारित आदेश अनुच्छेद 226 के अन्तर्गत शक्तियों के प्रयोग में है तथा उक्त आदेश के विरुद्ध अपील पोषणीय है। (साधना चौरसिया (श्रीमति) वि. पंजाब नेशनल बैंक) (DB)...61

संविधान, अनुच्छेद 311 — दो पदों की समानता — सिर्फ समान वेतन के तथ्य से ही नहीं आंकी जाती बल्कि वेतन के अलावा अन्य कारकों जैसे (i) पद का स्वरूप एवं कर्तव्य, (ii) पद धारण करने वाले अधिकारी द्वारा प्रयोग किये जाने वाले उत्तरदायित्व एवं शक्तियाँ, (iii) धारित किये गये क्षेत्रीय अथवा अन्य पदभार का अथवा निर्वहन किये गये दायित्वों का विस्तार, (iv) भर्ती के लिए विहित न्यूनतम योग्यता, (v) वेतन, को भी विचार में लेना होगा। (श्याम नारायण शर्मा वि. म.प्र. राज्य) (DB)...*36

संविधान, अनुच्छेद 311 — कार्यपालक नीति — जब भारत संघ की कार्यपालिका शक्ति किसी कानून द्वारा बाधित न हो अथवा नियम व्यापक हों, तथा अपनी शक्तियों के अनुसरण में यह कार्यपालक नीति बना सकती है। (श्याम नारायण शर्मा वि. म.प्र. राज्य) (DB)...*36

संविधान, अनुच्छेद 311 — दो विभागों का विलयन — विलयन आवश्यक रूप में एक नीति निर्णय है। (श्याम नारायण शर्मा वि. म.प्र. राज्य) (DB)...*36

संविधान, अनुच्छेद 311 — नीति निर्णय — पदों के निर्माण, स्वरूप, नामावली, संवर्ग, श्रेणी, उनका सृजन/समाप्ति, योग्यता का निर्धारण तथा सेवा की अन्य शर्तें, जिसमें पदोन्नति पथ, तथा पदोन्नति मानदण्ड सम्मिलित हैं, से सम्बन्धित प्रश्न नीति क्षेत्र से सम्बन्धित होते हैं, जो कि राज्य सरकार का अनन्य विवेकाधिकार एवं क्षेत्राधिकार है। (श्याम नारायण शर्मा वि. म.प्र. राज्य) (DB)...*36

संविधान, अनुच्छेद 311 — देखें — शिक्षा सेवा (शाला शाखा) भर्ती तथा पदोन्नति नियम, म.प्र. 1982, (श्याम नारायण शर्मा वि. म.प्र. राज्य) (DB)...*36

*Contract Act (9 of 1872), Section 23 - Opposed to public policy - Any contract prohibited by enactment is also against public policy. [Ispat Khadan Janta Mazdoor Union Vs. The Director, Steel Authority of India Ltd.] (DB)...*9*

Contract Act (9 of 1872), Section 28, Civil Procedure Code, 1908, Section 20 - Ouster of jurisdiction - Head Office of respondent situated at Bombay and Branch Office at Indore - Agreement entered into between parties at Bombay and contract was to be performed at Indore - Agreement containing clause that "agreement shall be subject to jurisdiction of Court at Bombay" - Ouster of jurisdiction of Court at Indore - Held - Intention to exclude Court's jurisdiction should be reflected in clear, unambiguous, explicit and specific terms - Import of use of words 'only', 'alone', 'exclusive' in exclusion clause would reflect the intention to exclude the jurisdiction - There was no ouster clause in the agreement such as words 'alone', 'only', 'exclusive' is not used - Court at Indore has jurisdiction - Appeal allowed. [Life Care International Vs. Mahindra & Mahindra Ltd.] ...175

*Contract Act (9 of 1872), Section 55 - See - Civil Procedure Code, 1908, Order 39 Rule 1 & 2 [Saroj Gautam (Smt.) Vs. Laxmi Prasad]...*18*

Contract - Judicial review - Error in bid document and price bid - Nature of error in bid document is also material to be considered - Merely the fact that price bid was lesser could not be a ground to accept the tender in violation of the conditions. [Gajendra Vs. State of M.P.] (DB)...375

Contract - Judicial review - Negligent mistakes - Negligent mistakes in bid documents cannot be permitted to be corrected on basis of equity - Where facts indicate that (i) it was not beyond the control of bidder to correct the error before the submission of bid (ii) that he was not vigilant (iii) that he did not seek to make corrections at the earliest opportunity - It is not within the scope of judicial review. [Gajendra Vs. State of M.P.] (DB)...375

Contract - Judicial review - Parameters of judicial interference in contractual matters - Explained. [Gajendra Vs. State of M.P.] (DB)...375

Contract Labour (Regulation and Abolition) Act (37 of 1970) Section 10 - Prohibition notification - Agreements entered into between

संविदा अधिनियम (1872 का 9), धारा 23 — लोक नीति के विरुद्ध — अधिनियम द्वारा प्रतिषिद्ध कोई करार लोक नीति के विरुद्ध भी है। (इस्पात खदान जनता मजदूर यूनियन वि. द डायरेक्टर, स्टील अथॉरिटी ऑफ इंडिया लि.) (DB)---*9

संविदा अधिनियम (1872 का 9), धारा 28, सिविल प्रक्रिया संहिता, 1908, धारा 20 — अधिकारिता से बेदखली — प्रत्यर्थी का प्रधान कार्यालय मुम्बई में तथा शाखा कार्यालय इंदौर में स्थित — पक्षकारों के मध्य करार मुम्बई में हुआ तथा संविदा का पालन इंदौर में किया जाना था — करार में खण्ड अन्तर्विष्ट कि "करार मुम्बई न्यायालय की अधिकारिता के अध्यधीन होगा" — इंदौर न्यायालय की अधिकारिता से बेदखली — अभिनिर्धारित — न्यायालय की अधिकारिता अपवर्जित करने का आशय स्पष्ट, निश्चित अर्थवाले, सुव्यक्त एवं विनिर्दिष्ट शब्दों द्वारा प्रकट होना चाहिये — अपवर्जन खण्ड में शब्द 'केवल', 'मात्र', 'अनन्य' के उपयोग का तात्पर्य अधिकारिता अपवर्जित करने का आशय प्रकट करेगा — करार में कोई अपवर्जन खण्ड नहीं था जैसे ऐसे किन्ही शब्दों का जैसे 'केवल', 'मात्र', 'अनन्य' का उपयोग नहीं किया गया — इन्दौर न्यायालय को अधिकारिता है — अपील मंजूर। (लाइफ केयर इंटरनेशनल वि. महिन्द्रा एण्ड महिन्द्रा लि.) ...175

संविदा अधिनियम (1872 का 9), धारा 55 — देखें — सिविल प्रक्रिया संहिता, 1908, आदेश 39 नियम 1 व 2 (सरोज गौतम (श्रीमति) वि. लक्ष्मी प्रसाद) ...*18

संविदा — न्यायिक पुनर्विलोकन — बोली दस्तावेज में त्रुटि और मूल्य बोली — बोली दस्तावेज में त्रुटि की प्रकृति पर विचार किया जाना भी तात्त्विक है — मात्र यह तथ्य कि मूल्य बोली कम थी, शर्तों का अतिक्रमण करके किसी निविदा को स्वीकार किये जाने का आधार नहीं हो सकता। (गजेन्द्र वि. म.प्र. राज्य) (DB)...375

संविदा — न्यायिक पुनर्विलोकन — नगण्य त्रुटि — बोली दस्तावेजों की नगण्य त्रुटियों को साम्य के आधार पर सुधारे जाने की अनुज्ञा नहीं दी जा सकती — जहाँ तथ्यों से यह उपदर्शित होता है कि (i) बोली प्रस्तुत किये जाने के पूर्व त्रुटि को सुधारना बोली लगाने वाले के वश से परे नहीं था, (ii) वह सजग नहीं था, (iii) उसने सर्वप्रथम अवसर पर सुधार करने का अनुरोध नहीं किया — यह न्यायिक पुनर्विलोकन के कार्यक्षेत्र में नहीं है। (गजेन्द्र वि. म.प्र. राज्य) (DB)...375

संविदा — न्यायिक पुनर्विलोकन — संविदात्मक मामलों में न्यायिक हस्तक्षेप के मापदण्ड — स्पष्ट किये गये। (गजेन्द्र वि. म.प्र. राज्य) (DB)...375

ठेका श्रम (विनियमन और उत्सादन) अधिनियम (1970 का 37), धारा 10 — निषेध अधिसूचना — प्रबंधन और संघ के मध्य इस आशय के करार हुए कि उद्योग स्थायी

Management and Union to the effect that industry shall not employ labour through contractors or engage contractor's labour in jobs of permanent and perennial nature - Whether binding on contract labours as they were not party to agreement - Held - Contract labours were not supposed to be party to such agreement - Mandate of agreement binding on management is not to engage workers on contract basis in jobs of permanent and perennial nature. [Ispat Khadan Janta Mazdoor Union Vs. The Director, Steel Authority of India Ltd.] (DB)...*9

Contract Labour (Regulation and Abolition) Act (37 of 1970), Section 10 - Regularization of services of contract labour - In spite of notification, management continued to employ contract labour - Engineers/Mines Manager having full power to issue instructions during progress of work for proper and adequate execution of works - Management having full control over contract labour - Contract between Management and Contractors was sham and bogus considering the functioning of mines and there was no justification to continue with contract labour after 17.3.1993 - Contract labours are to be treated as employees of principal employer - Workers who were in employment from 1993 till 1996 directed to be reinstated without back wages. [Ispat Khadan Janta Mazdoor Union Vs. The Director, Steel Authority of India Ltd.] (DB)...*9

Contract Labour (Regulation and Abolition) Act (37 of 1970), Section 10 - Regularization of services of contract labour - Relationship of employer and employee - To ascertain relationship, multiple factors are required to be taken into consideration - Control, interrogation, power to select & dismiss, to pay remuneration, deduct insurance contributions, organize work, supply tools & material, mutual obligations between them are relevant factors. [Ispat Khadan Janta Mazdoor Union Vs. The Director, Steel Authority of India Ltd.] (DB)...*9

Contract Labour (Regulation and Abolition) Act (37 of 1970), Sections 23, 24 & 25 - Penalties and offences by Companies - Aforesaid provisions cannot be said to be exhaustive of the remedies available. [Ispat Khadan Janta Mazdoor Union Vs. The Director, Steel Authority of India Ltd.] (DB)...*9

Contract - Mistake in bid document - Whether can be corrected -

एवं बारहमासी प्रकृति के कार्यों में ठेकेदारों के माध्यम से श्रमिकों को नियोजित नहीं करेगा अथवा ठेकेदार के श्रमिकों को काम में नहीं लगायेगा - क्या संविदा श्रमिकों पर बंधनकारी है क्योंकि वे करार के पक्षकार नहीं थे - अभिनिर्धारित - संविदा श्रमिकों को ऐसे करार का पक्षकार नहीं माना जा सकता - प्रबंधन पर बन्धनकारी करार का प्रादेश स्थायी एवं बारहमासी प्रकृति के कार्यों में संविदा आधार पर श्रमिकों को नियोजित न करना है। (इस्पात खदान जनता मजदूर यूनियन वि. द डायरेक्टर, स्टील अथॉरिटी ऑफ इंडिया लि.) (DB)...*9

ठेका श्रम (विनियमन और उत्सादन) अधिनियम (1970 का 37), धारा 10 - ठेका श्रम सेवाओं का नियमितीकरण - अधिसूचना के बावजूद, प्रबंधन ने ठेका श्रमिकों को नियोजित रखा - इंजीनियरों/खदान प्रबंधक को कार्य के उचित एवं उपयुक्त निष्पादन हेतु कार्य की प्रगति के दौरान अनुदेश जारी करने की पूर्ण शक्ति है - प्रबंधन का ठेका श्रमिकों पर पूर्ण नियंत्रण होता है - खदानों के परिचालन को देखते हुए प्रबंधन एवं ठेकेदारों के मध्य संविदा झूठी एवं छद्म थी तथा 17.3.1993 के बाद ठेका श्रमिकों को रखे जाने का कोई औचित्य नहीं था - ठेका श्रमिकों को प्रधान नियोजक का कर्मचारी माना जाना है - श्रमिक जो कि 1993 से 1996 तक नियोजन में थे, उन्हें पिछले वेतन के बिना बहाल किये जाने का निदेश। (इस्पात खदान जनता मजदूर यूनियन वि. द डायरेक्टर, स्टील अथॉरिटी ऑफ इंडिया लि.) (DB)...*9

ठेका श्रम (विनियमन और उत्सादन) अधिनियम (1970 का 37), धारा 10 - ठेका श्रम सेवाओं का नियमितीकरण - नियोक्ता एवं कर्मचारी का सम्बन्ध - सम्बन्ध अभिनिश्चित करने के लिए बहुविध कारकों को विचार में लिया जाना आवश्यक है - नियंत्रण, परिप्रश्न करना, चयन एवं बर्खास्त करने की शक्ति, पारिश्रमिक भुगतान करना, बीमा योगदान की कटौती करना, कार्य संचालन करना, औजारों और सामग्री की पूर्ति करना, उनके मध्य पारस्परिक दायित्व सुसंगत कारक हैं। (इस्पात खदान जनता मजदूर यूनियन वि. द डायरेक्टर, स्टील अथॉरिटी ऑफ इंडिया लि.) (DB)...*9

ठेका श्रम (विनियमन और उत्सादन) अधिनियम (1970 का 37), धाराएँ 23, 24 व 25 - शास्तियाँ एवं कम्पनी द्वारा अपराध - उक्त प्रावधानों को उपलब्ध उपचारों का निःशेषकारी नहीं कहा जा सकता। (इस्पात खदान जनता मजदूर यूनियन वि. द डायरेक्टर, स्टील अथॉरिटी ऑफ इंडिया लि.) (DB)...*9

संविदा - बोली दस्तावेज में त्रुटि - क्या सुधारी जा सकती है - बोली लगाने

Bidders were required to keep Part I of tender document containing their eligibility in one envelop and financial bid in another envelop - Petitioner kept both the documents in the envelop meant for keeping financial bid - Petitioner moved an application informing that tender form Part I is kept in tender form II - Collector, Excise rejected the application and financial bid of petitioner was not opened - *Held* - There is secrecy as to financial bid - Envelop containing financial bid cannot be opened at the stage of qualification round - It was a fatal error - Financial bid of the petitioner cannot be considered - Petition dismissed. [Gajendra Vs. State of M.P.] (DB)...375

Court Fees Act (7 of 1870) - Amendment - Amendment to the Court Fees Act (Act No.4 of 1976) w.e.f. 01.03.1976 was introduced to clarify that even in cases where possession of a part of the land separately assessed to land revenue was claimed, court fees payable on such claim will be proportionately worked out for such part of the land. [Narayanprasad Vs. Jagdish] ...792

Court Fees Act (7 of 1870), Section 7(iv)(c) - Ad valorem Court fees - Where the executant of the sale deed wants it to be annulled, he has to seek cancellation of that deed for which ad valorem court fee on the consideration stated in the sale deed is payable. [Ambika Prasad Vs. Shri Ramshiromani @ Chandrika Prasad Dwivedi] (DB)...154

Court Fees Act (7 of 1870), Section 7(v) & 7(vi) - When a co-owner files a suit for partition and separate possession, on the ground that he is out of possession, there is no difference between such a suit and a suit for possession based on title. [Narayanprasad Vs. Jagdish] ...792

Criminal Jurisprudence - Cardinal principles - (i) Prosecution must prove its case beyond reasonable doubt, (ii) Prosecution cannot take advantage of weakness of defence case, (iii) Whenever two sets of evidence or two inferences are possible, evidence or inference in favour of accused has to be acted upon. [Prahlaad Vs. State of M.P.](DB)...489

Criminal Procedure Code, 1973 (2 of 1974), Sections 91 & 482 - Additional documents - High Court in exercise of power u/s 482 can consider material produced on behalf of accused to arrive at a decision whether the charge as framed could be maintained or not.[Dev Vrat Mishra Vs. State of M.P.] (DB)...*23

वालों से निविदा दस्तावेज का भाग-I, जिसमें उनकी पात्रता वर्णित थी, एक लिफाफे में तथा वित्तीय बोली दूसरे लिफाफे में रखा जाना अपेक्षित था - याची ने दोनों दस्तावेज वित्तीय बोली रखने के लिए अभिप्रेत लिफाफे में रख दिये - याची ने यह सूचित करते हुए आवेदन किया कि निविदा पत्र भाग-I निविदा पत्र II में रखा है - कलेक्टर, आबकारी ने आवेदन अस्वीकार कर दिया और याची की वित्तीय बोली को नहीं खोला गया - अभिनिर्धारित - वित्तीय बोली के सम्बन्ध में गोपनीयता होती है - योग्यता दौर के प्रक्रम पर वित्तीय बोली का लिफाफा नहीं खोला जा सकता - यह एक गंभीर त्रुटि थी - याची की वित्तीय बोली पर विचार नहीं किया जा सकता - याचिका खारिज। (गजेन्द्र वि. म.प्र. राज्य) (DB)...375

न्यायालय फीस अधिनियम (1870 का 7) - संशोधन - 1.3.1976 से प्रभावी न्यायालय फीस अधिनियम (1976 का अधिनियम क्र. 4) का संशोधन, यह स्पष्ट करने के लिए प्रविष्ट किया गया कि ऐसे मामलों में भी जहाँ भूमि राजस्व के लिए पृथक से निर्धारित भूमि के भाग के कब्जे का दावा किया गया, ऐसे दावे पर देय न्यायालय फीस, भूमि के ऐसे भाग के लिए आनुपातिक रूप से निकाली जाएगी। (नारायणप्रसाद वि. जगदीश) ...792

न्यायालय फीस अधिनियम (1870 का 7), धारा 7(iv)(सी) - मूल्यानुसार न्यायालय फीस - जब विक्रय विलेख का निष्पादक इसे निष्प्रभावी कराना चाहता है तब उसे उस विलेख को रद्द करवाना होगा जिसके लिये विक्रय विलेख में उल्लिखित प्रतिफल पर मूल्यानुसार न्यायालय फीस देय है। (अम्बिका प्रसाद वि. श्री रामशिरोमणी उर्फ चन्द्रिका प्रसाद द्विवेदी) (DB)...154

न्यायालय फीस अधिनियम (1870 का 7), धारा 7(अ) व 7(vi) - जब सहस्वामी विभाजन और पृथक कब्जे के लिए वाद इस आधार पर प्रस्तुत करता है, कि वह कब्जे से बाहर है, तब ऐसे वाद और हक पर आधारित कब्जे के लिए वाद के मध्य कोई भेद नहीं है। (नारायणप्रसाद वि. जगदीश) ...792

आपराधिक विधि शास्त्र - मुख्य सिद्धान्त - (i) अभियोजन को अपना मामला युक्तियुक्त सन्देह के परे साबित करना चाहिये, (ii) अभियोजन बचाव पक्ष के मामले की कमजोरी का लाभ नहीं उठा सकता है, (iii) जहाँ दो साक्ष्य संवर्ग अथवा दो निष्कर्ष संभावित हों तो अभियुक्त के पक्ष में साक्ष्य या निष्कर्ष पर कार्यवाही की जायेगी। (प्रहलाद वि. म.प्र. राज्य) (DB)...489

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धाराएँ 91 व 482 - अतिरिक्त दस्तावेज - उच्च न्यायालय, इस निर्णय पर पहुँचने के लिए कि क्या विरचित आरोप कायम रखे जा सकते हैं अथवा नहीं, धारा 482 के अन्तर्गत शक्तियों के प्रयोग में अभियुक्त की ओर से प्रस्तुत सामग्री पर विचार कर सकता है। (देवव्रत मिश्रा वि. म.प्र. राज्य) (DB)...*23

Criminal Procedure Code, 1973 (2 of 1974), Section 111 - Order by Executive Magistrate - Nature - Proceedings are judicial proceedings and Executive Magistrate performs judicial function. [Suresh Kumar Sharma Vs. Durgalal Vijay] (DB)...628

*Criminal Procedure Code, 1973 (2 of 1974), Section 154 - Ante-timed FIR - Evidence shows that police reached at 10:30 p.m. whereas Dehati Nalishi was written at 9:30 p.m. - FIR was registered at 7:00 a.m. - No reason of delay in lodging the FIR explained - Held - Dehati Nalishi appears to be ante-timed - Possibility of concoction arises - Corroboration cannot be expected from Dehati Nalishi. [Ramadhar @ Pappan Khamparia Vs. State of M.P.] ...*32*

*Criminal Procedure Code, 1973 (2 of 1974), Section 154 - Dehati Nalishi - Dehati Nalishi is FIR but to maintain its authenticity it is required to be proved that (i) there should be no manipulation of time, and (ii) it should not be registered after any enquiry. [Ramadhar @ Pappan Khamparia Vs. State of M.P.] ...*32*

*Criminal Procedure Code, 1973 (2 of 1974), Section 154, Lokayukt Evam Up-Lokayukt Adhiniyam, M.P. 1981 - Limitation - FIR registered after expiry of 5 years from the date of offence - S.P.E. is not powerless to register the FIR and proceed with investigation - Lokayukt or Up-Lokayukt are not debarred to refer the matter to S.P.E. for verification merely because of the lapse of 5 years from the date of offence. [Dev Vrat Mishra Vs. State of M.P.] (DB)...*23*

Criminal Procedure Code, 1973 (2 of 1974), Section 156(3) - Investigation of offence - Locus standi - Special Judge directed S.P.E. to file a report after enquiry on an application of complainant - Another application filed by applicant who was stranger to the earlier proceedings requesting that S.P.E. to conclude the investigation within reasonable time - Held - Criminal proceedings have already been set in motion - Applicant was stranger to said proceedings - Cannot be allowed to intervene by filing an application u/s 156(3). [Kishore Samrite Vs. Shivraj Singh Chouhan] (DB)...284

Criminal Procedure Code, 1973 (2 of 1974), Section 156(3) - Magistrate/Special Judge in exercise of jurisdiction u/s 156(3), can

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 111 — कार्यपालक मजिस्ट्रेट द्वारा आदेश — प्रकृति — कार्यवाहियाँ न्यायिक कार्यवाहियाँ हैं तथा कार्यपालक मजिस्ट्रेट न्यायिक कर्तव्य निर्वहन करता है। (सुरेश कुमार शर्मा वि. दुर्गालाल विजय) (DB)...628

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 154 — समय पूर्व प्रथम सूचना रिपोर्ट — साक्ष्य दर्शाती है कि पुलिस रात 10:30 बजे पहुँची जबकि देहाती नालिशी रात 9:30 बजे लिखी गई — प्रथम सूचना रिपोर्ट प्रातः 7 बजे दर्ज की गयी — प्रथम सूचना रिपोर्ट दायर करने में हुए विलम्ब का कोई कारण स्पष्ट नहीं किया गया — अभिनिर्धारित — देहाती नालिशी पूर्व समयी प्रतीत होती है — कूटरचना की संभावना उत्पन्न होती है — देहाती नालिशी से सम्पुष्टि की अपेक्षा नहीं। (रामाधार उर्फ पप्पन खंपरिया वि. म.प्र. राज्य) ...*32

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 154 — देहाती नालिशी — देहाती नालिशी प्रथम सूचना रिपोर्ट है परंतु उसकी प्रमाणिकता बनाये रखने के लिए यह साबित करना अपेक्षित है कि (i) समय का कोई हेरफेर नहीं हुआ हो, और (ii) उसे किसी जाँच के बाद अभिलिखित नहीं किया गया हो। (रामाधार उर्फ पप्पन खंपरिया वि. म.प्र. राज्य) ...*32

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 154, लोकायुक्त एवं उप-लोकायुक्त अधिनियम, म.प्र. 1981 — परिसीमा — एफ.आई.आर. अपराध की तारीख से 5 वर्ष बीत जाने के बाद दर्ज की गयी — विशेष पुलिस स्थापना एफ.आई.आर. दर्ज करने और अन्वेषण करने के लिए अगसर होने के लिए अशक्त नहीं हैं — आपराध की तारीख से 5 वर्ष बीत जाने मात्र से ही लोकायुक्त या उप-लोकायुक्त सत्यापन के लिए मामला विशेष पुलिस स्थापना को निर्दिष्ट करने के लिए विवर्जित नहीं हो जाते। (देवव्रत मिश्रा वि. म.प्र. राज्य) (DB)...*23

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 156(3) — अपराध का अन्वेषण — सुने जाने का अधिकार — विशेष न्यायाधीश ने परिवादी के आवेदन पर विशेष पुलिस स्थापना को जाँच उपरान्त रिपोर्ट फाइल करने के लिए निदेशित किया — आवेदक, जो पूर्व की कार्यवाहियों से अपरिचित था, के द्वारा विशेष पुलिस स्थापना से यह निवेदन करते हुए मित्र आवेदन फाइल किया गया कि युक्तियुक्त समय के भीतर अन्वेषण पूर्ण किया जाए — अभिनिर्धारित — दण्डिक कार्यवाहियाँ पहले ही आरंभ कर दी गयीं — आवेदक उक्त कार्यवाहियों के लिए अपरिचित था — उसे धारा 156(3) के अन्तर्गत आवेदन फाइल करके हस्तक्षेप करने के लिए अनुमत नहीं किया जा सकता। (किशोर समरीते वि. शिवराज सिंह चौहान) (DB)...284

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2) धारा 156(3) — मजिस्ट्रेट/विशेष न्यायाधीश धारा 156(3) के अन्तर्गत अधिकारिता के प्रयोग में अन्वेषण को मॉनीटर

monitor the investigation and issue direction for proper investigation.
[Kishore Samrite Vs. Shivraj Singh Chouhan] (DB)...284

*Criminal Procedure Code, 1973 (2 of 1974), Section 156(3) - See - Prevention of Corruption Act, 1988, Section 13(1)(d) [Ramesh Vs. State of M.P.] (DB)...*48*

*Criminal Procedure Code, 1973 (2 of 1974), Section 161 - Delay in recording of - Explanation thereof - Plausible explanation has been given by I.O. with regard to delay in recording of evidence of P.W. 8 and P.W. 11 - Names of P.W. 8 and P.W. 11 mentioned in FIR which was lodged immediately after incident - Evidence of P.W. 8 and P.W. 11 are reliable.[Somu Vs. State of M.P.] (DB)...*37*

*Criminal Procedure Code, 1973 (2 of 1974), Section 161 - Delay in recording of - Statement of witness recorded after more than a month - Witness failed to account for - No reliance can be placed. [Somu Vs. State of M.P.] (DB)...*37*

*Criminal Procedure Code, 1973 (2 of 1974), Section 165 - Duty of Court - It is duty of Court to find out the truth from falsehood. [Somu Vs. State of M.P.] (DB)...*37*

Criminal Procedure Code, 1973 (2 of 1974), Section 172 - Police Case Diary - Entry recorded by police in case diary and other documents could not be held to be a proof of fact as an evidence. [Suresh Kumar Sharma Vs. Durgalal Vijay] (DB)...628

*Criminal Procedure Code, 1973 (2 of 1974), Section 173(8) - See - Prevention of Corruption Act, 1988, Section 13(1)(d) [State of M.P. Vs. D.K. Rokde] (DB)...*19*

Criminal Procedure Code, 1973 (2 of 1974), Section 177, Negotiable Instruments Act, 1881, Section 138 - Jurisdiction - Cheque handed over to complainant at Gwalior - Gwalior Court has jurisdiction.[Mohan Mandelia Vs. State of M.P.] ...562

Criminal Procedure Code, 1973 (2 of 1974), Sections 179 & 188, Penal Code, 1860, Section 500 - Offence committed outside India - Sanction - Section 179 of Cr.P.C. empowers a Court to try an offence either at a place where the offence is committed or the consequences ensued - Defamatory statement given at Dubai - Complaint filed at

कर सकता है और उचित अन्वेषण के लिए निदेश जारी कर सकता है। (किशोर समरीते वि. शिवराज सिंह चौहान) (DB)...284

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 156(3) — देखें — भ्रष्टाचार निवारण अधिनियम, 1988, धारा 13(1)(डी) (रमेश वि. म.प्र. राज्य) (DB)...*48

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 161 — अभिलिखित करने में विलम्ब — उसका स्पष्टीकरण — अ.सा. 8 एवं अ.सा. 11 की साक्ष्य अभिलिखित करने में विलम्ब के संबंध में अन्वेषण अधिकारी द्वारा युक्तिसंगत स्पष्टीकरण दिया गया — प्रथम सूचना रिपोर्ट, जो कि घटना के तत्काल बाद दर्ज करायी गयी, में अ.सा. 8 एवं अ.सा. 11 के नामों का उल्लेख — अ.सा. 8 एवं अ.सा. 11 की साक्ष्य विश्वसनीय है। (सोमू वि. म.प्र. राज्य) (DB)...*37

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 161 — अभिलिखित करने में विलम्ब — साक्षी का कथन एक माह से अधिक समय बाद अभिलिखित — साक्षी इसका कारण बताने में असफल — कोई विश्वास नहीं किया जा सकता। (सोमू वि. म.प्र. राज्य) (DB)...*37

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 165 — न्यायालय का कर्तव्य — असत्य में से सत्य को ढूँढना न्यायालय का कर्तव्य है। (सोमू वि. म.प्र. राज्य) (DB)...*37

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 172 — पुलिस केस डायरी — पुलिस द्वारा केस डायरी में अभिलिखित की गयी प्रविष्टि तथा अन्य दस्तावेज साक्ष्य के रूप में तथ्य का सबूत होना अभिनिर्धारित नहीं किये जा सकते। (सुरेश कुमार शर्मा वि. दुर्गालाल विजय) (DB)...628

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 173(8) — देखें — भ्रष्टाचार निवारण अधिनियम, 1988, धारा 13(1)(डी) (म.प्र. राज्य वि. डी.के. रोकड़े)(DB)...*19

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 177, परक्राम्य लिखत अधिनियम, 1881, धारा 138 — अधिकारिता — परिवादी को चैक ग्वालियर में सौंपा गया — ग्वालियर के न्यायालय को अधिकारिता है। (मोहन मंडेलिया वि. म.प्र. राज्य) ...562

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धाराएँ 179 व 188, दण्ड संहिता, 1860, धारा 500 — भारत से बाहर किया गया अपराध — मंजूरी — द.प्र.स. की धारा 179 न्यायालय को किसी अपराध का विचारण, या तो उस स्थान पर जहाँ अपराध किया गया अथवा जहाँ परिणाम निकले, करने के लिए सशक्त करती है — मानहानिकारक कथन दुबई में दिया गया — परिवाद इन्दौर में फाइल किया गया — अभिनिर्धारित —

Indore - Held - On the allegations in the complaint, the act or omissions were committed in India. [Rasiklal Manikchand Vs. Kishore Wadhvani] ...*16

Criminal Procedure Code, 1973 (2 of 1974), Section 188 - Sanction of Central Government - It is not necessary that sanction of Central Government should be obtained before taking cognizance - It may be obtained before the trial begins. [Rasiklal Manikchand Vs. Kishore Wadhvani] ...*16

Criminal Procedure Code, 1973 (2 of 1974), Section 190, Negotiable Instruments Act, 1881, Section 138 - Jurisdiction of cognizance - Cheque issued by another person purporting himself to be the proprietor of the firm and the applicant has produced prima facie evidence before the Court to show that he had nothing to do with the business of firm who had issued the cheque in question to the complainant - The essential ingredients of Section 138 are not satisfied against the applicant and case u/s 138 cannot proceed - Order (taking cognizance) set aside. [Akhilesh Saraf (Dr.) Vs. Smt. Usha Tiwari] ...572

Criminal Procedure Code, 1973 (2 of 1974), Section 195(3) - Court - Officers of the Income Tax Department and authorities constituted under M.P. Trade Tax Act, 1995 do not fall within the ambit of term Court. [Institute of Chartered Accountants of India Vs. Vimal Kumar Surana] (DB)SC...321

Criminal Procedure Code, 1973 (2 of 1974), Sections 200 & 202 - Statement of complainant - Statements of witnesses recorded prior to the statement of complainant - It is mere irregularity and not illegality - Not a ground to quash or hold the proceedings void ab initio. [Mohan Mandelia Vs. State of M.P.] ...562

Criminal Procedure Code, 1973 (2 of 1974), Section 202 - Enquiry - Status of persons arrayed as accused - Whenever Magistrate accepts the complaint and starts inquiry, it means he has considered the complaint and decided to proceed - At this stage it cannot be said that person who has been mentioned in complaint as accused acquires the status of accused. [Mohan Mandelia Vs. State of M.P.] ...562

Criminal Procedure Code, 1973 (2 of 1974), Section 202 -

परिवाद के अभिकथनों पर कार्य या लोप भारत में किये गये। (रसिकलाल मानिकचंद वि. किशोर वाघवानी) ...*16

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 188 — केन्द्रीय सरकार की मंजूरी — यह आवश्यक नहीं है कि केन्द्रीय सरकार की मंजूरी संज्ञान लेने से पूर्व अभिप्राप्त की जानी चाहिये — यह विचारण प्रारम्भ होने के पूर्व अभिप्राप्त की जा सकती है। (रसिकलाल मानिकचंद वि. किशोर वाघवानी) ...*16

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 190, परक्राम्य लिखत अधिनियम, 1881, धारा 138 — संज्ञान की अधिकारिता — अन्य व्यक्ति द्वारा स्वयं को फर्म का स्वामी होना जताते हुए चैक जारी किया गया तथा आवेदक ने न्यायालय के समक्ष प्रथम दृष्ट्या साक्ष्य यह दर्शाने के लिए प्रस्तुत की कि उसे फर्म के कारोबार से कोई वास्ता नहीं था जिसने परिवादी को प्रश्नगत चैक जारी किया था — धारा 138 के आवश्यक संघटक आवेदक के विरुद्ध पूरे नहीं होते तथा धारा 138 के अन्तर्गत मामले की कार्यवाही नहीं हो सकती — आदेश (संज्ञान लेने का) अपास्त। (अखिलेश सराफ (डॉ.) वि. श्रीमति रुषा तिवारी) ...572

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 195(3) — न्यायालय — आयकर विभाग के अधिकारी एवं म.प्र. व्यवसाय कर अधिनियम, 1995 के अन्तर्गत गठित प्राधिकारी, न्यायालय शब्द की परिधि के भीतर नहीं आते। (इंस्टीट्यूट ऑफ चार्टर्ड एकाउंटेंट्स ऑफ इंडिया वि. विमल कुमार सुराना) (DB)SC...321

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धाराएँ 200 व 202 — परिवादी का कथन — परिवादी के कथन से पूर्व साक्षियों के कथन अभिलिखित किये गये — यह मात्र अनियमितता है न कि अवैधता — कार्यवाहियाँ अभिखंडित करने या आरम्भतः शून्य ठहराने का आधार नहीं। (मोहन मंडेलिया वि. म.प्र. राज्य) ...562

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 202 — जाँच — अभियुक्त के रूप में दोषारोपित व्यक्तियों की प्रास्थिति — जब कमी मजिस्ट्रेट परिवाद स्वीकार करता है और जाँच आरम्भ करता है, इसका तात्पर्य है कि उसने परिवाद पर विचार किया है और आगे कार्यवाही करने का निर्णय लिया — इस प्रक्रम पर यह नहीं कहा जा सकता कि व्यक्ति, जो परिवाद में अभियुक्त के रूप में उल्लिखित है, ने अभियुक्त की प्रास्थिति प्राप्त कर ली है। (मोहन मंडेलिया वि. म.प्र. राज्य) ...562

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 202 — साक्षियों की परीक्षा —

Examination of witnesses - Examination of all the witnesses cited in the complaint is not a condition precedent for taking cognizance and issue of process. [Rasiklal Manikchand Vs. Kishore Wadhvani]...*16

Criminal Procedure Code, 1973 (2 of 1974), Sections 204, 252 & 482 - Issue of summons in summons case - Remedy - Once the plea of accused u/s 252 is recorded, same cannot be reviewed or reconsidered by Magistrate - Petition u/s 482 of Cr.P.C. challenging substance of accusation is maintainable. [Rasiklal Manikchand Vs. Kishore Wadhvani] ...*16

Criminal Procedure Code, 1973 (2 of 1974), Sections 227 & 228 - See -Prevention of Corruption Act, 1988, Section 13(1)(d) [State of M.P. Vs. D.K. Rokde] (DB)...*19

Criminal Procedure Code, 1973 (2 of 1974), Section 300, Constitution, Article 20(2) - Double jeopardy - Person who is said to have contravened provisions of Ss. 24, 24A, 25, 26 of Chartered Accountants Act, 1949 can also be prosecuted for an offence defined under IPC. [Institute of Chartered Accountants of India Vs. Vimal Kumar Surana] (DB)SC...321

Criminal Procedure Code, 1973 (2 of 1974), Section 311 - Recall of witness - Prosecution, gave up witnesses and closed the evidence - Final arguments heard and case closed for judgment - Witnesses, given up by prosecution, summoned by the Court - Held - Trial Judge ought to have assigned cogent reasons so as to justify his observations that evidence of each one of the witnesses who were given up by prosecution was material to just decision of the case by highlighting respective role - Order summoning witnesses set aside - However, Trial Court may call these witnesses only after passing speaking order. [P.L. Usrete Vs. State of M.P.] (DB)...803

Criminal Procedure Code, 1973 (2 of 1974), Section 311 - See -Prevention of Corruption Act, 1988, Section 13(1)(d) [State of M.P. Through S.P.E. (Lokayukta, Bhopal Vs. T.D. (Thakur Das) Patel] (DB)...774

Criminal Procedure Code, 1973 (2 of 1974), Section 354 - Content of judgment - Each decision should be based on points for determination and reasons for that decision. [State of M.P. Vs. Vishnoo Prasad] ...787

परिवाद में वर्णित सभी साक्षियों की परीक्षा संज्ञान लेने एवं आदेशिका जारी करने के लिए पुरोभाव्य शर्त नहीं है। (रसिकलाल मानिकचंद वि. किशोर वाघवानी) ...*16

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धाराएँ 204, 252 व 482 — समन मामले में समन जारी करना — उपचार — एक बार जब धारा 252 के अन्तर्गत अभियुक्त का अभिवाक् अभिलिखित कर लिया जाता है तब मजिस्ट्रेट द्वारा उसकी समीक्षा या पुनर्विचार नहीं किया जा सकता — द.प्र.स. की धारा 482 के अन्तर्गत अभियोग के सार को चुनौती देने वाली याचिका पोषणीय है। (रसिकलाल मानिकचंद वि. किशोर वाघवानी) ...*16

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धाराएँ 227 व 228 — देखें — भ्रष्टाचार निवारण अधिनियम, 1988, धारा 13(1)(डी), (म.प्र. राज्य वि. डी.के. रोकडे) (DB)...*19

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 300, संविधान, अनुच्छेद 20(2) — दोहरा संकट — व्यक्ति जिसने कथित रूप से चार्टर्ड अकाउंटेंट अधिनियम, 1949 की धाराएँ 24, 24ए, 25, 26 के उपबंधों का उल्लंघन किया है, उसे भा.द.सं. के अन्तर्गत परिभाषित अपराध के लिए भी अभियोजित किया जा सकता है। (इंस्टीट्यूट ऑफ चार्टर्ड एकाउंटेंट्स ऑफ इंडिया वि. विमल कुमार सुराना) (DB)SC...321

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 311 — साक्षी को पुनः बुलाना — अभियोजन ने साक्षियों को छोड़ दिया और साक्ष्य समाप्त घोषित कर दी — अन्तिम तर्क सुने गये तथा मामला निर्णय के लिए बंद कर दिया गया — अभियोजन द्वारा छोड़ दिये गये साक्षियों को न्यायालय द्वारा आहूत किया गया — अभिनिर्धारित — विचारण न्यायाधीश को अपने अवलोकन, कि प्रत्येक साक्षी जिन्हें कि अभियोजन द्वारा छोड़ दिया गया था उनकी प्रत्येक की भूमिका को बताते हुए कि वह प्रकरण में उचित निर्णय हेतु तात्त्विक है, को न्यायोचित ठहराये जाने के लिये तर्कपूर्ण कारण देना चाहिये था — साक्षियों को बुलाने हेतु पारित आदेश अपास्त — तथापि, विचारण न्यायालय सकारण आदेश पारित करने के बाद ही उन साक्षियों को आहूत कर सकती है। (पी.एल. उसरेठे वि. म.प्र. राज्य) (DB)...803

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 311 — देखें — भ्रष्टाचार निवारण अधिनियम, 1988, धारा 13(1)(डी) (म.प्र. राज्य द्वारा एस.पी.ई. (लोकायुक्त), भोपाल वि. टी.डी. (ठाकुर दास) पटेल) (DB)...774

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 354 — निर्णय की अन्तर्वस्तु — प्रत्येक विनिश्चय, अवधारित किये जाने वाले बिन्दुओं पर तथा उस विनिश्चय के कारणों पर आधारित होना चाहिए। (म.प्र. राज्य वि. विष्णु प्रसाद) ...787

*Criminal Procedure Code, 1973 (2 of 1974), Section 386 - Powers of appellate Court - Trial Court on unjustified reasonings on the face value of the evidence which is extremely credible and on account of perversity has acquitted the respondents - The judgment of acquittal cannot be allowed to remain stand. [State of M.P. Vs. Suresh Singh] (DB)...*49*

Criminal Procedure Code, 1973 (2 of 1974), Section 437(6) - Bail - Seven bail applications of the applicant already rejected - Trial not concluded within sixty days - Held - Applicant not entitled for bail in view of later part of Section 437(6) as on earlier occasions looking to the seriousness of offence and availability of sufficient prima facie circumstances, his bail applications were rejected - Prima facie circumstances available showing that by practicing fraud and fabricating documents applicant has misappropriated huge amount of Rs.25,05,793 - Bail application rejected as benefit of provision of Section 437(6) cannot be granted. [Sunil Saxena Vs. State of M.P.]...816

Criminal Procedure Code, 1973 (2 of 1974), Section 438 - No straitjacket formula can be fixed for not granting of anticipatory bail - Provisions of S. 438 are to be applied by balancing between the rights of the applicant and investigation of the police. [Harshita @Harshlata Vs. State of M.P.] ...819

Criminal Procedure Code, 1973 (2 of 1974), Section 439(2) - Cancellation of Bail - Concept of setting aside the unjustified, illegal or perverse order is totally different from the concept of cancelling the bail on the ground that the noticee has misconducted himself or because of some new facts requiring such cancellation. [In Reference Vs. Vijay Kesharwani] ...307

Criminal Procedure Code, 1973 (2 of 1974), Section 439(2) - Cancellation of Bail - Where ignoring material and evidence on record a perverse order granting bail is passed in a serious crime of this nature involving commercial quantity of contraband - Such an order would be against principles of law - Interest of justice would also require that such a perverse order be set aside and bail be cancelled. [In Reference Vs. Vijay Kesharwani] ...307

Criminal Procedure Code, 1973 (2 of 1974), Sections 468 & 470 - In computing the period of limitation, time during which accused is

दण्ड प्रक्रिया संहिता 1973 (1974 का 2), धारा 386 - अपीलीय न्यायालय की शक्तियाँ - आत्यांतिक विश्वसनीय साक्ष्य के मुल्यांकन पर अनुचित तर्क तथा विपर्यस्ता के कारण विचारण न्यायालय ने प्रत्यर्थियों को दोषमुक्त किया - दोषमुक्ति का निर्णय स्थिर नहीं रहने दिया जा सकता। (म.प्र. राज्य वि. सुरेश सिंह)(DB)...*49

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 437(6) - जमानत - पूर्व में आवेदक के सात जमानत आवेदन नामंजूर - 60 दिनों के भीतर विचारण पूर्ण नहीं - अभिनिर्धारित - धारा 437(6) के बाद के भाग को दृष्टिगत रखते हुये आवेदक जमानत का हकदार नहीं क्योंकि पूर्व अवसरों पर अपराध की गंभीरता तथा पर्याप्त प्रथम दृष्ट्या परिस्थितियों की उपलब्धता को देखते हुए, उसके जमानत आवेदन नामंजूर किये गये - उपलब्ध प्रथम दृष्ट्या परिस्थितियाँ दर्शाती हैं कि कपट एवं दस्तावेजों की कूटरचना करके आवेदक ने एक बड़ी रकम 25,05,739 रुपये का दुर्विनियोजन किया है - जमानत आवेदन नामंजूर क्योंकि धारा 437(6) के उपबंध का लाभ नहीं दिया जा सकता। (सुनील सक्सेना वि. म.प्र. राज्य) ...816

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 438 - अग्रिम जमानत न दिये जाने के लिए कोई स्ट्रेटजेक्ट फार्मूला तय नहीं किया जा सकता - धारा 438 के उपबंधों को आवेदक के अधिकारों तथा पुलिस के अन्वेषण के मध्य संतुलन कर लागू किया जाना चाहिए। (हर्षिता उर्फ हर्षलता वि. म.प्र. राज्य) ...819

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 439(2) - जमानत का रद्दकरण - अन्यायपूर्ण, अवैध या विपर्यस्त आदेश को अपास्त करने की अवधारणा, जमानत को इस आधार पर कि नोटिसी ने स्वयं अवचार किया है अथवा ऐसे रद्दकरण की अपेक्षा करने वाले कुछ नये तथ्यों के कारण, रद्द करने की अवधारणा से पूर्णतः अलग है। (इन रेफ्रेन्स वि. विजय केशरवानी) ...307

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 439(2) - जमानत का रद्दकरण - जहाँ अभिलेख पर मौजूद सामग्री एवं साक्ष्य की अवहेलना करते हुये गंभीर प्रकृति के अपराध में जिसमें प्रतिषिद्ध पदार्थ की व्यापारिक मात्रा अन्तर्गस्त थी, जमानत अनुदत्त करने का विपर्यस्त आदेश पारित किया जाता है - ऐसा आदेश विधि के सिद्धान्तों के विपरीत होगा - न्यायहित भी अपेक्षित करता है कि ऐसा विपर्यस्त आदेश अपास्त किया जाए और जमानत रद्द की जाए। (इन रेफ्रेन्स वि. विजय केशरवानी) ...307

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धाराएँ 468 व 470 - परिसीमा-काल की संगणना करने में उस समय का अपवर्जन करना होगा, जिसके दौरान अभियुक्त

prosecuted in good faith in a Court which from defect the jurisdiction is unable to entertain it is to be excluded. [Bharat Singh Vs. State of M.P.] ...294

Criminal Procedure Code, 1973 (2 of 1974), Section 482 - Additional documents - Quashing of FIR and investigation - Charge sheet yet to be filed - Documents filed by accused cannot be considered.[Dev Vrat Mishra Vs. State of M.P.] (DB)...*23

Criminal Procedure Code, 1973 (2 of 1974), Section 482 - Exercise of inherent power - Locus standi - Special Judge passed an order u/s 156(3) to investigate into allegations made against the applicants - Held - Applicants have locus standi to challenge the order as order has been passed which would affect them. [Ramesh Vs. State of M.P.](DB)...*48

Criminal Procedure Code, 1973 (2 of 1974), Section 482 - Inherent powers of Court - Applicants were charge sheeted for the offence u/ ss. 387, 507, 115 & 120-B of IPC and Ss. 25 & 27 of Arms Act on the grounds that (1) Applicants could have a motive against complainant because he had published article in his magazine highlighting the corruption done by applicant, (2) A memorandum u/s 27 of Evidence Act given by co-accused without any other incriminating piece of evidence, and (3) Confessional statement said to have been made to police - Held - There is absolutely no legal evidence against the applicants and the continuation of the criminal proceeding against the applicants would be the abuse of process of Court - Petition allowed. [Ashok Nanda Vs. State of M.P.] ...300

Criminal Procedure Code, 1973 (2 of 1974), Section 482. - Quashing of proceedings - Where there is sufficient evidence against the accused, which may establish the charge, the proceedings cannot be quashed. [Rasiklal Manikchand Vs. Kishore Wadhwani] ...*16

Criminal Procedure Code, 1973 (2 of 1974), Sections 482 & 154 - Two FIRs have got been registered arising out of one common incident by two different complainants - Prosecution story and place of occurrence is same - Witnesses are common in both cases - Held - Second FIR and entire subsequent criminal proceeding pending before the Court quashed. [Lakhan Giri Vs. State of M.P.] ...808

Dealership for Petrol Pump - Constitution of Committee -

का उस न्यायालय में सद्भावपूर्वक अभियोजन किया जाता है जो अधिकारिता की त्रुटि से उसे ग्रहण करने में असमर्थ है। (भारत सिंह वि. म.प्र. राज्य) ...294

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 482 — अतिरिक्त दस्तावेज — एफ.आई.आर. और अन्वेषण का अभिखंडन — आरोप पत्र अभी प्रस्तुत किया जाना है — अभियुक्त द्वारा प्रस्तुत किये गये दस्तावेजों पर विचार नहीं किया जा सकता। (देवव्रत मिश्रा वि. म.प्र. राज्य) (DB)...*23

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 482 — अन्तर्निहित शक्ति का प्रयोग — सुने जाने का अधिकार — विशेष न्यायाधीश ने आवेदकों के विरुद्ध किये गये अभिकथनों का अन्वेषण करने के लिए धारा 156(3) के अन्तर्गत आदेश पारित किया — अभिनिर्धारित — आवेदकों को आदेश को चुनौती देने के लिए सुने जाने का अधिकार है क्योंकि पारित किया गया आदेश उनको प्रभावित करेगा। (रमेश वि. म.प्र. राज्य) (DB)...*48

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 482 — न्यायालय की अन्तर्निहित शक्तियाँ — आवेदकों पर भा.द.सं. की धारा 387, 507, 115 एवं 120-बी तथा आयुध अधिनियम की धारा 25 एवं 27 के अन्तर्गत अपराध के लिए आरोप इन आधारों पर लगाये गये कि (1) आवेदकों का परिवादी के विरुद्ध हेतु हो सकता है क्योंकि उसने अपनी पत्रिका में आवेदक के द्वारा किये गये भ्रष्टाचार पर बल देते हुए लेख प्रकाशित किया था, (2) सह-अभियुक्त द्वारा साक्ष्य अधिनियम की धारा 27 के अन्तर्गत ज्ञापन अपराध में फँसाने वाले साक्ष्य के किसी अन्य अंश के बिना दिया गया, और (3) संस्वीकृति कथन पुलिस से करना बताया गया — अभिनिर्धारित — आवेदकों के विरुद्ध आत्यंतिक रूप से कोई वैध साक्ष्य नहीं है तथा आवेदकों के विरुद्ध दण्डिक कार्यवाही जारी रखना न्यायालय की प्रक्रिया का दुरुपयोग होगा — याचिका मंजूर। (अशोक नन्दा वि. म.प्र. राज्य) ...300

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 482 — कार्यवाहियों का अभिखंडित किया जाना — जहाँ अभियुक्त के विरुद्ध पर्याप्त साक्ष्य है जो कि आरोप सिद्ध कर सकती है, वहाँ कार्यवाहियाँ अभिखंडित नहीं की जा सकती। (रसिकलाल मानिकचंद वि. किशोर बाघवानी) ...*16

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धाराएँ 482 व 154 — दो भिन्न शिकायतकर्ताओं द्वारा एक ही घटना से उद्भूत दो एफ.आई.आर. दर्ज करायीं गयीं — अभियोजन की कहानी और घटनास्थल वही है — दोनों मामलों में साक्षी समान हैं — अभिनिर्धारित — द्वितीय एफ.आई.आर. तथा न्यायालय के समक्ष लम्बित सम्पूर्ण दण्डिक कार्यवाही अभिखंडित। (लखन गिरी वि. म.प्र. राज्य) ...808

पेट्रोल पंप की डीलरशिप — समिति का गठन — विज्ञापन 31.12.1997 को जारी

Advertisement issued on 31.12.1997 - Circular dated 1.1.1993 was in vogue which provided that chairman for the OSB's would be retired High Court Judge - Interviews were held on 27.1.1999 and on that date circular dated 14.10.1998 was in vogue which provided that chairman would be a retired judge of High Court or retired District Judge - Board chaired by retired District Judge - Proceedings cannot be said to be vitiated for coram non-judice. [Kamruddin Siddiqui Vs. Indian Oil Corporation] ...*41

Dealership for Petrol Pump - Criteria of resident - Enquiry conducted by Tahsildar on the complaint of petitioner with regard to residence of respondent No.4 - Tahsildar has given a specific finding that respondent No. 4 is found residing at Bamitha, Distt. Chattarpur - No material brought on record to show that findings recorded by Tahsildar were called in question before any forum and were allowed to attain finality - Objection that respondent No. 4 is not resident of Chattarpur unsustainable. [Kamruddin Siddiqui Vs. Indian Oil Corporation] ...*41

Dealership for Petrol Pump - Suppression of material fact - Total family income - Respondent No. 4 did not disclose the fact of having double storeyed building whereof, are six shops and leased out on rent - Certificate also reveals of other land and house reaping income - All these facts have not been disclosed by respondent No. 4 - There is a suppression of material fact in respect of income as warranted under Clause 2.9.7. - Selection process vitiated - O.I.C. will be at liberty to take fresh steps for allotment of retail outlet of dealership in petrol and diesel. [Kamruddin Siddiqui Vs. Indian Oil Corporation] ...*41

Distributorship - False information - Petitioner mentioned in application that he is unmarried - Whereas in affidavit the marital status was shown to be married - Held - Marital status of candidate effects the evaluation in process of selection - Rejection of candidature of petitioner by IOCL proper - Petition dismissed. [Gaurav Tiwari Vs. Indian Oil Corporation Ltd.] ...*5

Distributorship of LPG - Selection process - Petitioner and respondent No.2 applied for grant of distributorship - Application of respondent No.2 was wrongly rejected by Level-1 Committee - On

किया गया - परिपत्र दिनांक 1.1.1993 प्रभावी था, जो यह उपबंधित करता था कि ओएसबी के अध्यक्ष उच्च न्यायालय के सेवानिवृत्त न्यायाधिपति होंगे - साक्षात्कार दिनांक 27.1.1999 को लिये गये और उस दिनांक को परिपत्र दिनांक 14.10.1998 प्रभावी था, जो यह उपबंधित करता था कि अध्यक्ष, उच्च न्यायालय के सेवानिवृत्त न्यायाधिपति अथवा सेवानिवृत्त जिला न्यायाधीश होंगे - बोर्ड की अध्यक्षता सेवानिवृत्त जिला न्यायाधीश द्वारा की गई - कार्यवाहियाँ, अधिकारिताविहीन न्यायालय के आधार पर दूषित नहीं कही जा सकती। (कमरुद्दीन सिद्दीकी वि. इंडियन ऑल कारपोरेशन) ...*41

पेट्रोल पंप की डीलरशिप - निवासी का मानदंड - प्रत्यर्थी क्र. 4 के निवास संबंध में याची की शिकायत पर तहसीलदार द्वारा जाँच की गई - तहसीलदार ने विनिर्दिष्ट निष्कर्ष दिया है कि प्रत्यर्थी क्र. 4 बमीठा, जिला छतरपुर का निवासी पाया गया - अभिलेख पर यह दर्शाने वाली कोई सामग्री नहीं लायी गयी कि तहसीलदार द्वारा अभिलिखित निष्कर्षों को किसी फोरम के समक्ष प्रश्नगत किया गया और उसे अंतिमता प्राप्त होने दी गई - आक्षेप कि प्रत्यर्थी क्र. 4 छतरपुर का निवासी नहीं है, समर्थन योग्य नहीं। (कमरुद्दीन सिद्दीकी वि. इंडियन ऑल कारपोरेशन) ...*41

पेट्रोल पंप की डीलरशिप - तात्त्विक तथ्य का छिपाया जाना - संपूर्ण कौटुम्बिक आय - प्रत्यर्थी क्र. 4 ने उसके पास दो मंजिला भवन, जिसमें छः दुकानें हैं और भाड़े पर दी गई हैं, के तथ्य को प्रकट नहीं किया - प्रमाणपत्र भी अन्य भूमि और मकान से आय कमाना प्रकट करता है - इन सभी तथ्यों को प्रत्यर्थी क्र. 4 द्वारा प्रकट नहीं किया गया - खण्ड 2.9.7 के अंतर्गत आवश्यक आय के संबंध में तात्त्विक तथ्य को छिपाया गया - चयन प्रक्रिया दूषित - पेट्रोल और डीजल में डीलरशिप के फुटकर दुकान के आवंटन के लिए नये कदम उठाये जाने की ओआईसी को स्वतंत्रता रहेगी। (कमरुद्दीन सिद्दीकी वि. इंडियन ऑल कारपोरेशन) ...*41

वितरकता - मिथ्या सूचना - याची ने आवेदन पत्र में उल्लिखित किया कि वह अविवाहित है - जबकि शपथ पत्र में वैवाहिक स्थिति विवाहित होना दर्शाया गयी - अभिनिर्धारित - अम्यर्थी की वैवाहिक स्थिति चयन प्रक्रिया के दौरान मूल्यांकन को प्रभावित करती है - आई.ओ.सी.एल. द्वारा याची की अम्यर्थिता की नामजूरी उचित - याचिका खारिज। (गौरव तिवारी वि. इंडियन ऑइल कारपोरेशन लि.) ...*5

एल.पी.जी. की वितरकता - चयन प्रक्रिया - याची एवं प्रत्यर्थी क्र. 2 ने वितरकता के अनुदान के लिए आवेदन किया - प्रत्यर्थी क्र. 2 का आवेदन स्तर-1 समिति द्वारा गलत तौर पर नामजूर कर दिया गया - प्रत्यर्थी क्र. 2 के आवेदन पर,

application by respondent No.2, mistake in wrongly rejecting the application of respondent No.2 was found - Entire selection process was set aside and fresh selection process was initiated - *Held* - Petitioner has not challenged the eligibility of respondent No.2 nor any doubt has been raised - As respondent No.2 was wrongly not considered in selection process therefore, entire selection process was scrapped - Procedure adopted by IOCL proper - Petition dismissed. [Gaurav Tiwari Vs. Indian Oil Corporation Ltd.] ...*5

Education - Admission - Compensation - Petitioner took admission in M.Sc. (Botany) Previous - Eligibility criteria for granting admission in M.Sc. (Botany) is Biology as per brochure published by University - Petitioner subsequently not allowed to appear in theory examination as she did not possess B.Sc. (Biology) with Botany as subject - *Held* - University did not specify that B.Sc. with Botany as a subject was essential qualification - Petitioner under Bona fide belief took admission in M.Sc. (Botany) and was allowed to prosecute her studies and to participate in practical examination - Petitioner was denied permission to appear in M.Sc. (Botany) Previous Year examination without any justification - Five days time given to petitioner by University to appear in examination cannot be said to be sufficient or adequate for preparing oneself for an annual exam - Petitioner entitled for compensation of Rs.25,000 for loss of her one year. [Arpita Bisen Vs. M.P. Bhoj (Open) University] ...696

Education Service (School Branch) Recruitment and Promotion Rules, M.P. 1982, Constitution, Article 311 - Merger of two departments and posts - Directorate of Adult Education was merged with Directorate of Public Instructions - Post of District Adult Education Officer absorbed with Assistant Director, Public Instructions granting them seniority - Responsibilities of the post of Asstt. Director, Adult Education and that of Public Instructions were more or less same - Although there was slight difference of pay scale but later on was brought at par - No educational qualification as such was provided for the post of Asstt. Director, Public Instructions - Absorption of the post of D.A.E.O. who were holding the qualification of graduation and were sufficiently experience with Asstt. Director, Public Instructions could not be said to be impermissible - Petition dismissed. [Shyam Narayan Sharma Vs. State of M.P.](DB)...*36

प्रत्यर्थी क्र. 2 का आवेदन गलत तौर पर नामंजूर किये जाने में त्रुटि पायी गयी — सम्पूर्ण चयन प्रक्रिया निरस्त की गयी तथा नयी चयन प्रक्रिया प्रारम्भ की गयी — अभिनिर्धारित — याची ने प्रत्यर्थी क्र. 2 की पात्रता को चुनौती नहीं दी और न ही कोई संदेह किया गया — चूँकि चयन प्रक्रिया में प्रत्यर्थी क्र. 2 को गलत रूप से विचार में नहीं लिया गया, इसलिए सम्पूर्ण चयन प्रक्रिया बेकार हो गयी — आई.ओ.सी.एल. द्वारा अपनायी गयी प्रक्रिया उचित — याचिका खारिज। (गौरव तिवारी वि. इंडियन ऑइल कारपोरेशन लि.) ...*5

शिक्षा — प्रवेश — प्रतिकर — याची ने एम.एससी. (वनस्पति विज्ञान) पूर्वाद्ध में प्रवेश लिया — विश्वविद्यालय द्वारा प्रकाशित विवरण पुस्तिका के अनुसार एम.एससी. (वनस्पति विज्ञान) में प्रवेश देने के लिए पात्रता मानदंड जीव विज्ञान है — तत्पश्चात् याची को सैद्धांतिक परीक्षा में बैठने की अनुमति नहीं दी गई क्योंकि वह वनस्पति विज्ञान विषय के साथ बी.एससी. (जीव विज्ञान) नहीं थी — अभिनिर्धारित — विश्वविद्यालय ने विनिर्दिष्ट नहीं किया कि विषय के रूप में वनस्पति विज्ञान के साथ बी.एससी. आवश्यक अर्हता थी — याची ने सद्भाविक विश्वास के साथ एम.एससी. (वनस्पति विज्ञान) में प्रवेश लिया और उसे अध्ययन की तथा प्रायोगिक परीक्षा में भाग लेने की अनुमति दी गई — याची को बिना किसी औचित्य के एम.एससी. (वनस्पति विज्ञान) पूर्वाद्ध वर्ष परीक्षा में बैठने की अनुमति देने से इन्कार किया गया — विश्वविद्यालय द्वारा याची को परीक्षा में बैठने के लिए दिया गया पाँच दिनों का समय, उसे वार्षिक परीक्षा की तैयारी करने के लिए पर्याप्त एवं उपयुक्त होना नहीं कहा जा सकता — याची उसकी एक वर्ष की हानि के लिए रुपये 25,000 के प्रतिकर की हकदार। (अर्पिता विसेन वि. एम.पी. भोज (ओपन) यूनिवर्सिटी) ...696

शिक्षा सेवा (शाला शाखा) भर्ती तथा पदोन्नति नियम, म.प्र. 1982, संविधान, अनुच्छेद 311 — दो विभागों और पदों का विलयन — प्रौढ़ शिक्षा संचालनालय का लोक शिक्षण संचालनालय में विलय — जिला प्रौढ़ शिक्षा अधिकारी के पद का सहायक संचालक, लोक शिक्षण में उनको वरिष्ठता प्रदान करते हुए आमेलन किया गया — सहायक संचालक, प्रौढ़ शिक्षा तथा लोक शिक्षण के पदों का उत्तदायित्व लगभग समान था — यद्यपि वेतनमान में कुछ भिन्नता थी, किन्तु बाद में दोनों को समान कर दिया गया — सहायक संचालक, लोक शिक्षण के पद हेतु इस रूप में कोई शैक्षणिक योग्यता का उपबंध नहीं था — जिला प्रौढ़ शिक्षा अधिकारी, जो स्नातक योग्यता धारित किये हुए थे तथा जिन्हें सहायक संचालक, लोक शिक्षण का पर्याप्त अनुभव था, के पद का आमेलन अननुज्ञेय नहीं कहा जा सकता — याचिका खारिज। (श्याम नारायण शर्मा वि. म.प्र. राज्य) (DB)...*36

Electricity Act (36 of 2003), Section 156 - The High Court while dealing with the criminal appeal against the conviction can also deal with the finding of civil liability determined by the Special Court and can even pass appropriate interlocutory orders on the question of its recovery. [Bhagwandas Tiwari (Shri) Vs. State of M.P.](DB)...718

Employees Provident Funds Scheme, 1952, Section 61 - See - Payment of Gratuity Act, 1972, Section 2(h) [Urmila Tiwari (Smt.) Vs. Smt. Kanti Devi] ...741

Entry Tax Act, M.P. (52 of 1976), Sections 3, 3-B & 14 - Incidence of taxation - Section 3 of Act is charging provision - Words used in later part of Section 3(1) that such tax shall be paid by every dealer who is liable to pay tax under VAT Act, is only for identifying the person who is liable to pay entry tax - Ss. 3-B & 14 are machinery provisions.[Lila Sons Breweries Ltd. (M/s.) Vs. State of M.P.](DB)...*28

Entry Tax Act, M.P. (52 of 1976), Sections 3, 3-B & 14 - Notification u/s 3-B - Absence of - Absence of notification u/s 3-B cannot come in the way of validity of charging S. 3 of the Act and render it inoperative - Absence of notification prescribing special procedure for collection of entry tax upon foreign liquor and beer - General machinery provision of S. 14 is clearly attracted. .[Lila Sons Breweries Ltd. (M/s.) Vs. State of M.P.] (DB)...*28

Environment (Protection) Rules, 1986, Rule 5(3), Minor Mineral Rules, M.P. 1996, Rule 49 - Provisions of Environmental Impact Assessment (EIA) notification dated 14.09.2006 issued by Central Government in exercise of powers u/R 5(3)(a) of the Environment (Protection) Rules, 1986 do not apply to quarrying operations of sand and 'Bajri' in view of Rule 49(1) of M.P. Minor Mineral Rules, 1996 - Consequently, no prior environmental clearance is required to be obtained in respect of quarrying of sand and 'Bajri'. [Ajay Dubey Vs. State of M.P.] (DB)...*21

Environment (Protection) Rules, 1986, Rule 5(3), Minor Mineral Rules, M.P. 1996, Rule 49 - The notification u/R 5(3) of Environment (Protection) Rules, 1986 is not an enactment within the meaning of S. 24(1) of the Environment (Protection) Act, 1986 and, therefore, it cannot have overriding effect on Rule 49 of the M.P. Minor Mineral Rules, 1996. [Ajay Dubey Vs. State of M.P.] (DB)...*21

विद्युत अधिनियम (2003 का 36), धारा 156 — उच्च न्यायालय दोषसिद्धि के विरुद्ध क्रिमिनल अपील की कार्यवाही के दौरान विशेष न्यायालय के द्वारा अवधारित सिविल दायित्व के निष्कर्ष पर भी कार्यवाही कर सकता है, तथा इसके प्रत्युद्धरण संबंधी प्रश्न पर समुचित अंतरिम आदेश भी पारित कर सकता है। (भगवानदास तिवारी (श्री) वि. म.प्र. राज्य) (DB)...718

कर्मचारी भविष्य निधि योजना, 1952, धारा 61 — देखें — उपदान संदाय अधिनियम, 1972, धारा 2(एच) (उर्मिला तिवारी (श्रीमति) वि. श्रीमति कांतीदेवी)...741

प्रवेश कर अधिनियम, म.प्र. (1976 का 52), धाराएँ 3, 3-बी व 14 — कर का भार — अधिनियम की धारा 3 एक भारण उपबंध है — धारा 3(1) के दूसरे भाग में प्रयुक्त शब्द कि ऐसे कर का भुगतान प्रत्येक व्यापारी जो कि वेट अधिनियम के अन्तर्गत कर भुगतान हेतु दायी है, के द्वारा किया जायेगा, केवल उस व्यक्ति का अभिज्ञान करने के लिये है जो प्रवेश कर का भुगतान करने के लिए दायी है — धारा 3-बी एवं 14 तंत्र-उपबंध हैं। (लीलासंस ब्रेवरीज लि. (मे.) वि. म.प्र. राज्य) (DB)...*28

प्रवेश कर अधिनियम, म.प्र. (1976 का 52), धाराएँ 3, 3-बी व 14 — धारा 3-बी के अन्तर्गत अधिसूचना — का अभाव — धारा 3-बी के अन्तर्गत अधिसूचना का अभाव अधिनियम की भारण धारा 3 की विधिमान्यता के आड़े नहीं आ सकता तथा इसे अप्रभावी नहीं कर सकता — विदेशी मदिरा तथा बीयर पर प्रवेश कर के संग्रहण के लिए विशेष प्रक्रिया विहित करने वाली अधिसूचना का अभाव — धारा 14 का सामान्य तंत्र उपबंध स्पष्ट रूप से आकर्षित होता है। (लीलासंस ब्रेवरीज लि. (मे.) वि. म.प्र. राज्य) (DB)...*28

पर्यावरण (संरक्षण) नियम, 1986, नियम 5(3), गौण खनिज नियम, म.प्र. 1996, नियम 49 — केन्द्रीय सरकार द्वारा पर्यावरण (संरक्षण) नियम, 1986 के नियम 5(3)(ए) के अन्तर्गत शक्तियों के प्रयोग में जारी पर्यावरण समाघात मूल्यांकन (ईआईए) अधिसूचना दिनांक 14.09.2006 के उपबंध, म.प्र. गौण खनिज नियम, 1996 के नियम 49(1) को दृष्टिगत रखते हुए रेत एवं बजरी की खदान क्रियाओं को लागू नहीं होता — परिणामस्वरूप, रेत एवं बजरी की खदान क्रिया के संबंध में कोई पूर्व पर्यावरण अनापत्ति अभिप्राप्त करना आवश्यक नहीं है। (अजय दुबे वि. म.प्र. राज्य)(DB)...*21

पर्यावरण (संरक्षण) नियम, 1986, नियम 5(3), गौण खनिज नियम, म.प्र. 1996, नियम 49 — पर्यावरण (संरक्षण) नियम, 1986 के नियम 5(3) के अन्तर्गत अधिसूचना, पर्यावरण (संरक्षण) अधिनियम, 1986 की धारा 24(1) के अर्थान्तर्गत अधिनियमिति नहीं है और इसलिए यह म.प्र. गौण खनिज नियम, 1996 के नियम 49 पर अध्यारोही प्रभाव नहीं रख सकती। (अजय दुबे वि. म.प्र. राज्य) (DB)...*21

Evidence Act (1 of 1872), Section 3 - Conduct of witness - Merely non-shouting of eyewitness would not dilute the prosecution case, because on seeing the incident how a witness would react it depends upon his mind and there cannot be any barometer or yardstick. [State of M.P. Vs. Suresh Singh] (DB)...*49

Evidence Act (1 of 1872), Section 3 - Eye witness - Appreciation - P.W. 5 supported the prosecution case in examination in chief - He was cross examined after 10 months of his examination in chief - Witness resiled from his statement made in examination in chief - No re-examination done by Public Prosecutor - Trial Court has also not exercised its power u/s 165 of Cr.P.C. - Bald statement of witness that first informant reached on the spot after the incident was over, cannot be acted upon. [Somu Vs. State of M.P.] (DB)...*37

Evidence Act (1 of 1872), Section 3 - Interested witness - Testimony of interested and related witness cannot be discarded only on this count but Court is required to scrutinize his testimony with great care and caution. [Gangadhar Vs. State of M.P.] (DB)...202

Evidence Act (1 of 1872), Section 3 - Medical and ocular evidence - Where evidence of solitary witness is in complete variance with medical evidence, the witness cannot be held to be fully reliable - Appeal allowed. [Gangadhar Vs. State of M.P.] (DB)...202

Evidence Act (1 of 1872), Section 3 - Merely on ground that prosecution witnesses are interested and partisan, their testimony cannot be discarded, but when their evidence appears inconsistent on material particulars & unnatural, it becomes hazardous to place reliance on their evidence to convict the accused persons. [Sunil Datta Vs. State of M.P.] (DB)...*50

Evidence Act (1 of 1872), Section 3, Penal Code, 1860, Section 302 - Solitary child witness - Evidence of child witness contrary to medical evidence - Child witness did not disclose the names of assailants to any other witness and report against unknown persons was lodged - Evidence of child witness not reliable. [Nandram Vs. State of M.P.] (DB)...493

*Evidence Act (1 of 1872), Section 3 - See - Penal Code, 1860, Section 302, [Somu Vs. State of M.P.] (DB)...*37*

साक्ष्य अधिनियम (1872 का 1), धारा 3 — साक्षी का आचरण — प्रत्यक्षदर्शी साक्षियों के न चिल्लाते मात्र से अभियोजन मामला कमजोर नहीं होता क्योंकि घटना देखने पर साक्षी कैसी प्रतिक्रिया करेगा यह उसके मस्तिष्क पर निर्भर करता है और इसका कोई बैरोमीटर या मापदंड नहीं हो सकता। (म.प्र. राज्य वि. सुरेश सिंह)(DB)...*49

साक्ष्य अधिनियम (1872 का 1), धारा 3 — प्रत्यक्षदर्शी साक्षी — मूल्यांकन — अ. सा. 5 ने मुख्य परीक्षा में अभियोजन मामले का समर्थन किया — उसकी प्रतिपरीक्षा उसकी मुख्य परीक्षा के 10 माह बाद की गयी — साक्षी अपनी मुख्य परीक्षा में किये गये कथन से मुकर गया — लोक अभियोजक द्वारा कोई पुनः परीक्षा नहीं की गयी — विचारण न्यायालय ने भी दं.प्र.सं. की धारा 165 के अंतर्गत अपनी शक्ति का प्रयोग नहीं किया — साक्षी के सरल कथन कि प्रथम सूचनादाता घटनास्थल पर घटना के समाप्त होने के पश्चात् पहुँचा था, पर कार्यवाही नहीं की जा सकती। (सोमू वि. म.प्र. राज्य) (DB)...*37

साक्ष्य अधिनियम (1872 का 1), धारा 3 — हितबद्ध साक्षी — हितबद्ध एवं नातेदार साक्षी की परिसाक्ष्य केवल इसी कारण अमान्य नहीं की जा सकती, परन्तु उसकी परिसाक्ष्य की अत्यधिक सतर्कता एवं सावधानी से संवीक्षा करना न्यायालय से अपेक्षित है। (गंगाधर वि. म.प्र. राज्य) (DB)...202

साक्ष्य अधिनियम (1872 का 1), धारा 3 — चिकित्सीय और प्रत्यक्ष साक्ष्य — जहाँ एकमात्र साक्षी की साक्ष्य चिकित्सीय साक्ष्य से पूर्ण भिन्न हो, वहाँ साक्षी को पूर्णतः विश्वसनीय नहीं ठहराया जा सकता — अपील मंजूर। (गंगाधर वि. म.प्र. राज्य)(DB)...202

साक्ष्य अधिनियम (1872 का 1), धारा 3 — मात्र इस आधार पर अभियोजन साक्षी हितबद्ध तथा पक्षपाती हैं, उनकी परिसाक्ष्य को अमान्य नहीं किया जा सकता, लेकिन जब उनकी साक्ष्य तात्त्विक विशिष्टियों पर असंगत और अस्वामाविक प्रतीत हो तो अभियुक्तगणों को दोषसिद्ध करने हेतु उनकी साक्ष्य पर विश्वास करना नुकसानदायक हो सकता है। (सुनील दत्ता वि. म.प्र. राज्य) (DB)...*50

साक्ष्य अधिनियम (1872 का 1), धारा 3, दण्ड संहिता, 1860, धारा 302 — अकेला बालक साक्षी — बालक साक्षी की साक्ष्य, चिकित्सीय साक्ष्य के प्रतिकूल — बालक साक्षी ने हमलावरों के नाम किसी अन्य साक्षी को प्रकट नहीं किये और अज्ञात व्यक्तियों के विरुद्ध रिपोर्ट दर्ज की गई — बालक साक्षी की साक्ष्य विश्वसनीय नहीं। (नंदराम वि. म.प्र. राज्य) (DB)...493

साक्ष्य अधिनियम (1872 का 1), धारा 3 — देखें — दण्ड संहिता, 1860, धारा 302, (सोमू वि. म.प्र. राज्य) (DB)...*37

Evidence Act (1 of 1872), Section 3 - Witness - Persons named in FIR as witnesses not examined by prosecution - Son and nephew claiming themselves to be eye witnesses not named in FIR as witnesses - Held - Witnesses are concocted witnesses. [Ramadhar @ Pappan Khampariya Vs. State of M.P.] ...*32

Evidence Act (1 of 1872), Sections 3 & 8 - False implication - Motive - Complainant is a political person and his wife had fought the election for member of Panchayat - Appellant was Up-Sarpanch at the time of incident - Held - Political rivalry between appellant and complainant cannot be ruled out. [Ramadhar @ Pappan Khampariya Vs. State of M.P.] ...*32

Evidence Act (1 of 1872), Section 9 - Relevant fact - News published in newspaper about detention of appellants prior to seizure of Charas is relevant and cannot be disbelieved. [Kishorilal Vs. State of M.P.] ...498

Evidence Act (1 of 1872), Section 32 - Dying declaration - Averment by deceased in FIR recorded by Head Constable that appellant, when the deceased sat on platform of witness (PW-11), came and asked him to eat sulphas and die - Neither supported by PW-11 nor by mother, father and uncle of deceased - The averment does not appear to be a truthful statement made by deceased. [Mijajilal Vs. State of M.P.] ...253

Evidence Act (1 of 1872), Section 32 - Dying declaration - Dying declaration recorded by Doctor - No evidence on record to indicate that anybody prompted or persuaded deceased to implicate appellant - No material to indicate that Doctor entertained any ill will or grudge against appellant - Dying declaration recorded by Doctor worth reliance - Appeal dismissed. [Somat Vs. State of M.P.] (DB)...535

Evidence Act (1 of 1872), Section 32 - Dying Declaration - Dying declarations recorded by two medical experts and one Executive Magistrate - No reason for these independent witnesses to speak lie or concoct document against appellant - Dying declarations reliable. [Santosh Vs. State of M.P.] (DB)...196

Evidence Act (1 of 1872), Section 32 - Dying declaration - Fitness certificate of deceased - Not necessary, where the person who recorded the statement is himself a doctor. [Prakash Wagh Vs. State of M.P.] (DB)...239

साक्ष्य अधिनियम (1872 का 1), धारा 3 — साक्षी — प्रथम सूचना रिपोर्ट में साक्षियों के रूप में नामित व्यक्तियों की अभियोजन द्वारा परीक्षा नहीं की गयी — स्वयं के प्रत्यक्षदर्शी साक्षी होने का दावा करने वाले पुत्र और भतीजे का नाम प्रथम सूचना रिपोर्ट में साक्षियों के रूप में नहीं दिया गया — अभिनिर्धारित — साक्षी मनगढ़ंत साक्षी हैं। (रामाधार उर्फ पप्पन खंपरिया वि. म.प्र. राज्य) ...*32

साक्ष्य अधिनियम (1872 का 1), धाराएँ 3 व 8 — मिथ्या आलिप्त करना — हेतु — परिवादी एक राजनीतिक व्यक्ति है और उसकी पत्नी ने पंचायत सदस्य का चुनाव लड़ा था — घटना के समय अपीलार्थी उप-सरपंच था — अभिनिर्धारित — अपीलार्थी और परिवादी के बीच राजनीतिक प्रतिद्वन्द्विता की संभावना नकारी नहीं जा सकती। (रामाधार उर्फ पप्पन खंपरिया वि. म.प्र. राज्य) ...*32

साक्ष्य अधिनियम (1872 का 1), धारा 9 — सुसंगत तथ्य — चरस के अभिग्रहण के पूर्व अपीलार्थियों के निरोध के बारे में समाचार पत्र में प्रकाशित समाचार सुसंगत हैं और उस पर अविश्वास नहीं किया जा सकता। (किशोरीलाल वि. म.प्र. राज्य) ...498

साक्ष्य अधिनियम (1872 का 1), धारा 32 — मृत्युकालिक कथन — प्रधान आरक्षक द्वारा अभिलिखित प्रथम सूचना रिपोर्ट में मृतक द्वारा यह प्रकथन किया गया कि जब मृतक, साक्षी (अ.सा.—11) के चबूतरे पर बैठा हुआ था, तब अपीलार्थी आया और उसको सल्फास खाकर मरने को कहा — इसका समर्थन न तो अ.सा.—11 द्वारा और न ही मृतक की माँ, पिता एवं चाचा द्वारा किया गया — प्रकथन, मृतक द्वारा किया गया सत्य कथन प्रतीत नहीं होता है। (मिजाजीलाल वि. म.प्र. राज्य) ...253

साक्ष्य अधिनियम (1872 का 1), धारा 32 — मृत्युकालिक कथन — चिकित्सक द्वारा अभिलिखित मृत्युकालिक कथन — अभिलेख पर यह उपदर्शित करने के लिए कोई साक्ष्य नहीं कि किसी ने अपीलार्थी को आलिप्त करने के लिये मृतक को उकसाया अथवा प्रेरित किया — यह उपदर्शित करने के लिए कोई सामग्री नहीं कि चिकित्सक अपीलार्थी के विरुद्ध कोई वैमनस्यता या द्वेष रखता था — चिकित्सक द्वारा अभिलिखित मृत्युकालिक कथन विश्वास योग्य — अपील खारिज। (सोमत वि. म.प्र. राज्य) (DB)...535

साक्ष्य अधिनियम (1872 का 1), धारा 32 — मृत्युकालिक कथन — मृत्युकालिक कथन दो चिकित्सा विशेषज्ञों एवं एक कार्यपालक मजिस्ट्रेट द्वारा अभिलिखित — इन स्वतंत्र साक्षियों द्वारा झूठ बोलने अथवा अपीलार्थी के विरुद्ध झूठे दस्तावेज गढ़ने का कोई कारण नहीं — मृत्युकालिक कथन विश्वसनीय। (संतोष वि. म.प्र. राज्य)(DB)...196

साक्ष्य अधिनियम (1872 का 1), धारा 32 — मृत्युकालिक कथन — मृतक का स्वस्थता प्रमाण पत्र — आवश्यक नहीं है, जहाँ वह व्यक्ति जिसने कथन अभिलिखित किया स्वयं चिकित्सक हो। (प्रकाश वाघ वि. म.प्र. राज्य) (DB)...239

Evidence Act (1 of 1872), Section 32 - Multiple dying declaration -
Each dying declaration has to be considered independently on its own merit as to its evidentiary value and one dying declaration cannot be rejected because of the contents of others - It is the duty of Court to consider each of them in its correct perspective and satisfy itself which one of them reflects the true state of affairs. [Somat Vs. State of M.P.] (DB)...535

Evidence Act (1 of 1872), Section 32 - See - Penal Code, 1860, Section 302 [Prakash Wagh Vs. State of M.P.] (DB)...239

Evidence Act (1 of 1872), Section 32(1) - Oral statements made by the deceased to her parents and near relatives prior to her death relating to the cause of her death are admissible in evidence after her death. [Raman Singh Vs. State of M.P.] ...259

Evidence Act (1 of 1872), Section 45 - Even if the application to get the document examined by handwriting expert was filed at the fag end of the trial when the case was fixed for final argument, the law is not so much harsh so as to shut down the doors to provide justice to the parties. [Asharam Vs. Suraj Singh Baghel] (DB)...684

*Evidence Act (1 of 1872), Section 45 - See - Hindu Marriage Act, 1955, Sections 12 and 13, [Alka Sharma Vs. Ajaykant Sharma](DB)...*3*

Evidence Act (1 of 1872), Section 65 - Secondary evidence of Will -
Defendant after filing application under Order 11 Rule 12 CPC and getting admitted the fact of execution of Will by plaintiffs, sought permission to give secondary evidence - *Held* - Once the petitioners/plaintiffs have admitted that there was a Will (which has been misplaced) and also a mutation proceeding in the Municipal Corporation on the basis of the copy of will, it is just and proper to allow the respondents/defendants to produce the secondary evidence of the original Will. [Shambhu Prasad Sharma Vs. Smt. Pushpa Badonya] (DB)...144

Evidence Act (1 of 1872), Sections 101 & 106 - Onus of proof -
Once possession is established, the person who claims that it was not a conscious possession has to establish it, because how he came to be in possession is within his special knowledge. [Boote @ Kanichhedi Vs. State of M.P.] ...511

साक्ष्य अधिनियम (1872 का 1), धारा 32 — बहुविध मृत्युकालिक कथन — प्रत्येक मृत्युकालिक कथन पर उसके साक्ष्यिक मूल्य के बारे में उसके अपने गुणगुण पर स्वतंत्र रूप से विचार करना होगा और एक मृत्युकालिक कथन को अन्य की विषय वस्तु के कारण अस्वीकार नहीं किया जा सकता — न्यायालय का कर्तव्य है कि वह उनमें से प्रत्येक का उसके सही परिप्रेक्ष्य में विचार करे और स्वयं की संतुष्टि करे कि उनमें से कौन सा मामले की वास्तविक कार्यकलाप की स्थिति को प्रतिबिम्बित करता है। (सोमन वि. म.प्र. राज्य) (DB)...535

साक्ष्य अधिनियम (1872 का 1), धारा 32 — देखें — दण्ड संहिता, 1860, धारा 302, (प्रकाश वाघ वि. म.प्र. राज्य) (DB)...239

साक्ष्य अधिनियम (1872 का 1), धारा 32(1) — मृतक द्वारा अपनी मृत्यु से पूर्व अपनी मृत्यु के कारण के संबंध में अपने माता-पिता तथा करीबी नातेदारों से किये गये मौखिक कथन उसकी मृत्यु के पश्चात् साक्ष्य में ग्राह्य हैं। (रमन सिंह वि. म.प्र. राज्य) ...259

साक्ष्य अधिनियम (1872 का 1), धारा 45 — मले ही दस्तावेजों का परीक्षण हस्तलिपि विशेषज्ञ से करवाये जाने हेतु आवेदन पत्र विचारण के अंतिम छोर पर प्रस्तुत किया गया, जब कि प्रकरण अंतिम तर्क हेतु नियत था, कानून इतना कठोर नहीं है कि पक्षकारों को न्याय प्रदान किये जाने के दरवाजे बंद हो जायें। (आशाराम वि. सूरज सिंह बघेल) (DB)...684

साक्ष्य अधिनियम (1872 का 1), धारा 45 — देखें — हिन्दु विवाह अधिनियम, 1955, धाराएँ 12 व 13, (अलका शर्मा वि. अजयकांत शर्मा) (DB)---*3

साक्ष्य अधिनियम (1872 का 1), धारा 65 — वसीयत का द्वितीयक साक्ष्य — प्रतिवादी ने सि.प्र.सं. के आदेश 11 नियम 12 के अन्तर्गत आवेदन फाइल करने और वादियों द्वारा वसीयत के निष्पादन का तथ्य स्वीकार कर लेने के बाद, द्वितीयक साक्ष्य देने की अनुज्ञा चाही — अभिनिर्धारित — जब एक बार याचियों/वादियों ने स्वीकार कर लिया है कि एक वसीयत थी (जो खो गयी है) और वसीयत की प्रतिलिपि के आधार पर नगरपालिक निगम में नामांतरण कार्यवाही भी हुई थी, तब यह न्यायसंगत और उचित है कि प्रत्यर्थियों/प्रतिवादियों को मूल वसीयत का द्वितीयक साक्ष्य पेश करने की अनुमति दी जाए। (शम्भू प्रसाद शर्मा वि. श्रीमति पुष्पा बड़ोन्या)(DB)...144

साक्ष्य अधिनियम (1872 का 1), धाराएँ 101 व 106 — सबूत का भार — एकबार जब कब्जा साबित हो जाता है, तब वह व्यक्ति, जो यह दावा करता है कि वह एक सचेतन कब्जा नहीं था, को उसे साबित करना होगा, क्योंकि वह कब्जे में कैसे आया यह उसी के विशेष ज्ञान में है। (बूटे उर्फ कन्हेदी वि. म.प्र. राज्य) ...511

*Evidence Act (1 of 1872), Section 113B - See - Penal Code, 1860, Section 304B [Kanhaiyalal Gupta Vs. State of M.P.] (DB)...*42*

Evidence Act (1 of 1872), Section 114(g) - Presumption - First informant not examined by prosecution - No reasons assigned by prosecution for non-examination of this witness - Held - Adverse inference can be drawn against prosecution that if this witness would have been examined in Court, he would have not supported the prosecution case.[Nandram Vs. State of M.P.] (DB)...493

Evidence Act (1 of 1872), Section 134 - Number of witnesses - Quality of evidence is required and not quantity - Parties are not required to examine particular number of witnesses to prove their case. [Gangadhar Vs. State of M.P.] (DB)...202

Evidence Act (1 of 1872), Section 134 - Number of witnesses - Quality of witness is material and not quantity. .[Nandram Vs. State of M.P.] (DB)...493

Examination - Age relaxation - State Government took a decision that age relaxation, that was given in previous two examination (held in year 2008-09 and 2009-10) is not continued now in the current examination - Held - Decision of the State Government cannot be interfered with by High Court until and unless, the statutory rules or regulations or any constitutional provisions are shown to be violated. [Subhash Kumar Dwivedi Vs. State of M.P.] ...441

Family Courts Act (66 of 1984), Sections 7 & 8 - Exclusion of jurisdiction and pending proceedings - Family Court constituted in 2002 - Ex parte decree of dissolution of marriage obtained by applicant in the year 2000 from the Civil Court - Non-applicant filed application under Order 9 Rule 13 CPC for setting aside ex parte decree before Civil Court - Held - To bring the dispute within the jurisdiction of Family Court, the suit or proceeding must be for declaration as to validity of a marriage or as to matrimonial status of any person - By application under Order 9 Rule 13 CPC, non-applicant did not seek any declaration as to validity of their marriage or matrimonial status - Court was only obliged to consider the question of validity or effectivity of service of summons on non-applicant - Not required to be transferred to Family Court - Revision dismissed. [Arvind Singh Bhadoriya Vs. Smt. Kunti Bhadoriya] ...270

साक्ष्य अधिनियम (1872 का 1), धारा 113बी - देखें - दण्ड संहिता, 1860, धारा 304बी, (कन्हैयालाल गुप्ता वि. म.प्र. राज्य) (DB)...*42

साक्ष्य अधिनियम (1872 का 1), धारा 114(जी) - उपधारणा - प्रथम सूचनादाता का अभियोजन द्वारा परीक्षण नहीं किया गया - अभियोजन द्वारा इस साक्षी का परीक्षण न कराने का कोई कारण नहीं दिया गया - अभिनिर्धारित - अभियोजन के विरुद्ध प्रतिकूल निष्कर्ष निकाला जा सकता है कि यदि इस साक्षी का न्यायालय में परीक्षण किया गया होता, तो वह अभियोजन के मामले का समर्थन नहीं करता। (नंदराम वि. म.प्र. राज्य) (DB)...493

साक्ष्य अधिनियम (1872 का 1), धारा 134 - साक्षियों की संख्या - साक्ष्य की गुणवत्ता अपेक्षित है न कि संख्या - पक्षकारों से अपना मामला साबित करने के लिये विशिष्ट संख्या में साक्षियों की परीक्षा कराना अपेक्षित नहीं है। (गंगाधर वि. म.प्र. राज्य) (DB)...202

साक्ष्य अधिनियम (1872 का 1), धारा 134 - साक्षियों की संख्या - साक्षी की गुणवत्ता तात्त्विक है न कि संख्या। (नंदराम वि. म.प्र. राज्य) (DB)...493

परीक्षा - आयु में छूट - राज्य सरकार ने निर्णय लिया कि आयु में छूट, जो पिछली दो परीक्षाओं (वर्ष 2008-09 एवं 2009-10 में आयोजित) में दी गयी थी, अब वर्तमान परीक्षा में जारी नहीं रहेगी - अभिनिर्धारित - राज्य सरकार के निर्णय में उच्च न्यायालय द्वारा तब तक हस्तक्षेप नहीं किया जा सकता जब तक कि कानूनी नियमों अथवा विनियमों अथवा किसी संवैधानिक उपबंध का उल्लंघन होना नहीं दर्शाया जाता। (सुभाष कुमार द्विवेदी वि. म.प्र. राज्य) ...441

कुटुम्ब न्यायालय अधिनियम (1984 का 66), धाराएँ 7 व 8 - अधिकारिता का अपवर्जन तथा लम्बित कार्यवाहियाँ - कुटुम्ब न्यायालय 2002 में गठित हुआ - आवेदक द्वारा विवाह विच्छेद की एकपक्षीय डिक्री वर्ष 2000 में सिविल न्यायालय से अभिप्राप्त की - अनावेदक ने एकपक्षीय डिक्री अपास्त करने हेतु सि.प्र.सं. के आदेश 9 नियम 13 के अंतर्गत आवेदन सिविल न्यायालय के समक्ष फाइल किया - अभिनिर्धारित - विवाद को कुटुम्ब न्यायालय की अधिकारिता के भीतर लाने के लिये, वाद या कार्यवाही, विवाह की विधिमान्यता या किसी व्यक्ति की वैवाहिक स्थिति के संबंध में घोषणा के लिये होनी चाहिए - सि.प्र.सं. के आदेश 9 नियम 13 के अंतर्गत आवेदन द्वारा, अनावेदक ने, उनके विवाह की विधिमान्यता या वैवाहिक स्थिति के संबंध में कोई घोषणा नहीं चाही - न्यायालय केवल अनावेदक पर समन की तामील की विधिमान्यता अथवा प्रभाव कारिता के प्रश्न पर विचार करने के लिए बाध्य था - कुटुम्ब न्यायालय को अंतरित किया जाना अपेक्षित नहीं - पुनरीक्षण खारिज। (अरविन्द सिंह भदौरिया वि. श्रीमति कुन्ती भदौरिया) ...270

Food Stuffs (Distribution) Control Order, M.P. 1960, Clause 4, (Khadya Padarath) Sarvajanic Nagrik Purti Scheme, M.P. 1991, Clause 4(1) - S.D.O. has failed to assign any reason for cancellation of fair price shops run by the appellant - He also did not afford any opportunity of hearing to the appellant - Order passed by S.D.O. cannot be sustained in eye of law - Order quashed. [Mahila Rukhmani Primary Consumer Co-operative Society Vs. State of M.P.](DB)...354

Food Stuffs (Distribution) Control Order, M.P. 1960, Clause 4, (Khadya Padarath) Sarvajanic Nagrik Purti Scheme, M.P. 1991, Clause 4(1) - The Scheme envisages pre-decisional hearing - The post-decisional hearing cannot be a substitute for pre-decisional hearing. [Mahila Rukhmani Primary Consumer Co-operative Society Vs. State of M.P.] (DB)...354

Griha Nirman Mandal Adhiniyam, M.P. 1972, (3 of 1973), Section 50 - Flat - Parking charge and premium of land were not mentioned separately in initial advertisement - Parking space and land are part and parcel of Flat and are included in definition of Flat - Demand of parking charge and premium of land illegal. [Amit Pande Vs. M.P. Housing Board] ...*40

High Court of Madhya Pradesh Rules, 2008, Chapter 4 Rule 10 - Formulation of point - Judges comprising of Division Bench differing on the point of admission - Matter was placed before Hon'ble the Chief Justice without formulating the point - **Held** - The Chief Justice acquires jurisdiction to nominate one or more of other Judge(s) only after such formulation of point(s) of difference - Unless such formulation is made, the Chief Justice may not even acquire the power under sub-rule (2) to nominate one or more of other Judge(s) to deliver the opinion - Matter to be placed before Hon'ble the Chief Justice for appropriate orders. [Suresh Singh Sikarwar Vs. State of M.P.] (FB)...36

Hindu Law - Joint Hindu Family Property - Two different properties purchased jointly in the names of Kannomal and Gullimal (real brothers) - Plaintiff admitted that Firm Kannomal and Gullimal was in existence - In absence of contrary evidence, it may be presumed that HUF firm must be in existence during the lifetime of brothers - Presumption about existence of particular state of affairs is available

खाद्य सामग्री (वितरण) नियंत्रण आदेश, म.प्र. 1960, खण्ड 4, (खाद्य पदार्थ) सार्वजनिक नागरिक पूर्ति योजना, म.प्र. 1991, खण्ड 4(1) - अनुविभागीय अधिकारी अपीलार्थी द्वारा चलाई जा रही उचित मूल्य की दुकानें रद्द किये जाने का कोई कारण बताने में असफल - उसने अपीलार्थी को सुनवाई का कोई अवसर भी नहीं दिया - अनुविभागीय अधिकारी द्वारा पारित आदेश विधि की दृष्टि में कायम नहीं रखा जा सकता - आदेश अमिखंडित। (महिला रूकमणि प्राइमरी कंज्यूमर को-ऑपरेटिव सोसायटी वि. म.प्र. राज्य) (DB)...354

खाद्य सामग्री (वितरण) नियंत्रण आदेश, म.प्र. 1960, खण्ड 4, (खाद्य पदार्थ) सार्वजनिक नागरिक पूर्ति योजना, म.प्र. 1991, खण्ड 4(1) - योजना निर्णय-पूर्व सुनवाई परिकल्पित करती है - निर्णय-उपरांत सुनवाई निर्णय-पूर्व सुनवाई के लिए स्थानापन्न नहीं हो सकती है। (महिला रूकमणि प्राइमरी कंज्यूमर को-ऑपरेटिव सोसायटी वि. म.प्र. राज्य) (DB)...354

गृह निर्माण मण्डल अधिनियम, म.प्र. 1972 (1973 का 3), धारा 50 - लैट - पार्किंग शुल्क तथा भूमि के प्रीमियम का प्रारंभिक विज्ञापन में पृथक से उल्लेखित नहीं किया गया - पार्किंग स्थल तथा भूमि लैट के अभिन्न अंग हैं तथा लैट की परिभाषा में शामिल हैं - पार्किंग शुल्क तथा भूमि के प्रीमियम की मांग अवैध। (अमित पांडे वि. एम.पी. हाउसिंग बोर्ड) ...*40

मध्य प्रदेश उच्च न्यायालय नियम, 2008, अध्याय 4 नियम 10 - बिन्दु विनिर्मिति - खण्ड न्यायपीठ में समाविष्ट न्यायाधीशों में ग्रहण किये जाने के बिन्दु पर मतभेद - मामला बिन्दु विनिर्मित किये बिना माननीय मुख्य न्यायाधिपति के समक्ष रखा गया - अभिनिर्धारित - मुख्य न्यायाधिपति को मतभेद के बिन्दु (बिन्दुओं) की ऐसी विनिर्मिति के बाद ही एक या अधिक अन्य न्यायाधीश (न्यायाधीशों) को नामनिर्दिष्ट करने की अधिकारिता प्राप्त होती है - जब तक ऐसे मतभेद के बिन्दु विनिर्मित नहीं किये जाते तब तक मुख्य न्यायाधिपति को उप-नियम (2) के अन्तर्गत एक या अधिक अन्य न्यायाधीश (न्यायाधीशों) को राय देने के लिए नामनिर्दिष्ट करने की शक्ति भी प्राप्त नहीं हो सकती है - मामले को उचित आदेशार्थ माननीय मुख्य न्यायाधिपति के समक्ष रखा जाए। (सुरेश सिंह सिकरवार वि. म.प्र. राज्य) (FB)---36

हिन्दू विधि - संयुक्त हिन्दू परिवार सम्पत्ति - कानोमल एवं गुलीमल (सगे भाइयों) के नाम से दो अलग सम्पत्तियाँ संयुक्त रूप से क्रय की गयीं - वादी ने स्वीकार किया कि फर्म कानोमल एवं गुलीमल अस्तित्व में थी - विपरीत साक्ष्य के अभाव में यह उपधारणा की जा सकती है कि भाइयों के जीवनकाल में संयुक्त हिन्दू परिवार की फर्म अस्तित्व में होगी - किसी विशिष्ट कार्यकलाप के अस्तित्व के सम्बन्ध में उपधारणा न केवल आगे की दिशा में अपितु पीछे की दिशा में भी की जा सकती है

not merely in forward direction but may also be raised in backward direction - Joint nucleus of said firm about purchase of property in 1928 has been rightly inferred. [Omprakash Vs. Shri Ram] ...722

Hindu Marriage Act (25 of 1955), Sections 12 & 13, Evidence Act, 1872, Section 45 - Annulment of marriage / Divorce sought on ground of mental disorder of wife - Application by husband for subjecting wife to medical examination by Medical Board - Held - It would certainly offend the fundamental human values, which would be demeaning the personality of an individual and the dignity of a person, who would be unnecessarily subjected to such an examination/test, for which she had not consented or volunteered herself - Order passed by trial Court allowing the application set aside. [Alka Sharma Vs. Ajaykant Sharma] (DB)...*3

Hindu Succession Act (30 of 1956), Section 14 - Conditions required - For applicability of Section 14 two conditions must exit (i) Concerning female Hindu must be in possession of property (ii) Such property must be possessed by her as a limited owner.[Basant Kumar Vs. Indra Sen (Deceased) Through Heirs] ...479

Hindu Succession Act (30 of 1956), Section 14 - Possession - Possession of a share of husband in joint family property in lieu of maintenance is sufficient to apply the provision of sub-clause (1) of Section 14. [Basant Kumar Vs. Indra Sen (Deceased) Through Heirs] ...479

Hindu Succession Act (30 of 1956), Section 14 - Property of female Hindu - A Hindu widow has a pre-existing right of maintenance in property left by her husband and any instrument executed afterward in her favour in which her right shown as limited right, would be in recognizance of her pre-existing right, and not as a new right created for first time. [Basant Kumar Vs. Indra Sen (Deceased) Through Heirs] ...479

Hindu Women's Right to Property Act (18 of 1937), Section 559(1) - Maintenance to widow - Husband died in 1922 - Benefit under the Act was not available to wife - However, she had a right of maintenance out of property of her late husband. [Basant Kumar Vs. Indra Sen (Deceased) Through Heirs] ...479

Industrial Disputes Act (14 of 1947), Section 25F - A workman

— वर्ष 1928 में सम्पत्ति क्रय करने के संबंध में उक्त फर्म का संयुक्त केन्द्रक होने बावत् निष्कर्ष उचित। (ओमप्रकाश वि. श्रीराम) ...722

हिन्दू विवाह अधिनियम (1955 का 25), धाराएँ 12 व 13, साक्ष्य अधिनियम, 1872, धारा 45 — पत्नी के मानसिक विकार के आधार पर विवाह का बातिलीकरण/विवाह विच्छेद चाहा गया — पति द्वारा चिकित्सा बोर्ड से पत्नी का चिकित्सीय परीक्षण कराये जाने हेतु आवेदन — अभिनिर्धारित — ऐसा करना निश्चित रूप से मूलभूत मानवीय मूल्यों का उल्लंघन होगा और उस व्यक्ति के व्यक्तित्व और व्यक्ति की प्रतिष्ठा को नीचा करना होगा, जिसे अनावश्यक रूप से ऐसे किसी परीक्षण/जाँच के आधीन रखा जाएगा, जिसके लिए उसने सहमति नहीं दी अथवा स्वेच्छा नहीं दर्शाई थी — विचारण न्यायालय द्वारा पारित, आवेदन मंजूर किये जाने का आदेश अपास्त। (अलका शर्मा वि. अजयकांत शर्मा) (DB)---*3

हिन्दू उत्तराधिकार अधिनियम (1956 का 30), धारा 14 — आवश्यक परिस्थितियाँ — धारा 14 की प्रयोज्यता के लिए दो परिस्थितियाँ अस्तित्वमान होनी चाहिए (i) सम्पत्ति संबंधित हिन्दू स्त्री के कब्जे में होनी चाहिए, (ii) उसके द्वारा ऐसी सम्पत्ति पर कब्जा परिसीमित स्वामी के तौर पर होना चाहिए। (बसंत कुमार वि. इंद्रा सेन (मृतक) द्वारा प्रतिनिधि) ...479

हिन्दू उत्तराधिकार अधिनियम (1956 का 30), धारा 14 — कब्जा — भरण पोषण के बदले में संयुक्त परिवार की सम्पत्ति में पति के अंश का कब्जा धारा 14 के उपखण्ड (1) के उपबंध को लागू करने के लिए पर्याप्त है। (बसंत कुमार वि. इंद्रा सेन (मृतक) द्वारा प्रतिनिधि) ...479

हिन्दू उत्तराधिकार अधिनियम (1956 का 30), धारा 14 — हिन्दू स्त्री की सम्पत्ति — कोई हिन्दू विधवा अपने पति द्वारा छोड़ी गयी सम्पत्ति में भरण पोषण का पूर्ववर्ती अधिकार रखती है और इसके बाद उसके पक्ष में निष्पादित कोई लिखत, जिसमें उसका अधिकार परिसीमित अधिकार के रूप में दर्शाया गया है, उसके पूर्ववर्ती अधिकार की पहचान में होगा न कि प्रथम बार सृष्ट किसी नये अधिकार के रूप में। (बसंत कुमार वि. इंद्रा सेन (मृतक) द्वारा प्रतिनिधि) ...479

हिन्दू महिलाओं का सम्पत्ति का अधिकार अधिनियम (1937 का 18), धारा 559(1) — विधवा को भरण पोषण — पति की मृत्यु 1922 में हुई — अधिनियम के अन्तर्गत लाभ पत्नी को उपलब्ध नहीं था — तथापि उसे उसके मृत पति की सम्पत्ति में से भरण पोषण का अधिकार था। (बसंत कुमार वि. इंद्रा सेन (मृतक) द्वारा प्रतिनिधि) ...479

औद्योगिक विवाद अधिनियम (1947 का 14), धारा 25एफ — कोई कर्मकार

who rendered services continuously for 10 years cannot be terminated without following the provisions contained in Section 25F - Petition allowed. [Rajesh Kushwaha Vs. M.P. Rajya Beej Avam Farm Vikas Nigam] ...665

Interpretation of Statutes - A statute is an edict of the Legislature and the conventional way of interpreting or construing a statute is to seek the 'intention' of its maker. [Suresh Baba Vs. Virendra Tyagi] (DB)...614

Interpretation of Statutes - Construction - If there are two possible constructions of statute, then the one which leads to anomaly or absurdity and makes the statute vulnerable to attack of unconstitutionality should be avoided in preference to other which makes it rational and immune from charge of unconstitutionality. [Institute of Chartered Accountants of India Vs. Vimal Kumar Surana] (DB)SC...321

Interpretation of Statutes - Decision of Court - Judgment of a Court has not to be interpreted like a statute where every word, as far as possible, has to be given a liberal meaning - Observations made have to be understood in the context of facts & circumstances raised. [Bramha Swaroop Saini Vs. State of M.P.] (DB)...796

Interpretation of Statutes - 'May' or 'Shall' - Use of word 'May' at one place and 'Shall' at another place in the same section may strengthen the inference that these words have been used in their primary and that 'Shall' be construed as mandatory. [Shyam Narayan Sharma Vs. State of M.P.] (DB)...*36

Interpretation of Statutes - Non-obstante clause - It is a potent clause intended to exclude every consideration arising from other provisions of the same statute or other statute - When the section does not refer to any particular provisions which it intends to override but refers to the provisions of the statute generally, it is not permissible to hold that it excludes the whole Act and stands all alone by itself. [Lila Sons Breweries Ltd. (M/s.) Vs. State of M.P.](DB)...*28

Interpretation of Statutes - Taxing statute - Levy of tax - For want of machinery provision, levy cannot become invalid - Even if rules have not been framed under the Act, levy can still hold good. [Lila Sons Breweries Ltd. (M/s.) Vs. State of M.P.] (DB)...*28

जिसने निरंतर 10 वर्षों से सेवाएँ दी हैं, को धारा 25एफ में अन्तर्विष्ट उपबंधों का पालन किये बिना बर्खास्त नहीं किया जा सकता। (राजेश कुशवाहा वि. एम.पी. राज्य बीज एवं फार्म विकास निगम) ...665

कानूनों का निर्वचन — कानून विधान मण्डल का राज्यादेश होता है तथा कानून के निर्वचन का परम्परागत तरीका अथवा उसकी व्याख्या करना इसके निर्माता का 'आशय' ढूँढना है। (सुरेश बाबा वि. वीरेन्द्र त्यागी) (DB)...614

कानूनों का निर्वचन — अर्थान्वयन — यदि कानून के दो अर्थान्वयन संभव हैं, तब वह जो विषमता या अर्थहीनता की ओर ले जाता है एवं कानून को असंवैधानिकता के आक्रमण से भेद्य बनाता है उससे बचना चाहिए, दूसरे की तुलना में जो उसे युक्तिसंगत बनाता है तथा असंवैधानिकता के आरोप से उन्मुक्त करता है। (इंस्टीट्यूट ऑफ चार्टर्ड एकाउंटेंट्स ऑफ इंडिया वि. विमल कुमार सुराना) (DB)SC...321

कानूनों का निर्वचन — न्यायालय का विनिश्चय — न्यायालय के निर्णय का निर्वचन उस कानून के समान नहीं करना होगा जहाँ प्रत्येक शब्द को, जहाँ तक संभव हो सके, उदार अर्थ देना होता है — की गयी टिप्पणियों को उठाये गये तथ्यों एवं परिस्थितियों के संदर्भ में समझना होगा। (ब्रम्हस्वरूप सेनी वि. म.प्र. राज्य)(DB)...796

कानूनों का निर्वचन — 'सकेगा' या 'होगा' — एक ही धारा में एक स्थान पर 'सकेगा' शब्द तथा दूसरे स्थान पर 'होगा' शब्द का उपयोग इस अनुमान को पुष्ट कर सकता है कि इन शब्दों का उपयोग उनके मूल रूप में किया गया है और यह कि 'होगा' का आज्ञापक अर्थ लगाया जावे। (श्याम नारायण शर्मा वि. म.प्र. राज्य) (DB)...*36

कानूनों का निर्वचन — सर्वोपरि खण्ड — यह उसी कानून अथवा अन्य कानून के उपबंधों से उद्भूत प्रत्येक विचार का अपवर्जन करने के लिए आशयित एक प्रभावकारी खण्ड है — जब धारा किसी विशिष्ट उपबंध, जिस पर यह अध्यारोही होना चाहती है, को निर्दिष्ट नहीं करती किन्तु कानून के उपबंधों को साधारणतया निर्दिष्ट करती है, तब यह अभिनिर्धारित करना अनुज्ञेय नहीं है कि यह पूरे अधिनियम को अपवर्जित करती है तथा स्वयं ही प्रभावी होती है। (लीलासंस ब्रेवरीज लि. (मे.) वि. म.प्र. राज्य) (DB)...*28

कानूनों का निर्वचन — कर कानून — कर का उद्ग्रहण — तंत्र उपबंध के अभाव में, उद्ग्रहण अविधिमाम्य नहीं हो सकता — मले ही अधिनियम के अन्तर्गत नियम विरचित नहीं किये गये हों, उद्ग्रहण तब भी उचित रहता है। (लीलासंस ब्रेवरीज लि. (मे.) वि. म.प्र. राज्य) (DB)...*28

Interpretation of Statutes - Taxing statute - Tax - Four ingredients

- (1) Nature which prescribes the taxable event attracting the levy, (2) Person on whom the levy is imposed and who is obliged to pay the tax, (3) Rate at which the tax is imposed, (4) Measure or value to which rate will be applied for computing the tax liability. [Lila Sons Breweries Ltd. (M/s.) Vs. State of M.P.] (DB)...*28

Judicial Officers Protection Act (18 of 1850), Section 1 - Liability -

An act done or ordered to be done in discharge of judicial capacity is within jurisdiction of Magistrate - Protection provided under Act of 1850 is absolute and no enquiry would be entertained even with the act or order was erroneous, irregular or illegal or was done or ordered to be done believing in good faith that he had jurisdiction to do or ordered to be done. [Suresh Kumar Sharma Vs. Durgalal Vijay] (DB)...628

(Khadya Padarath) Sarvajanic Nagrik Purti Scheme, M.P. 1991,

Clause 4(1) - See - Food Stuffs (Distribution) Control Order, M.P. 1960, Clause 4, [Mahila Rukhmani Primary Consumer Co-operative Society Vs. State of M.P.] (DB)...354

Krishi Prayojan Ke Liye Upayog Ki Ja Rahi Dakhal Rahit Bhoomi Par Bhoomiswami Adhikaron Ka Pradan Kiya Jana (Vishesh Upabandh) Adhiniyam, M.P. (30 of 1984), Section 3, Specific Relief Act, 1963, Section 38 - Declaration and perpetual injunction - Relief when cannot be granted - Appellant alleging to have acquired Bhoomiswami rights on the strength of possession for more than 100 years - State marking the land for a plantation project - Appellant declared to be an encroacher and proceedings u/s 248 M.P. Land Revenue Code initiated - Held - Appellant was not found in legal possession of the land and whenever the possession of the party is not lawful or legal, then the same could not be protected by issuing or granting perpetual injunction in favor of such party and against the true owner or the recorded Bhoomiswami of land. [Sharda Prasad Vs. State of M.P.] ...461

Land Acquisition Act (1 of 1894), Sections 4 & 6 - See - Civil Procedure Code, 1908, Section 9 [Mohd. Ashraf Vs. M.P. Housing Board] ...182

Land Revenue Code, M.P. (20 of 1959), Section 22(2) - Sub-

कानूनों का निर्वचन - कर कानून - कर - चार संघटक - (1) प्रकृति, जो आरोपण आकर्षित करने वाली कर योग्य स्थिति विहित करती है (2) व्यक्ति, जिस पर आरोपण करना है तथा जो कर भुगतान करने के लिए दायी है (3) दर, जिससे करारोपण किया जाना है, (4) मात्रा अथवा मूल्य, जिस पर कर दायित्व की गणना करने के लिये दर लागू होगी। (लीलासंस ब्रेवरीज लि. (मे.) वि. म.प्र. राज्य)(DB)...*28

न्यायिक अधिकारी संरक्षण अधिनियम (1850 का 18), धारा 1 - दायित्व - न्यायिक हैसियत के निर्वहन में किया गया अथवा किये जाने के लिए आदेशित कोई कार्य मजिस्ट्रेट की अधिकारिता के भीतर है - 1850 के अधिनियम के अन्तर्गत उपबन्धित संरक्षण आत्यंतिक है तथा किसी जाँच पर विचार नहीं किया जायेगा भले ही कार्य या आदेश त्रुटिपूर्ण, अनियमित अथवा अवैध हो अथवा सद्भावपूर्वक यह विश्वास करते हुए किया गया हो अथवा किये जाने के लिए आदेशित किया गया हो कि उसे ऐसा करने अथवा ऐसा किये जाने के लिए आदेशित करने की अधिकारिता थी। (सुरेश कुमार शर्मा वि. दुर्गालाल विजय) (DB)...628

(खाद्य पदार्थ) सार्वजनिक नागरिक पूर्ति योजना, म.प्र. 1991, खण्ड 4(1) - देखें - खाद्य सामग्री (वितरण) नियंत्रण आदेश, म.प्र. 1960, खण्ड 4, (महिला रुकमणि प्राइमरी कंज्यूमर को-ऑपरेटिव सोसायटी वि. म.प्र. राज्य) (DB)...354

कृषि प्रयोजन के लिए उपयोग की जा रही दखल रहित भूमि पर भूमि स्वामी अधिकारों का प्रदान किया जाना (विशेष उपबंध) अधिनियम, म.प्र. (1984 का 30), धारा 3, विनिर्दिष्ट अनुतोष अधिनियम, 1963, धारा 38 - घोषणा एवं शाश्वत व्यादेश - अनुतोष कब प्रदान नहीं किया जा सकता - अपीलार्थी ने 100 वर्षों से अधिक समय से कब्जे के बल पर भूमिस्वामी अधिकारों को प्राप्त किया जाना अभिकथित किया - राज्य ने बागान परियोजना के लिए भूमि को चिह्नंकित किया - अपीलार्थी को अतिक्रामक घोषित किया गया और म.प्र. भू राजस्व संहिता की धारा 248 के अन्तर्गत कार्यवाहियाँ प्रारम्भ की गई - अभिनिर्धारित - अपीलार्थी भूमि के वैध कब्जे में नहीं पाया गया और जब कभी भी पक्षकार का कब्जा विधिपूर्ण या वैध नहीं होता है, तब ऐसे पक्षकार के पक्ष में और भूमि के वास्तविक स्वामी या अभिलिखित भूमिस्वामी के विरुद्ध शाश्वत व्यादेश जारी अथवा प्रदान कर उसे संरक्षित नहीं किया जा सकता। (शारदा प्रसाद वि. म.प्र. राज्य) ...461

भूमि अर्जन अधिनियम (1894 का 1), धाराएँ 4 व 6 - देखें - सिविल प्रक्रिया संहिता, 1908, धारा 9 (मो. अशरफ वि. एम.पी. हाउसिंग बोर्ड) ...182

भू राजस्व संहिता, म.प्र. (1959 का 20), धारा 22(2) - उप खण्ड अधिकारी को

Divisional Officer has been conferred powers of the Collector to appoint a Patwari and as a consequence thereof he also has the power to remove a Patwari from service. [Kala Bai (Smt.) Vs. State of M.P.] (FB)...575

Land Revenue Code, M.P. (20 of 1959), Sections 44 & 50 - Order passed under the provisions of M.P. Lok Dhan (Shodhya Rashiyon Ki Vasuli) Adhiniyam, 1987 is not subject to appeal and revision under the provisions of Code. [Sadhna Chourasia (Smt.) Vs. Punjab National Bank] (DB)...61

*Land Revenue Code, M.P. (20 of 1959), Section 50 - Revision - Powers - Revisional Court has not limited jurisdiction as it can satisfy itself as to legality or propriety of any order passed by or as to the regularity of the proceedings of any revenue officer subordinate to it. [Municipal Council, Balaghat Vs. M/s. Rishubh Developers & Builders] ...*30*

Land Revenue Code, M.P. (20 of 1959), Section 50 - Revision - Suo motu - When a person against whom suo motu exercise of power is being made is not put to an irreparable loss, period of one year from the date of detection of illegality, impropriety or irregularity in the order/proceedings would be reasonable period for exercise of suo motu powers of revision u/s 50 of Code for protection of the government land or public interest. [Minority View (Mr. Justice Abhay M. Naik)] [Ranveer Singh (Dead) Through L.Rs. Vs. State of M.P.] (FB) ...1

Land Revenue Code, M.P. (20 of 1959), Section 50 - Revision - The suo motu powers can be exercised by the revisional authority envisaged u/s 50 of the Code within a period of 180 days from the date of the knowledge of illegality, impropriety and irregularity of the proceedings committed by a revenue officer subordinate to it even if the immovable property is government land or having some public interest. [Majority View (Mr. Justice A.K. Shrivastava & Mr. Justice S.S. Dwivedi)] [Ranveer Singh (Dead) Through L.Rs. Vs. State of M.P.] (FB) ...1

Land Revenue Code, M.P. (20 of 1959), Section 51 - Review - Tahsildar reviewed the order without obtaining permission of review - Order liable to be discarded. [Jagdish Vs. Achhelal] ...756

पटवारी नियुक्त करने हेतु कलेक्टर की शक्तियाँ प्रदत्त की गयी हैं और उसके परिणामस्वरूप उसे पटवारी को सेवा से हटाने की शक्ति भी है। (कला बाई (श्रीमति) वि. म.प्र. राज्य) (FB)...575

भू राजस्व संहिता म.प्र. (1959 का 20), धाराएँ 44 व 50 — म.प्र. लोक धन (शोध्य राशियों की वसूली) अधिनियम, 1987 के उपबंधों के अन्तर्गत पारित आदेश संहिता के उपबंधों के अन्तर्गत अपील एवं पुनरीक्षण के अध्यक्षीन नहीं है। (साधना चौरसिया (श्रीमति) वि. पंजाब नेशनल बैंक) (DB)---61

भू राजस्व संहिता, म.प्र. (1959 का 20), धारा 50 — पुनरीक्षण — शक्तियाँ — पुनरीक्षण न्यायालय को सीमित अधिकारिता नहीं है क्योंकि यह अपने अधीनस्थ किसी राजस्व अधिकारी द्वारा पारित किसी आदेश की वैधता अथवा औचित्यता के संबंध में अथवा उसकी कार्यवाहियों की नियमितता के संबंध में अपना समाधान कर सकता है। (म्युनिसिपल काउंसिल, बालाघाट वि. मे. रिशुम डेव्हेलपर्स एण्ड बिल्डर्स) ...*30

भू राजस्व संहिता, म.प्र. (1959 का 20), धारा 50 — पुनरीक्षण — स्वप्रेरणा से — जब किसी व्यक्ति को, जिसके विरुद्ध स्वप्रेरणा शक्ति का प्रयोग किया जा रहा है, अपूरणीय क्षति न पहुँचती हो, तब आदेश/कार्यवाहियों में अवैधता, अनौचित्यता अथवा अनियमितता का पता लगने की तारीख से एक वर्ष की अवधि शासकीय भूमि अथवा लोक हित की सुरक्षा के लिए संहिता की धारा 50 के अन्तर्गत पुनरीक्षण की स्वप्रेरणा शक्ति का प्रयोग करने के लिये युक्तियुक्त अवधि होगी। [अल्पमत दृष्टिकोण—मि.जस्टिस अमय एम. नायक] (रणवीर सिंह (मृतक) द्वारा विधिक प्रतिनिधि वि. म.प्र. राज्य) (FB)...1

भू राजस्व संहिता, म.प्र. (1959 का 20), धारा 50 — पुनरीक्षण — संहिता की धारा 50 के अन्तर्गत परिकल्पित पुनरीक्षण प्राधिकारी द्वारा स्वप्रेरणा शक्तियों का प्रयोग, उसके अधीनस्थ किसी राजस्व अधिकारी द्वारा की गयी कार्यवाहियों की अवैधता, अनौचित्यता तथा अनियमितता की जानकारी की तारीख से 180 दिन की अवधि के भीतर किया जा सकता है मले ही अवल सम्पत्ति शासकीय भूमि हो अथवा उसमें कोई लोकहित हो। [बहुमत दृष्टिकोण—मि. जस्टिस ए.के. श्रीवास्तव एवं मि. जस्टिस एस.एस. द्विवेदी] (रणवीर सिंह (मृतक) द्वारा विधिक प्रतिनिधि वि. म.प्र. राज्य) (FB)...1

भू राजस्व संहिता, म.प्र. (1959 का 20), धारा 51 — पुनर्विलोकन — तहसीलदार ने पुनर्विलोकन की अनुमति अभिप्राप्त किये बिना आदेश का पुनर्विलोकन किया — आदेश निरस्त किये जाने योग्य। (जगदीश वि. अच्छेलाल) ...756

Land Revenue Code, M.P. (20 of 1959), Section 108 - Revenue Entry - Title - Revenue entries in record of right are not sufficient to hold the title and possession of the property unless title is proved by admissible documents. [Mohd. Ashraf Vs. M.P. Housing Board]...182

Land Revenue Code, M.P. (20 of 1959), Section 114 - Revenue entry - No right, title or interest can be created by orders of Revenue Court regarding mutation. [Basant Kumar Vs. Indra Sen (Deceased) through Heirs] ...479

Land Revenue Code, M.P. (20 of 1959), Sections 147 & 165(9-b) - Land held by an agriculturist, which admeasures less than 6 hectares and is situated in scheduled area - Can be sold in an auction under the provisions of M.P. Lok Dhan (Shodhya Rashiyon Ki Vasuli) Adhiniyam, 1987, in view of Section 147 of the Code. [Sadhna Chourasia (Smt.) Vs. Punjab National Bank] DB...61

Land Revenue Code, M.P. (20 of 1959), Sections 169(2) & 185(2) - Occupancy tenant - Appellants claiming right on the basis of agreement to sell - Possession could not be deemed to be possession as lessee and their rights could not be deemed to be protected as occupancy tenant. [Jagdish Vs. Achhelal] ...756

Land Revenue Code, M.P. (20 of 1959), Section 242 - Wazib-ul-urz - Land settled with ex-proprietor in occupancy rights by High Court in Second Appeal - Land/water body was entered as Wazib-ul-urz - Held - Board of Revenue was well within its right to set aside the entries in Wazib-ul-urz. [Municipal Council, Balaghat Vs. M/s. Rishubh Developers & Builders] ...*30

Law of Torts - Medical negligence - In absence of culpable negligence, no Doctor/Surgeon could be penalized or declared guilty of committing negligence. [Laxmi Devi (Smt.) Vs. State of M.P.]...*10

Limitation Act (36 of 1963), Section 5 - Condonation of delay - Appellant an illiterate lady was not informed by her counsel that an intra court appeal can be filed - She was informed by any another counsel - Held - For the fault on the part of the Counsel, a litigant should not suffer - Delay in filing appeal, condoned. [Sumarwati Bai (Smt.) Vs. The Mines Manager] DB...609

भू राजस्व संहिता, म.प्र. (1959 का 20), धारा 108 — राजस्व प्रविष्टि — हक — अधिकार अभिलेख की राजस्व प्रविष्टियाँ सम्पत्ति का स्वत्व एवं कब्जा मानने के लिये पर्याप्त नहीं हैं जब तक कि ग्राह्य दस्तावेजों द्वारा स्वत्व साबित नहीं कर दिया जाता है। (मो. अशरफ़ वि. एम.पी. हाउसिंग बोर्ड) ...182

भू राजस्व संहिता, म.प्र. (1959 का 20), धारा 114 — राजस्व प्रविष्टि — राजस्व न्यायालय के आदेशों द्वारा नामांतरण के संबंध में कोई अधिकार, हक या हित सृष्ट नहीं किया जा सकता। (बसंत कुमार वि. इन्द्रा सेन (मृतक) द्वारा प्रतिनिधि) ...479

भू राजस्व संहिता म.प्र. (1959 का 20), धाराएँ 147 व 165(9-बी) — कृषक द्वारा धारित भूमि, जो 6 हेक्टेयर से कम है और अनुसूचित क्षेत्र में स्थित है — संहिता की धारा 147 को दृष्टि में रखते हुए, म.प्र. लोक धन (शोध्य राशियों की वसूली) अधिनियम, 1987 के उपबंधों के अन्तर्गत नीलामी में विक्रय की जा सकती है। (साधना चौरसिया (श्रीमति) वि. पंजाब नेशनल बैंक) (DB)...61

भू राजस्व संहिता, म.प्र. (1959 का 20), धाराएँ 169(2) व 185(2) — मौरुसी कृषक — अपीलार्थी ने विक्रय करार के आधार पर अधिकार का दावा किया — कब्जा पट्टेदार के रूप में कब्जा नहीं समझा जा सकता तथा उनके अधिकार मौरुसी कृषक के रूप में संरक्षित नहीं समझे जा सकते। (जगदीश वि. अच्छेलाल) ...756

भू राजस्व संहिता, म.प्र. (1959 का 20), धारा 242 — वाजिब-उल-अर्ज — उच्च न्यायालय द्वारा द्वितीय अपील में पूर्व-स्वामी के अधिमोग अधिकार में भूमि व्यवस्थापित — भूमि/जलाशय वाजिब-उल-अर्ज के रूप में प्रविष्टि — अभिनिर्धारित — वाजिब-उल-अर्ज की प्रविष्टि को अपास्त करना राजस्व मण्डल के अधिकार में था। (म्युनिसिपल काउंसिल, बालाघाट वि. मे. रिशुम डेव्हेलपर्स एण्ड बिल्डर्स)...*30

अपकृत्य विधि — चिकित्सीय उपेक्षा — सदोष उपेक्षा के अभाव में, किसी चिकित्सक/शल्य चिकित्सक को दण्डित अथवा उपेक्षा करने का दोषी घोषित नहीं किया जा सकता। (लक्ष्मी देवी (श्रीमति) वि. म.प्र. राज्य) ---*10

परिसीमा अधिनियम (1963 का 36), धारा 5 — विलम्ब माफी — अपीलार्थी, एक अशिक्षित महिला को उसके अधिवक्ता द्वारा यह नहीं बताया गया कि अन्तर्न्यायालयीन अपील प्रस्तुत की जा सकती है — अन्य अधिवक्ता द्वारा उसे बताया गया — अभिनिर्धारित — अधिवक्ता की गलती के कारण किसी वादकर्ता को नुकसान नहीं होना चाहिए — अपील प्रस्तुत करने में हुआ विलम्ब माफ किया गया। (सुमरवती बाई (श्रीमति) वि. द माइंस मेनेजर) (DB)...609

Limitation Act (36 of 1963), Section 14 - Exclusion of time - Plaint return by Court for want of jurisdiction - Benefit of Section 14 cannot be given by Court returning the case - Such benefit can be claimed only after presentation to the Court having competent jurisdiction. [Manju Tomar Smt. Vs. Smt. Anjali Jain] ...544

Limitation Act (36 of 1963), Section 18 - Limitation - Property mortgaged with Bank - Limitation would be 12 years - Loan was sanctioned on 27.03.1992 - Appellant acknowledged the liability to repay the loan on 16.05.1996 - On 27.12.1996 Revenue Recovery Certificate was issued - The proceedings are not time barred. [Sadhna Chourasia (Smt.) Vs. Punjab National Bank] (DB)...61

Limitation Act (36 of 1963), Article 136 - After passing the decree by the trial Court if the same was remained sub-judice before the appellate Court then the limitation for filing the execution proceeding should be counted from the date of the judgment & decree passed by the appellate Court. [Netlal Vs. Thagi Bai (Dead) Through LR Marotirao] ...278

Lokayukt Evam Up-Lokayukt Adhiniyam, M.P. (37 of 1981), Section 8, Special Police Establishment Act, M.P. 1947, Section 4 - Limitation - Limitation of five years as envisaged u/s 8(c) of Adhiniyam, 1981 is applicable only for Lokayukta and Up-lokayukta and not for S.P.E. [Ramesh Vs. State of M.P.] (DB)...*48

Lokayukt Evam Up-Lokayukt Adhiniyam, M.P. 1981 - See - Criminal Procedure Code, 1973, Section 154, [Dev Vrat Mishra Vs. State of M.P.] (DB)...*23

Lok Dhan (Shodhya Rashiyon Ki Vasuli) Adhiniyam, M.P. 1987 (1 of 1988), Sections 2(i), 3(B) - Socially desirable scheme - The tractor trolley fall within the expression "inputs and implements for promotion of agriculture" - Therefore, the loan advanced would be under "socially desirable scheme" and the proceeding for recovery of amount can be initiated u/s 3(B) of the Adhiniyam. [Sadhna Chourasia (Smt.) Vs. Punjab National Bank] (DB)...61

Lok Seva (Anusuchit Jatiyon, Anusuchit Jan Jation Aur Anya Pichhade Vargon Ke Liye Arakshan) Adhiniyam, M.P. 1994, Section 2(b) - See - Service Law [R.R. Nihare Vs. State of M.P.] (DB)...111

परिसीमा अधिनियम (1963 का 36), धारा 14 — समय का अपवर्जन — अधिकारिता के अभाव में न्यायालय द्वारा वादपत्र वापस — मामला वापस करने वाले न्यायालय द्वारा धारा 14 का लाभ नहीं दिया जा सकता है — ऐसे लाभ का दावा सक्षम अधिकारिता रखने वाले न्यायालय के समक्ष प्रस्तुत करने के उपरान्त ही किया जा सकता है। (मंजू तोमर (श्रीमति) वि. श्रीमति अंजलि जैन) ...544

परिसीमा अधिनियम (1963 का 36), धारा 18 — परिसीमा — सम्पत्ति बैंक में बंधक — परिसीमा 12 वर्ष होगी — ऋण दिनांक 27.03.1992 को स्वीकृत — अपीलार्थी ने ऋण का प्रतिसंदाय करने का दायित्व दिनांक 16.05.1996 को अभिस्वीकृत किया — राजस्व वसूली-प्रमाण पत्र दिनांक 27.12.1996 को जारी — कार्यवाहियाँ समय-वर्जित नहीं हैं। (साधना चौरसिया (श्रीमति) वि. पंजाब नेशनल बैंक) (DB)...61

परिसीमा अधिनियम (1963 का 36), अनुच्छेद 136 — विचारण न्यायालय द्वारा डिक्री पारित किये जाने के बाद यदि वह अपीलीय न्यायालय में विचाराधीन रहती है तब निष्पादन कार्यवाही फाइल करने के लिए परिसीमा की गणना अपीलीय न्यायालय द्वारा पारित निर्णय एवं डिक्री की तारीख से की जानी चाहिए। (नेतलाल वि. थागीवाई (मृतक) द्वारा विधिक प्रतिनिधि आरोतिराव) ...278

लोकायुक्त एवं उप-लोकायुक्त अधिनियम, म.प्र. (1981 का 37), धारा 8, विशेष पुलिस स्थापना अधिनियम, म.प्र. 1947, धारा 4 — परिसीमा — अधिनियम, 1981 की धारा 8(सी) के अन्तर्गत यथा परिकल्पित पाँच वर्ष की परिसीमा केवल लोकायुक्त एवं उप-लोकायुक्त के लिए लागू होती है, विशेष पुलिस स्थापना के लिए नहीं। (रमेश वि. म.प्र. राज्य) (DB)...*48

लोकायुक्त एवं उप-लोकायुक्त अधिनियम, म.प्र. 1981 — देखें — दण्ड प्रक्रिया संहिता, 1973, धारा 154, (देवव्रत मिश्रा वि. म.प्र. राज्य) (DB)...*23

लोक धन (शोध्य राशियों की वसूली) अधिनियम, म.प्र. 1987 (1988 का 1), धाराएँ 2(4) व 3(बी) — सामाजिक दृष्टि से वांछनीय योजना — ट्रेक्टर ट्रॉली, शब्दावली "कृषि के उन्नयन के लिए उत्पादक सामग्री एवं उपकरण" के अन्तर्गत आते हैं — अतएव दिया गया ऋण "सामाजिक दृष्टि से वांछनीय योजना" के अन्तर्गत होगा तथा राशि की वसूली के लिए अधिनियम की धारा 3(बी) के अन्तर्गत कार्यवाही की जा सकती है। (साधना चौरसिया (श्रीमति) वि. पंजाब नेशनल बैंक) (DB)...61

लोक सेवा (अनुसूचित जातियों, अनुसूचित जनजातियों और अन्य पिछड़े वर्गों के लिये आरक्षण) अधिनियम, म.प्र. 1994, धारा 2(बी) — देखें — सेवा विधि (आर.आर. निहारे वि. म.प्र. राज्य) (DB)...111

Maxim - "mens or sententia legis" - As per Salmon it means that the object of interpreting a statute is to ascertain the intention of the Legislature enacting it. [Suresh Baba Vs. Virendra Tyagi](DB)...614

Maxim - Per incuriam - For a decision to be per incuriam, it must first be established that same is given in ignorance, forgetfulness or carelessness of some inconsistent statutory provisions, or some authority binding on Court - Judgement passed in Anand Beohar's case is not per incuriam. [R.R. Nihare Vs. State of M.P.] (DB)...111

Maxim - Vigilantibus non dormientibus jura subveniunt - Means - Laws come to the assistance of those who are vigilant and not those who sleeps upon their rights - We can extend this maxim to the revisional authority who has to exercise his suo motu power. [Ranveer Singh (Dead) Through L.Rs. Vs. State of M.P.] (FB)...1

Medical and Dental Post Graduate Course Entrance Examination Rules, M.P. 2010, Rule 1.19(2)(b) - Inter se merit - Age - Validity - In case two candidates scoring equal marks, then candidate older in age will be placed higher in inter se merit of such candidate - **Held** - Rule 1.19(2)(b) cannot be held to be arbitrary or unreasonable. [Pooja Mathur (Dr.) Vs. State of M.P.] (DB)...410

Medical and Dental Post Graduate Course Entrance Examination Rules, M.P. 2010, Rule 1.20(16) - Opt for waiting - If candidate is not willing to take admission in any of the subject available at the time of his counseling it would be open for him/her to give option in writing and to opt for waiting - **Held** - In the event of any vacancy, the candidature of such candidate shall be considered on the basis of merit - Rule 1.20(16) cannot be held to be arbitrary or unreasonable. [Pooja Mathur (Dr.) Vs. State of M.P.] (DB)...410

Mining Lease - Grant of - Delay and laches - Application of appellant for grant of mining lease after expiry of period of prospecting license rejected on 02.12.2006 - On 02.03.2007, notification issued making the area in question available for grant of mineral concession - Mining lease granted to respondent No.4 by order dated 19.06.2008 - After 1½ year of grant of mining lease, petitioner challenged the grant of mining lease - **Held** - Facts leads to

सूक्ति - "मेन्स या सेंटेंशिया लेगिस" - सालमन के अनुसार, इसका तात्पर्य है कि कानून के अर्थान्वयन का उद्देश्य इसे बनाने वाले विधान मण्डल के आशय को ढूँढना है। (सुरेश बाबा वि. वीरेन्द्र त्यागी) (DB)...614

सूत्र - अनवधानता के कारण - किसी निर्णय को अनवधानता के कारण होने के लिये प्रथमतः यह सिद्ध होना चाहिये कि वह कुछ असंगत कानूनी उपबंधों अथवा न्यायालय पर आबद्धकर किसी प्राधिकार की अनभिज्ञता, विस्मरणशीलता अथवा लापरवाही में दिया गया है - आनन्द ब्यूहार के मामले में पारित निर्णय अनवधानता के कारण नहीं है। (आर.आर. निहारे वि. म.प्र. राज्य) (DB)...111

सूत्र - विधि जागरूक की सहायता करती है न कि सुषुप्त की - अर्थात् - कानून उनकी सहायता करता है जो अपने अधिकारों के प्रति सजग हैं न कि उनकी जो सचेत नहीं हैं - हम यह सूत्र पुनरीक्षण प्राधिकारी, जिसे अपनी स्वप्रेरणा शक्ति का प्रयोग करना है, तक विस्तृत कर सकते हैं। (रणवीर सिंह (मृतक) द्वारा विधिक प्रतिनिधि वि. म.प्र. राज्य) (FB)...1

चिकित्सा और दंत स्नातकोत्तर पाठ्यक्रम प्रवेश परीक्षा नियम, म.प्र. 2010, नियम 1.19(2)(बी) - परस्पर योग्यता - आयु - विधिमान्यता - दो अभ्यर्थियों के एक समान अंक आने की दशा में अधिक आयु वाले अभ्यर्थी को ऐसे अभ्यर्थियों की परस्पर योग्यता में ऊपर रखा जायेगा - अभिनिर्धारित - नियम 1.19(2)(बी) को मनमाना अथवा अयुक्तियुक्त नहीं ठहराया जा सकता। (पूजा माथुर (डॉ.) वि. म.प्र. राज्य) (DB)...410

चिकित्सा और दंत स्नातकोत्तर पाठ्यक्रम प्रवेश परीक्षा नियम, म.प्र. 2010, नियम 1.20(16) - प्रतीक्षा का विकल्प - यदि कोई अभ्यर्थी अपनी कार्टसिलिंग के समय उपलब्ध किसी विषय में प्रवेश लेने का इच्छुक नहीं है तो वह लिखित में विकल्प देने अथवा प्रतीक्षा का विकल्प चुनने के लिए स्वतंत्र होगा - अभिनिर्धारित - कोई रिक्ति होने की दशा में ऐसे अभ्यर्थी की अभ्यर्थिता पर योग्यता के आधार पर विचार किया जायेगा - नियम 1.20(16) को मनमाना अथवा अयुक्तियुक्त नहीं ठहराया जा सकता। (पूजा माथुर (डॉ.) वि. म.प्र. राज्य) (DB)...410

खनन पट्टा - का अनुदान - विलम्ब एवं उपेक्षा - खनन पट्टे के अनुदान के लिए अपीलार्थी का आवेदन पूर्वोक्त अनुज्ञप्ति की अवधि की समाप्ति के बाद 02.12.2006 को नामजूर किया गया - तारीख 02.03.2007 को खनिज रियायत के अनुदान के लिए प्रश्नगत क्षेत्र उपलब्ध कराते हुए अधिसूचना जारी की गयी - आदेश तारीख 19.06.2008 द्वारा प्रत्यर्थी क्र. 4 को खनन पट्टा अनुदत्त किया गया - खनन पट्टे के अनुदान के 1½ वर्ष बाद याची ने खनन पट्टे के अनुदान को चुनौती दी - अभिनिर्धारित - तथ्य इस अप्रतिरोध्य निष्कर्ष पर पहुँचाते हैं कि अपीलार्थी विलम्ब

irresistible conclusion that appellant is guilty of delay and laches - Writ Appeal dismissed. [Focus Energy Ltd. (M/s.) Vs. Government of India] (DB)...53

*Minor Mineral Rules, M.P. 1996, Rule 49 - See - Environment (Protection) Rules, 1986, Rule 5(3), [Ajay Dubey Vs. State of M.P.](DB)...*21*

Motor Vehicles Act (59 of 1988), Section 166 - Amount of compensation - Apportionment of compensation between widow and mother - In case of availability of proof about additional factors like age, degree of dependency, size of family, financial potential of individual claimant etc., the ratio or proportion may be varied depending upon the facts and circumstances of the case - Where no material available on record fully and sufficiently to make just and proper apportionment, the ratio of 9:4 may be maintained. [Savita Devi (Smt.) Vs. Smt. Sukhwinder Kaur] ...165

Motor Vehicles Act (59 of 1988), Section 166, Civil Procedure Code, 1908, Section 2(11) - Legal representative - Entitlement - A claimant though may not a legal heir but is a legal representative may be held entitled to compensation by the Claims Tribunal in a set of particular/peculiar facts and circumstances of case - Merely on account of being not a legal heir, a person applying u/s 166 of M.V. Act does not ipso facto stand excluded from description of claimant. [Savita Devi (Smt.) Vs. Smt. Sukhwinder Kaur] ...165

Motor Vehicles Act (59 of 1988), Section 166 - Legal Representatives - Claim petition filed on the basis of relationship with deceased by adoption - Held - In case of dispute about adoption, same is to be proved in due manner taking into consideration the provisions of Hindu Adoptions and Maintenance Act, 1956.[Oriental Insurance Company Ltd. Vs. Harishankar] ...474

Motor Vehicles Act (59 of 1988), Section 166 - Legal Representative - Nephew - Nephew in the capacity of legal representative may maintain an application for compensation. [Oriental Insurance Company Ltd. Vs. Harishankar] ...474

Municipal Corporation Act, M.P. (23 of 1956), Sections 132, 135, 136 & 138, Municipalities (Determination of Annual Letting Value of Buildings/Lands) Rules, M.P. 1997 - Non-payment of Property Tax -

एवं उपेक्षा का दोषी है - रिट याचिका खारिज। (फोकस एनर्जी लि. (मे.) वि. गव्हरमेन्ट ऑफ इंडिया) (DB)...53

गौण खनिज नियम, म.प्र. 1996, नियम 49 - देखें - पर्यावरण (संरक्षण) नियम, 1986, नियम 5(3), (अजय दुबे वि. म.प्र. राज्य) (DB)...*21

मोटर यान अधिनियम (1988 का 59), धारा 166 - प्रतिकर की रकम - विधवा और माता के मध्य प्रतिकर का प्रभाजन - अतिरिक्त कारकों जैसे उम्र, आश्रितता की कोटि, परिवार का आकार, दावेदार की व्यक्तिगत वित्तीय क्षमता आदि के सम्बंध साक्ष्य उपलब्ध होने की दशा में अनुपात मामले के तथ्यों एवं परिस्थितियों के आधार पर परिवर्तित हो सकता है - जहाँ न्यायसंगत और उचित प्रभाजन करने के लिए पूर्ण और पर्याप्त कोई सामग्री अभिलेख पर उपलब्ध न हो, वहाँ 9:4 का अनुपात रखा जा सकता है। (सविता देवी (श्रीमति) वि. श्रीमति सुखविन्दर कौर) ...165

मोटर यान अधिनियम (1988 का 59), धारा 166, सिविल प्रक्रिया संहिता, 1908, धारा 2(11) - विधिक प्रतिनिधि - हकदारी - कोई दावेदार भले ही विधिक वारिस नहीं हो सकता, किन्तु विधिक प्रतिनिधि है, तो दावा अधिकरण द्वारा मामले के विशेष तथ्यों एवं परिस्थितियों के समूह में प्रतिकर के लिए हकदार ठहराया जा सकता है - विधिक वारिस न होने मात्र से मोटर यान अधिनियम की धारा 166 के अन्तर्गत आवेदन करने वाला व्यक्ति स्वमेव ही दावेदार के अभिवर्णन से अपवर्जित नहीं हो जाता। (सविता देवी (श्रीमति) वि. श्रीमति सुखविन्दर कौर) ...165

मोटर यान अधिनियम (1988 का 59), धारा 166 - विधिक प्रतिनिधि - मृतक के साथ दत्तक ग्रहण सम्बन्ध के आधार पर दावा याचिका प्रस्तुत की गयी - अभिनिर्धारित - दत्तक ग्रहण के सम्बन्ध में विवाद होने की दशा में, उसे हिन्दू दत्तक एवं मरण-पोषण अधिनियम, 1956 के उपबन्धों को विचार में लेकर सम्यक् ढंग से साबित करना होगा। (ओरियेंटल इश्योरेंस कंपनी लि. वि. हरिशंकर) ...474

मोटर यान अधिनियम (1988 का 59), धारा 166 - विधिक प्रतिनिधि - भतीजा - विधिक प्रतिनिधि की हैसियत से भतीजा क्षतिपूर्ति के लिए आवेदन चला सकता है। (ओरियेंटल इश्योरेंस कंपनी लि. वि. हरिशंकर) ...474

नगरपालिक निगम अधिनियम, म.प्र. (1956 का 23), धाराएँ 132, 135, 136 व 138, नगरपालिका (भवनों/भूमियों के वार्षिक भाड़ा मूल्य का अवधारण) नियम, म.प्र. 1997 - सम्पत्ति कर भुगतान न किया जाना - निर्वाचन याचिका में आधार उठाया

Ground raised in election petition - Dismissal of election petition on the ground of non-payment of property tax without considering the amended provisions of Sections 132, 135, 136 & 138 of Act of 1956 and Rules, 1997 bad - Findings bad. [Pushkar Singh Tomar Vs. K.P. Sharma] ...*46

Municipal Corporation Act, M.P. (23 of 1956), Section 441 - Election Petition - Non-joinder of defeated candidates - Maintainability of Election Petition - There is no provision under Act 1956 like Representatives of People Act, 1951 that in case petitioner seeks relief of his declaring him to be elected, then election petition is liable to be dismissed for not joining all defeated candidates - Election Petition could have been entertained and adjudicated for the remaining prayer except the prayer for declaring him elected. [Pushkar Singh Tomar Vs. K.P. Sharma] ...*46

Municipal Corporation Act, M.P. (23 of 1956), Sections 441-B(b), (d)(ii), 441-G - Corrupt practice - Defeated candidate - Cannot be declared as disqualified to contest such election on the ground of corrupt practices - He could be declared to be disqualified to vote in such election for five years and such disqualification could be removed by the State Govt. [Pushkar Singh Tomar Vs. K.P. Sharma] ...*46

Municipal Corporation Act, M.P. (23 of 1956), Section 441-C, Municipal Corporation (Election Petition) Rules, M.P. 1963, Rules 3 & 5, Civil Procedure Code, 1908, Order 18 Rule 4 & 13 - Procedure to be followed - Memorandum of substance of evidence - Petitioner was rightly allowed to produce the examination-in-chief on affidavit - However, subsequently to that Court had to make the memorandum of substance of evidence of witnesses examined - Memorandum of substance of witness not recorded - Evidence of petitioner taken by Court could not be deemed to be taken in accordance with law. [Pushkar Singh Tomar Vs. K.P. Sharma] ...*46

Municipal Corporation Act, M.P. (23 of 1956), Section 441-F(2) - See - Civil Procedure Code, 1908, Order 9 Rule 13, [Pushkar Singh Tomar Vs. K.P. Sharma]*46

Municipal Corporation (Election Petition) Rules, M.P. 1963, Sections 3 & 5 - See - Municipal Corporation Act, M.P., 1956, Section 441-C [Pushkar Singh Tomar Vs. K.P. Sharma] ...*46

गया - 1956 के अधिनियम की धाराएँ 132, 135, 136 व 138 के संशोधित उपबंधों और नियम 1997 पर विचार किये बिना सम्पत्ति कर का भुगतान न किये जाने के आधार पर निर्वाचन याचिका की खारिजी दोषपूर्ण - निष्कर्ष दोषपूर्ण। (पुष्कर सिंह तोमर वि. के.पी. शर्मा) ...*46

नगरपालिक निगम अधिनियम, म.प्र. (1956 का 23), धारा 441 - निर्वाचन याचिका - हारे हुए प्रत्याशियों का असंयोजन - निर्वाचन याचिका की पोषणीयता - लोक प्रतिनिधित्व अधिनियम, 1951 जैसा कोई उपबंध अधिनियम 1956 के अंतर्गत नहीं है कि जब याची उसे निर्वाचित घोषित किये जाने का अनुतोष चाहता है, तब हारे हुए सभी प्रत्याशियों को संयोजित न करने से निर्वाचन याचिका खारिज किये जाने योग्य है - उसे निर्वाचित घोषित करने की प्रार्थना को छोड़कर शेष प्रार्थना के लिए निर्वाचन याचिका ग्रहण की जा सकती थी और न्यायनिर्णीत की जा सकती थी। (पुष्कर सिंह तोमर वि. के.पी. शर्मा) ...*46

नगरपालिक निगम अधिनियम, म.प्र. (1956 का 23), धाराएँ 441-बी(बी), (डी)(ii), 441-जी - भ्रष्ट आचरण - हारा हुआ प्रत्याशी - भ्रष्ट आचरण के आधार पर ऐसे निर्वाचन लड़ने के लिए अनर्हित घोषित नहीं किया जा सकता - उसे पाँच वर्षों के लिए ऐसे निर्वाचन में मतदान करने से अनर्हित घोषित किया जा सकता है और ऐसी अनर्हिता राज्य सरकार द्वारा हटाई जा सकती है। (पुष्कर सिंह तोमर वि. के.पी. शर्मा) ...*46

नगरपालिक निगम अधिनियम, म.प्र. (1956 का 23), धारा 441-सी, नगरपालिक निगम (निर्वाचन याचिका) नियम, म.प्र. 1963, नियम 3 व 5, सिविल प्रक्रिया संहिता, 1908, आदेश 18 नियम 4 व 13 - प्रक्रिया जिसका अवलम्ब किया जाना चाहिए - साक्ष्य के सार का ज्ञापन - याची को मुख्य परीक्षण शपथपत्र पर प्रस्तुत करने की अनुमति उचित रूप से दी गई - तथापि, उसके पश्चात् न्यायालय को परीक्षण कराये गये साक्षियों की साक्ष्य के सार का ज्ञापन बनाना था - साक्षी के सार का ज्ञापन अभिलिखित नहीं किया गया - न्यायालय द्वारा ली गई याची की साक्ष्य, विधि अनुसार ली जाना नहीं मानी जा सकती। (पुष्कर सिंह तोमर वि. के.पी. शर्मा) ...*46

नगरपालिक निगम अधिनियम, म.प्र. (1956 का 23), धारा 441 - एफ (2) - देखें - सिविल प्रक्रिया संहिता, 1908, आदेश 9 नियम 13. (पुष्कर सिंह तोमर वि. के.पी. शर्मा) ...*46

नगरपालिक निगम (निर्वाचन याचिका) नियम, म.प्र. 1963, धाराएँ 3 व 5 - देखें - नगरपालिक निगम अधिनियम, म.प्र., 1956, धारा 441-सी (पुष्कर सिंह तोमर वि. के.पी. शर्मा) ...*46

Municipal Employees (Recruitment and Conditions of Service) Rules, M.P. 1968, Rules 2, 4, 15 & 16 - Once, a person is appointed to or borne on the cadre of the Municipal staff other than a member of the State Municipal Service (Executive), he has to be treated an employee of the particular Municipality and his seniority has to be counted in the aforesaid Municipality. [Hari Charan Soni Vs. State of M.P.] ...*8

Municipalities Act, M.P. (37 of 1961), Section 20 - Assignment of election petition to ADJ - District Judge has power to assign election petition to ADJ by virtue of Section 7 of M.P. Civil Courts Act, 1958. [Rajni Sahu (Smt.) Vs. Smt. Asma] ...*47

Municipalities Act, M.P. (37 of 1961), Section 20 - Forum - And in any other case - Words "and in any other case" are significant and important - Election in question was held Karera where the permanent post of ADJ exists - Election petition filed before District Judge, Shivpuri - Held - It is not always necessary that Civil District and Revenue District must be common - Where election is held within Revenue District in which the Court of District Judge is situated, the election petition is to be necessarily presented to the District Judge alone - If the Court of District Judge is not situated in Revenue District in which election is held, the election petition may be presented to the Additional District Judge having permanent seat. [Rajni Sahu (Smt.) Vs. Smt. Asma] ...*47

Municipalities Act, M.P. (37 of 1961), Sections 131, 132, 164 & 322 - Demand notice for export tax issued to the appellant in exercise of powers u/s 164 - The Collector has absolutely no authority to quash the demand notice - Powers u/s 131 & 132 are exercisable by the State Government and have not been delegated to the Collector - Appeal dismissed. [S. Goenka Lime & Chemicals Vs. Nagar Panchayat, Kaymore] (DB)...358

Municipalities Act, M.P. (37 of 1961), Section 323 - Collector had no power or jurisdiction to set aside the resolution passed by the Municipality deciding to regulate the holding of functions in the town hall itself instead of giving it to the private contractor. [Virendra Kumar Gupta Vs. State of M.P.] ...714

नगरपालिका कर्मचारी (भर्ती तथा सेवा की शर्तें) नियम, म.प्र., 1968, नियम 2, 4, 15 व 16 — कोई व्यक्ति जब राज्य नगरपालिका सेवा (कार्यकारी) के सदस्य से भिन्न नगरपालिका कर्मचारी संवर्ग में नियुक्त होता है या धारित करता है तब उसे नगरपालिका विशेष का कर्मचारी माना जायेगा तथा उसकी वरिष्ठता की गणना उक्त नगरपालिका में की जावेगी। (हरिचरण सोनी वि. म.प्र. राज्य) ---*8

नगरपालिका अधिनियम, म.प्र. (1961 का 37), धारा 20 — निर्वाचन याचिका का अपर जिला न्यायाधीश को सौंपना — जिला न्यायाधीश को म.प्र. सिविल न्यायालय अधिनियम, 1958 की धारा 7 के आधार पर निर्वाचन याचिका अपर जिला न्यायाधीश को सौंपने की शक्ति है। (रजनी साहू (श्रीमति) वि. श्रीमति अस्मा) ...*47

नगरपालिका अधिनियम, म.प्र. (1961 का 37), धारा 20 — फोरम — और किसी अन्य मामले में — शब्द "और किसी अन्य मामले में" अर्थपूर्ण एवं महत्वपूर्ण है — प्रश्नगत चुनाव करैरा में हुये जहाँ अपर जिला न्यायाधीश का स्थायी पद है — निर्वाचन याचिका जिला न्यायाधीश, शिवपुरी के समक्ष प्रस्तुत की गयी — अग्निनिर्धारित — यह सदैव आवश्यक नहीं है कि सिविल जिला तथा राजस्व जिला एक ही हों — जहाँ चुनाव राजस्व जिला के अन्तर्गत होते हैं जिसमें जिला न्यायाधीश का न्यायालय स्थित है, वहाँ निर्वाचन याचिका अनिवार्य रूप से सिर्फ जिला न्यायाधीश के समक्ष प्रस्तुत की जानी चाहिए — यदि राजस्व जिले में, जिसमें चुनाव हुआ है, जिला न्यायाधीश का न्यायालय स्थित नहीं है, तो निर्वाचन याचिका स्थायी बैठक वाले अपर जिला न्यायाधीश के समक्ष प्रस्तुत की जा सकती है। (रजनी साहू (श्रीमति) वि. श्रीमति अस्मा) ...*47

नगरपालिका अधिनियम, म.प्र. (1961 का 37), धाराएँ 131, 132, 164 व 322 — धारा 164 के अन्तर्गत शक्तियों के प्रयोग में अपीलार्थी को निर्यात कर हेतु मांग का सूचना पत्र जारी किया गया — कलेक्टर को मांग का सूचना पत्र अभिखण्डित करने का आत्यंतिकतः कोई प्राधिकार नहीं है — धारा 131 एवं 132 के अन्तर्गत शक्तियाँ राज्य सरकार द्वारा प्रयोग किये जाने योग्य हैं तथा कलेक्टर को प्रत्यायोजित नहीं की गयीं हैं — अपील खारिज। (एस. गोयंका लाईम एण्ड केमिकल्स वि. नगर पंचायत, कैमोर) (DB)...358

नगरपालिका अधिनियम, म.प्र. (1961 का 37), धारा 323 — टाऊन हाल में आयोजित कार्यक्रमों का विनियमन प्रायवेट ठेकेदार को देने के स्थान पर स्वयं करने का विनिश्चय लेने वाले नगरपालिका द्वारा पारित संकल्प को अपास्त करने की कलेक्टर को कोई शक्ति या आधिकारिता नहीं है। (वीरेन्द्र कुमार गुप्ता वि. म.प्र. राज्य) ...714

Municipalities (Determination of Annual Letting Value of Buildings/Lands) Rules, M.P. 1997 - See - Municipal Corporation Act, M.P., 1956), Sections 132, 135, 136 & 138 [Pushkar Singh Tomar Vs. K.P. Sharma] ...*46

Narcotic Drugs and Psychotropic Substances Act (61 of 1985), Sections 8 & 20(b)(ii)(B) - Appellants were apprehended carrying contraband / Ganja (cannabis/hemp) in separate Potlies - Contents of bundles (Potlies) were converted into one homogenous mixture wherefrom two samples of 25 gms each were drawn - Held - It was not possible to conclude with certainty that contents of each Potlies comprised of contraband/Ganja. [Harigopal Maurya Vs. State of M.P.] ...218

Narcotic Drugs and Psychotropic Substances Act (61 of 1985), Sections 8 & 20(b)(ii)(B) - Detecting Officer contradicting his own statement - Joint and common notice (about search) was given to appellants - Appellants were entitled to benefit of doubt. [Harigopal Maurya Vs. State of M.P.] ...218

Narcotic Drugs and Psychotropic Substances Act (61 of 1985), Sections 8, 20(b)(ii)(c), 35 & 54 - 162 Kgs of Ganja was recovered from the box kept in Tapariya occupied as residence by the appellant - Appellant did not discharge the onus of proof to rebut the presumption envisaged u/ss. 35 & 54 of the Act - Conviction proper.[Boote @ Kanchhedi Vs. State of M.P.] ...511

Narcotic Drugs and Psychotropic Substances Act (61 of 1985), Sections 8, 21(c) - Samples - Bulk quantity of seized poppy straw not produced before the Court - It cannot be said that samples were prepared from the bulk quantity.[Vinay Kumar Jain Vs. State of M.P.] ...*39

Narcotic Drugs and Psychotropic Substances Act (61 of 1985), Sections 8 & 21(c) - Seizure of Heroin - Samples - Colour of contraband - Grey powder was sealed at the time of sealing whereas at the time of chemical analysis brown and white powder was found - Difference in colour not explained - As samples were doubtful, therefore, seizure memo was not proved. [Dinesh Vs. Union of India] ...210

Narcotic Drugs and Psychotropic Substances Act (61 of 1985), Sections 8 & 21(c) - Weight - Difference - Samples sent to FSL were

नगरपालिका (मवनों/भूमियों के वार्षिक भाड़ा मूल्य का अवधारण) नियम, म.प्र. 1997 - देखें - नगरपालिक निगम अधिनियम, म.प्र., 1956, धाराएँ 132, 135, 136 व 138 (पुष्कर सिंह तोमर वि. के.पी. शर्मा) ...*46

स्वापक औषधि और मनःप्रभावी पदार्थ अधिनियम (1985 का 61), धाराएँ 8 व 20(बी)(ii)(बी) - अपीलार्थी को पृथक पोटलियों में गांजा (गांजा/भांग) ले जाते हुए गिरतार किया गया - बंडलों (पोटलियों) की अंतर्वस्तु को एक समरूप मिश्रण में रूपांतरित किया गया जिसमें से 25 ग्राम प्रत्येक के दो नमूने निकाले गये - अभिनिर्धारित - निश्चित रूप से यह निष्कर्ष निकालना संभव नहीं था कि प्रत्येक पोटली की अंतर्वस्तु में विनिषिद्ध/गांजा समाविष्ट था। (हरिगोपाल मौर्य वि. म.प्र. राज्य) ...218

स्वापक औषधि और मनःप्रभावी पदार्थ अधिनियम (1985 का 61), धाराएँ 8 व 20(बी)(ii)(बी) - जाँच अधिकारी ने स्वयं के कथन का खंडन किया - अपीलार्थी को संयुक्त और सामान्य सूचना (तलाशी के बारे में) दी गई - अपीलार्थी शंका के लाभ के हकदार। (हरिगोपाल मौर्य वि. म.प्र. राज्य) ...218

स्वापक औषधि और मनःप्रभावी पदार्थ अधिनियम (1985 का 61), धाराएँ 8, 20(बी)(ii)(सी), 35 व 54 - अपीलार्थी द्वारा निवास के रूप में उपयोग की जाने वाली टपरिया में रखे बक्से से 162 किग्रा गांजा बरामद हुआ - अपीलार्थी ने अधिनियम की धारा 35 व 54 के अंतर्गत परिकल्पित उपधारणा का खंडन करने के लिए सबूत के भार का निर्वहन नहीं किया - दोषसिद्धि उचित। (बूटे उर्फ कन्छेदी वि. म.प्र. राज्य) ...511

स्वापक औषधि और मनःप्रभावी पदार्थ अधिनियम (1985 का 61), धारा 8, 21(सी) - नमूने - अभिग्रहीत पोस्ट पुआल (पॉपी स्ट्रॉ) की वृहद मात्रा न्यायालय के समक्ष प्रस्तुत नहीं - यह नहीं कहा जा सकता कि नमूने वृहद मात्रा से तैयार किये गये थे। (विनय कुमार जैन वि. म.प्र. राज्य) ...*39

स्वापक औषधि और मनःप्रभावी पदार्थ अधिनियम (1985 का 61), धाराएँ 8 व 21(सी) - हेरोइन का अभिग्रहण - नमूने - विनिषिद्ध पदार्थ का रंग - सीलबंद करते समय धूसर रंग का चूर्ण सील किया गया जबकि रासायनिक विश्लेषण के समय भूरा एवं सफेद चूर्ण पाया गया - रंग की मिश्रता को स्पष्ट नहीं किया गया - चूंकि नमूने संदेहास्पद थे अतएव अभिग्रहण पत्रक साबित नहीं हुआ। (दिनेश वि. म.प्र. राज्य)...210

स्वापक औषधि और मनःप्रभावी पदार्थ अधिनियम (1985 का 61), धाराएँ 8 व 21(सी) - वजन - अन्तर - न्यायालयिक प्रयोगशाला को प्रेषित नमूनों में 5 ग्राम

said to be containing 5 gms of Heroin - FSL found 4.46 and 4.47 gms in samples - *Held* - When weight is taken in a covered place by sensitive balance, then measurement of weight is very accurate and if weight is taken by ordinary balance in air, the weight of sample will be different - Difference in weight of samples not of much importance. [Dinesh Vs. Union of India] ...210

Narcotic Drugs and Psychotropic Substances Act (61 of 1985), Section 20 - Possession of Charas - Non-production of seized article during trial - Only samples were produced and bulk quantity seized not produced in evidence - It cannot be said that samples were prepared from the respective bulk quantity - Seizure of 2 kg. 800 gms. Charas not proved. [Kishori Lal Vs. State of M.P.] ...498

Narcotic Drugs and Psychotropic Substances Act (61 of 1985), Sections 35 & 54 - Presumption of culpable mental state - Seizure Panchnama not proved - Hence possession of contraband also not proved - Presumption would not arise. [Dinesh Vs. Union of India] ...210

Narcotic Drugs and Psychotropic Substances Act (61 of 1985), Sections 36A(4) & 54 - Three inmates accused of private vehicle who were known to each other, found with contraband - The quantity of the contraband was also in same form - Presumption of conscious possession u/s 54 of the Act was available against each one of the accused. [In Reference Vs. Vijay Kesharwani] ...307

Narcotic Drugs and Psychotropic Substances Act (61 of 1985), Section 37(1)(b)(ii) & 67 - *Satisfaction of Court* - Admissibility of the statement made u/s 67 of the Act is not to be considered at the time of consideration of bail. [Prabhulal Vs. C.B.N. Garoth] ...811

Narcotic Drugs and Psychotropic Substances Act (61 of 1985), Section 42 - Dy. S.P. was immediately informed about recovery of the contraband - Copy of the FIR leading to registration of the case was also forwarded to the Magistrate having jurisdiction - Thus, there was substantial compliance with the provisions of Section 42. [Boote @ Kanchhedi Vs. State of M.P.] ...511

Narcotic Drugs and Psychotropic Substances Act (61 of 1985), Section 42 - *Seizure* - Independent witness of seizure memo not

हेरोइन होना बताया गया — न्यायालयिक प्रयोगशाला ने नमूनों में 4.46 ग्राम एवं 4.47 ग्राम होना पाया — अभिनिर्धारित — जब बन्द स्थान पर संवेदनशील तराजू द्वारा वजन लिया जाता है तब वजन का मापन बहुत शुद्ध होता है तथा यदि वजन साधारण तराजू द्वारा हवा में लिया जाता है तो नमूनों का वजन अलग होगा — नमूनों के वजन में अन्तर बहुत महत्वपूर्ण नहीं है। (दिनेश वि. म.प्र. राज्य) ...210

स्वापक औषधि और मनःप्रभावी पदार्थ अधिनियम (1985 का 61), धारा 20 — चरस का कब्जा — अभिगृहीत वस्तु विचारण के दौरान प्रस्तुत नहीं की गई — साक्ष्य में केवल नमूने प्रस्तुत किये गये और अभिगृहीत की गई सामूहिक मात्रा प्रस्तुत नहीं की गई — यह नहीं कहा जा सकता कि नमूने, अपनी-अपनी सामूहिक मात्रा से तैयार किये गये थे — 2 किग्रा 800 ग्राम चरस का अभिग्रहण साबित नहीं। (किशोरीलाल वि. म.प्र. राज्य) ...498

स्वापक औषधि और मनःप्रभावी पदार्थ अधिनियम (1985 का 61), धाराएँ 35 व 54 — आपराधिक मनःस्थिति की उपधारणा — अभिग्रहण पंचनामा साबित नहीं — अतएव विनिषिद्ध पदार्थ का कब्जा भी साबित नहीं — उपधारणा उत्पन्न नहीं होगी। (दिनेश वि. म.प्र. राज्य) ...210

स्वापक औषधि और मनःप्रभावी पदार्थ अधिनियम (1985 का 61), धाराएँ 36ए(4) व 54 — निजी वाहन के तीन सहायत्री अभियुक्त, जो एक दूसरे को जानते थे, प्रतिषिद्ध पदार्थ के साथ पाये गये — प्रतिषिद्ध पदार्थ की मात्रा भी एक ही रूप में थी — प्रत्येक अभियुक्त के विरुद्ध अधिनियम की धारा 54 के अन्तर्गत सचेतन कब्जे की उपधारणा उपलब्ध होगी। (इन रेफ्रेन्स वि. विजय केशरवानी) ...307

स्वापक औषधि और मनःप्रभावी पदार्थ अधिनियम (1985 का 61), धारा 37(1)(बी)(ii) व 67 — न्यायालय का समाधान — जमानत पर विचार करते समय अधिनियम की धारा 67 के अन्तर्गत किये गये कथन की ग्राह्यता पर विचार नहीं किया जाना चाहिए। (प्रभूलाल वि. सी.बी.एन. गरोठ) ...811

स्वापक औषधि और मनःप्रभावी पदार्थ अधिनियम (1985 का 61), धारा 42 — विनिषिद्ध पदार्थ बरामद किये जाने के बारे में उप-पुलिस अधीक्षक को तुरंत सूचित किया गया — एफ.आई.आर., जिसके अग्रसरण में प्रकरण पंजीबद्ध किया गया, की प्रतिलिपि भी अधिकारिता रखने वाले मजिस्ट्रेट को प्रेषित की गई — इस प्रकार धारा 42 के उपबंधों का सारभूत अनुपालन किया गया। (बूटे उर्फ कच्छेदी वि. म.प्र. राज्य) ...511

स्वापक औषधि और मनःप्रभावी पदार्थ अधिनियम (1985 का 61), धारा 42 —

supported fact of seizure - Seizure Panchnama not proved. [Vinay Kumar Jain Vs. State of M.P.] ...*39

Narcotic Drugs and Psychotropic Substances Act (61 of 1985), Section 42 - Seizure - One independent seizure witness not examined and another did not turn up for cross examination - Seizure memo not proved - Panchnamas were also could not be proved - Seized contraband also not produced before the trial Court - Held - Seizure Panchnamas not proved. [Hujul Akbar Vs. State of M.P.] ...221

Narcotic Drugs and Psychotropic Substances Act (61 of 1985), Section 50 - Notice - Language - Appellants knowing Tamil language - Not conversant with Hindi language - Consent for personal search not proved - Panchnamas are also to be recorded in the same language which was understandable to accused persons - Mandatory provision not followed. [Hujul Akbar Vs. State of M.P.] ...221

Narcotic Drugs and Psychotropic Substances Act (61 of 1985), Section 51 - Safe custody of seized article - Delay of 2 months and 6 days in sending seized article to Court - Not proved that seized article was properly sealed and kept in proper custody in police Malkhana - Accused entitled for acquittal. .[Kishori Lal Vs. State of M.P.] ...498

Narcotic Drugs and Psychotropic Substances Act (61 of 1985), Section 52 - Disposal of articles seized - Court permitted to destroy 1447 Kg of poppy straw - Property not forwarded to High Level Drug Disposal Committee for destruction - Certificate of destruction was to be issued by High Level Drug Disposal Committee - No such certificate produced before the Court - Property was not destroyed as per procedure - Provisions of Section 52 not complied with. .[Vinay Kumar Jain Vs. State of M.P.] ...*39

Narcotic Drugs and Psychotropic Substances Act (61 of 1985), Section 55 - Deposit of seal in Malkhana - Property sent to Court after 5 months - No entry in Malkhana register about the deposit of seal and the impression of the seal - Provision of Section 55 not followed - Possibility of tempering not ruled out. [Hujul Akbar Vs. State of M.P.] ...221

Narcotic Drugs and Psychotropic Substances Act (61 of 1985), Section 55 - Re-sealing of property - Property is to be re-sealed by the

अभिग्रहण - अभिग्रहण ज्ञापन के स्वतंत्र साक्षी ने अभिग्रहण के तथ्य का समर्थन नहीं किया - अभिग्रहण पंचनामा साबित नहीं। (विनय कुमार जैन वि. म.प्र. राज्य) ...*39

स्वापक औषधि और मनःप्रभावी पदार्थ अधिनियम (1985 का 61), धारा 42 - अभिग्रहण - एक स्वतन्त्र अभिग्रहण साक्षी की परीक्षा नहीं की गयी तथा दूसरा प्रतिपरीक्षा के लिये उपस्थित नहीं हुआ - अभिग्रहण पत्रक साबित नहीं - पंचनामा भी साबित नहीं किया जा सका - जब्त प्रतिषिद्ध पदार्थ को भी विचारण न्यायालय के समक्ष प्रस्तुत नहीं किया गया - अभिनिर्धारित - अभिग्रहण पंचनामा साबित नहीं। (हजुल अकबर वि. म.प्र. राज्य) ...221

स्वापक औषधि और मनःप्रभावी पदार्थ अधिनियम (1985 का 61), धारा 50 - सूचना पत्र - भाषा - अपीलार्थियों को तमिल भाषा का ज्ञान - हिन्दी भाषा से परिचित नहीं - व्यक्तिगत तलाशी की सम्पत्ति साबित नहीं - पंचनामों को भी उसी भाषा में अभिलिखित करना होगा जो कि अभियुक्त व्यक्तियों द्वारा समझने योग्य हो - आज्ञापक प्रावधान का पालन नहीं। (हजुल अकबर वि. म.प्र. राज्य) ...221

स्वापक औषधि और मनःप्रभावी पदार्थ अधिनियम (1985 का 61), धारा 51 - अभिगृहीत वस्तु की सुरक्षित अभिरक्षा - अभिगृहीत वस्तु न्यायालय को भेजने में 2 महीना 6 दिन का विलम्ब - साबित नहीं कि अभिगृहीत वस्तु उचित प्रकार से सीलबंद की गई और पुलिस मालखाना में उचित अभिरक्षा में रखी गयी - अभियुक्त दोषमुक्ति का हकदार। (किशोरीलाल वि. म.प्र. राज्य) ...498

स्वापक औषधि और मनःप्रभावी पदार्थ अधिनियम (1985 का 61), धारा 52 - अभिग्रहित वस्तुओं का व्ययन - न्यायालय ने 1447 किग्रा पोस्त पुआल (पाँपी स्ट्रा) का व्ययन करने की अनुज्ञा दी - सम्पत्ति विनष्ट किये जाने के लिए उच्च स्तरीय औषधि व्ययन समिति को नहीं भेजी गयी - विनष्ट किये जाने का प्रमाण पत्र उच्च स्तरीय औषधि व्ययन समिति द्वारा जारी किया जाना था - ऐसा कोई प्रमाण पत्र न्यायालय के समक्ष प्रस्तुत नहीं किया गया - सम्पत्ति को प्रक्रिया के अनुसार नष्ट नहीं किया गया - धारा 52 के उपबंधों का अनुपालन नहीं। (विनय कुमार जैन वि. म.प्र. राज्य) ...*39

स्वापक औषधि और मनःप्रभावी पदार्थ अधिनियम (1985 का 61), धारा 55 - मालखाना में सील जमा करना - सम्पत्ति 5 माह बाद न्यायालय में भेजी गयी - मालखाना रजिस्टर में सील जमा करने एवं सील की छाप बाबत कोई प्रविष्टि नहीं - धारा 55 के उपबंधों का पालन नहीं - हेरफेर किये जाने की संभावना खारिज नहीं। (हजुल अकबर वि. म.प्र. राज्य) ...221

स्वापक औषधि और मनःप्रभावी पदार्थ अधिनियम (1985 का 61), धारा 55 - सम्पत्ति का पुनः सील किया जाना - मालखाना प्रभारी द्वारा सम्पत्ति को अपनी

incharge of the Malkhana with his personal seal - It is not required that seizing officer shall reseal it - Mandatory provision of Section 55 not followed. [Hujul Akbar Vs. State of M.P.] ...221

Narcotic Drugs and Psychotropic Substances Act (61 of 1985), Section 55 - Re-sealing - Samples should be handed over to the officer-in-charge of Malkhana and he should re-seal it with his seal and then property shall be deposited in Malkhana - If the samples are prepared after the deposit of property in Malkhan, then they shall also be re-sealed in the same way. [Dinesh Vs. Union of India] ...210

Narcotic Drugs and Psychotropic Substances Act (61 of 1985), Section 57 - Report to arrest and seizure - Provisions of Section 57 not complied with - Conviction is bad in law and cannot be sustained. [Dinesh Vs. Union of India] ...210

Narcotic Drugs and Psychotropic Substances Act (61 of 1985), Section 63(2) Proviso - Proviso attached with Section 63(2) would be applicable to a case wherein owner of article/vehicle or his known agent and person-in-charge thereof has not faced the trial - Judgment passed in Prem Narayan's case [2003(1) MPLJ 122] is accordingly overruled. [Abhijit Singh Vs. State of M.P.] (DB)...780

National Coal Wages Agreement, Clause 9.5.0 - Employment / monetary compensation of female dependant - Appellant's husband died in harness - Appellant given compassionate appointment - Female dependant of employee who die due to an accident in mine or otherwise would have the option either to accept the monetary compensation of Rs. 3000 per month or employment irrespective of her age - Clause 9.5.0 does not provide for grant of compensation in addition to appointment - Appellant has already opted for appointed and is now estopped from claiming compensation - Appeal dismissed. [Sumarwati Bai (Smt.) Vs. The Mines Manager] (DB)...609

Negotiable Instruments Act (26 of 1881), Section 138 - See - Criminal Procedure Code, 1973, Section 177, [Mohan Mandelia Vs. State of M.P.] ...562

Negotiable Instruments Act (26 of 1881), Section 138 - See - Criminal Procedure Code, 1973, Section 190, [Akhilesh Saraf (Dr.) Vs. Smt. Usha Tiwari] ...572

व्यक्तिगत मुद्रा द्वारा पुनः सील किया जाना चाहिए — यह अपेक्षित नहीं है कि अभिग्रहण अधिकारी इसे पुनः सील करेगा — धारा 55 के आज्ञापक उपबंधों का पालन नहीं। (हूजुल अकबर वि. म.प्र. राज्य) ...221

स्वापक औषधि और मनःप्रभावी पदार्थ अधिनियम (1985 का 61), धारा 55 — पुनःसील किया जाना — नमूनों को मालखाना प्रभारी को सौंपा जाना चाहिये और उसे अपनी सील से उसको पुनः सील करना चाहिए और तब सम्पत्ति मालखाना में जमा की जायेगी — यदि नमूनों को सम्पत्ति के मालखाना में जमा होने के बाद तैयार किया जाता है तब उन्हें भी उसी ढंग से पुनः सील किया जायेगा। (दिनेश वि. यूनिन ऑफ इंडिया) ...210

स्वापक औषधि और मनःप्रभावी पदार्थ अधिनियम (1985 का 61), धारा 57 — गिरतारी और अभिग्रहण की सूचना — धारा 57 के उपबंधों का अनुपालन नहीं — दोषसिद्धि विधि विरुद्ध है तथा उसका समर्थन नहीं किया जा सकता। (दिनेश वि. यूनिन ऑफ इंडिया) ...210

स्वापक औषधि और मनः प्रभावी पदार्थ अधिनियम (1985 का 61), धारा 63(2) परंतुक — धारा 63(2) के साथ संलग्न परंतुक उस मामले में लागू होगा, जिसमें वस्तु/वाहन के स्वामी या उसके विदित अभिकर्ता एवं उसके प्रभारी व्यक्ति ने विचारण का सामना नहीं किया है — प्रेम नारायण के मामले [2003(1) MPLJ 122] में धारित निर्णय तदनुसार उलटा गया। (अभिजीत सिंह वि. म.प्र. राज्य)(DB)...780

राष्ट्रीय कोयला मजदूरी करार, खण्ड 9.5.0 — महिला आश्रित की आर्थिक क्षतिपूर्ति/रोजगार — अपीलार्थी के पति की कार्य के दौरान मृत्यु हो गयी — अपीलार्थी को अनुकम्पा नियुक्ति दी गयी — किसी कर्मचारी, जिसकी खदान में दुर्घटना के कारण अथवा अन्य किसी तरह से मृत्यु हो जाती है, की महिला आश्रित को 3,000/- रुपये प्रति माह की आर्थिक क्षतिपूर्ति अथवा आयु का विचार किये बिना रोजगार स्वीकार करने का विकल्प होगा — खण्ड 9.5.0 नियुक्ति के अतिरिक्त क्षतिपूर्ति प्रदान करने का उपबंध नहीं करता — अपीलार्थी द्वारा पूर्व में ही नियुक्ति का विकल्प चुन लिया है और अब क्षतिपूर्ति का दावा करने से विवंधित है — अपील खारिज। (सुमरवती बाई (श्रीमति) वि. द माइंस मेनेजर) (DB)...609

परक्राम्य लिखत अधिनियम, (1881 का 26), धारा 138 — देखें — दण्ड प्रक्रिया संहिता, 1973, धारा 177, (मोहन मंडेलिया वि. म.प्र. राज्य) ...562

परक्राम्य लिखत अधिनियम, (1881 का 26), धारा 138 — देखें — दण्ड प्रक्रिया संहिता, 1973, धारा 190, (अखिलेश सराफ (डॉ.) वि. श्रीमति ऊषा तिवारी) ...572

Negotiable Instruments Act (26 of 1881), Sections 138 & 142 - Cause of action & limitation - Cheque of Rs. 5 Lacs issued by applicant returned back by Bank on the ground of 'Stop Payment' - Non-applicant issued notice on 12.09.2007 demanding refund of Rs. 7,50,000 deposited in the account of applicant through M/s Bharat Thacker - No demand of Rs. 5 Lacs payable under the cheque was made - Non-applicant again deposited the cheque and issued another notice after the same was dishonoured complaint filed on the basis of the second notice - Held - First notice was not in conformity of the provisions of S. 138 proviso (b) of the Act - Unless the notice served is in conformity with proviso (b), no complaint is maintainable - Complaint filed on the basis of second notice maintainable and within limitation - Petition dismissed. [Aadhar Trading (M/s.) Vs. M/s. Ambica Refinery] ...*1

Notaries Rules, 1956, Rule 2(a) - Appropriate Government - Petitioner appointed by Central Government - Appropriate Government is Central Government to enquire into the allegations of professional or other misconduct - Action initiated by State Government bad in law. [Rais Khan Vs. State of M.P.] ...395

Notaries Rules, 1956, Rule 13 - Expunction of remarks - Before any castigating remarks are made by Court against any person, he should have been given an opportunity of being heard in respect of such proposed remarks/strictures - Petitioner was not heard at any point of time before passing any remark/stricture - Stricture deserves to be expunged - Petition allowed. [Rais Khan Vs. State of M.P.] ...395

Notification - Exemption notification - Is to be read literally - For the purpose of satisfying the eligibility criteria nothing can be read into the exemption notification which is not provided therein. [Ghanshyamdas & Co. (M/s.) Vs. Commissioner of Commercial Tax, M.P.] (DB)...*6

Panchayat Raj Evam Gram Swaraj Adhiniyam, M.P. 1993 (1 of 1994), Section 36 - Appellant, a convict of life imprisonment was released from Jail after completion of sentence and five years have not yet been elapsed - Rightly held by Writ Court that the appellant was having disqualification for holding the office of Sarpanch. [Suresh Baba Vs. Virendra Tyagi] (DB)...614

परक्राम्य लिखत अधिनियम (1881 का 26), धाराएँ 138 व 142 — वाद हेतुक एवं परिसीमा — आवेदक द्वारा जारी 5 लाख रुपये का चैक बैंक द्वारा 'भुगतान पर रोक' के आधार पर वापस लौटाया गया — अनावेदक ने आवेदक के खाते में मैसर्स भारत ठक्कर के माध्यम से जमा कराये गये 7,50,000 रुपये लौटाने की माँग करते हुए तारीख 12.09.2007 को सूचना पत्र जारी किया — चैक के अधीन संदेय 5 लाख रुपये की कोई माँग नहीं की गयी — अनावेदक ने चैक पुनः जमा किया तथा उसके अनाकृत होने के बाद दूसरा सूचना पत्र जारी किया — परिवाद द्वितीय सूचना पत्र के आधार पर फाइल किया गया — अभिनिर्धारित — प्रथम सूचना पत्र अधिनियम की धारा 138 परन्तुक (बी) के उपबंधों के अनुरूप नहीं था — जब तक तामील किया गया सूचना पत्र परन्तुक (बी) के अनुरूप न हो, कोई परिवाद पोषणीय नहीं है — द्वितीय सूचना पत्र के आधार पर फाइल किया गया परिवाद पोषणीय तथा परिसीमा के भीतर — याचिका खारिज। (आधार ट्रेडिंग (मे.) वि. मे. अंबिका रिफाइनरी) ---*1

नोटरी नियम, 1956, नियम 2(ए) — समुचित सरकार — याची केन्द्रीय सरकार द्वारा नियुक्त — वृत्तिक या अन्य अवचार के आरोपों की जाँच करने के लिए केन्द्रीय सरकार समुचित सरकार है — राज्य सरकार द्वारा प्रारम्भ की गयी कार्यवाही विधि की दृष्टि में दोषपूर्ण। (रईस खान वि. म.प्र. राज्य) ...395

नोटरी नियम, 1956, नियम 13 — टिप्पणी का विलोपन — न्यायालय द्वारा किसी व्यक्ति के विरुद्ध आलोचनाकारी टिप्पणी करने के पूर्व प्रस्तावित टिप्पणी/निन्दा के सम्बन्ध में उसे सुने जाने का अवसर दिया जाना चाहिये — कोई टिप्पणी/निन्दा पारित करने के पूर्व किसी भी समय प्रार्थी को सुने जाने का अवसर नहीं दिया गया — निन्दा विलोपित किये जाने योग्य है — याचिका मंजूर। (रईस खान वि. म.प्र. राज्य)...395

अधिसूचना — छूट अधिसूचना — को अक्षरशः पढ़ा जाना चाहिए — पात्रता मापदण्ड पूरे करने के प्रयोजन के लिए छूट अधिसूचना के भीतर ऐसा कुछ नहीं पढ़ा जा सकता जो उसमें उपबंधित न हो। (घनश्यामदास एण्ड कं. (मे.) वि. कमिश्नर ऑफ कमर्शियल टेक्स, एम.पी.) (DB)---*6

पंचायत राज एवं ग्राम स्वराज अधिनियम, म.प्र. 1993 (1994 का 1), धारा 36 — अपीलार्थी, आजीवन कारावास का दोषी, सजा पूर्ण होने पर जेल से रिहा तथा पाँच वर्ष नहीं बीते — रिट न्यायालय द्वारा यह उचित ठहराया गया कि अपीलार्थी सरपंच का पद धारण करने हेतु अनर्ह था। (सुरेश बाबा वि. वीरेन्द्र त्यागी) (DB)...614

Panchayat Raj Evam Gram Swaraj Adhiniyam, M.P. 1993 (1 of 1994), Section 36(1) & 36(2) - Bar under - Would not come in the way when a writ petition seeking relief of quo warranto is filed. [Suresh Baba Vs. Virendra Tyagi] (DB)...614

Panchayat Raj Evam Gram Swaraj Adhiniyam, M.P. 1993 (1 of 1994), Section 122 - Recounting - Order of recounting passed by Sub Divisional Officer on mere asking and without there being any evidence necessitating passing of such order - Such order and the consequential order of recounting of votes was rightly quashed by writ Court - Appeal dismissed. [Ramesh Chandra Bhilala Vs. Bashir] (DB)...49

Payment of Gratuity Act (39 of 1972), Section 2(h), Employees Provident Funds Scheme, 1952, Section 61 - Family - Claim of Gratuity and Provident Fund made on the basis of Will - Claimants/beneficiaries of Will not the members of family as defined under the Act, 1972 and Scheme, 1952 - Held - Despite proof of Will, they are not entitled to receive dues of the gratuity and provident funds on the strength of probate. [Urmila Tiwari (Smt.) Vs. Smt. Kanti Devi] ...741

Payment of Wages Act (4 of 1936), Section 7(2)(KKK) - Check-off facility - Employer is not under any obligation to offer check-off facility to Union - Check-off facility is a concession granted to Union under an agreement or binding settlement and cannot be claimed as a matter of right. [Rashtriya Colliery Majdoor Congress Vs. South Eastern Coalfields Ltd.] (DB)...364

Payment of Wages Act (4 of 1936), Section 7(2)(KKK) - Check-off facility - Withdrawal of - Appellant/Union enjoying check-off facility for a period of 21 years - Facility withdrawn on extraneous consideration i.e., requirement of affiliation with Central Trade Unions which has no statutory sanction - Action of unilaterally withdrawing the facility of check-off system cannot be approved - Respondent cannot be permitted to show undue preference to any union on extraneous consideration - Withdrawal of check-off facility bad. [Rashtriya Colliery Majdoor Congress Vs. South Eastern Coalfields Ltd.] (DB)...364

Payment of Wages Act (4 of 1936), Sections 9(2) & 15 - See - Constitution, Article 226 [Hind Khadan Mazdoor Federation Vs. Coal India Ltd.] ...147

पंचायत राज एवं ग्राम स्वराज अधिनियम, म.प्र. 1993 (1994 का 1), धारा 36(1) एवं 36(2) - अन्तर्गत वर्जन - अधिकार पृच्छा के अनुतोष हेतु प्रस्तुत रिट याचिका में आड़े नहीं आता। (सुरेश बाबा वि. वीरेन्द्र त्यागी) (DB)...614

पंचायत राज एवं ग्राम स्वराज अधिनियम, म.प्र. 1993 (1994 का 1), धारा 122 - पुनर्गणना - पुनर्गणना का आदेश उपखण्ड अधिकारी द्वारा सिर्फ कहने पर एवं ऐसे आदेश के पारित किये जाने के लिए आवश्यक किसी साक्ष्य के बिना पारित किया गया - ऐसा आदेश एवं मतों की पुनर्गणना का पारिणामिक आदेश रिट न्यायालय द्वारा उचित रूप से अभिखंडित किया गया - अपील खारिज। (रमेश चंद्र मिलाला वि. बशीर) (DB)...49

उपदान संदाय अधिनियम (1972 का 39), धारा 2(एच), कर्मचारी भविष्य निधि योजना, 1952, धारा 61 - परिवार - वसीयत के आधार पर किया गया उपदान एवं भविष्य निधि का दावा - दावेदार/वसीयत के हिताधिकारी, अधिनियम 1972 तथा योजना 1952 के अंतर्गत यथा परिभाषित परिवार के सदस्य नहीं - अभिनिर्धारित - वसीयत के सबूत के बावजूद, वे प्रोबेट के बल पर उपदान और भविष्य निधि के देय प्राप्त करने के हकदार नहीं हैं। (जर्मिला तिवारी (श्रीमति) वि. श्रीमति कांतीदेवी) ...741

मजदूरी संदाय अधिनियम (1936 का 4), धारा 7(2)(केकेके) - चैक-ऑफ सुविधा - यूनियन को चैक-ऑफ सुविधा प्रस्तावित करने के लिये नियोक्ता किसी बाध्यता के अधीन नहीं - चैक-ऑफ सुविधा किसी करार या बाध्यकारी परिनिर्धारण के अन्तर्गत यूनियन को प्रदाय की गई रियायत है और अधिकार के रूप में दावा नहीं किया जा सकता। (राष्ट्रीय कोल्यैरी मजदूर कांग्रेस वि. साउथ इस्टर्न कोलफील्ड्स लि.)(DB)...364

मजदूरी संदाय अधिनियम (1936 का 4), धारा 7(2)(केकेके) - चैक-ऑफ सुविधा - का वापस लेना - अपीलार्थी/यूनियन ने 21 वर्षों की अवधि तक चैक-ऑफ सुविधा का उपभोग किया - अप्रासंगिक प्रतिफल अर्थात् केन्द्रीय व्यापार संघ, जिसे कोई कानूनी मंजूरी नहीं है, से सम्बद्धता की अपेक्षा पर सुविधा वापस ली गई - एकपक्षीय रूप से चैक-ऑफ पद्धति की सुविधा को वापस लेने की कार्यवाही अनुमोदित नहीं की जा सकती - अप्रासंगिक प्रतिफल पर किसी यूनियन को असम्यक् अधिमान देने की प्रत्यर्थी को अनुज्ञा नहीं दी जा सकती - चैक-ऑफ सुविधा वापस लेना दोषपूर्ण। (राष्ट्रीय कोल्यैरी मजदूर कांग्रेस वि. साउथ इस्टर्न कोलफील्ड्स लि.) (DB)...364

मजदूरी संदाय अधिनियम (1936 का 4), धाराएँ 9(2) व 15 - देखें - संविधान, अनुच्छेद 226 (हिन्द खदान मजदूर फेडरेशन वि. कोल इंडिया लि.) ...147

Penal Code (45 of 1860), Section 34 - Common intention - Accused A-2 was present with accused A-1 when the incident occurred, and ran away with him - *Held* - Merely from that it cannot be held that A-2 knew that A-1 was armed with Katta and was likely to fire at deceased, especially when incident occurred suddenly - Accused A-2 cannot be held liable for causing death of deceased with the aid of S. 34. [Aiju @ Ajay Kumar Vs. State of M.P.] (DB)...768

Penal Code (45 of 1860), Section 149 - Unlawful assembly - Appellant No.1 caused injury to deceased and thereafter remaining 9 accused persons came one after another and joined appellant No.1 - *Held* - It cannot be said that it was an unlawful assembly whose common object was to commit murder. [Gangadhar Vs. State of M.P.] (DB)...202

Penal Code (45 of 1860), Section 302 - Circumstantial evidence - Burden of proof - Deceased wife died due to consumption of sulphas - Appellant admitted having given Metacin and seridone medicine - *Held* - No evidence that appellant was all alone in the company of deceased - Trial Court was wrong in holding that burden lies on appellant to establish that no other tablet was given to deceased. [Prahlaad Vs. State of M.P.] (DB)...489

Penal Code (45 of 1860), Section 302 - Circumstantial evidence - Extra judicial confession - P.W. 2, son of deceased stated that appellant had made extra judicial confession to him - Highly suspicious that for no rhyme or reason accused would have made confession of his guilt before son of deceased - Evidence of P.W. 2 suspicious. [Halku Vs. State of M.P.] (DB)...529

Penal Code (45 of 1860), Section 302 - Circumstantial evidence - Recovery of weapon - Blood group of deceased was 'B' - However, blood group on Bakhar could not be detected - *Held* - It cannot be held with certainty that Bakhar recovered from the possession of appellant was used in commission of murder - Appeal allowed. [Halku Vs. State of M.P.] (DB)...529

Penal Code (45 of 1860), Section 302, Evidence Act, 1872, Section 3 - Medical and ocular evidence - Autopsy surgeon found stab wounds and impact abrasions and laceration of mastoid region because of pieces of skull bone - Accused alleged to have caused injuries by hard

दण्ड संहिता (1860 का 45), धारा 34 — सामान्य आशय — जब घटना हुई तब अभियुक्त ए-2, अभियुक्त ए-1 के साथ उपस्थित था और उसके साथ भाग गया — अभिनिर्धारित — मात्र इससे यह नहीं माना जा सकता कि ए-2 को ज्ञात था कि ए-1 कट्टा लिये हुये था और मृतक पर गोली दाग सकता था, विशेषतः जब घटना अचानक घटित हुई — धारा 34 की सहायता के साथ अभियुक्त ए-2 को मृतक की मृत्यु कारित करने के लिए जिम्मेदार नहीं माना जा सकता। (अज्जू उर्फ अजय कुमार वि. म.प्र. राज्य) (DB)...768

दण्ड संहिता (1860 का 45), धारा 149 — विधिविरुद्ध जमाव — अपीलार्थी क्र. 1 ने मृतक को क्षति कारित की और तत्पश्चात् शेष 9 अभियुक्त एक के बाद एक आये और अपीलार्थी क्र. 1 से संयुक्त हो गये — अभिनिर्धारित — यह नहीं कहा जा सकता कि वह एक विधिविरुद्ध जमाव था जिसका सामान्य उद्देश्य हत्या कारित करना था। (गंगाधर वि. म.प्र. राज्य) (DB)...202

दण्ड संहिता (1860 का 45), धारा 302 — परिस्थितिजन्य साक्ष्य — सबूत का भार — मृतका पत्नी की सल्फास खाने से मृत्यु हुई — अपीलार्थी ने मेटासिन तथा सेरिडोन दवाइयाँ देना स्वीकार किया — अभिनिर्धारित — कोई साक्ष्य नहीं कि मृतक के साथ केवल अपीलार्थी ही था — विचारण न्यायालय द्वारा यह अभिनिर्धारित करना गलत था कि यह सिद्ध करने का भार अपीलार्थी पर था कि मृतका को कोई अन्य गोली नहीं दी गयी। (प्रहलाद वि. म.प्र. राज्य) (DB)...489

दण्ड संहिता (1860 का 45), धारा 302 — परिस्थितिजन्य साक्ष्य — न्यायिकेतर संस्वीकृति — अ.सा. 2, मृतक के पुत्र ने कथन किया कि अपीलार्थी ने उससे न्यायिकेतर संस्वीकृति की — यह अत्यंत संदेहास्पद है कि बिना किसी तुक या कारण के अभियुक्त ने अपने अपराध की संस्वीकृति मृतक के पुत्र के समक्ष की होगी — अ. सा. 2 की साक्ष्य संदेहास्पद। (हल्कू वि. म.प्र. राज्य) (DB)...529

दण्ड संहिता (1860 का 45), धारा 302 — परिस्थितिजन्य साक्ष्य — हथियार की बरामदगी — मृतक का रक्त समूह 'बी' था — तथापि 'बखर' पर के रक्त का रक्त समूह मालूम नहीं किया जा सका — अभिनिर्धारित — निश्चय पूर्वक यह अभिनिर्धारित नहीं किया जा सकता कि अपीलार्थी के कब्जे से बरामद 'बखर' हत्या करने में उपयोग किया गया — अपील मंजूर। (हल्कू वि. म.प्र. राज्य) (DB)...529

दण्ड संहिता (1860 का 45), धारा 302, साक्ष्य अधिनियम, 1872, धारा 3 — चिकित्सीय एवं चक्षुदर्शी साक्ष्य — शव परीक्षक ने खोपड़ी की हड्डी के टुकड़े होने के कारण बेधन घाव तथा संघात खरोंच और कर्णमूल भाग का कटा-फटा होना पाया — अभियुक्त जिसने कथित रूप से सख्त तथा मोथरे हथियार से क्षतियाँ कारित

and blunt object are entitled to be acquitted as oral evidence is not corroborated by medical evidence.[Somu Vs. State of M.P.](DB)...*37

Penal Code (45 of 1860), Section 302, Evidence Act, 1872, Section 32 - Dying declaration - (1) recorded by doctor, (2) recorded by Inspector, Police as Dehati Nalishi, and (3) Dying declaration written as statement u/s 161 Cr.P.C. were found true and voluntary - There appeared no reason for the deceased to have made false statement accusing her husband/accused - By the fact that accused tried to extinguish the fire, it cannot be presumed that the deceased committed suicide - It stands proved that accused set fire to deceased and as a result of it she died. [Prakash Wagh Vs. State of M.P.] (DB)...239

Penal Code (45 of 1860), Section 302 - Murder - Appellant/ husband picked up quarrel with deceased/wife and pour kerosene oil on her and lit fire by match box - Appellant arrested after 7 days of incident - Doctor found old burn injuries on the tip of his fingers, thumb and teeth biting injury on left fore arm - Held - Appellant did not take his wife to hospital for treatment - Appellant failed to account for his absence for about 7 days - Deceased was taken to hospital by neighbors and brother-in-law - Appellant guilty of offence u/s 302 of IPC. [Santosh Vs. State of M.P.] (DB)...196

Penal Code (45 of 1860), Section 302 - Murder - Circumstantial evidence - Deceased died unnatural death by rupture of spleen - Appellant/accused (husband of deceased) who was last resided together with wife/deceased in his dwelling house did not offer satisfactory explanation as to how deceased received fatal injury on her body - The explanation offered by appellant/accused that deceased committed suicide by hanging herself was found to be false - All these circumstances cumulatively establish that appellant only is responsible of homicidal death of deceased - Conviction affirmed. [Laxman Singh Vs. State of M.P.] (DB)...229

Penal Code (45 of 1860), Section 302 - See - Evidence Act, 1872, Section 3, [Nandram Vs. State of M.P.] (DB)...493

Penal Code (45 of 1860), Section 302/34 - Murder - Trial Court implicitly accepted the evidence of eyewitnesses without properly considering the inconsistencies and contradictions in their evidence -

कीं, दोषमुक्त किये जाने का हकदार है, क्योंकि मौखिक साक्ष्य की चिकित्सीय साक्ष्य से सम्पुष्टि नहीं होती है। (सोमू वि. म.प्र. राज्य) (DB)...*37

दण्ड संहिता (1860 का 45), धारा 302, साक्ष्य अधिनियम, 1872 धारा 32 — मृत्युकालिक कथन — (1) चिकित्सक द्वारा अभिलिखित, (2) पुलिस निरीक्षक द्वारा देहाती नालिशि के रूप में अभिलिखित, और (3) द.प्र.स. की धारा 161 के अंतर्गत कथन के रूप में लिखित मृत्युकालिक कथन सत्य एवं स्वेच्छापूर्ण पाये गये — मृतक द्वारा अपने पति/अभियुक्त पर आरोप लगाते हुए मिथ्या कथन करने का कोई कारण प्रकट नहीं हुआ — इस तथ्य से कि अभियुक्त ने आग बुझाने का प्रयास किया, यह उपधारित नहीं किया जा सकता कि मृतक ने आत्महत्या की — यह साबित होता है कि अभियुक्त ने मृतक को आग लगाई और उसके परिणामस्वरूप उसकी मृत्यु हुई। (प्रकाश वाघ वि. म.प्र. राज्य) (DB)---239

दण्ड संहिता (1860 का 45), धारा 302 — हत्या — अपीलार्थी/पति ने मृतक/पत्नी से झगड़ा किया तथा उस पर भिट्टी का तेल डालकर माचिस से आग लगा दी — घटना के 7 दिन बाद अपीलार्थी गिरतार — चिकित्सक ने उसकी उंगलियों के पोरों, अंगूठे पर जलने की पुरानी क्षतियाँ तथा बायें अग्रभुजा पर दांत से काटने की क्षति पायी — अभिनिर्धारित — अपीलार्थी अपनी पत्नी को इलाज के लिये अस्पताल नहीं ले गया — अपीलार्थी 7 दिनों तक की अपनी अनुपस्थिति का कारण बताने में असमर्थ रहा — मृतक को पड़ोसियों एवं देवर द्वारा अस्पताल ले जाया गया — अपीलार्थी मा.द.स. की धारा 302 के अन्तर्गत अपराध का दोषी। (संतोष वि. म.प्र. राज्य) (DB)...196

दण्ड संहिता (1860 का 45), धारा 302 — हत्या — परिस्थितिजन्य साक्ष्य — मृतक की प्लीहा फटने के कारण अस्वाभाविक मृत्यु — अपीलार्थी/अभियुक्त (मृतक का पति), जो आखिरी बार पत्नी/मृतक के साथ अपने निवास गृह पर रहा था, ने मृतक के शरीर पर घातक चोटें आने के सम्बन्ध में संतोषजनक स्पष्टीकरण नहीं दिया — अपीलार्थी/अभियुक्त द्वारा दिया गया स्पष्टीकरण कि मृतक ने स्वयं फाँसी लगाकर आत्महत्या की थी, मिथ्या होना पाया गया — यह सभी परिस्थितियाँ संचयी रूप से सिद्ध करती हैं कि केवल अपीलार्थी ही मृतक की मानववध संबंधी मृत्यु के लिये उत्तरदायी है — दोषसिद्धि की पुष्टि की गयी। (लक्ष्मण सिंह वि. म.प्र. राज्य) (DB)...229

दण्ड संहिता (1860 का 45), धारा 302 — देखें — साक्ष्य अधिनियम, 1872, धारा 3, (नंदराम वि. म.प्र. राज्य) (DB)...493

दण्ड संहिता (1860 का 45), धारा 302/34 — हत्या — विचारण न्यायालय ने अव्यक्त रूप से प्रत्यक्षदर्शी साक्षियों की साक्ष्य पर उनकी साक्ष्य में आयी असंगतताओं तथा विरोधाभासों पर उचित रूप से विचार किये बिना स्वीकार किया — न्यायालय यह

The Court failed to consider that inherent infirmities in their evidence created grave suspicion and doubt about their presence at the place of occurrence - The Court also failed to notice their highly unnatural conduct - The evidence produced by the prosecution is unfit to be held the appellants guilty for the offence - Conviction & sentence set aside. [Sunil Datta Vs. State of M.P.] (DB)...*50

Penal Code (45 of 1860), Sections 302/34, 304 Part-I - Murder or culpable homicide - Deceased himself indulged in quarrel with accused A-1 when A-1 did not accede to his demand of providing liquor - In that quarrel, suddenly A-1 took out Katta and fired at deceased - Deceased and accused persons were on family terms and accused used to visit deceased at his house also - Held - It cannot be held with certainty that accused A-1 intended to cause death of deceased - However, since he used a fire arm, it can be held that he intended to cause such bodily injury to deceased as was likely to cause his death - His act clearly falls within the ambit of S. 304 Part-I. [Ajju @ Ajay Kumar Vs. State of M.P.] (DB)...768

Penal Code (45 of 1860), Section 302/148 - FIR delayed and first informant also not examined - The testimony of solitary child/eye witness was found not safe to place reliance - The conviction and sentence passed by the trial Court set aside. [Nandram Vs. State of M.P.] (DB)...493

Penal Code (45 of 1860), Sections 302, 304 Part I or 304 Part II - Murder or culpable homicide - When deceased asked the accused not to consume liquor, he became violent and poured kerosene and set fire to deceased - The act of pouring kerosene and setting fire, is so imminently dangerous that it must in all probability, cause death or such bodily injury as is likely to cause death - It cannot be held that the case of accused falls within the ambit of Section 304-I or 304-II - Conviction u/s 302 is affirmed. [Prakash Wagh Vs. State of M.P.] (DB)...239

Penal Code (45 of 1860), Section 304B, Evidence Act, 1872, Section 113B - Soon before death - Presumption - Demand of Rs.61,000, TV, Cooler, Ring and Almirah - Deceased lived in her husband's house for 4 months - Thereafter came back to her parents house where she stayed for 5 months and informed her parents about demand of dowry -

विचार करने में असफल रहा कि उनकी साक्ष्य में अन्तर्निहित दुर्बलताओं ने उनकी घटनास्थल पर उपस्थिति पर गंभीर संदेह उत्पन्न कर दिया — न्यायालय उनके अत्यन्त अस्वाभाविक आचरण पर ध्यान देने में भी असमर्थ रही — अभियोजन द्वारा प्रस्तुत साक्ष्य अभियुक्त को अपराध का दोषी ठहराये जाने के लायक नहीं है — दोषसिद्धि एवं दण्डादेश अपास्त। (सुनील दत्ता वि. म.प्र. राज्य) (DB)...*50

दण्ड संहिता (1860 का 45), धाराएँ 302/34, 304 भाग—एक — हत्या या आपराधिक मानव वध — मृतक स्वयं अभियुक्त ए—1 के साथ झगड़े में उलझा, जब ए—1 ने उसकी मदिरा देने की मांग अस्वीकार की — उस झगड़े में, ए—1 ने अचानक कट्टा निकाला और मृतक पर गोली दागी — मृतक एवं अभियुक्त के कौटुम्बिक संबंध थे और अभियुक्त का मृतक के घर आना-जाना भी था — अभिनिर्धारित — यह निश्चित रूप से नहीं माना जा सकता है कि ए—1 का आशय मृतक की मृत्यु कारित करना था — तथापि चूंकि उसने आग्नेय अस्त्र का उपयोग किया, यह माना जा सकता है कि उसका आशय मृतक को ऐसी शारीरिक क्षति कारित करना था, जिससे उसकी मृत्यु कारित होना संभाव्य था — उसका कृत्य स्पष्टतः धारा 304 भाग—एक की परिधि में आता है। (अज्जू उर्फ अजय कुमार वि. म.प्र. राज्य) (DB)...768

दण्ड संहिता (1860 का 45), धारा 302/148 — प्रथम सूचना रिपोर्ट विलम्बित और प्रथम सूचनादाता का भी परीक्षण नहीं किया गया — अकेले बालक/प्रत्यक्षदर्शी साक्षी की परिसाक्ष्य विश्वास करने के लिए सुरक्षित नहीं पायी गयी — विचारण न्यायालय द्वारा पारित दोषसिद्धि और दण्डादेश अपास्त। (नंदराम वि. म.प्र. राज्य) (DB)...493

दण्ड संहिता (1860 का 45), धाराएँ 302, 304 भाग I व 304 भाग II — हत्या या आपराधिक मानव वध — जब मृतक ने अभियुक्त से मदिरापान न करने के लिए कहा तो वह हिंसक हो गया और मृतक पर मिट्टी का तेल उड़ेलकर उसे आग लगा दी — मिट्टी का तेल उड़ेलने और आग लगाने का कृत्य इतना आसन्न रूप से घातक है कि वह सभी संभाव्यताओं में, मृत्यु कारित करेगा अथवा ऐसी शारीरिक क्षति कारित करेगा जिससे मृत्यु कारित होना संभाव्य है — यह अग्निनिर्धारित नहीं किया जा सकता कि अभियुक्त का मामला धारा 304—I या 304—II की परिधि के भीतर आता है — धारा 302 के अंतर्गत दोषसिद्धि की पुष्टि की गई। (प्रकाश वाघ वि. म.प्र. राज्य)(DB)...239

दण्ड संहिता (1860 का 45), धारा 304बी, साक्ष्य अधिनियम, 1872, धारा 113बी — मृत्यु के अल्प समय पूर्व — उपधारणा — 61,000 रुपये टी.व्ही., कूलर, अंगूठी एवं अलमारी की माँग — मृतका अपने पति के घर 4 माह रही — उसके बाद अपने माता-पिता के घर वापस आयी, जहाँ पर वह 5 माह तक रही तथा अपने माता-पिता को दहेज की माँग के बारे में जानकारी दी — पुनः मृतका 4 माह तक अपने ससुराल

Again deceased stayed in her in-laws house for 4 months and came back and stayed for 5 months in her parents house - A-1/husband took her back to her in-laws house where she committed suicide after 15 days - *Held* - There had been no patch up or any Panchayat between two parties - No assurance given by A-2 for giving up the demand of motorcycle and no evidence that dispute stood resolved - Mere lapse of time by itself would not provide any defence to accused, if the course of conduct relating to cruelty or harassment in connection with demand of dowry existed - Conviction of A-1 affirmed - However, evidence found against A-2 is vague - No specific or clinching evidence that A-2 joined A-1 in meting out any cruelty for making demand of motorcycle - Conviction of A-2 on both the counts set aside - A-2 acquitted of both the charges. [Kanhaiyalal Gupta Vs. State of M.P.] (DB)...*42

Penal Code (45 of 1860), Section 304(I) or 325 - Culpable homicide - Accused assaulted only once with a light weight bamboo stick to the deceased (72 year) ultimately causing his death - His intention was not to cause such bodily injury as was likely to cause death in normal or ordinary course - The conviction of accused converted from Section 304 Part I to 325, and punished with Jail sentence for the period already undergone - Appeal partly allowed. [Yashwant Vs. State of M.P.] ...248

Penal Code (45 of 1860), Section 306 - Abetment of suicide - An oral allegation of theft made by appellant against deceased, even if followed by some amount of beating, does not amount to such circumstance that the deceased was left with no option except to commit suicide - No offence proved beyond peripheri of doubt - Appeal allowed. [Mijajilal Vs. State of M.P.] ...253

Penal Code (45 of 1860), Sections 306 & 498-A - Abetment of suicide - Cruelty - Parents and other witnesses proving that Rs.5000/- was settled to be given at the time of marriage, but only a sum of Rs.4000/- could be given - It is also proved that the deceased when returned from matrimonial home, she used to tell that appellant used to beat her and torture her on account of demand of remaining amount - The death of deceased by hanging herself at the place of appellant (her husband) is also proved - *Held* - It can be safely concluded that

में रही और अपने माता-पिता के घर में 5 माह रही - ए-1/पति उसे वापस उसकी ससुराल ले गया जहाँ उसने 15 दिन बाद आत्महत्या कर ली - अभिनिर्धारित - दोनों पक्षों के बीच कोई मनमुटाव समाप्त नहीं किया गया या कोई पंचायत नहीं हुई - मोटरसाईकिल की मांग छोड़ देने का ए-2 द्वारा कोई आश्वासन नहीं दिया गया और कोई साक्ष्य नहीं कि विवाद सुलझ गया था - मात्र समय बीत जाना अपने आप में अभियुक्त को कोई बचाव प्रदान नहीं करता, यदि दहेज की मांग से संबंधित क्रूरता या उत्पीड़न के व्यवहार का क्रम अस्तित्वमान था - ए-1 की दोषसिद्धि की पुष्टि की गई - तथापि, ए-2 के विरुद्ध पाई गयी साक्ष्य अस्पष्ट है - कोई विनिर्दिष्ट अथवा निश्चित साक्ष्य नहीं कि मोटरसाईकिल की मांग के लिए किसी प्रकार की क्रूरता कारित करने में, ए-2 ने ए-1 का साथ दिया - ए-2 की दोषसिद्धि, दोनों विन्दुओं पर अपास्त - ए-2 दोनों आरोपों से दोषमुक्त किया गया। (कन्हैयालाल गुप्ता वि. म.प्र. राज्य) (DB)...*42

दण्ड संहिता (1860 का 45), धारा 304(प) या 325 - आपराधिक मानव वध - अभियुक्त ने हल्के वजन की बांस की लकड़ी से केवल एक बार मृतक (72 वर्षीय) पर वार किया, जिससे अतंतः उसकी मृत्यु हो गयी - उसका आशय ऐसी शारीरिक क्षति कारित करना नहीं था जिससे कि सामान्य अथवा साधारण अनुक्रम में मृत्यु कारित होना संभाव्य था - अभियुक्त की दोषसिद्धि धारा 304 भाग-I से 325 में संपरिवर्तित की गयी तथा भुगताई जा चुकी कारावास की अवधि से दण्डित किया गया - अपील अंशतः मंजूर। (यशवंत वि. म.प्र. राज्य) ...248

दण्ड संहिता (1860 का 45), धारा 306 - आत्महत्या का दुष्प्रेरण - अपीलार्थी द्वारा मृतक के विरुद्ध किया गया चोरी का मौखिक अभिकथन, भले ही इसके बाद कुछ मारपीट किया जाना भी हो, ऐसी परिस्थिति की कोटि में नहीं आता है कि मृतक के पास आत्महत्या करने के सिवाय कोई विकल्प नहीं बचा था - संदेह की परिधि के परे कोई अपराध साबित नहीं - अपील मंजूर। (मिजाजीलाल वि. म.प्र. राज्य) ...253

दण्ड संहिता (1860 का 45), धाराएँ 306 व 498-ए - आत्महत्या का दुष्प्रेरण - क्रूरता - माता-पिता तथा अन्य साक्षियों द्वारा यह साबित किया गया कि विवाह के समय 5000/- रुपये दिया जाना तय हुआ, किन्तु केवल 4000/- रुपये की राशि ही दी जा सकी - यह भी साबित किया गया कि मृतक जब अपने ससुराल से लौटी तो वह यह बताया करती थी कि शेष राशि की माँग को लेकर अपीलार्थी उसके साथ मारपीट करता है तथा प्रताड़ित करता है - मृतक की अपीलार्थी (उसके पति) के घर पर स्वयं को फाँसी लगाकर मृत्यु होना भी साबित - अभिनिर्धारित - सुरक्षित रूप

appellant by his willful acts and continued course of conduct, as aforesaid, created such circumstances that the deceased was left with no option but to commit suicide and she was compelled to take the extreme step of putting an end to her life by hanging herself - Conviction u/s 306 & 498-A do not suffer from any infirmity. [Raman Singh Vs. State of M.P.] ...259

Penal Code (45 of 1860), Section 307, Arms Act, 1959, Section 25(1-B)(a) & 27 - Charge of attempt to murder by firing at police personnel - Incident narrated by Head Constable sought to be supported by police personnel only, whose presence at the spot located in the vicinity of residential quarters was shrouded with doubt and not by any public witness - The probability of the defence that the appellant was apprehended while staying in the quarter allotted to co-accused and was shot at while being taken to the police station stood duly substantiated - The appellant was required to be given the benefit of doubt - Appeal allowed. [Babuji @ Shyam Vs. State of M.P.] ...233

Penal Code (45 of 1860), Section 307 - Source of light on the spot - Incident took place at 8:30 in the night and no arrangement of light shown in investigation - Not possible for complainant to see the actual assailant - Testimony of complainant doubtful. [Ramadhar @ Pappan Khamparia Vs. State of M.P.] ...*32

Penal Code (45 of 1860), Sections 307 & 324 - Attempt to murder or causing simple hurt - Complainant alone in the street - Appellant fired from the back from a distance of 8 fts. - Did not repeat his fire - Appellant did not approach near the complainant - Appellant ran away immediately although there was no body at the time of incident to prevent him to make another gun shot - Held - Intention of appellant was to cause simple injuries - His intention cannot be presumed of causing death of complainant - Overt act of appellant constitute offence u/s 324 of IPC. [Ramadhar @ Pappan Khamparia Vs. State of M.P.] ...*32

Penal Code (45 of 1860), Section 354 - Sentence - Appellant a young boy of 22 years - Already undergone the sentence of 4 months and 19 days and fine of Rs. 1000 - Appellant sentenced to period already undergone. [Manoj Vs. State of M.P.] ...506

से यह निष्कर्ष निकाला जा सकता है कि अपीलार्थी ने अपने जानबूझकर किये गये कार्यों एवं लगातार आचरण से जैसा कि उपरोक्त वर्णित है, इस प्रकार की परिस्थितियाँ उत्पन्न कीं कि मृतका के पास आत्महत्या करने के सिवाय कोई विकल्प नहीं बचा था तथा उसे फाँसी लगाकर अपने जीवन का अन्त करने का उग्र कदम उठाने के लिये विवश किया गया - धारा 306 तथा 498-ए के अन्तर्गत दोषसिद्धि किसी अशक्तता से ग्रसित नहीं। (रमन सिंह वि. म.प्र. राज्य) ...259

दण्ड संहिता (1860 का 45), धारा 307, आयुध अधिनियम, 1959, धारा 25(1-बी)(ए) व 27 - पुलिस कर्मचारी पर गोली चलाकर हत्या करने के प्रयत्न का आरोप - प्रधान आरक्षक द्वारा बताई गयी घटना का समर्थन सिर्फ पुलिस कर्मचारी, जिसकी नैवासिक आवासों के समीपस्थ घटना स्थल पर उपस्थिति संदेहास्पद थी, द्वारा कराया जाना चाहा गया न कि किसी लोक साक्षी द्वारा - बचाव की संभाव्यता कि अपीलार्थी को सह-अभियुक्त को आवंटित मकान में रहने के दौरान गिरतार कर लिया गया था तथा पुलिस स्टेशन ले जाये जाने के दौरान गोली मारी गयी, सम्यक रूप से समर्थित होता है - अपीलार्थी को संदेह का लाम दिया जाना आवश्यक था - अपील मंजूर। (बाबूजी उर्फ श्याम वि. म.प्र. राज्य) ...233

दण्ड संहिता (1860 का 45), धारा 307 - घटनास्थल पर प्रकाश का स्रोत - घटना रात 8:30 बजे घटित हुई और अन्वेषण में प्रकाश की कोई व्यवस्था नहीं दर्शाई गई - परिवादी के लिए वास्तविक आक्रमणकर्ता को देख सकना संभव नहीं - परिवादी की परिसाक्ष्य संदेहास्पद। (रामाधार उर्फ पप्पन खंपरिया वि. म.प्र. राज्य) ...*32

दण्ड संहिता (1860 का 45), धाराएँ 307 व 324 - हत्या करने का प्रयत्न या साधारण उपहति कारित करना - परिवादी गली में अकेला - अपीलार्थी ने पीछे से 8 फीट की दूरी से फायर किया - उसने पुनः फायर नहीं किया - अपीलार्थी परिवादी के पास नहीं गया - अपीलार्थी तुरंत भाग गया यद्यपि घटना के समय उसे दूसरी गोली चलाने से रोकने के लिए वहाँ कोई नहीं था - अभिनिर्धारित - अपीलार्थी का आशय साधारण क्षतियाँ कारित करना था - परिवादी की मृत्यु कारित करने का उसका आशय होने की उपधारणा नहीं की जा सकती - अपीलार्थी का प्रत्यक्ष कृत्य मा.द.सं. की धारा 324 के अंतर्गत अपराध गठित करता है। (रामाधार उर्फ पप्पन खंपरिया वि. म.प्र. राज्य) ...*32

दण्ड संहिता (1860 का 45), धारा 354 - दण्डादेश - अपीलार्थी एक 22 वर्ष का युवक - पूर्व में 4 माह 19 दिवस का कारावास तथा 1000 रु. जुर्माने की सजा भुगत चुका - अपीलार्थी को पूर्व में भुगती गयी कालावधि से दण्डादिष्ट किया गया। (मनोज वि. म.प्र. राज्य) ...506

Penal Code (45 of 1860), Section 362 - Expression "deceitful means" - Is wide enough to include the inducing a wife by husband on a false pretext. [Radheshyam Ahirwar Vs. State of M.P.] ...517

Penal Code (45 of 1860), Sections 366 & 376 - A-2, the husband of prosecutrix, persuaded her upon a false pretext of illness of her father to accompany on a motor cycle driven by A-1 upto her parental home and from there to the place where she was handed over to A-1 - She was ravished by A-1 after being taken to a nearby plot of land - Conviction of accused/appellants A-1 for offence of rape and conviction of A-2 for the offence of abduction do not call for interference. [Radheshyam Ahirwar Vs. State of M.P.] ...517

Penal Code (45 of 1860), Section 376/511 - Attempt to commit rape - False implication - It is not believable that for wrecking vengeance or compensation any father or mother put into stake chastity and career of their minor daughter. [Manoj Vs. State of M.P.] ...506

Penal Code (45 of 1860), Section 376/511 - Attempt to commit rape - Prosecutrix did not state that appellant tried to penetrate his male organ - Merely removal of underwear and laying down on prosecutrix would not be sufficient to hold that appellant attempted to commit rape. [Manoj Vs. State of M.P.] ...506

Penal Code (45 of 1860), Sections 376/511, 354 - Attempt to commit rape or outraging modesty - Appellant removed underwear of prosecutrix and laid down upon her after removing his underwear - Appellant liable for molesting the modesty of prosecutrix. [Manoj Vs. State of M.P.] ...506

Penal Code (45 of 1860), Section 376/511 or 354 - Attempt to commit rape or outrage the modesty of a woman - Difference - Appellant/accused did not put his penis on vagina of prosecutrix and on denial of prosecutrix he performed ejaculation by his own hands - The overt-act of appellant does not come under purview of attempt to commit rape and at the most it comes under the purview of Section 354. [Lal Singh Vs. State of M.P.] ...524

Penal Code (45 of 1860), Sections 403, 406, 418, 420/34 - Cheating - Civil dispute - Contract to applicant for National Highway Section II Project by National Highway Authority of India - Respondent was

दण्ड संहिता (1860 का 45), धारा 362 — अभिव्यक्ति "प्रवचनापूर्ण उपाय" — पति द्वारा मिथ्या बहाने से पत्नी को उत्प्रेरित किये जाने को सम्मिलित करने के लिए पर्याप्त है। (राधेश्याम अहिरवार वि. म.प्र. राज्य) ...517

दण्ड संहिता (1860 का 45), धाराएँ 366 व 376 — ए-2, अभियोक्ता के पति ने उसे उसके पिता के बीमार होने के मिथ्या बहाने से, ए-1 द्वारा चलाई गयी मोटर साईकिल पर उसके माता-पिता के घर तक और वहाँ से उस स्थान तक जहाँ उसे ए-1 को सौंपा गया, साथ जाने के लिए प्रेरित किया — ए-1 द्वारा निकट के भूखण्ड पर ले जाने के बाद उसके साथ बलात्संग किया गया — अभियुक्त/अपीलार्थी ए-1 की बलात्संग के अपराध के लिए दोषसिद्धि और ए-2 की अपहरण के अपराध के लिए दोषसिद्धि में हस्तक्षेप की आवश्यकता नहीं। (राधेश्याम अहिरवार वि. म.प्र. राज्य) ...517

दण्ड संहिता (1860 का 45), धारा 376/511 — बलात्संग करने का प्रयत्न — मिथ्या आलिप्त करना — यह विश्वसनीय नहीं है कि बदले की भावना अथवा क्षतिपूर्ति के लिये कोई पिता अथवा माँ अपनी अवयस्क पुत्री की सुचिता और भविष्य को दांव पर लगा देंगे। (मनोज वि. म.प्र. राज्य) ...506

दण्ड संहिता (1860 का 45), धारा 376/511 — बलात्संग करने का प्रयत्न — अभियोक्त्री ने यह नहीं कहा कि अपीलार्थी ने अपना शिशन प्रविष्ट करने का प्रयत्न किया — अभियोक्त्री का अधोवस्त्र उतारना तथा उसके ऊपर लेट जाना मात्र ही यह अभिनिर्धारित करने के लिए पर्याप्त नहीं होगा कि अपीलार्थी ने बलात्संग करने का प्रयत्न किया। (मनोज वि. म.प्र. राज्य) ...506

दण्ड संहिता (1860 का 45), धाराएँ 376/511, 354 — बलात्संग करने का प्रयत्न अथवा लज्जा भंग करना — अपीलार्थी ने अभियोक्त्री के अधोवस्त्र उतारे तथा अपने अधोवस्त्र उतारने के बाद उसके ऊपर लेट गया — अपीलार्थी अभियोक्त्री की लज्जा से छेड़खानी करने के लिए दायी है। (मनोज वि. म.प्र. राज्य) ...506

दण्ड संहिता (1860 का 45), धारा 376/511 या 354 — बलात्संग करने का प्रयत्न या स्त्री की लज्जा भंग करना — भेद — अपीलार्थी/अभियुक्त ने अपना जननांग अभियोक्त्री की योनि में नहीं डाला और अभियोक्त्री के इनकार करने पर उसने अपने हाथों से स्खलन किया — अपीलार्थी का प्रत्यक्ष कार्य बलात्संग करने के प्रयत्न के सीमा क्षेत्र के अन्तर्गत नहीं आता है और यह धारा 354 के सीमा क्षेत्र में आता है। (लाल सिंह वि. म.प्र. राज्य) ...524

दण्ड संहिता (1860 का 45), धाराएँ 403, 406, 418, 420/34 — छल — सिविल विवाद — भारतीय राष्ट्रीय राजमार्ग प्राधिकरण द्वारा राष्ट्रीय राजमार्ग खण्ड-द्वितीय परियोजना का ठेका आवेदक को — आवेदक द्वारा प्रत्यर्थी को उप-ठेकेदार के रूप

persuaded by applicant to take part of project as a sub-contractor, whereas sub-contractor was not approved by NHAI - Applicant also violated terms and conditions of contract entered into with respondent - *Held* - Respondent was aware of fact that he was not fully approved sub-contractor by NHAI - Subsequently NHAI approved respondent as sub-contractor - Normally breach of trust/cheating is essentially a civil dispute unless it shows the intention of applicant to cheat from very inception - Dispute is a case of simple breach of contract and the same has already been referred to the Arbitrator - Order taking cognizance against applicants quashed - Petition allowed. [Ssangyong Engineering & Construction Co. Ltd. Vs. M/s Yogra Infrastructure Ltd.] ...312

Penal Code (45 of 1860), Sections 420, 467, 468, 471 & 472 - Cheating - False Caste Certificate - Only allegation against the applicant is with respect to obtaining false certificate concerning his caste - As per the law laid down by Apex Court, such matter is to be inquired into by Caste Scrutiny Committee / State Level Committee constituting in each State - Proceedings concerning Crime No.261/2010 registered against the applicant deserve to be quashed. [Malkit Singh Vs. State of M.P.] ...296

Penal Code (45 of 1860), Section 500 - Defamation - There must be an imputation and such imputation must have been made with an intention of harming, or knowing or having reason to believe that such imputation will harm, the reputation of the person about whom it is made. [Rasiklal Manikchand Vs. Kishore Wadhwani] ...*16

Penal Code (45 of 1860), Section 500 - See - Criminal Procedure Code, 1973, Sections 179 & 188 [Rasiklal Manikchand Vs. Kishore Wadhwani] ...*16

Precedent - Conflict between the decisions - No conflict between the decisions rendered in the case of *Vishwanath Prasad vs. Board of Revenue* [1964 MPLJ SN 38] and *Mangilal vs. State of M.P. & ors.* [1995 RN 67] as the factual matrix on the basis of which the two judgments were rendered was totally different and that the Division Bench in the Case of *Mangilal* on that count has rightly distinguished the case of *Vishwanath Prasad*. [Kala Bai (Smt.) Vs. State of M.P.] (FB)...575

में परियोजना में भाग लेने हेतु कहा गया, जबकि उप-ठेकेदार भा.रा.रा.प्रा. द्वारा अनुमोदित नहीं था - आवेदक ने प्रत्यर्थी के साथ किये गये करार के निबंधन एवं शर्तों का भी उल्लंघन किया - अभिनिर्धारित - प्रत्यर्थी इस तथ्य से अवगत था कि वह भा.रा.रा.प्रा. से पूर्णतः अनुमोदित उप-ठेकेदार नहीं था - तत्पश्चात् भा.रा.रा.प्रा. ने प्रत्यर्थी को उप-ठेकेदार के रूप में अनुमोदित किया - समान्यतः विश्वास भंग/छल आवश्यक रूप से एक सिविल विवाद है जब तक कि यह आवेदक का प्रारम्भ से ही छल करने का आशय नहीं दर्शाता - विवाद साधारण संविदा भंग का मामला है और इसे पूर्व में ही मध्यस्थ को निर्दिष्ट किया जा चुका है - आवेदकों के विरुद्ध संज्ञान लेने का आदेश अभिखंडित - याचिका मंजूर। (सैंगयंग इंजीनियरिंग कन्सल्टेशन कं. लि. वि. योगराज इन्फ्रास्ट्रक्चर लि.)

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दण्ड संहिता (1860 का 45), धाराएँ 420, 467, 468, 471 व 472 - छल - मिथ्या जाति प्रमाण पत्र - आवेदक के विरुद्ध अपनी जाति के संबंध में मिथ्या प्रमाण पत्र अभिप्राप्त करने के सम्बन्ध में सिर्फ अभिकथन - शीर्ष न्यायालय द्वारा प्रतिपादित विधि के अनुसार, ऐसे मामले की जाँच जाति संवीक्षा समिति/प्रत्येक राज्य में गठित राज्य स्तरीय समिति द्वारा की जानी चाहिए - आवेदक के विरुद्ध दर्ज अपराध क्र. 261/2010 से संबंधित कार्यवाहियाँ अपास्त किये जाने योग्य हैं। (मलकीत सिंह वि. म.प्र. राज्य)

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दण्ड संहिता (1860 का 45), धारा 500 - मानहानि - कोई लांछन अवश्य होना चाहिये एवं ऐसा लांछन हानि पहुँचाने के आशय से लगाया जाना चाहिये या यह जानते हुए या विश्वास करने का कारण रखते हुए लगाया जाना चाहिए कि ऐसे लांछन से उस व्यक्ति की ख्याति की अपहानि होगी, जिसके बारे में यह लगाया गया है। (रसिकलाल मानिकचंद वि. किशोर वाघवानी)

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दण्ड संहिता (1860 का 45), धारा 500 - देखें - दण्ड प्रक्रिया संहिता, 1973, धाराएँ 179 व 188 (रसिकलाल मानिकचंद वि. किशोर वाघवानी)

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पूर्व दृष्टान्त - निर्णयों में अन्तर्विरोध - विश्वनाथ प्रसाद वि. बोर्ड ऑफ रेवेन्यू (1964 एम.पी.एल.जे. एस.एन. 38) तथा मांगीलाल वि. म.प्र. राज्य एवं अन्य (1995 आर.एन. 67) के निर्णयों में कोई अन्तर्विरोध नहीं है, क्योंकि तथ्य जिनके आधार पर दोनों निर्णय दिये गये हैं वह बिल्कुल भिन्न थे तथा मांगीलाल के प्रकरण में खण्ड न्यायपीठ ने इस आधार पर विश्वनाथ प्रसाद के प्रकरण से उचित रूप से भेद किया है। (कला बाई (श्रीमति) वि. म.प्र. राज्य)

(FB)...575

Prevention of Corruption Act (49 of 1988), Sections 7 & 13(1)(d) - Demand - No mention in complaint that any demand was made by appellant - Prosecution failed to establish demand by appellant. [Ghanshyam Narayan Dubey Vs. State of M.P.] (DB)...*762

Prevention of Corruption Act (49 of 1988), Section 13(1)(d) - Circumstantial evidence - There is always a danger that conjecture or suspicion may take place of legal proof - Circumstances should be fully established and all the facts so established should be consistent only with the hypothesis of guilt of accused - 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. [Vijay Kumar Paliwal Vs. State of M.P.] (DB)...*38

Prevention of Corruption Act (49 of 1988), Section 13(1)(d) - Conspiracy - It might be difficult to produce any direct or positive evidence to prove conspiracy, but then the prosecution is required to establish the circumstances on the basis of which it can be inferred with certainty that appellants hatched conspiracy with main accused. [Vijay Kumar Paliwal Vs. State of M.P.] (DB)...*38

Prevention of Corruption Act (49 of 1988), Section 13(1)(d), Criminal Procedure Code, 1973, Section 156(3) - Direction to investigate - Director of S.P.E. is a police station - Special Judge appointed under P.C. Act, 1988 has jurisdiction to take cognizance of offences without the accused being committed to him for trial - Special Judge can direct the S.P.E. to investigate as per provisions of Section 156(3) of Cr.P.C. [Ramesh Vs. State of M.P.] (DB)...*48

Prevention of Corruption Act (49 of 1988), Section 13(1)(d), Criminal Procedure Code, 1973, Section 173(8) - Delay in filing charge sheet - Steps were taken to collect several evidence during investigation - S.P.E. waited for filing charge sheet till the retirement of respondent No.1 - Investigating agency cannot be held responsible for delay in investigation - Delay simplicitor not sufficient to quash the criminal proceedings. [State of M.P. Vs. D.K. Rokde] (DB)...*19

Prevention of Corruption Act (49 of 1988), Section 13(1)(d), Criminal Procedure Code, 1973, Sections 227 & 228 - Framing of charges - High Court decided contractual/civil dispute between the

भ्रष्टाचार निवारण अधिनियम (1988 का 49), धारा 7 व 13(1)(डी) - माँग - परिवार में कोई उल्लेख नहीं कि अपीलार्थी द्वारा कोई माँग की गयी - अपीलार्थी द्वारा माँग किये जाने को स्थापित करने में अभियोजन असफल। (चनश्याम नारायण दुबे वि. म.प्र. राज्य) (DB)...762

भ्रष्टाचार निवारण अधिनियम (1988 का 49), धारा 13(1)(डी) - परिस्थितिजन्य साक्ष्य - इसका सदैव खतरा रहता है कि विधिक सबूत का स्थान अनुमान या संदेह ले सकता है - परिस्थितियाँ पूर्णतः स्थापित होनी चाहिए और ऐसे स्थापित सभी तथ्य, केवल अभियुक्त के दोषी होने की परिकल्पना से संगत होने चाहिए - परिस्थितियाँ निश्चायक प्र.ति और प्रवृत्ति की होनी चाहिए और वे ऐसी होनी चाहिए जिससे साबित किये जाने के लिये प्रस्तावित एकमात्र परिकल्पना के सिवाय सभी परिकल्पनाएँ अपवर्जित करती हों। (विजय कुमार पालीवाल वि. म.प्र. राज्य) (DB)...*38

भ्रष्टाचार निवारण अधिनियम (1988 का 49), धारा 13(1)(डी) - षड्यंत्र - षड्यंत्र साबित करने के लिए कोई प्रत्यक्ष या सकारात्मक साक्ष्य प्रस्तुत करना कठिन हो सकता है, परन्तु तब अभियोजन से यह अपेक्षित है कि वह परिस्थितियाँ स्थापित करे जिनके आधार पर यह निष्कर्ष निकाला जा सके कि अपीलार्थियों ने मुख्य अभियुक्त के साथ षड्यंत्र रचा। (विजय कुमार पालीवाल वि. म.प्र. राज्य) (DB)...*38

भ्रष्टाचार निवारण अधिनियम (1988 का 49), धारा 13(1)(डी), दण्ड प्रक्रिया संहिता, 1973, धारा 156(3) - अन्वेषण का निदेश - विशेष पुलिस स्थापना का निदेशक एक पुलिस थाना है - भ्रष्टाचार निवारण अधिनियम, 1988 के अन्तर्गत नियुक्त विशेष न्यायाधीश को विचारण के लिए अभियुक्त का उसे उपार्पण किये बिना ही अपराधों का संज्ञान लेने की अधिकारिता है - विशेष न्यायाधीश द.प्र.सं. की धारा 156(3) के उपबंधों के अनुसार विशेष पुलिस स्थापना को अन्वेषण करने का निदेश दे सकता है। (रमेश वि. म.प्र. राज्य) (DB)...*48

भ्रष्टाचार निवारण अधिनियम (1988 का 49), धारा 13(1)(डी), दण्ड प्रक्रिया संहिता, 1973, धारा 173(8) - आरोप पत्र प्रस्तुत करने में विलम्ब - अन्वेषण के दौरान कई साक्ष्य एकत्रित करने हेतु कार्यवाही की गयी - विशेष पुलिस स्थापना ने आरोप पत्र प्रस्तुत करने के लिये प्रत्यर्थी क्र. 1 की सेवानिवृत्ति तक प्रतीक्षा की - अन्वेषण अभिकरण को अन्वेषण में विलम्ब के लिये उत्तरदायी नहीं ठहराया जा सकता - सादा विलम्ब दाण्डिक कार्यवाहियों को अभिखंडित करने के लिए पर्याप्त नहीं। (म.प्र. राज्य वि. डी.के. रोकडे) (DB)---*19

भ्रष्टाचार निवारण अधिनियम (1988 का 49), धारा 13(1)(डी), दण्ड प्रक्रिया संहिता, 1973, धाराएँ 227 व 228 - आरोप विरचित करना - उच्च न्यायालय ने रिट याचिका में पक्षकारों के मध्य संविदात्मक/सिविल विवाद का विनिश्चय किया -

parties in writ petition - Does not mean that respondents have been exonerated by High Court if prima facie criminal case on the basis of material available on record is made out - Order discharging respondent set aside. [State of M.P. Vs. D.K. Rokde] (DB)...*19

Prevention of Corruption Act (49 of 1988), Section 13(1)(d), Criminal Procedure Code, 1973, Section 311 - Examination of material witnesses - Complainant turned hostile and did not support prosecution case - Special Public Prosecutor without examining remaining witnesses closed the prosecution case - Respondent acquitted by the Trial Court - *Held* - All the witnesses essential to unfolding of narrative on which the prosecution is based must be called by prosecution, whether effect of their testimony is for or against the case of prosecution - Lacuna in prosecution is not to be equated with the fallout of an oversight committed by Public Prosecutor during trial, either in producing relevant material or in eliciting relevant answers from the witnesses - Function of criminal court is administration of criminal justice and not to count errors committed by parties or to find out and declare who among the parties performed better - Case remitted back with direction to call all the remaining prosecution witnesses and to pass fresh judgment. [State of M.P. Through S.P.E. (Lokayukta, Bhopal Vs. T.D. (Thakur Das) Patel] (DB)...774

Prevention of Corruption Act (49 of 1988), Section 13(1)(d) - Mens rea - Prosecution must prove affirmatively that appellant by corrupt or illegal means or by abusing his position obtained any pecuniary advantage for some other person - Even if there appeared some amount of carelessness or negligence on the part of appellant, it does not appear plausible to doubt his bona fides - Possibility cannot be ruled out that in routine manner while acting quickly or hurriedly, mistake is committed. [Vijay Kumar Paliwal Vs. State of M.P.] (DB)...*38

Prevention of Corruption Act (49 of 1988), Section 13(1)(d) - Misuse of office by public servant - Allegation that applicant by misusing his position as Dy.S.P., S.P.E., undervalued the house and constructed area of the house was not correctly shown in map and sale deed - The sale deed was undervalued causing loss of Rs. 29,434/- by paying less stamp duty - *Held* - Applicant was not posted as

इसका तात्पर्य यह नहीं है कि उच्च न्यायालय द्वारा प्रत्यर्थियों को दोषमुक्त कर दिया गया है, यदि अभिलेख पर मौजूद सामग्री के आधार पर प्रथम दृष्टया दाण्डिक मामला बनता हो — प्रत्यर्थी को उन्मोचित करने का आदेश अपास्त। (म.प्र. राज्य वि. डी.के. रोकडे) (DB)---*19

भ्रष्टाचार निवारण अधिनियम (1988 का 49), धारा 13(1)(डी), दण्ड प्रक्रिया संहिता, 1973, धारा 311 — महत्वपूर्ण साक्षियों का परीक्षण — परिव्रादी बदलकर पक्षद्रोही हो गया और अभियोजन के मामले का समर्थन नहीं किया — विशेष लोक अभियोजक ने शेष साक्षियों का परीक्षण किये बिना अभियोजन मामला बंद कर दिया — विचारण न्यायालय द्वारा प्रत्यर्थी को दोषमुक्त किया गया — **अभिनिर्धारित** — जिस वृत्तांत पर अभियोजन आधारित है, उसे प्रकट करने के लिए सभी महत्वपूर्ण साक्षियों को अभियोजन द्वारा बुलाया जाना चाहिए, भले ही उनकी परिसंस्थ का प्रभाव अभियोजन मामले के पक्ष में हो अथवा विरुद्ध हो — या तो सुसंगत तथ्य प्रस्तुत करने में अथवा साक्षियों से सुसंगत उत्तर निकलवाने में, विचारण के दौरान अभियोजक द्वारा कारित भूल की घटना को अभियोजन में कमी के समान नहीं मानना होगा — दाण्डिक न्यायालय का कार्य दाण्डिक न्याय करना है, न कि पक्षकारों द्वारा की गई त्रुटियों की गिनती करना या पक्षकारों में से किसने बेहतर प्रदर्शन किया है यह खोजकर घोषित करना — मामला इस निदेश के साथ प्रतिप्रेषित किया गया कि शेष सभी अभियोजन साक्षियों को बुलाया जाये एवं नया निर्णय पारित किया जावे। (म.प्र. राज्य द्वारा एस.पी.ई. (लोकायुक्त), भोपाल वि. टी.डी. (ठाकुर दास) पटेल) (DB)---*774

भ्रष्टाचार निवारण अधिनियम (1988 का 49), धारा 13(1)(डी) — आपराधिक मनःस्थिति — अभियोजन को सकारात्मक रूप से साबित करना चाहिए कि अपीलार्थी ने भ्रष्ट या अवैध साधनों द्वारा या अपनी स्थिति के दुरुपयोग द्वारा किसी अन्य व्यक्ति के लिए कोई आर्थिक लाभ अभिप्राप्त किया — यद्यपि अपीलार्थी की ओर से कुछ मात्रा में असावधानी या उपेक्षा प्रतीत हुई है, तथापि उसकी सद्भाविकता पर संदेह करना युक्तिसंगत प्रतीत नहीं होता — इस बात की संभावना से इन्कार नहीं किया जा सकता कि नैतिक रूप से जल्दबाजी में या शीघ्रता से कार्य करते समय भूल हुई हो। (विजय कुमार पालीवाल वि. म.प्र. राज्य) (DB)---*38

भ्रष्टाचार निवारण अधिनियम (1988 का 49), धारा 13(1)(डी) — लोक सेवक द्वारा पद का दुरुपयोग — आरोप कि आवेदक ने उप पुलिस अधीक्षक, विशेष पुलिस स्थापना के रूप में अपने पद का दुरुपयोग करके मकान का न्यून मूल्यांकन किया और नक्शे एवं विक्रय विलेख में मकान का निर्मित क्षेत्र सही रूप से नहीं दर्शाया गया — विक्रय विलेख का न्यून मूल्यांकन किया गया जिससे कम स्टाम्प शुल्क भुगतान होने से 29,434/- रुपये की हानि कारित हुई — **अभिनिर्धारित** — आवेदक विक्रय विलेख

Dy.S.P.E., S.P.E. at the time of registration of sale deed - Merely because the property is undervalued and vendor or vendee is public servant, he cannot be prosecuted u/s 13(1)(d) of Act - It cannot be concluded that applicants abused their positions as public servants to obtain the pecuniary advantage. [Dev Vrat Mishra Vs. State of M.P.] (DB)...*23

Prevention of Corruption Act (49 of 1988), Section 13(1)(d) - Remedy of civil suit - Merely because remedy by way of civil suit is available, is not an impediment in maintaining a criminal complaint provided the complaint discloses the ingredients of offence alleged. [State of M.P. Vs. D.K. Rokde] (DB)...*19

Prevention of Corruption Act (49 of 1988), Section 13(1)(d) - Respondent No.1 on the day of his joining issued notice to contractor to complete the work as per terms and conditions and as per specifications - On the next day issued work completion order entitling the contractor to collect toll tax - Work was found to be of inferior quality and incomplete - Prima facie case u/s 13(1)(d) r/w 13(2) made out. [State of M.P. Vs. D.K. Rokde] (DB)...*19

Prevention of Corruption Act (49 of 1988), Section 13(1)(d) & 20 - Presumption - Appellant not made any demand of illegal gratification - Money found in possession of appellant - Premise to be established for arriving at presumption is that public servant had obtained or accepted any illegal gratification - No scientific test process was adopted to prove that appellant handled the currency notes in question - Defence that currency notes were kept in the pocket of his shirt hanging on a peg without his knowledge more probable - Appellant liable to be acquitted. [Jiyalal Vs. State of M.P.] (DB)...*26

Prevention of Corruption Act (49 of 1988), Sections 13(1)(d) & 20 - Presumption - Neither demand of bribe nor acceptance or payment thereof established from evidence on record - Serious infirmities in prosecution version sufficient to establish probability of defence that notes were put into pocket of Pyjama presuming to that of co-accused (already dead) without his knowledge or connivance - Held - Burden which rests on accused to displace presumption is not a onerous as that cast on prosecution to prove its case - Appeal allowed. [Ram Prasad Vs. State of M.P.] (DB)...*33

के रजिस्ट्रीकरण के समय उप पुलिस अधीक्षक, विशेष पुलिस स्थापना के रूप में पदस्थ नहीं था — मात्र इसलिए कि सम्पत्ति का न्यून मूल्यांकन किया गया तथा विक्रेता अथवा क्रेता लोक सेवक है, उसे अधिनियम की धारा 13(1)(डी) के अन्तर्गत अभियोजित नहीं किया जा सकता — यह निष्कर्ष नहीं निकाला जा सकता कि आवेदकगण ने आर्थिक लाभ प्राप्त करने के लिए लोक सेवक के रूप में अपने पद का दुरुपयोग किया। (देवव्रत मिश्रा वि. म.प्र. राज्य) (DB)---*23

अष्टाचार निवारण अधिनियम (1988 का 49), धारा 13(1)(डी) — सिविल वादों का उपचार — सिविल वाद के रूप में उपचार उपलब्ध होना मात्र ही दाण्डिक परिवाद चलाने में बाधा नहीं है बशर्ते कि परिवाद से तथाकथित अपराधों के संघटनक प्रकट होते हों। (म.प्र. राज्य वि. डी.के. रोकडे) (DB)---*19

अष्टाचार निवारण अधिनियम (1988 का 49), धारा 13(1)(डी) — प्रत्यर्थी क्र. 1 ने अपने कार्यभार ग्रहण करने के दिन ठेकेदार को निर्बंधनों एवं शर्तों के अनुसार तथा विनिर्देशों के अनुरूप कार्य पूर्ण करने का सूचना पत्र जारी किया — अगले दिन ठेकेदार को पथकर एकत्रित करने हेतु अधिकृत करने वाला कार्य समाप्ति आदेश जारी किया — कार्य निम्न स्तर का एवं अधूरा पाया गया — धारा 13(1)(डी) सहपठित धारा 13(2) के अन्तर्गत प्रथमा दृष्ट्या मामला बनता है। (म.प्र. राज्य वि. डी.के. रोकडे) (DB)---*19

अष्टाचार निवारण अधिनियम (1988 का 49), धाराएँ 13(1)(डी) व 20 — उपधारणा — अपीलार्थी ने अवैध परितोषण की कोई माँग नहीं की — अपीलार्थी के कब्जे में दान पाया गया — उपधारणा पर पहुँचने के लिए यह आधार स्थापित किया जाना है कि लोक सेवक ने कोई अवैध परितोषण अभिप्राप्त अथवा स्वीकार किया था — यह साबित करने के लिए कोई वैज्ञानिक परीक्षण प्रक्रिया नहीं अपनायी गयी कि अपीलार्थी ने प्रश्नगत नोटों को हाथ से पकड़ा था — यह बचाव कि नोट खूँटी पर लटकी उसकी शर्ट की जेब में उसकी जानकारी के बिना रखे गये, अधिक संभाव्य है — अपीलार्थी दोषमुक्त किये जाने योग्य। (जियालाल वि. म.प्र. राज्य) (DB)---*26

अष्टाचार निवारण अधिनियम (1988 का 49), धाराएँ 13(1)(डी) व 20 — उपधारणा — अभिलेख पर उपलब्ध साक्ष्य से न तो रिश्वत की माँग और न ही उसकी स्वीकृति अथवा भुगतान स्थापित हुआ — अभियोजन कथन में गम्भीर अशक्तताएँ बचाव की इस संभाव्यता को स्थापित करने के लिए पर्याप्त हैं कि पजामे की जेब में नोट उसे सह-अभियुक्त (जिसकी पूर्व में ही मृत्यु हो चुकी है) का मानकर उसकी जानकारी, अथवा मौन सहमति के बिना डाले गये थे — **अभिनिर्धारित** — अभियुक्त पर उपधारणा को विस्थापित करने का भार दुर्भर नहीं है क्योंकि अपना मामला साबित करने का भार अभियोजन पर डाला गया है — अपील मंजूर। (रामप्रसाद वि. म.प्र. राज्य) (DB)---*33

Prevention of Corruption Act (49 of 1988), Section 19 - Sanction - Competent Authority - Executive Magistrate who accorded sanction was not competent to remove the appellant from service - Such defective sanction had certainly resulted in failure of justice. [Jiyalal Vs. State of M.P.] (DB)...*26

Prevention of Corruption Act (49 of 1988), Section 19 - Sanction for prosecution - Necessity - Office - Applicant is member of State Administrative Services - He is alleged to have misused his office as General Manager, M.P. State Civil Supplies Corporation Limited - *Held* - Word 'office' denotes that office which the Public Servant misused or abused for corrupt motives and in respect of which sanction to prosecute him is necessary by competent authority entitled to remove him from that office - No necessity of sanction by State Government for prosecution in respect of offences committed by him as General Manager of Corporation. [O.P. Shukla Vs. State of M.P.] (DB)...555

Prevention of Corruption Act (49 of 1988), Section 19 - Sanction - Office - Transfer - Applicant working as Executive Engineer in Division No.1 transferred to Division No.5 in same capacity - Word 'transfer' used by Supreme Court in the case of Prakash Singh Badal Vs. State implies change of authority competent to accord sanction - Since there was no change in authority competent to accord sanction therefore sanction u/s 19 of Act essential - Order of trial Court set-aside - Applicant stands released - However, investigation agency can file charge-sheet after obtaining sanction - Petition allowed. [Bramha Swaroop Saini Vs. State of M.P.] (DB)...796

Prevention of Corruption Act (49 of 1988), Section 20 - Presumption - Presumption is not available for Section 13(1)(d) - Appellant had given immediate spontaneous statement that money was thrust in his pocket and he has not accepted the same - Conviction of appellant set aside - Appeal allowed. [Ghanshyam Narayan Dubey Vs. State of M.P.] (DB)...762

Prevention of Cruelty to Animals Act (59 of 1960), Section 11 - Practice of sacrifice of animals which even otherwise has no sanction of religion cannot be permitted to be continued. [Prani Raksha Sangh Vs. State of M.P.] (DB)...*13

ग्रष्टाचार निवारण अधिनियम (1988 का 49), धारा 19 - मंजूरी - सक्षम प्राधिकारी - कार्यपालक मजिस्ट्रेट जिसने मंजूरी प्रदान की अपीलार्थी को सेवा से पृथक करने के लिए सक्षम नहीं था - ऐसी दोषपूर्ण मंजूरी के परिणामस्वरूप निश्चित ही न्याय की विफलता हुई थी (जियालाल वि. म.प्र. राज्य) (DB)---*26

ग्रष्टाचार निवारण अधिनियम (1988 का 49), धारा 19 - अभियोजन के लिए मंजूरी - आवश्यकता - पद - अपीलार्थी राज्य प्रशासनिक सेवा का सदस्य है - उसे महाप्रबंधक, म.प्र. राज्य सिविल आपूर्ति निगम मर्यादित के रूप में अपने पद का दुरुपयोग करने के लिए आरोपित किया गया - **अभिनिर्धारित** - शब्द 'पद' उस पद का द्योतक है जिसका लोक सेवक ने दुरुपयोग किया अथवा भ्रष्ट हेतुओं के लिए दुरुपयोग किया और जिसके संबंध में उसे अभियोजित करने के लिए उस पद से उसे हटाने के लिए हकदार सक्षम प्राधिकारी द्वारा मंजूरी आवश्यक है - निगम के महाप्रबंधक के रूप में उसके द्वारा किये गये अपराधों के संबंध में अभियोजन के लिए राज्य सरकार द्वारा मंजूरी की कोई आवश्यकता नहीं है। (ओ.पी. शुक्ला वि. म.प्र. राज्य) (DB)---555

ग्रष्टाचार निवारण अधिनियम (1988 का 49), धारा 19 - मंजूरी - कार्यालय - स्थानांतरण - मण्डल क्र. 1 में कार्यपालन यंत्री के रूप में कार्यरत प्रार्थी को मण्डल क्र. 5 में उसी हैसियत में स्थानांतरित किया गया - उच्चतम न्यायालय द्वारा प्रकाश सिंह बादल वि. राज्य के मामले में उपयोग किये गये शब्द 'स्थानांतरण' से विवक्षित है मंजूरी प्रदान करने के लिए सक्षम प्राधिकारी का बदलना - चूंकि मंजूरी प्रदान करने के लिए सक्षम प्राधिकारी में कोई बदलाव नहीं था, इसलिए अधिनियम की धारा 19 के अन्तर्गत मंजूरी आवश्यक - विचारण न्यायालय का आदेश अपारत - प्रार्थी को मुक्त किया गया - तथापि, अन्वेषण एजेंसी मंजूरी प्राप्त करने के पश्चात् आरोप पत्र प्रस्तुत कर सकती है - याचिका मंजूर। (ब्रम्हस्वरूप सेनी वि. म.प्र. राज्य)(DB)---796

ग्रष्टाचार निवारण अधिनियम (1988 का 49), धारा 20 - उपधारणा - धारा 13(1)(डी) के लिये उपधारणा उपलब्ध नहीं है - अपीलार्थी ने तत्काल सहज कथन किया था कि उसकी जेब में पैसा डाला गया था तथा उसने उसे स्वीकार नहीं किया है - अपीलार्थी की दोषसिद्धि अपास्त - अपील मंजूर। (घनश्याम नारायण दुबे वि. म.प्र. राज्य) (DB)---762

पशुओं के प्रति क्रूरता का निवारण अधिनियम (1960 का 59), धारा 11 - पशुओं की बलि की प्रथा जिसे अन्यथा भी धर्म की कोई मंजूरी न हो, जारी रखने की अनुज्ञा नहीं दी जा सकती। (प्राणी रक्षा संघ वि. म.प्र. राज्य) (DB)...*13

Prevention of Food Adulteration Act (37 of 1954), Section 20 - Sanction for prosecution - Officer appointed as Incharge Chief Medical & Health Officer (CHMO) can issue sanction - However, a person who is not appointed as District CHMO or Incharge District CHMO has no authority to grant sanction for prosecution, although he has taken charge (in another capacity) from transferred CHMO. [State of M.P. Vs. Vishnoo Prasad] ...787

Prisoners' Release on Probation Act, M.P. (16 of 1954), Section 9, Prisoners' Release on Probation Rules, M.P. 1964, Rule 2 - Release of prisoner on probation - Manner of commission of offence is a relevant consideration - The manner of commission of offence may be so brutal that it by itself may be a good and sole ground to decline the licence to release. [Durga Prasad Vs. State of M.P.] ...656

Prisoners' Release on Probation Rules, M.P. 1964, Rule 2 - See - Prisoners' Release on Probation Act, M.P., 1954, Section 9 [Durga Prasad Vs. State of M.P.] ...656

Procedural Law - Is enacted to provide justice to the parties and not to stall the process of law. [Rambabu Vs. Shri Krishna](DB)...671

*Public Interest Litigation - Alternative remedy - Public Interest Litigation should not be entertained where ordinarily a person aggrieved should approach the forum created under the statute. [Nepal Singh Rajput Vs. State of M.P.] (DB)...*12*

*Public Interest Litigation - Delay and Laches - Allotment of foreign liquor shop challenged - Foreign liquor shop notified in the area as per resolution was passed by Gram Sabha - Tenders were invited for allotment of foreign liquor shop - Resolution passed by Gram Sabha not challenged - No objection raised with regard to opening of foreign liquor shop in the area - Country liquor shop is already running in the area and no objection with regard to running of that shop taken - Allotment of shop in favour of respondent No.5 - Petitioner is guilty of delay and laches and by his conduct he has permitted creation of third party interest - Petition suffers from delay and laches. [Nepal Singh Rajput Vs. State of M.P.] (DB)...*12*

Public Interest Litigation - Neither any fact has been pleaded nor any material has been brought in support thereof to show that

खाद्य अपमिश्रण निवारण अधिनियम (1954 का 37), धारा 20 — अभियोजन के लिए मंजूरी — प्रभारी मुख्य चिकित्सा और स्वास्थ्य अधिकारी के रूप में नियुक्त अधिकारी (सीएचएमओ) मंजूरी जारी कर सकता है — तथापि वह व्यक्ति जो जिला सीएचएमओ या प्रभारी जिला सीएचएमओ के रूप में नियुक्त नहीं है, उसे अभियोजन के लिए मंजूरी प्रदान करने का प्राधिकार नहीं है, यद्यपि उसने स्थानांतरित सीएचएमओ से पदभार (अन्य क्षमता में) लिया है। (म.प्र. राज्य वि. विष्णु प्रसाद) ...787

बंदियों का परिवीक्षा पर छोड़ा जाना अधिनियम, म.प्र. (1954 का 16), धारा 9, बंदियों का परिवीक्षा पर छोड़ा जाना नियम, म.प्र. 1964, नियम 2 — *बंदी का परिवीक्षा पर छोड़ा जाना* — अपराध करने का ढंग सुसंगत बात है — अपराध करने का ढंग इतना नृशंस हो सकता है कि मुक्त किये जाने की अनुज्ञा अस्वीकार करने का वह अपने आप एक उचित और एकमात्र आधार हो सकता है। (दुर्गा प्रसाद वि. म.प्र. राज्य) ...656

बंदियों का परिवीक्षा पर छोड़ा जाना नियम, म.प्र. 1964, नियम 2 — देखें — *बंदियों का परिवीक्षा पर छोड़ा जाना अधिनियम, म.प्र., 1954, धारा 9* (दुर्गा प्रसाद वि. म.प्र. राज्य) ...656

प्रक्रिया संबंधी विधि — पक्षकारों को न्याय प्रदान करने के लिए अधिनियमित की जाती है न कि विधि की प्रक्रिया में बाधा डालने के लिए। (रामबाबू वि. श्रीकृष्ण)(DB)...671

लोकहित वाद — *वैकल्पिक उपचार* — लोकहित वाद वहाँ ग्रहण नहीं किया जाना चाहिये जहाँ साधारणतया व्यथित व्यक्ति को कानून के अन्तर्गत सृष्ट फोरम की शरण लेनी चाहिए। (नेपाल सिंह राजपूत वि. म.प्र. राज्य) (DB)---*12

लोकहित वाद — *विलम्ब एवं उपेक्षा* — विदेशी मदिरा की दुकान के आवंटन को चुनौती — ग्राम सभा द्वारा पारित प्रस्ताव के अनुसार क्षेत्र में विदेशी मदिरा की दुकान अधिसूचित — विदेशी मदिरा की दुकान के आवंटन के लिए निविदाएँ आमंत्रित की गयीं — ग्राम सभा द्वारा पारित प्रस्ताव को चुनौती नहीं दी गयी — क्षेत्र में विदेशी मदिरा की दुकान खोले जाने के संबंध में कोई आपत्ति नहीं उठायी गयी — देशी मदिरा की दुकान क्षेत्र में पूर्व से ही चल रही है और उस दुकान के संबंध में कोई आपत्ति नहीं उठायी गयी — दुकान का आवंटन प्रत्यर्थी क्र. 5 के पक्ष में — याची विलम्ब एवं उपेक्षा का दोषी है एवं उसने अपने आचरण से तृतीय पक्ष के हित के सृजन को अनुमत किया है — याचिका विलम्ब और उपेक्षा से ग्रसित। (नेपाल सिंह राजपूत वि. म.प्र. राज्य) (DB)---*12

लोकहित वाद — यह दर्शाने के लिये कि सामान्य जनता का कोई विधिक अधिकार प्रभावित हो रहा है अथवा जन समुदाय को कोई आर्थिक हानि या कोई

any legal rights of public in general are being affected or any pecuniary loss or any loss is going to be caused to the public at large - Writ petition cannot be treated as Public Interest Litigation. [All India Bank Officers' Association Vs. State Bank of India](DB)...*22

Public Interest Litigation - Petitioner an unregistered society sought a direction (1) to prevent slaughter of animals, (2) to take measures to prevent illegal felling of trees, and (3) to prevent manufacture, sale and consumption of liquor in the vicinity of temple - Held - (1) Petition is maintainable, (2) Appropriate directions to respondents issued. [Prani Raksha Sangh Vs. State of M.P.](DB)...*13

Public Interest Litigation - Petitioner being elected as representative of District Central Co-operative Bank Ltd. filed writ petition as PIL seeking quo warranto for restraining respondent Nos.5 & 6 (who were elected as Directors) from participating in the management of the Bank - Held - Petitioner being a person who cannot be said to be unbiased, and therefore, the petition is not maintainable as PIL. [Sukhendra Singh Vs. State of M.P.](DB)...687

Rajya Sahakari Bank Maryadit Employees (Terms of Employment and Working Conditions) Rules, M.P. 1976, Rules 15(b)(2) - See - Service Law [R.R. Nihare Vs. State of M.P.](DB)...111

Regularization - Where an employee is appointed under particular scheme, he has no right to claim regularization only because he has worked for a particular period of time. [Vijay Kumar Bajpayee Vs. M.P. Urja Vikas Nigam Ltd.] ...*51

Regularization - Where appointment is not made in accordance with rules for recruitment and is de hors the rules and where appointment order clearly appoints a person against a particular project, appointment cannot be termed to be one in the regular establishment of Company - Merely because benefit of Provident Fund, Gratuity and GIS are extended to the petitioners, it cannot be construed that they become regular employees of establishment. [Vijay Kumar Bajpayee Vs. M.P. Urja Vikas Nigam Ltd.] ...*51

Rejection of Bid/Tender - Judicial review - Judicial review cannot be denied but it is intended to prevent arbitrariness or favouritism and is exercised in large public interest or if it is brought to the notice

हानि कारित होने वाली है, न तो किसी तथ्य का अभिवचन किया गया और न ही उसके समर्थन में कोई सामग्री प्रस्तुत की गयी — रिट याचिका को लोकहित वाद नहीं माना जा सकता। (ऑल इंडिया बैंक ऑफीसर्स एसोशियेशन वि. स्टेट बैंक ऑफ इंडिया) (DB)...*22

लोकहित वाद — याची, एक अपंजीत सोसायटी ने निदेश चाहा कि (1) पशुओं का बध रोका जाए, (2) वृक्षों का अवैध रूप से गिराया जाना रोकने के लिए उपाय किये जाएँ, और (3) मंदिर के सामीप्य में शराब का विनिर्माण, विक्रय और उपभोग रोका जाए — **अभिनिर्धारित** — (1) याचिका पोषणीय है, (2) प्रत्यर्थियों को समुचित निदेश जारी किये गये। (प्राणी रक्षा संघ वि. म.प्र. राज्य) (DB)---*13

लोकहित वाद — जिला केन्द्रीय सहकारी बैंक लिमिटेड के प्रतिनिधि के रूप में निर्वाचित याची ने प्रत्यर्थी क्रं. 5 व. 6 (जो निदेशकों के रूप में निर्वाचित थे) को बैंक के प्रबंधन में सहभागी होने से रोकने के लिये अधिकार पृच्छा चाहते हुये लोकहित वाद के रूप में रिट याचिका प्रस्तुत की — **अभिनिर्धारित** — याची ऐसा व्यक्ति है, जिसे निष्पक्ष नहीं कहा जा सकता है। इसलिये याचिका लोकहित वाद के रूप में पोषणीय नहीं है। (सुखेन्द्र सिंह वि. म.प्र. राज्य) (DB)...687

राज्य सहकारी बैंक मर्यादित कर्मचारी (नियोजन के निबंधन और कार्य दशाये) नियम, म.प्र. 1976, नियम 15(बी)(2) — देखें — सेवा विधि (आर.आर. निहारे वि. म.प्र. राज्य) (DB)...111

नियमितीकरण — जहाँ किसी कर्मचारी की नियुक्ति विशिष्ट स्कीम के अंतर्गत की जाती है, वहाँ केवल इसलिये कि उसने किसी विशिष्ट समय की कालावधि के लिये कार्य किया है, उसे नियमितीकरण का दावा करने का कोई अधिकार नहीं होता है। (विजय कुमार वाजपेयी वि. एम.पी. ऊर्जा विकास निगम लि.) ...*51

नियमितीकरण — जहाँ नियुक्ति भर्ती के नियमों के अनुसार नहीं की गई है और नियमों से असंबद्ध है और जहाँ नियुक्ति आदेश किसी व्यक्ति को स्पष्टतः किसी विशिष्ट परियोजना के लिये नियुक्त करता है, वहाँ नियुक्ति को कम्पनी की नियमित स्थापना में होना नहीं कहा जा सकता — मात्र इसलिए कि याचियों को भविष्य निधि, उपदान और जी.आई.एस. के लाभ दिये गये हैं, यह अर्थ नहीं लगाया जा सकता कि वे स्थापना के नियमित कर्मचारी बन जाते हैं। (विजय कुमार वाजपेयी वि. एम.पी. ऊर्जा विकास निगम लि.) ...*51

बोली/निविदा का नामंजूर किया जाना — **न्यायिक पुनर्विलोकन** — न्यायिक पुनर्विलोकन को अस्वीकार नहीं किया जा सकता किन्तु यह मनमानेपन एवं पक्षपात को रोकने के लिए आशयित है तथा यह विस्तृत लोक हित में अथवा यदि न्यायालय

of the Court that contract power has been exercised for any collateral purpose - Only decision making process is open to judicial review - Court cannot act as an Appellate Authority. [Glodyne Technoserve Ltd. Vs. State of M.P.] (DB)...*7

Rejection of Bid/Tender - Judicial review - Section 3.1 of Request for Proposal provides that bidder must possess an active ISO 9001:2000 certification at the time of submission of bid - Petitioner enclosed ISO 9001:2000 certificate which had already expired, however, the said certificate was renewed and was valid upto 18.11.2000 - Bid of petitioner rejected for want of active ISO 9001:2000 certificate - *Held* - It was necessary to submit active certificate along with the bid - Final decision was already taken on 09.04.2010 whereas confirmation by QA International that certificate is valid upto 18.11.2010 was made on 12.04.2010 - Petitioner thereafter also did not try to submit a valid certificate under its signatures or signatures of its authorized representative - Respondents No.1 & 2 have acted on due consideration of Sections 3, 7 of tender documents and no case for interference is made out. [Glodyne Technoserve Ltd. Vs. State of M.P.] (DB)...*7

Representation of the People Act (43 of 1951), Section 81(3) - Attestation of copy of petition - Substantial compliance - Copy of petition furnished to respondent is apparently an exact photo copy of original reflecting photo impressions of signature of petitioner on each page thereof - It can safely be concluded that the object underlying provision of Section 81(3) of Act is duly fulfilled. [Kusum Singh Mehdele Vs. Shri Shrikant Dubey] ...*44

Representation of the People Act (43 of 1951), Sections 81(3) & 83(1)(c) - Presentation and contents of petition - True copy of election petition - Copy of petition served upon respondent No.5 does not bear signatures of election petitioner with regard to attestation - *Held* - Respondent No. 5 unable to point out any material or substantial defect of vital nature which could have mislead a reasonable person to understand and meet the allegations contained in election petition - Election Petitioner has also served another copy of election petition along with annexures - No defect pointed out in such copy - Objection not liable to be accepted. [Bhagirath Prasad (Dr.) Vs. Election Commission of India] ...*4

के ध्यान में यह लाया जाए कि संविदा शक्ति किसी सांपाश्विक उद्देश्य के लिये प्रयोग की गयी है, प्रयोग किया जाता है — केवल निर्णयन प्रक्रिया ही न्यायिक पुनर्विलोकन के लिए खुली है — न्यायालय अपीलीय प्राधिकारी के रूप में कार्य नहीं कर सकता। (ग्लोडाइन टेक्नोसर्व लि. वि. म.प्र. राज्य) (DB)---*7

बोली/निविदा का नामंजूर किया जाना — न्यायिक पुनर्विलोकन — प्रस्ताव के लिए निवेदन की धारा 3.1 उपबंधित करती है कि बोलीकर्ता के पास बोली प्रस्तुत करते समय प्रभावी आई.एस.ओ. 9001:2000 प्रमाण पत्र होना चाहिए — याची ने ऐसा आई.एस.ओ. 9001:2000 प्रमाण पत्र प्रस्तुत किया जिसकी अवधि पूर्व में ही समाप्त हो चुकी थी फिर भी उक्त प्रमाण पत्र का नवीनीकरण किया गया तथा वह दिनांक 18.11.2000 तक विधिमान्य था — याची की बोली प्रभावी आई.एस.ओ. 9001:2000 प्रमाण पत्र के अभाव में नामंजूर कर दी गयी — अभिनिर्धारित — बोली के साथ प्रभावी प्रमाण पत्र प्रस्तुत करना आवश्यक था — अन्तिम निर्णय पूर्व में ही दिनांक 09.04.2010 को ले लिया गया जबकि क्यू.ए. इंटरनेशनल द्वारा यह पुष्टिकरण कि प्रमाण पत्र दिनांक 18.11.2010 तक विधिमान्य है, दिनांक 12.04.2010 को किया गया — तत्पश्चात् प्रार्थी ने भी अपने हस्ताक्षरी अथवा अपने प्राधिकृत प्रतिनिधि के हस्ताक्षर से विधिमान्य प्रमाण पत्र प्रस्तुत करने का प्रयत्न नहीं किया — प्रत्यर्थी क्र. 1 एवं 2 ने निविदा प्रलेखों की धारा 3, 7 पर उचित विचार करके कार्य किया और हस्तक्षेप के लिए कोई मामला नहीं बनाता। (ग्लोडाइन टेक्नोसर्व लि. वि. म.प्र. राज्य) (DB)---*7

लोक प्रतिनिधित्व अधिनियम (1951 का 43), धारा 81(3) — याचिका की प्रतिलिपि का अनुप्रमाणन — सारतः अनुपालन — प्रत्यर्थी को दी गयी याचिका की प्रतिलिपि प्रत्यक्षतः मूल याचिका की सटीक फोटो कॉपी है, जिसके प्रत्येक पृष्ठ पर याची के हस्ताक्षर की फोटो छाप प्रतिबिम्बित हो रही है — सुरक्षित रूप से यह निष्कर्ष निकाला जा सकता है कि अधिनियम की धारा 81(3) के अन्तर्निहित उपबंध के उद्देश्य की सम्यक् रूप से पूर्ति हो गयी है। (कुसुम सिंह मेंहदेले वि. श्री श्रीकांत दुबे)---*44

लोक प्रतिनिधित्व अधिनियम (1951 का 43), धारा 81(3) व 83(1)(सी) — याचिका का प्रस्तुतिकरण और अन्तर्वस्तु — निर्वाचन याचिका की सत्य प्रतिलिपि — प्रत्यर्थी क्र. 5 पर तामील की गई याचिका की प्रतिलिपि पर अनुप्रमाणन के संबंध में निर्वाचन याची के हस्ताक्षर नहीं हैं — अभिनिर्धारित — प्रत्यर्थी क्र. 5 महत्वपूर्ण प्रकृति की ऐसी कोई तात्त्विक या सारवान त्रुटि दर्शाने में असमर्थ रहा जो किसी युक्तियुक्त व्यक्ति को निर्वाचन याचिका में अंतर्विष्ट अभिकथनों को समझने और पूर्ति करने में भ्रमित कर सकती थी — निर्वाचन याची ने उपाबंधों के साथ निर्वाचन याचिका की दूसरी प्रतिलिपि भी तामील कर दी — इस प्रतिलिपि में कोई त्रुटि नहीं दर्शाई गई — आक्षेप स्वीकार किये जाने योग्य नहीं। (भागीरथ प्रसाद (डॉ.) वि. इलेक्शन कमीशन ऑफ इंडिया) ---*4

Representation of the People Act (43 of 1951), Section 82 - Parties to petition - Corrupt practice alleged to have been committed on the basis of a document - Independent candidate was author of this document who has not been made a party - No corrupt practice alleged against independent candidate - Instead document is said to have been published at the behest of BJP - Non-joinder of such candidate not fatal. [Bhagirath Prasad (Dr.) Vs. Election Commission of India] ...*4

Representation of the People Act (43 of 1951), Section 83(2) - Verification of annexures - Non-compliance of Section 83(2) is of no consequence at the initial stage and election petition cannot be dismissed in limine. [Kusum Singh Mehdele Vs. Shri Shrikant Dubey] ...*44

Representation of the People Act (43 of 1951), Section 86 - Trial of election petition - No material or substantial defect which could have prejudiced the respondents in taking appropriate defence pointed out - Objections not going to the root of the matter - *Held* - Opportunity to rectifying most of the defects on an appropriate application may be provided - Dismissal of petition u/s 86 not warranted. [Bhagirath Prasad (Dr.) Vs. Election Commission of India] ...*4

Representation of the People Act (43 of 1951), Section 86(1) - Non-supply of C.Ds. - Transcription of C.Ds. form part of pleadings - C.Ds. only contain evidence of what has already been pleaded - Consequence of non-supply of C.Ds. is a matter to be adjudged at the trial and not at the stage of proceedings. [Kusum Singh Mehdele Vs. Shri Shrikant Dubey] ...*44

Representation of the People Act (43 of 1951), Section 117 - Security for costs - Security amount duly deposited at the time of presentation of election petition - No requirement in Act or rules that receipt of security deposit must be annexed to the election petition. [Bhagirath Prasad (Dr.) Vs. Election Commission of India] ...*4

Representation of the People Act (43 of 1951), Form 25 - Affidavit - Petition not filed on the ground of any corrupt practice - Non-submission of affidavit in form 25 immaterial - Affidavit furnished to verify pleadings reflects substantial compliance with procedural requirements. [Kusum Singh Mehdele Vs. Shri Shrikant Dubey]...*44

लोक प्रतिनिधित्व अधिनियम (1951 का 43), धारा 82 — याचिका के पक्षकार — दस्तावेज के आधार पर भ्रष्ट आचरण किये जाने का अभिकथन — स्वतंत्र प्रत्याशी इस दस्तावेज का लेखक था, जिसे पक्षकार नहीं बनाया गया — स्वतंत्र प्रत्याशी के विरुद्ध भ्रष्ट आचरण का कोई अभिकथन नहीं — बल्कि दस्तावेज कथित रूप से भा.ज.पा. के कहने पर प्रकाशित किया गया — ऐसे प्रत्याशी का असंयोजन घातक नहीं। (भागीरथ प्रसाद (डॉ.) वि. इलेक्शन कमीशन ऑफ इंडिया) ---*4

लोक प्रतिनिधित्व अधिनियम (1951 का 43), धारा 83(2) — अनुलग्नकों का सत्यापन — प्रारंभिक अवस्था पर धारा 83(2) के अपालन का कोई परिणाम नहीं है तथा निर्वाचन याचिका आरम्भ में ही खारिज नहीं की जा सकती। (कुसुम सिंह मेहदेले वि. श्री श्रीकांत दुबे) ---*44

लोक प्रतिनिधित्व अधिनियम (1951 का 43), धारा 86 — निर्वाचन याचिका का विचारण — कोई तात्त्विक या सारवान त्रुटि जिससे प्रत्यर्थी को उचित बचाव लेने में पूर्वाग्रह हो सकता था, नहीं बतायी गई — आक्षेप मामले की तह तक नहीं जाते — अभिनिर्धारित — अधिकांश त्रुटियों को उचित आवेदन पर सुधारे जाने का अवसर प्रदान किया जा सकता है — धारा 86 के अंतर्गत याचिका की खारिजी समर्थनीय नहीं। (भागीरथ प्रसाद (डॉ.) वि. इलेक्शन कमीशन ऑफ इंडिया) ---*4

लोक प्रतिनिधित्व अधिनियम (1951 का 43), धारा 86(1) — सी.डी. प्रदाय न करना — सी.डी. की अनुलिपि अभिवचन का भाग है — सी.डी. में मात्र वही साक्ष्य अन्तर्विष्ट है जिसका पूर्व में अभिवचन किया जा चुका है — सी.डी. प्रदाय न करने का परिणाम विचारण में निपटाया जाने वाला विषय है न कि कार्यवाहियों के प्रक्रम पर। (कुसुम सिंह मेहदेले वि. श्री श्रीकांत दुबे) ---*44

लोक प्रतिनिधित्व अधिनियम (1951 का 43), धारा 117 — खर्चों के लिए प्रतिभूति — निर्वाचन याचिका प्रस्तुत करते समय प्रतिभूति राशि सम्यक् रूप से जमा की गई — अधिनियम या नियमों में कोई अपेक्षा नहीं कि प्रतिभूति जमा करने की रसीद निर्वाचन याचिका के साथ संलग्न की जानी चाहिए। (भागीरथ प्रसाद (डॉ.) वि. इलेक्शन कमीशन ऑफ इंडिया) ---*4

लोक प्रतिनिधित्व अधिनियम (1951 का 43), प्रारूप 25 — शपथ पत्र — याचिका किसी दूषित कार्यप्रणाली के आधार पर प्रस्तुत नहीं — प्रारूप 25 में शपथ पत्र प्रस्तुत न करना महत्वहीन है — अभिवचनों को सत्यापित करने हेतु प्रस्तुत शपथ पत्र प्रक्रिया संबंधी अपेक्षाओं का सारतः पालन परिलक्षित करता है। (कुसुम सिंह मेहदेले वि. श्री श्रीकांत दुबे) ---*44

Revision of Pay Rules, M.P. 1990, Section 6 - Choice of cut off date - Chief Municipal Officer cannot as a matter of right be held entitled for the revised pay scale from the date as the employees of State Government are. [Krishnapal Singh Sisodiya Vs. State of M.P.] ...*43

Service Law - Change of Date of Birth - Petitioner, prior to his retirement submitted an application dated 16.08.2000 before the respondent seeking correction of his date of birth so as to make it 09.03.1953 in place of the date of birth (year) declared by him as 1943 - The said prayer made by the petitioner was rejected by the respondent (employer) - Petitioner by the order of his retirement approached the Labour Court and the Labour Court allowed the petitioner's application u/s 31(3) of M.P. Industrial Relations Act, 1960 and set aside the order of his retirement - In appeal the Industrial Court held that the petitioner himself declared his date of birth as 1943 at time of entry in service and that the date of birth as 09.03.1953 which is being claimed by him has not been proved - Petitioner challenged the order of Industrial Court and argued that School Leaving Certificate produced by him before Labour Court was doubted by the respondent - *Held* - Industrial Court committed no error in holding that the School Leaving Certificate not, properly proved, can not be relied upon - Further, if the date of birth now claimed, is taken to be correct, then the age of the petitioner while joining the services initially, would come to 11 years, which can not be accepted - Petition dismissed. [Bherulal Vs. Grasim Industries Ltd., Birlagram, Ujjain] (DB)...659

Service Law - Compulsory retirement - Decision to compulsorily retire the petitioner is taken on the basis of the enquiry report and there is no scrutiny of the service record of the petitioner to find out as to whether he is a deadwood - The enquiry report in question, is based on an enquiry conducted ex parte, behind the back of the petitioner and without granting him any opportunity of hearing - The action of the respondents in compulsorily retiring the petitioner is illegal, contrary to the principles of law and has to be quashed - Petition allowed. [Ajit Narayan Vs. Union of India] ...*2

Service Law - Compulsory retirement - Is neither a punishment nor does it cast a stigma on the employee concerned - However, before

वेतन पुनरीक्षण नियम, म.प्र. 1990, धारा 6 — निर्दिष्ट तारीख का विकल्प — मुख्य नगरपालिका अधिकारी को अधिकार के रूप में उस तारीख से पुनरीक्षित वेतनमान का हकदार नहीं माना जा सकता, जैसे कि राज्य सरकार के कर्मचारी हैं। (कृष्णपाल सिंह सिसोदिया वि. म.प्र. राज्य) ---*43

सेवा विधि — जन्म तिथि में परिवर्तन — याची ने अपनी सेवानिवृत्ति से पूर्व प्रत्यर्थी के समक्ष आवेदन दिनांक 16.8.2000, यह चाहते हुए प्रस्तुत किया कि उसके द्वारा घोषित जन्म तिथि (वर्ष) 1943 के स्थान पर उसकी जन्म तिथि 9.3.1953 का सुधार किया जाए — याची द्वारा की गई उक्त प्रार्थना, प्रत्यर्थी (नियोक्ता) द्वारा अस्वीकार की गई — याची अपनी सेवानिवृत्ति के आदेश द्वारा श्रम न्यायालय पहुँचा और श्रम न्यायालय ने याची का आवेदन अंतर्गत धारा 31(3) म.प्र. औद्योगिक संबंध अधिनियम, 1960 मंजूर किया एवं उसकी सेवानिवृत्ति का आदेश अपास्त किया — अपील में औद्योगिक न्यायालय ने अभিনিर्धारित किया कि सेवा में प्रवेश करते समय स्वयं याची ने अपनी जन्म तिथि 1943 के रूप में घोषित की और जन्म तिथि 9.3.1953 होना, जिसका उसके द्वारा दावा किया जा रहा है, वह साबित नहीं किया गया है — याची ने औद्योगिक न्यायालय के आदेश को चुनौती दी और यह तर्क किया कि उसके द्वारा श्रम न्यायालय के समक्ष प्रस्तुत किये गये विद्यालय त्याग प्रमाण पत्र पर प्रत्यर्थी द्वारा संदेह किया गया था — **अभिनिर्धारित** — औद्योगिक न्यायालय ने यह अभिनिर्धारित करने में कोई त्रुटि नहीं की, कि विद्यालय त्याग प्रमाण पत्र समुचित रूप से साबित नहीं किया गया, उस पर विश्वास नहीं किया जा सकता — इसके अतिरिक्त, यदि अब दावा की गई जन्म तिथि को सही माना जाए, तब आरंभ में सेवा का पद ग्रहण करते समय याची की आयु 11 वर्ष बनती है, जो स्वीकार नहीं की जा सकती — याचिका खारिज। (भेरूलाल वि. ग्रेसिम इंडस्ट्रीज लि., बिरला ग्राम, उज्जैन)(DB)...659

सेवा विधि — अनिवार्य सेवानिवृत्ति — याची को अनिवार्य रूप से सेवानिवृत्त करने का निर्णय जाँच प्रतिवेदन के आधार पर लिया गया और यह पता लगाने के लिए कि वह अनुपयुक्त है याची के सेवा अभिलेख की कोई संवीक्षा नहीं की गई — प्रश्नगत जाँच प्रतिवेदन, याची की पीठ पीछे और उसे सुनवाई का कोई अवसर दिये बिना एकपक्षीय रूप से की गयी जाँच पर आधारित है — याची को अनिवार्य रूप से सेवानिवृत्त करने का प्रत्यर्थियों का कृत्य अवैध, विधि के सिद्धांतों के प्रतिकूल है और अभिखंडित किया जाना चाहिए — याचिका मंजूर। (अजीत नारायण वि. यूनियन ऑफ़ इंडिया) ---*21

सेवा विधि — अनिवार्य सेवानिवृत्ति — न तो दण्ड है और न ही यह संबद्ध कर्मचारी पर कलंक लगाती है — फिर भी किसी कर्मचारी को अनिवार्य सेवानिवृत्त

taking a decision to compulsory retire an employee, his entire service record, character roll etc. are to be placed before the appropriate screening committee and on scrutiny of the same the committee has to decide as to whether the employee is useful to the department or is a deadwood. [Ajit Narayan Vs. Union of India] ...*2

Service Law - Constitution, Article 226, Lok Seva (Anusuchit Jatiyon, Anusuchit Jan Jation Aur Anya Pichhade Vargon Ke Liye Arakshan) Adhiniyam, M.P. 1994, Section 2(b), Rajya Sahakari Bank Maryadit Employees (Terms of Employment and Working Conditions) Rules, M.P. 1976, Rules 15(b)(2) - Promotion subject to decision - Order of amendment in rules dated 06.03.1997 challenged and finally held ultra virus by the Supreme Court - During pendency of that writ petition, petitioners were promoted, with the direction that promotion shall be subject to decision of writ petition - Also Section 2(b) of Adhiniyam substituted w.e.f. 13.05.2002 with prospective effect - After decision of Supreme Court on 26.05.2009 petitioners were reverted to their substantive post - Held - Validity of order dated 06.03.1997 was examined in writ petition on the basis of un-amended provision and subsequent amendment had no bearing thereupon - Order reverting petitioners not illegal - Petition dismissed. [R.R. Nihare Vs. State of M.P.] (DB)...111

Service Law - Departmental Enquiry - Inordinate delay in awarding punishment - Charge sheet issued in year 1988 for an incident that took place between 1980-1983 - Enquiry officer submitted his report on 30.03.1991, however the punishment of stoppage of two increments (which finally modified to 'censure') was imposed on 31.07.2001 - Except the explanation for a period from 20.11.1998 to 22.11.2000 when matter was pending with the PSC, the delay is not explained - Held - The departmental action has resulted in grave injustice and prejudice to the petitioner, which has to be remedied - Entire departmental proceedings are quashed - Respondents are directed to convene a Review DPC to consider the case of the petitioner for promotion - Writ Petition allowed. [Bhagwan Das Swarnakar Vs. State of M.P.] ...434

Service Law - Disciplinary Proceedings against a Judge - Discharging the accused by weighing and evaluating the evidence

करने का निर्णय लेने से पूर्व, उसका सम्पूर्ण सेवा अभिलेख, चरित्रावली इत्यादि को समुचित छानबीन समिति (स्क्रीनिंग कमेटी) के समक्ष रखना चाहिए और उसके संवीक्षण पर समिति को यह विनिश्चित करना चाहिए कि क्या कर्मचारी विभाग के लिये उपयुक्त है अथवा अनुपयुक्त है। (अजीत नारायण वि. यूनियन ऑफ इंडिया) ---*2

सेवा विधि — संविधान, अनुच्छेद 226, लोक सेवा (अनुसूचित जातियों, अनुसूचित जनजातियों और अन्य पिछड़े वर्गों के लिये आरक्षण) अधिनियम, म.प्र. 1994, धारा 2(बी), राज्य सहकारी बैंक मर्यादित कर्मचारी (नियोजन के निबंधन और कार्य दशायें) नियम, म.प्र. 1976, नियम 15(बी)(2) — निर्णय की अध्यक्षीन पदोन्नति — नियमों में संशोधन के आदेश तारीख 06.03.1997 को चुनौती तथा अन्ततः उच्चतम न्यायालय द्वारा अधिकारातीत ठहराये गये — उस रिट याचिका के लम्बित रहने के दौरान याचियों की पदोन्नति इस निदेश के साथ की गयी कि पदोन्नति रिट याचिका के निर्णय के अध्यक्षीन होगी — अधिनियम की धारा 2(बी) भी तारीख 13.05.2002 से भविष्यलक्षी प्रभाव के साथ प्रतिस्थापित — उच्चतम न्यायालय के निर्णय तारीख 26.05.2009 के बाद याचियों को उनके मूल पद पर लौटाया गया — **अभिनिर्धारित** — आदेश तारीख 06.03.1997 की विधिमान्यता रिट याचिका में असंशोधित उपबंध के आधार पर परीक्षित की गयी और पश्चातवर्ती संशोधन का उससे कोई संबंध नहीं था — याचियों को पूर्व पद पर लौटाने का आदेश अवैध नहीं — याचिका खारिज। (आर.आर. निहारे वि. म.प्र. राज्य) (DB)---111

सेवा नियम — **विभागीय जाँच** — दण्ड देने में असाधारण विलम्ब — वर्ष 1980-1983 के मध्य घटित घटना के सम्बन्ध में आरोप पत्र वर्ष 1988 को जारी — जाँचकर्ता अधिकारी ने अपनी रिपोर्ट 30.03.1991 को प्रस्तुत की, तथापि दो वेतन वृद्धियाँ रोके जाने का दण्ड (जो अंतिमतः परिनिंदा में परिवर्तित हो गया) दिनांक 31.07.2001 को अधिरोपित किया गया — 20.11.1998 से 22.11.2000 तक की कालावधि, जब मामला पी.एस.सी. में लंबित था, के स्पष्टीकरण के सिवाय विलम्ब का स्पष्टीकरण नहीं दिया गया — **अभिनिर्धारित** — विभागीय कार्यवाही के परिणामस्वरूप याची को गंभीर अन्याय एवं पूर्वाग्रह हुआ, जिसका उपचार दिया जाना है — सम्पूर्ण विभागीय कार्यवाही अभिखंडित — प्रत्यर्थियों को याची की पदोन्नति के प्रकरण पर विचार करने के लिए पुनर्विलोकन विभागीय पदोन्नति समिति आयोजित करने का निदेश — रिट याचिका मंजूर। (भगवान दास स्वर्णकार वि. म.प्र. राज्य) ...434

सेवा विधि — न्यायाधीश के विरुद्ध अनुशासनिक कार्यवाही — अभियुक्त को साक्ष्य का परीक्षण एवं मूल्यांकन कर और उसके निर्दोष होने की संभावना पर विचार

and considering the possibility of his innocence - Suffered from patent illegality, being contrary to the settled principle of law - Could form the basis of disciplinary proceedings. [Ramesh Prasad Tihaiya Vs. M.P. High Court] (DB)...705

Service Law - Fundamental Rules - FR 56(J) is applicable to the employees of Maulana Azad National Institute of Technology. [Ajit Narayan Vs. Union of India] ...*2

Service Law - Fundamental Rules, Rule 54-B(3) - Appellant acquitted by the Court only by giving benefit of doubt - The period of suspension directed to be treated as on duty and his pay and allowances for the said period were restricted to the subsistence allowance already paid to him - The discretion conferred by the rule has rightly been exercised by the competent authority - Writ Appeal dismissed. [Ramesh Singh Vs. M.P.S.E.B.] (DB)...58

Service Law - It was competent for the disciplinary authority, i.e. High Court, to take a dissenting view from the findings of Enquiry Officer and to record its own finding on the basis of material available - Mere non-challenge of the order in question by way of appeal or revision or suo moto revision, could not be an impediment in taking disciplinary action against the petitioner on the basis of an order, which was patently illegal. [Ramesh Prasad Tihaiya Vs. M.P. High Court] (DB)...705

Service Law - Promotion - Employee has no fundamental right of promotion - He only has a right to be considered for promotion - Even reduction in chances of promotion does not affect right of an employee. [Satyendra Pratap Singh Vs. State of M.P.] (DB)...400

Service Law - Promotion - On 10.11.2003, the case of respondent No.2 was considered and he was not found fit for promotion as he could not secure the minimum bench mark grade fixed by the D.P.C. - At the relevant time when the D.P.C. met, the order of punishment was in force - Subsequently, the case of respondent No.2 was considered for promotion and he was found fit for promotion and promoted vide order dated 10.07.2006 - No direction could have been issued to promote respondent No.2 with retrospective effect. [R.K. Mehra Vs. State of M.P.] (DB)...621

करते हुए उन्मोचित करना — विधि के स्थापित सिद्धांत के विपरीत होने के कारण प्रकट रूप से अवैधता से ग्रसित — अनुशासनिक कार्यवाही का आधार बन सकता है। (रमेश प्रसाद तिहैया वि. एम.पी. हाई कोर्ट) (DB)...705

सेवा विधि — मूलभूत नियम — मूलभूत नियम 56(जे) मौलाना आजाद राष्ट्रीय प्रौद्योगिकी संस्थान के कर्मचारियों को लागू है। (अजीत नारायण वि. यूनियन ऑफ इंडिया) —*2

सेवा विधि — मूलभूत नियम, नियम 54-बी(3) — न्यायालय द्वारा अपीलार्थी को केवल सन्देह का लाभ देते हुये दोषमुक्त किया गया — निलम्बन काल को सेवा में रहना माने जाने तथा उक्त अवधि के वेतन एवं भत्तों को उसे पूर्व में दिये गये निर्वाह भत्तों तक सीमित रखने के निदेश दिये गये — सक्षम अधिकारी द्वारा नियम द्वारा प्रदत्त अपने विवेकाधिकार का उचित रूप से प्रयोग किया गया — रिट अपील खारिज। (रमेश सिंह वि. एम.पी.एस.ई.बी.) (DB)---58

सेवा विधि — अनुशासनिक प्राधिकारी अर्थात् उच्च न्यायालय, जाँचकर्ता अधिकारी के निष्कर्षों से विसम्मत दृष्टिकोण लेने के लिए और उपलब्ध सामग्री के आधार पर अपने स्वयं का निष्कर्ष अभिलिखित करने के लिए सक्षम था — अपील या पुनरीक्षण या स्वप्रेरित पुनरीक्षण द्वारा प्रश्नगत आदेश को चुनौती न देना मात्र, आदेश, जो प्रकट रूप से अवैध था, के आधार पर याची के विरुद्ध अनुशासनिक कार्यवाही करने में बाधक नहीं हो सकता। (रमेश प्रसाद तिहैया वि. एम.पी. हाई कोर्ट) (DB)...705

सेवा विधि — पदोन्नति — कर्मचारी को पदोन्नति का कोई मौलिक अधिकार नहीं है — पदोन्नति के लिये विचार में लिया जाना मात्र ही उसका अधिकार — पदोन्नति के अवसर में कमी होना भी किसी कर्मचारी के अधिकार को प्रभावित नहीं करता है। (सत्येन्द्र प्रताप सिंह वि. म.प्र. राज्य) (DB)...400

सेवा विधि — पदोन्नति — तारीख 10.11.2003 को प्रत्यर्थी क्र. 2 के प्रकरण पर विचार किया गया तथा उसे पदोन्नति के लिए योग्य नहीं पाया गया क्योंकि वह विभागीय पदोन्नति समिति द्वारा नियत न्यूनतम स्तरसंक श्रेणी प्राप्त नहीं कर सका था — सुसंगत समय पर जब विभागीय पदोन्नति समिति की बैठक हुयी, दण्ड का आदेश प्रभाव में था — उसके पश्चात् पदोन्नति के लिए प्रत्यर्थी क्र. 2 के प्रकरण पर विचार किया गया और उसे पदोन्नति के लिए योग्य पाया गया तथा आदेश तारीख 10.07.2006 द्वारा उसे पदोन्नत किया गया — प्रत्यर्थी क्र. 2 को भूतलक्षी प्रभाव से पदोन्नत करने का कोई निदेश जारी नहीं किया जा सकता था। (आर.के. मेहरा वि. म.प्र. राज्य) (DB)...621

Service Law - Promotion - Punishment of stoppage of one increment - Case of promotion cannot be considered during the currency of the punishment. [R.K. Mehra Vs. State of M.P.] (DB)...621

Service Law - Punishment - Disciplinary proceedings relating to illegal discharge of the accused u/s 302 of IPC - View taken by the High Court that the order of discharge was actuated by improper motive, and consequent imposition of the penalty of withholding of two increments without cumulative effect - Was a minor punishment, after holding due enquiry and giving proper opportunity of hearing - Does not call for any interference. [Ramesh Prasad Tihaiya Vs. M.P. High Court] (DB)...705

Service Law - Recruitment - Age relaxation - Appellant was not given appointment order on the ground that she was overage - Standing Instruction 79 provides relaxation in age if candidate has rendered not less than 3 years continuous service on regular basis as Central Government Civilian Employee - Appellant has rendered service in railway department for a period of one year and four months only - Service rendered by appellant in a school run by society and not by Central Govt. cannot be taken into consideration - Since, the appellant had not rendered service for continuous three years therefore not entitled for relaxation in age - Appeal dismissed. [Usha Kiran Dubey (Smt.) Secretary, Union of India] (DB)...606

Service Law - Transfer of staff to the Company - Office order / Memorandum dated 10.02.2006 issued by Central Government regarding transfer of staff of industrial units to the Company - Order/ Memorandum challenged on ground that service conditions of the employees have been altered to their detriment without affording any opportunity of hearing to them - Held - The memorandum provides that employees' remuneration, retirement benefits and other service conditions on absorption in the company shall not be in any manner inferior to existing one and their service condition in no manner would be altered to disadvantage of the employees, if they opt to serve in the Corporation - Further, the employees have been given the option either to opt for Government service or the services of the Corporation and majority of the employees have opted to serve in the Corporation which goes to show that their service conditions

सेवा विधि - पदोन्नति - एक वेतनवृद्धि रोके जाने का दण्ड - दण्ड के चालू रहने के दौरान पदोन्नति के प्रकरण पर विचार नहीं किया जा सकता है। (आर.के. मेहरा वि. म.प्र. राज्य) (DB)...621

सेवा विधि - दण्ड - भा.द.सं. की धारा 302 के अंतर्गत अभियुक्त के अवैध उन्मोचन से संबंधित अनुशासनिक कार्यवाहियाँ - उच्च न्यायालय द्वारा लिया गया दृष्टिकोण कि उन्मोचन का आदेश अनुचित हेतुक द्वारा परिणत किया गया था और परिणामस्वरूप संचयी प्रभाव के बिना दो वेतन वृद्धियों की रोक की शास्ति का अधिरोपण - सम्यक जाँच करने एवं सुनवाई का उचित अवसर देने के पश्चात लघु दण्ड था - किसी प्रकार का हस्तक्षेप आवश्यक नहीं। (रमेश प्रसाद तिहैया वि. एम.पी. हाई कोर्ट) (DB)...705

सेवा विधि - मर्ती - आयु में छूट - अपीलार्थी को नियुक्ति आदेश इस आधार पर नहीं दिया गया कि वह नियत से अधिक वय की थी - स्थायी अनुदेश 79 आयु में छूट उपबंधित करता है यदि अभ्यर्थी ने केन्द्रीय सरकार के सिविलियन कर्मचारी के रूप में नियमित आधार पर निरंतर, जो 3 वर्ष से कम न हो, सेवा दी है - अपीलार्थी ने केवल एक वर्ष और चार माह की अवधि के लिए रेल विभाग में सेवा दी है - सोसाइटी द्वारा चलाये जा रहे न कि केन्द्रीय सरकार द्वारा चलाये जा रहे स्कूल में अपीलार्थी द्वारा दी गई सेवा विचार में नहीं ली जा सकती - चूंकि अपीलार्थी ने निरंतर तीन वर्ष के लिए सेवा नहीं दी है, इसलिए आयु में छूट की हकदार नहीं - अपील खारिज। (उषा किरण दुबे (श्रीमति) वि. सेक्रेटरी, यूनियन ऑफ इंडिया)(DB)...606

सेवा विधि - कर्मचारियों का कम्पनी में स्थानान्तरण - केन्द्र सरकार द्वारा औद्योगिक इकाईयों के कर्मचारियों का कम्पनी में स्थानान्तरण करने के सम्बंध में कार्यालयीन आदेश/ज्ञापन दिनांक 10.02.2006 जारी किया गया - आदेश/ज्ञापन को इस आधार पर चुनौती दी गयी कि कर्मचारियों की सेवा शर्तें उन्हें सुनवाई का कोई अवसर दिये बिना उनके अहित में परिवर्तित कर दी गयीं - अभिनिर्धारित - ज्ञापन में उपबंधित है कि कम्पनी में संविलयन होने पर कर्मचारियों के पारिश्रमिक, सेवानिवृत्ति लाभ तथा अन्य सेवा शर्तें किसी भी प्रकार से मौजूदा से निम्न नहीं होंगे तथा यदि वे निगम में सेवा करने का चुनाव करते हैं तो उनकी सेवा शर्तें किसी भी प्रकार से कर्मचारियों के अहित में परिवर्तित नहीं की जायेंगी - इसके अतिरिक्त कर्मचारियों को या तो शासकीय सेवा का अथवा निगम की सेवाओं का चुनाव करने का विकल्प दिया गया तथा अधिकांश कर्मचारियों ने निगम में सेवा का चुनाव किया जिससे यह प्रकट होता है कि उनकी सेवा शर्तें किसी भी प्रकार से उनके अहित में

are in no way being altered to their disadvantage - Writ petition dismissed. [S.P.M. Employees Union Vs. Union of India] (DB)...128

Service Law - Voluntary retirement - Withdrawal from - Appellant sought voluntary retirement from service (V.R.S.) - His application was accepted vide order dated 28.11.2001 w.e.f. 7.12.2001 - On 6.12.2001 appellant submitted a letter seeking withdrawal of his proposal of V.R.S. and prayed for giving him an opportunity to serve - Held - Appellant having submitted application seeking withdrawal of his V.R.S. a day prior to his effective date of retirement - His prayer ought to have been accepted by the employer - Appeal allowed. [Sanjay Victor Vs. State of M.P.] (DB)...598

Sovereign Function - What amounts to - Whether transfer of assets & liabilities of the nine industrial units of Government of India, to the Security Printing and Minting Corporation of India Limited (incorporated as fully owned Government Company w.e.f. 13.01.2006), amounts to transfer of sovereign power and for such transfer sanction of the Parliament is required - Held - No sovereign function has been delegated or transferred to the Corporation, by such transfer - Further there is no statutory provision which requires that approval of the Parliament has to be obtained before transfer. [S.P.M. Employees Union Vs. Union of India] (DB)...128

*Special Police Establishment Act, M.P. (17 of 1947), Section 4 - See - Lokayukt Evam Up-Lokayukt Adhiniyam, M.P., 1981, Section 8 [Ramesh Vs. State of M.P.] (DB)...*48*

*Specific Relief Act (47 of 1963), Section 12 - Specific performance of contract - Registered sale deed dated 11.04.69 for consideration of Rs. 4000 with contemporaneous agreement of resale for the same amount executed - Plaintiff paid Rs. 3000 and fresh agreement executed on 11.09.72 with condition that plaintiff would pay balance of Rs. 1000 within a year and get registered sale deed executed - Held - Agreement dated 11.09.72 is a complete agreement - Non-production of agreement dated 11.04.69, inconsequential - More so, when the same is found to have been returned by plaintiff to defendant. [Ramesh Chandra Vs. Kamal Kishore] ...*15*

Specific Relief Act (47 of 1963), Section 16 - Specific performance

परिवर्तित नहीं की जा रही हैं — रिट याचिका खारिज. (एस.पी.एम. एम्पलाइज यूनियन वि. यूनियन ऑफ इंडिया) (DB)...128

सेवा विधि — स्वैच्छिक सेवानिवृत्ति — वापस लेना — अपीलार्थी ने सेवा से स्वैच्छिक सेवानिवृत्ति (वी.आर.एस.) चाही — आदेश दिनांक 28.11.2001 द्वारा 07.12.2001 से प्रभावी कर उसका आवेदन स्वीकार किया गया — दिनांक 06.12.2001 को अपीलार्थी ने अपने वी.आर.एस. के प्रस्ताव को वापस लेना चाहते हुए पत्र प्रस्तुत किया एवं उसे सेवा का अवसर देने की प्रार्थना की — **अभिनिर्धारित** — अपीलार्थी ने अपनी सेवानिवृत्ति के प्रभावी होने के दिनांक के एक दिन पूर्व अपना वी.आर.एस. वापस लेना चाहते हुए आवेदन प्रस्तुत किया — नियोक्ता द्वारा उसकी प्रार्थना स्वीकार की जानी चाहिए थी — अपील मंजूर। (संजय विक्टर वि. म.प्र. राज्य) (DB)...598

प्रभुता सम्पन्न कार्य — की कोटि में क्या आता है — क्या भारत सरकार की नौ औद्योगिक इकाईयों की आस्तियाँ और दायित्वों का सिक्यूरिटी प्रिंटिंग एण्ड मिटिंग कॉर्पोरेशन ऑफ इंडिया लिमिटेड (दिनांक 13.01.2006 से पूर्ण स्वामित्व की सरकारी कम्पनी के रूप में निगमित) को हस्तान्तरण प्रभुता सम्पन्न शक्ति के हस्तान्तरण की कोटि में आता है तथा ऐसे हस्तान्तरण के लिये संसद की मंजूरी अपेक्षित है — **अभिनिर्धारित** — ऐसे हस्तान्तरण से निगम को कोई प्रभुता सम्पन्न कार्य प्रत्यायोजित अथवा हस्तान्तरित नहीं किया गया है — इसके अतिरिक्त ऐसा कोई कानूनी उपबंध नहीं है जो यह अपेक्षित करता हो कि हस्तान्तरण से पूर्व संसद का अनुमोदन प्राप्त करना होगा। (एस.पी.एम. एम्पलाइज यूनियन वि. यूनियन ऑफ इंडिया) (DB)...128

विशेष पुलिस स्थापना अधिनियम, म.प्र., (1947 का 17), धारा 4 — देखें — लोकायुक्त एवं उप-लोकायुक्त अधिनियम, म.प्र. (1981 का 37), धारा 8, (रमेश वि. म.प्र. राज्य) (DB)...*48

विनिर्दिष्ट अनुतोष अधिनियम (1963 का 47), धारा 12 — संविदा का विनिर्दिष्ट पालन — 4000 रुपये के प्रतिफल के लिए रजिस्ट्रीकृत विक्रय विलेख तारीख 11.04.69 उसी राशि के लिए पुनः विक्रय के समकालीन करार के साथ निष्पादित किया गया — वादी ने 3000 रुपये का भुगतान किया और 11.09.72 को नया करार इस शर्त के साथ निष्पादित किया कि वादी शेष 1000 रुपये की राशि एक वर्ष के भीतर अदा करेगा और रजिस्ट्रीकृत विक्रय विलेख निष्पादित कराएगा — **अभिनिर्धारित** — करार तारीख 11.09.72 पूर्ण करार है — करार तारीख 11.04.69 प्रस्तुत न करना महत्वहीन है — इसके अतिरिक्त, जब वह वादी द्वारा प्रतिवादी को लौटाया जाना पाया गया हो। (रमेशचंद्र वि. कमल किशोर) ---*15

विनिर्दिष्ट अनुतोष अधिनियम (1963 का 47), धारा 16 — संविदा का विनिर्दिष्ट

of contract - Readiness and willingness - No pleading and proof about readiness and willingness on the part of plaintiff - Held - No objection in written statement - No issue raised in the trial Court - Defendants did not move any application to frame any issue on this point - Parties were not at issue on the question of readiness and willingness. [Ramesh Chandra Vs. Kamal Kishore] ...*15

Specific Relief Act (47 of 1963), Section 38 - After acquisition of land and receiving the compensation, the person whose land was acquisitioned does not have any right or authority to file the suit for perpetual injunction or to sale the same - Purchasers on the strength of such defective title of their predecessor also do not have any right or authority to file a suit for perpetual injunction stating that they are in settled possession of the property. [Mohd. Ashraf Vs. M.P. Housing Board] ...182

Specific Relief Act (47 of 1963), Section 38 - See - Krishi Prayojan Ke Liye Upayog Ki Ja Rahi Dakhal Rahit Bhoomi Par Bhoomiswami Adhikaron Ka Pradan Kiya Jana (Vishesh Upabandh) Adhiniyam, M.P., 1984, Section 3, [Sharda Prasad Vs. State of M.P.] ...461

Stamp Act (2 of 1899), Section 2 - Application of stamp duty to instruments - Principles governing application of Stamp Act to instrument - explained. [Radheshyam Mishra Vs. Prem Narayan Sharma] ...732

Stamp Act (2 of 1899), Section 2(5), (22) - Bond, Agreement and Promissory Note - Distinction - Explained. [Radheshyam Mishra Vs. Prem Narayan Sharma] ...732

Stamp Act (2 of 1899), Sections 2(5) & 40 - Land of respondent acquired by petitioner - In furtherance of stipulations, contained in sale deed, a document called 'Ikrarnama' was executed - The document provides for payment of Rs.5000/- p.m. to dependants having undivided share till they attain 58 years of age - Held - The instrument does not acknowledge pre-existing liability because the circular of State Govt. referred to by petitioner lays down an employment in lieu of purchase of land - Instrument is a bond. [Prism Cement Ltd., Satna Vs. State of M.P.] ...71

Stamp Act (2 of 1899), Section 11, Stamp Rules, M.P. 1942, Rules

पालन - तैयारी और रजामंदी - वादी की ओर से तैयारी और रजामंदी के बारे में कोई अभिवचन तथा सबूत नहीं - *अभिनिर्धारित* - लिखित कथन में कोई आक्षेप नहीं - विचारण न्यायालय में कोई विवादक नहीं उठाया गया - प्रतिवादियों ने इस बिंदु पर कोई विवादक विरचित करने के लिए कोई आवेदन प्रस्तुत नहीं किया - तैयारी और रजामंदी के प्रश्न पर पक्षकारों का वाद नहीं था। (रमेशचंद्र वि. कमल किशोर) ---*15

विनिर्दिष्ट अनुतोष अधिनियम (1963 का 47), धारा 38 - भूमि के अर्जन और मुआवजा प्राप्त करने के पश्चात् वह व्यक्ति, जिसकी भूमि अर्जित की गई थी, को शाश्वत् व्यादेश के लिए सिविल वाद प्रस्तुत करने अथवा उसका विक्रय करने का कोई अधिकार या प्राधिकार नहीं है - क्रेता को भी उनके पूर्वाधिकारी के ऐसे त्रुटियुक्त हक के आधार पर, यह कथन करते हुए पौव संपत्ति के व्यवस्थापित कब्जे में है, शाश्वत् व्यादेश के लिए वाद दाखिल करने का कोई अधिकार या प्राधिकार नहीं है। (मो. अशरफ वि. एम.पी. हाउसिंग बोर्ड) ...182

विनिर्दिष्ट अनुतोष अधिनियम, (1963 का 47), धारा 38 - देखें - कृषि प्रयोजन के लिए उपयोग की जा रही दखल रहित भूमि पर भूमि स्वामी अधिकारों का प्रदान किया जाना (विशेष उपबंध) अधिनियम, म.प्र., 1984, धारा 3. (शारदा प्रसाद वि. म.प्र. राज्य) ...461

स्टाम्प अधिनियम (1899 का 2), धारा 2 - लिखत पर स्टाम्प शुल्क का लागू होना - लिखत पर स्टाम्प अधिनियम की प्रयोज्यता शासित करने वाले सिद्धान्त - स्पष्टीकृत। (राधेश्याम मिश्रा वि. प्रेमनारायण शर्मा) ...732

स्टाम्प अधिनियम (1899 का 2), धारा 2(5), (22) - बंधपत्र, करार एवं वचन पत्र - *विमर्द* - स्पष्टीकृत। (राधेश्याम मिश्रा वि. प्रेमनारायण शर्मा) ...732

स्टाम्प अधिनियम (1899 का 2), धाराएँ 2(5) व 40 - याची द्वारा प्रत्यर्थी की भूमि का अर्जन किया गया - विक्रय पत्र में, अन्तर्विष्ट शर्तों के अग्रसरण में एक दस्तावेज 'इकरारनामा' निष्पादित किया गया - दस्तावेज में अविभाजित हिस्सा रखने वाले आश्रितों को उनके 58 वर्ष की आयु के होने तक 5000/- रुपये प्रतिमाह भुगतान करने का उपबंध था - *अभिनिर्धारित* - लिखत पूर्व विद्यमान दायित्वों को अभिस्वीकृत नहीं करता, क्योंकि याची द्वारा संदर्भित राज्य शासन का परिपत्र भूमि क्रय करने के एवज में रोजगार अधिकथित करता है - लिखत एक बंधपत्र है। (प्रिंजम सीमेंट लि., सतना वि. म.प्र. राज्य) ...71

स्टाम्प अधिनियम (1899 का 2), धारा 11, स्टाम्प नियम, म.प्र. 1942, नियम 15

15 & 17 - Apart from the requisite revenue stamp on the promissory note, adhesive stamp also pasted - The document itself cannot be said to be inadmissible in evidence. [Khamir Singh Vs. Radheshyam Bansal] (DB)...387

Stamp Act (2 of 1899), Section 29 - Liability to pay duty - Bond - Duty shall be borne by person drawing, making or executing such instrument. [Prism Cement Ltd., Satna Vs. State of M.P.] ...71

Stamp Act (2 of 1899), Section 36 - Admissibility of document - Where an instrument has been admitted in evidence, such admission shall not, except as provided in Section 61, be called in question at any stage of the same suit or proceeding on the ground that the instruments has not been duly stamped. [Radheshyam Mishra Vs. Prem Narayan Sharma] ...732

Stamp Rules, M.P. 1942, Rules 15 & 17 - See - Stamp Act, 1899, Section 11, [Khamir Singh Vs. Radheshyam Bansal] (DB)...387

State Bank of India Act (23 of 1955), Sections 35(1) & 35(2) - See - Constitution, Article 226, [All India Bank Officers' Association Vs. State Bank of India] (DB)...*22

State Bank of India Act (23 of 1955), Section 35(13) - State Bank of Indore is a banking institution within the meaning of S. 35(13). [All India Bank Officers' Association Vs. State Bank of India] (DB)...*22

Tender - Bid documents - Negligent mistakes - Mistakes cannot be permitted to be corrected where facts indicate that (i) it was beyond the control of the bidder to correct, (ii) that he was not vigilant, (iii) he did not seek to make corrections at the earliest opportunity. [Glodyne Technoserve Ltd. Vs. State of M.P.] (DB)...*7

Tender documents and bidders information sheet - Sections 3 & 7 of tenders documents were amended - However, no corresponding amendment in bidders information sheet - Held - Sections 3 & 7 of tenders document have to prevail and merely because there is no amendment in bidders information sheet, is not going to come to the rescue of petitioners. [Glodyne Technoserve Ltd. Vs. State of M.P.] (DB)...*7

Tender - Term of - Mandatory or directory - Whether a condition is essential or collateral could be ascertained by reference to the

व 17 - वचन-पत्र (प्रॉमिसरी नोट) पर अपेक्षित राजस्व स्टाम्प के अलावा चिपकने वाले स्टाम्प भी चस्पा थे - दस्तावेज साक्ष्य में अग्राह्य होना नहीं कहा जा सकता। (खमीर सिंह वि. राघेश्याम बंसल) (DB)...387

स्टाम्प अधिनियम (1899 का 2), धारा 29 - शुल्क भुगतान करने का दायित्व - बंधपत्र - शुल्क का वहन ऐसी लिखत को लिखने, बनाने अथवा निष्पादित करने वाले व्यक्ति द्वारा किया जायेगा। (प्रिंज्म सीमेंट लि., सतना वि. म.प्र. राज्य) ...71

स्टाम्प अधिनियम (1899 का 2), धारा 36 - दस्तावेज की ग्राह्यता - जहाँ किसी लिखत को साक्ष्य में ग्राह्य किया जा चुका है वहाँ ऐसे ग्रहण को, धारा 61 में यथा उपबंधित के सिवाय एक ही वाद या कार्यवाही के किसी प्रक्रम पर इस आधार पर प्रश्नगत नहीं किया जायेगा कि लिखत सम्यक् रूप से स्टाम्पित नहीं है। (राघेश्याम मिश्रा वि. प्रेमनारायण शर्मा) ...732

स्टाम्प नियम, म.प्र. 1942, नियम 15 व 17 - देखें - स्टाम्प अधिनियम, 1899, धारा 11. (खमीर सिंह वि. राघेश्याम बंसल) (DB)...387

भारतीय स्टेट बैंक अधिनियम (1955 का 23), धाराएँ 35(1) व 35(2) - देखें - संविधान, अनुच्छेद 226, (ऑल इंडिया बैंक ऑफीसर्स एसोशियेशन वि. स्टेट बैंक ऑफ इंडिया) (DB)...*22

भारतीय स्टेट बैंक अधिनियम (1955 का 23), धारा 35(13) - धारा 35(13) के अर्थों में स्टेट बैंक ऑफ इन्दौर एक बैंकिंग संस्था है। (ऑल इंडिया बैंक ऑफीसर्स एसोशियेशन वि. स्टेट बैंक ऑफ इंडिया) (DB)...*22

निविदा - बोली प्रलेख - नगण्य त्रुटियाँ - त्रुटियों के सुधार करने की अनुज्ञा नहीं दी जा सकती जहाँ तथ्यों से यह उपदर्शित होता हो कि (प) सुधार किया जाना बोलीकर्ता के नियंत्रण के बाहर था (पप) वह सतर्क नहीं था (पपप) उसने सर्वप्रथम अवसर पर सुधार करने की माँग नहीं की। (ग्लोडाइन टेक्नोसर्व लि. वि. म.प्र. राज्य) (DB)...*7

निविदा प्रलेख एवं बोली लगाने वाले का सूचना पत्र - निविदा प्रलेखों की धारा 3 एवं 7 संशोधित की गयीं - तथापि, बोली लगाने वाले के सूचना पत्र में तदनुरूप कोई संशोधन नहीं किया गया - अभिनिर्धारित - निविदा प्रलेख की धारा 3 एवं 7 अभिभावी होंगी तथा मात्र इस कारण कि बोली लगाने वाले के सूचना पत्र में कोई संशोधन नहीं है, याचियों के बचाव में काम नहीं आने वाली है। (ग्लोडाइन टेक्नोसर्व लि. वि. म.प्र. राज्य) (DB)...*7

निविदा - के निबंधन - आज्ञापक या निदेशात्मक - कोई शर्त मर्मभूत है अथवा सांपार्षिक है इसका निश्चय उसके अपालन के परिणाम के संदर्भ से किया जा

consequence of non-compliance thereto - If non-fulfillment results in rejection of tender, then it would be an essential part of tender otherwise, it is only a collateral term. [Glodyne Technoserve Ltd. Vs. State of M.P.] (DB)...*7

Termination - Closure of Project - Termination on closure of a project is proper and not illegal - Petitioners were appointed to work in IREP and after the closure of scheme, the petitioners' appointment will automatically come to an end. [Vijay Kumar Bajpayee Vs. M.P. Urja Vikas Nigam Ltd.] ...*51

Transfer - Appellant transferred from Bhopal to Bhubaneswar - Appellant, though appointed for the post of Regional Director, Bhopal, joined with open eyes that selected officer can be shifted from one regional committee to other on administrative exigency - Candidate applying pursuant to the advertisement will have to abide and will govern by all the terms and conditions given in advertisement - After having selected/appointed cannot renounce other conditions on the pretext that he applied for a particular post - Appeal dismissed. [H.S. Tripathi (Dr.) Vs. National Council for Teachers Education] (DB)...603

Transfer of Property Act (4 of 1882), Section 53-A - Part performance - Appellants neither proved their case in consonance of ingredients of S. 53-A nor proved their readiness and willingness to get sale deed executed - Plea of defence discarded by Trial Court - This could not be termed to be substantial question of law for admission of appeal. [Jagdish Vs. Achhelal] ...756

Transfer of Property Act (4 of 1882), Section 58 - Mortgage - Sale deed, rent note and document of reconveyance executed on the same day - Transactions are akin to mortgage if not 'mortgage proper'. [Ramesh Chandra Vs. Kamal Kishore] ...*15

Transfer of Property Act (4 of 1882), Section 106, Civil Procedure Code, 1908, Order 29 Rule 1 - Notice of termination of tenancy - Corporate Body - Notice of suit to the Head Office is sufficient compliance of provision - Issuance of notice to Branch of appellant was not necessary. [Dena Bank Vs. Municipal Corporation, Burhanpur] ...466

Transfer of Property Act (4 of 1882), Section 106 - Termination

सकता है — यदि अपालन का परिणाम निविदा का नामंजूर किया जाना हो तब यह निविदा का मर्मभूत अंग होगी अन्यथा यह सिर्फ एक सांप्रसारितक निबंधन है। (ग्लोडाइन टेक्नोसर्व लि. वि. म.प्र. राज्य) (DB)...*7

सेवा समाप्ति — परियोजना का बंद होना — परियोजना के बंद हो जाने पर सेवा समाप्ति उचित है अवैध नहीं — याचियों को आई.आर.ई.पी. में कार्य करने हेतु नियुक्त किया गया था और स्कीम के बंद हो जाने के बाद याचियों की नियुक्ति अपने आप समाप्त हो जाएगी। (विजय कुमार वाजपेयी वि. एम.पी. ऊर्जा विकास निगम लि.) ...*51

स्थानांतरण — अपीलार्थी को भोपाल से भुवनेश्वर स्थानांतरित किया गया — अपीलार्थी यद्यपि क्षेत्रीय निदेशक, भोपाल के पद पर नियुक्त किया गया था, तथा उसने खुली आँख से कार्य ग्रहण किया कि चयनित अधिकारी को प्रशासनिक अत्यावश्यकता पर एक क्षेत्रीय समिति से अन्य में, स्थानांतरित किया जा सकता है — विज्ञापन के अनुसरण में आवेदन करने वाले अभ्यर्थी को विज्ञापन में दी गई सभी शर्तों का पालन करना होगा तथा उनके द्वारा वह शासित होगा — चयनित/नियुक्त किये जाने के पश्चात् इस बहाने पर कि उसने विशिष्ट पद के लिए आवेदन किया था अन्य शर्तों को त्याग नहीं सकता — अपील खारिज। (एच.एस. त्रिपाठी (डॉ.) वि. नेशनल काउंसिल फॉर टीचर्स एजुकेशन) (DB)...603

सम्पत्ति अन्तरण अधिनियम (1882 का 4), धारा 53-ए — भागिक पालन — अपीलार्थियों ने न तो धारा 53-ए के तत्वों के अनुरूप अपना मामला साबित किया और न ही विक्रय विलेख का निष्पादन करवाने की उनकी तैयारी और रजामंदी साबित की — विचारण न्यायालय द्वारा बचाव के अभिवाक् को अमान्य किया गया — इसे अपील ग्रहण किये जाने हेतु विधि का सारवान प्रश्न नहीं कहा जा सकता। (जगदीश वि. अच्छेताल) ...756

सम्पत्ति अन्तरण अधिनियम (1882 का 4), धारा 58 — बंधक — विक्रय विलेख, भाड़ा नोट तथा पुनः हस्तांतरण दस्तावेज एक ही दिन निष्पादित किये गये — यद्यपि संव्यवहार 'समुचित बंधक' नहीं हैं, वह बंधक के समान हैं। (रमेशचंद्र वि. कमल किशोर) ...*15

सम्पत्ति अन्तरण अधिनियम (1882 का 4), धारा 106, सिविल प्रक्रिया संहिता, 1908, आदेश 29 नियम 1 — किरायेदारी के पर्यवपन की सूचना — निगमित निकाय — प्रधान कार्यालय को वाद की सूचना उपबंध का पर्याप्त अनुपालन है— अपीलार्थी की शाखा को सूचना पत्र जारी किया जाना आवश्यक नहीं। (देना बैंक वि. म्युनिसिपल कॉरपोरेशन, बुरहानपुर) ...466

सम्पत्ति अन्तरण अधिनियम (1882 का 4), धारा 106 — पट्टे का पर्यवपन — यदि

of lease - If the suit is filed under the provisions of Transfer of Property Act, then after serving the quit notice on the tenant, the landlord is entitled to get the decree of eviction only on proving the service of such notice. [Dena Bank Vs. Municipal Corporation, Burhanpur] ...466

Transfer of Property Act (4 of 1882), Section 106 - Termination of lease - Waiver - Appellant deposited some of the money at the rate of existing rent in the account of respondent which was with the branch office of appellant - Held - It could not be deemed to be waiver of such right - Appellant after termination of tenancy became statutory tenant and therefore, deposit of rent in the account of respondent could not be deemed to have created either a new tenancy or the respondent has waived its right of eviction. [Dena Bank Vs. Municipal Corporation, Burhanpur] ...466

Uchcha Nyayalaya (Khand Nyaypeeth Ko Appeal) Adhiniyam, M.P. 2005 (14 of 2006), Section 2(1) - See - Constitution, Articles 226 & 227 [Sadhna Chourasia (Smt.) Vs. Punjab National Bank](DB)...61

Urban Land (Ceiling and Regulation) Act (33 of 1976), Section 8(3) - Service of notice - When holder acknowledge the service, then mode of service gets diluted - Even if notice is not published in the manner contemplated by law, it will be best a case of irregularity but certainly not a fact striking at the very jurisdiction of the authority passing order. [Rukmani Bai Vs. State of M.P.] ...*34

Value Added Tax Act, M.P. (20 of 2002), Sections 2(z) & 5 - Turnover and incidence of tax - Turnover u/s 5 has to be work out as per Section 2(z) of Act. [Lila Sons Breweries Ltd. (M/s.) Vs. State of M.P.] (DB)...*28

WORDS & PHRASES :

Irreparable loss - What should be - It should be considered on the facts and circumstances of each case as no definite yardstick in that regard can be drawn. [Ranveer Singh (Dead) Through L.Rs. Vs. State of M.P.] (FB) ...1

सम्पत्ति अन्तरण अधिनियम के उपबंधों के अन्तर्गत वाद दाखिल किया जाता है, तब किरायेदार पर खाली करने की सूचना तामील करने के पश्चात् भूस्वामी केवल ऐसे सूचना की तामीली साबित करने पर बेदखली की डिक्री पाने का हकदार है। (देना बैंक वि. म्युनिसिपल कॉरपोरेशन, बुरहानपुर) ...466

सम्पत्ति अन्तरण अधिनियम (1882 का 4), धारा 106 — पट्टे का पर्यवपन — अधित्यजन — अपीलार्थी ने किराये की प्रवृत्त दर से कुछ पैसा अपीलार्थी के शाखा कार्यालय में प्रत्यर्थी के खाते में जमा कराया — अभिनिर्धारित — इसे ऐसे अधिकार का अधित्यजन होना नहीं माना जा सकता — किरायेदारी के पर्यवसान के बाद अपीलार्थी कानूनी किरायेदार बन गया अतएव प्रत्यर्थी के खाते में किराया जमा करना नयी किरायेदारी का सृजन हो जाना अथवा प्रत्यर्थी द्वारा अपने अधिकार का अधित्यजन किया जाना नहीं माना जा सकता। (देना बैंक वि. म्युनिसिपल कॉरपोरेशन, बुरहानपुर) ...466

उच्च न्यायालय (खण्ड न्यायपीठ को अपील) अधिनियम, म.प्र. 2005 (2006 का 14), धारा 2(1) — देखें — संविधान, अनुच्छेद 226 व 227 (साधना चौरसिया (श्रीमति) वि. पंजाब नेशनल बैंक) (DB)...61

नगर भूमि (अधिकतम सीमा और विनियमन) अधिनियम (1976 का 33), धारा 8(3) — सूचना पत्र की तामील — जब धारक तामील को अभिस्वीकृत करता है, तब तामीली का ढंग महत्वहीन हो जाता है — भले ही, विधि द्वारा अनुध्यात ढंग से सूचना प्रकाशित नहीं की गयी हो, यह अनियमितता का एक उत्तम प्रकरण होगा किन्तु आदेश पारित करने वाले प्राधिकारी की अधिकारिता पर आघात करने वाला तथ्य बिल्कुल नहीं। (रुकमणी बाई वि. म.प्र. राज्य) ...*34

मूल्य वर्धित कर अधिनियम, म.प्र. (2002 का 20), धाराएँ 2(जेड) व 5 — कुल बिक्री एवं कर का भार — धारा 5 के अन्तर्गत कुल बिक्री की गणना अधिनियम की धारा 2(जेड) के अनुसार करनी होगी। (लीलासंस ब्रेवरीज लि. (मे.) वि. म. प्र. राज्य) (DB)...*28

शब्द और वाक्यांश :

अपूरणीय क्षति — क्या होनी चाहिए — यह प्रत्येक मामले के तथ्यों एवं परिस्थितियों पर विचारित किया जाना चाहिए क्योंकि उसके सम्बन्ध में कोई निश्चित मापदण्ड नहीं बनाया जा सकता है। (रणवीर सिंह (मृतक) द्वारा विधिक प्रतिनिधि वि. म.प्र. राज्य) (FB)...1

NOTES OF CASES SECTION

Short Note

(40)*

Before Mr. Justice S.K. Gangele

W.P. No.1869/2010 (Gwalior) decided on 24 November, 2010

AMIT PANDE

... Petitioner

Vs.

M.P. HOUSING BOARD & ors.

... Respondents

Griha Nirman Mandal Adhiniyam, M.P. 1972, (3 of 1973), Section 50 - Flat - Parking charge and premium of land were not mentioned separately in initial advertisement - Parking space and land are part and parcel of Flat and are included in definition of Flat - Demand of parking charge and premium of land illegal.

गृह निर्माण मण्डल अधिनियम, म.प्र. 1972 (1973 का 3), धारा 50 - फ्लैट - पार्किंग शुल्क तथा भूमि के प्रीमियम का प्रारंभिक विज्ञापन में पृथक् से उल्लेख नहीं किया गया - पार्किंग स्थल तथा भूमि फ्लैट के अभिन्न अंग हैं तथा फ्लैट की परिभाषा में शामिल हैं - पार्किंग शुल्क तथा भूमि के प्रीमियम की मांग अवैध।

Case referred :

AIR 2010 SC 3607.

Yogesh Singhal, for the petitioner.

Rajendra Bhargava, for the respondents.

Short Note

(41)*

Before Mr. Justice Sanjay Yadav

W.P. No.5136/1999 (Jabalpur) decided on 13 October, 2010

KAMRUDDIN SIDDIQUI

... Petitioner

Vs.

INDIAN OIL CORPORATION & ors.

... Respondents

A. Dealership for Petrol Pump - Criteria of resident - Enquiry conducted by Tahsildar on the complaint of petitioner with regard to residence of respondent No.4 - Tahsildar has given a specific finding that respondent No. 4 is found residing at Bamitha, Distt. Chattarpur - No material brought on record to show that findings recorded by Tahsildar were called in question before any forum and were allowed to attain finality - Objection that respondent No. 4 is not resident of Chattarpur unsustainable.

NOTES OF CASES SECTION

क. **पेट्रोल पंप की डीलरशिप - निवासी का मानदंड** - प्रत्यर्थी क्र. 4 के निवास संबंध में याची की शिकायत पर तहसीलदार द्वारा जाँच की गई - तहसीलदार ने विनिर्दिष्ट निष्कर्ष दिया है कि प्रत्यर्थी क्र. 4 बमीठा, जिला छतरपुर का निवासी पाया गया - अभिलेख पर यह दर्शाने वाली कोई सामग्री नहीं लायी गयी कि तहसीलदार द्वारा अभिलिखित निष्कर्षों को किसी फोरम के समक्ष प्रश्नगत किया गया और उसे अंतिमता प्राप्त होने दी गई - आक्षेप कि प्रत्यर्थी क्र. 4 छतरपुर का निवासी नहीं है, समर्थन योग्य नहीं।

B. Dealership for Petrol Pump - Constitution of Committee - Advertisement issued on 31.12.1997 - Circular dated 1.1.1993 was in vogue which provided that chairman for the OSB's would be retired High Court Judge - Interviews were held on 27.1.1999 and on that date circular dated 14.10.1998 was in vogue which provided that chairman would be a retired judge of High Court or retired District Judge - Board chaired by retired District Judge - Proceedings cannot be said to be vitiated for coram non-judice.

ख. **पेट्रोल पंप की डीलरशिप - समिति का गठन** - विज्ञापन 31.12.1997 को जारी किया गया - परिपत्र दिनांक 1.1.1993 प्रभावी था, जो यह उपबंधित करता था कि ओएसबी के अध्यक्ष उच्च न्यायालय के सेवानिवृत्त न्यायाधिपति होंगे - साक्षात्कार दिनांक 27.1.1999 को लिये गये और उस दिनांक को परिपत्र दिनांक 14.10.1998 प्रभावी था, जो यह उपबंधित करता था कि अध्यक्ष, उच्च न्यायालय के सेवानिवृत्त न्यायाधिपति अथवा सेवानिवृत्त जिला न्यायाधीश होंगे - बोर्ड की अध्यक्षता सेवानिवृत्त जिला न्यायाधीश द्वारा की गई - कार्यवाहियाँ, अधिकारिताविहीन न्यायालय के आधार पर दूषित नहीं कही जा सकतीं।

C. Arithmetical errors - Correctness regarding totaling up of the marks are arithmetical in nature - Objection that interpolation in marks was done to provide undue benefit to respondent No. 4, unsustainable.

ग. **अंकगणितीय त्रुटियाँ** - अंकों के जोड़ के संबंध में शुद्धता अंकगणितीय प्रकृति की है - आक्षेप, कि प्रत्यर्थी क्र. 4 को अनुचित लाभ देने के लिए अंकों में अंतर्गणन किया गया, कायम रखे जाने योग्य नहीं।

D. Dealership for Petrol Pump - Suppression of material fact - Total family income - Respondent No. 4 did not disclose the fact of having double storeyed building whereof, are six shops and leased out on rent - Certificate also reveals of other land and house reaping income - All these facts have not been disclosed by respondent No. 4 -

NOTES OF CASES SECTION

There is a suppression of material fact in respect of income as warranted under Clause 2.9.7. - Selection process vitiated - O.I.C. will be at liberty to take fresh steps for allotment of retail outlet of dealership in petrol and diesel.

घ. पेट्रोल पंप की डीलरशिप - तात्त्विक तथ्य का छिपाया जाना - संपूर्ण कौटुम्बिक आय - प्रत्यर्थी क्र. 4 ने उसके पास दो मंजिला भवन, जिसमें छः दुकानें हैं और भाड़े पर दी गई हैं, के तथ्य को प्रकट नहीं किया - प्रमाणपत्र भी अन्य भूमि और मकान से आय कमाना प्रकट करता है - इन सभी तथ्यों को प्रत्यर्थी क्र. 4 द्वारा प्रकट नहीं किया गया - खण्ड 2.9.7 के अंतर्गत आवश्यक आय के संबंध में तात्त्विक तथ्य को छिपाया गया - चयन प्रक्रिया दूषित - पेट्रोल और डीजल की डीलरशिप के फुटकर दुकान के आवंटन के लिए नये कदम उठाये जाने की ओआईसी को स्वतंत्रता रहेगी।

Cases referred :

(2005) 11 SCC 66, (2004) 2 SCC 177.

M.L. Jaiswal with K.K. Gautam, for the petitioner.

Virendra Verma, for the respondent Nos. 1, 2 & 3.

S.B. Shrivastava, for the respondent No. 4.

Short Note (DB)

(42)*

Before Mr. Justice Rakesh Saxena & Mr. Justice M.A. Siddiqui

Cr.A. No.1839/2002 (Jabalpur) decided on 7 December, 2010

KANHAIYALAL GUPTA & anr.

... Appellants

Vs.

STATE OF M.P.

... Respondent

Penal Code (45 of 1860), Section 304B, Evidence Act, 1872, Section 113B - Soon before death - Presumption - Demand of Rs.61,000, TV, Cooler, Ring and Almirah - Deceased lived in her husband's house for 4 months - Thereafter came back to her parents house where she stayed for 5 months and informed her parents about demand of dowry - Again deceased stayed in her in-laws house for 4 months and came back and stayed for 5 months in her parents house - A-1/husband took her back to her in-laws house where she committed suicide after 15 days - Held - There had been no patch up or any Panchayat between two parties - No assurance given by A-2 for giving up the demand of motorcycle and no evidence that dispute stood resolved - Mere lapse of time by itself would not provide any defence to accused, if

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the course of conduct relating to cruelty or harassment in connection with demand of dowry existed - Conviction of A-1 affirmed - However, evidence found against A-2 is vague - No specific or clinching evidence that A-2 joined A-1 in meting out any cruelty for making demand of motorcycle - Conviction of A-2 on both the counts set aside - A-2 acquitted of both the charges.

दण्ड संहिता (1860 का 45), धारा 304बी, साक्ष्य अधिनियम, 1872, धारा 113बी - मृत्यु के अल्प समय पूर्व - उपधारणा - 61,000 रुपये टी.व्ही., कूलर, अंगूठी एवं अलमारी की माँग - मृतका अपने पति के घर 4 माह रही - उसके बाद अपने माता-पिता के घर वापस आयी, जहाँ पर वह 5 माह तक रही तथा अपने माता-पिता को दहेज की माँग के बारे में जानकारी दी - पुनः मृतका 4 माह तक अपने ससुराल में रही और अपने माता-पिता के घर में 5 माह रही - ए-1/पति उसे वापस उसकी ससुराल ले गया जहाँ उसने 15 दिन बाद आत्महत्या कर ली - अभिनिर्धारित - दोनों पक्षों के बीच कोई मनमुटाव समाप्त नहीं किया गया या कोई पंचायत नहीं हुई - मोटरसाईकिल की माँग छोड़ देने का ए-2 द्वारा कोई आश्वासन नहीं दिया गया और कोई साक्ष्य नहीं कि विवाद सुलझ गया था - मात्र समय बीत जाना अपने आप में अभियुक्त को कोई बचाव प्रदान नहीं करता, यदि दहेज की माँग से संबंधित क्रूरता या उत्पीड़न के व्यवहार का क्रम अस्तित्वमान था - ए-1 की दोषसिद्धि की पुष्टि की गई - तथापि, ए-2 के विरुद्ध पाई गयी साक्ष्य अस्पष्ट है - कोई विनिर्दिष्ट अथवा निश्चित साक्ष्य नहीं कि मोटरसाईकिल की माँग के लिए किसी प्रकार की क्रूरता कारित करने में, ए-2 ने ए-1 का साथ दिया - ए-2 की दोषसिद्धि, दोनों बिन्दुओं पर अपास्त - ए-2 दोनों आरोपों से दोषमुक्त किया गया।

The Judgment of the Court was delivered by
RAKESH SAKSENA, J. :

Cases referred :

(1997) 9 SCC 759, AIR 2009 SC 913, (2004) 13 SCC 348.

Vikas Mahawar, for the appellants.

Yogesh Dhande, Panel Lawyer, for the respondent/State.

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(43)*

Before Mr. Justice Sanjay Yadav

W.P. No.11247/2003 (Jabalpur) decided on 24 September, 2010

KRISHNAPAL SINGH SISODIYA

... Petitioner

Vs.

STATE OF M.P. & ors.

... Respondents

Revision of Pay Rules, M.P. 1990, Section 6 - Choice of cut off date - Chief Municipal Officer cannot as a matter of right be held entitled for the revised pay scale from the date as the employees of State Government are.

वेतन पुनरीक्षण नियम, म.प्र. 1990, धारा 6 — निर्दिष्ट तारीख का विकल्प — मुख्य नगरपालिका अधिकारी को अधिकार के रूप में उस तारीख से पुनरीक्षित वेतनमान का हकदार नहीं माना जा सकता, जैसे कि राज्य सरकार के कर्मचारी हैं।

Cases referred :

1993 MPLSR 513, 2000(4) MPHT 12, AIR 1996 SC 1047.

Rakesh Jain, for the petitioner.

B.N. Mishra, G.A., for the respondent/State.

Short Note

(44)*

Before Mr. Justice R.C. Mishra

Election Petition No.5/2009 (Jabalpur) decided on 15 November, 2010

KUSUM SINGH MAHDELE

... Petitioner

Vs.

SHRI SHRIKANT DUBEY

... Respondent

A. Representation of the People Act (43 of 1951), Section 81(3) - Attestation of copy of petition - Substantial compliance - Copy of petition furnished to respondent is apparently an exact photo copy of original reflecting photo impressions of signature of petitioner on each page thereof - It can safely be concluded that the object underlying provision of Section 81(3) of Act is duly fulfilled.

क. लोक प्रतिनिधित्व अधिनियम (1951 का 43), धारा 81(3) — याचिका की प्रतिलिपि का अनुप्रमाणन — सारतः अनुपालन — प्रत्यर्थी को दी गयी याचिका की प्रतिलिपि प्रत्यक्षतः मूल याचिका की सटीक फोटो कॉपी है, जिसके प्रत्येक पृष्ठ पर याची के हस्ताक्षर की फोटो छाप प्रतिबिम्बित हो रही है — सुरक्षित रूप से यह निष्कर्ष

NOTES OF CASES SECTION

निकाला जा सकता है कि अधिनियम की धारा 81(3) के अन्तर्निहित उपबंध के उद्देश्य की सम्यक् रूप से पूर्ति हो गयी है।

B. Representation of the People Act (43 of 1951), Section 86(1)
- *Non-supply of C.Ds.* - Transcription of C.Ds. form part of pleadings
- C.Ds. only contain evidence of what has already been pleaded -
Consequence of non-supply of C.Ds. is a matter to be adjudged at the trial and not at the stage of proceedings.

ख. लोक प्रतिनिधित्व अधिनियम (1951 का 43), धारा 86(1) - सी.डी. प्रदाय न करना - सी.डी. की अनुलिपि अभिवचन का भाग है - सी.डी. में मात्र वही साक्ष्य अन्तर्विष्ट है जिसका पूर्व में अभिवचन किया जा चुका है - सी.डी. प्रदाय न करने का परिणाम विचारण में निपटाया जाने वाला विषय है न कि कार्यवाहियों के प्रक्रम पर।

C. Representation of the People Act (43 of 1951), Form 25 - Affidavit - Petition not filed on the ground of any corrupt practice - Non-submission of affidavit in form 25 immaterial - Affidavit furnished to verify pleadings reflects substantial compliance with procedural requirements.

ग. लोक प्रतिनिधित्व अधिनियम (1951 का 43), प्रारूप 25 - शपथ पत्र - याचिका किसी दूषित कार्यप्रणाली के आधार पर प्रस्तुत नहीं - प्रारूप 25 में शपथ पत्र प्रस्तुत न करना महत्वहीन है - अभिवचनों को सत्यापित करने हेतु प्रस्तुत शपथ पत्र प्रक्रिया संबंधी अपेक्षाओं का सारतः पालन परिलक्षित करता है।

D. Representation of the People Act (43 of 1951), Section 83(2)
- *Verification of annexures* - Non-compliance of Section 83(2) is of no consequence at the initial stage and election petition cannot be dismissed in limine.

घ. लोक प्रतिनिधित्व अधिनियम (1951 का 43), धारा 83(2) - अनुलग्नकों का सत्यापन - प्रारंभिक अवस्था पर धारा 83(2) के अपालन का कोई परिणाम नहीं है तथा निर्वाचन याचिका आरम्भ में ही खारिज नहीं की जा सकती।

E. Civil Procedure Code (5 of 1908), Order 7 Rule 11 - Cause of action - Election petition filed challenging the election on the ground of non-compliance of rules, and intermixing of postal ballot boxes - *Held* - Respondent already filed written statement - Cause of action in petition challenging election on the ground of corrupt practice cannot be equated with cause of action in the case in hand.

NOTES OF CASES SECTION

इ. सिविल प्रक्रिया संहिता (1908 का 5), आदेश 7 नियम 11 – वाद हेतुक – नियमों के अपालन एवं डाक मत पेटियों के अन्तर्निहित हो जाने के आधार पर चुनाव को चुनौती देते हुये निर्वाचन याचिका दाखिल की गयी – अभिनिर्धारित – प्रत्यर्थी ने पूर्व में ही लिखित कथन प्रस्तुत कर दिया – याचिका में चुनाव को दूषित कार्यप्रणाली के आधार पर चुनौती देने के वाद हेतुक को प्रस्तुत प्रकरण के वाद हेतुक के समान नहीं माना जा सकता।

Cases referred :

AIR 1980 SC 303, AIR 1966 MP 43, AIR 2010 SC 133, AIR 1964 SC 1545, (1999) 4 SCC 274, AIR 1971 SC 342, AIR 1984 SC 305, AIR 1990 SC 924, AIR 2001 SC 2565, 1994 AIR SCW 2028, (1991) 3 SCC 375, AIR 2003 SC 2271, (2003) 11 SCC 448, AIR 2000 SC 694, AIR 1998 SC 337.

K.K. Trivedi, for the petitioner.

P.D. Gupta, for the respondent.

Short Note

(45)*

Before Mr. Justice S.K. Gangele

W.P. No.4216/2010 (Gwalior) decided on 16 November, 2010

PRAKASH BHATTACHARYA & ors.

... Petitioners

Vs.

INDIAN INSTITUTE OF TOURISM & TRAVEL
MANAGEMENT & ors.

... Respondents

A. Ancient Monuments and Archaeological Sites and Remains Act (24 of 1958), Section 38 - Appointment of Part Time Foreign Language Linguistic Guide - Fixation of 50% marks in written examination - Criteria fixed by expert body for the purpose of selection/appointment would not be interfered with until and unless mala fides are attributed.

क. प्राचीन संस्मारक तथा पुरातत्वीय स्थल और अवशेष अधिनियम (1958 का 24), धारा 38 – अंशकालिक विदेशी भाषा भाषई मार्गदर्शक की नियुक्ति – लिखित परीक्षा में 50 प्रतिशत अंकों का नियतन – विशेषज्ञ निकाय द्वारा चयन/नियुक्ति के प्रयोजन हेतु नियत मापदण्डों में तब तक हस्तक्षेप नहीं किया जा सकता जब तक और यदि असदभाव उपरोपित न किया जाए।

B. Appointment - Educational qualification - Acquisition of educational qualification after cut-off date could not be taken into consideration for the purpose of appointment/selection.

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ख. नियुक्ति – शैक्षणिक योग्यता – अन्तिम दिनांक के पश्चात् शैक्षणिक योग्यता का अर्जित किया जाना, नियुक्ति/चयन के प्रयोजन हेतु विचार में नहीं लिया जा सकता।

Cases referred :

(2003) 7 SCC 309, (2009) 1 SCC 610, W.P.(C) No.7185/2008, L.P.A. No.360/2008, W.P.(C) No.4366/2001, AIR 1965 SC 491, (2008) 2 SCC 99, (2008) 14 SCC 306, (1997) 4 SCC 18, (2008) 10 SCC 687.

M.P.S. Raghuvanshi & D.K. Agrawal, for the petitioners.

Tapan Trivedi, Prashant Sharma & Vijay Sundaram, for the respondents.

Short Note

(46)*

Before Mr. Justice U.C. Maheshwari

C.R. No.356/2010 (Jabalpur) decided on 19 November, 2010

PUSHKAR SINGH TOMAR

... Applicant

Vs.

K.P. SHARMA & ors.

... Non-applicants

A. Civil Procedure Code (5 of 1908), Order 9 Rule 13, Municipal Corporation Act, M.P. 1956, Section 441-F(2) - Application for setting aside ex parte decree and revision under Act, 1956 simultaneously filed - Application for setting aside ex parte decree withdrawn without liberty to raise such grounds in other pending proceedings - Such grounds cannot be allowed to be raised in revision.

क. सिविल प्रक्रिया संहिता (1908 का 5), आदेश 9 नियम 13, नगरपालिक निगम अधिनियम, म.प्र. 1956, धारा 441-एफ(2) – एक पक्षीय डिक्री अपास्त किये जाने के लिए आवेदन तथा अधिनियम, 1956 के अंतर्गत पुनरीक्षण एक साथ प्रस्तुत – एक पक्षीय डिक्री अपास्त किये जाने के लिए प्रस्तुत आवेदन ऐसे आधारों को अन्य लंबित कार्यवाहियों में उठाये जाने की स्वतंत्रता के बिना वापस ले लिया गया – ऐसे आधारों को पुनरीक्षण में उठाये जाने की अनुमति नहीं दी जा सकती।

B. Civil Procedure Code (5 of 1908), Order 9 Rule 13 - Absence of counsel - Counsel did not appear on one date - Before proceeding ex parte against applicant, a fresh notice of hearing by fixing a date was required to be given.

ख. सिविल प्रक्रिया संहिता (1908 का 5), आदेश 9 नियम 13 – अधिवक्ता की अनुपस्थिति – एक तारीख पर अधिवक्ता उपस्थित नहीं हुआ – आवेदक के

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विरुद्ध एकपक्षीय कार्यवाही करने से पूर्व, तारीख नियत कर सुनवाई की नई सूचना देना अपेक्षित था।

C. *Municipal Corporation Act, M.P. (23 of 1956), Section 441-C, Municipal Corporation (Election Petition) Rules, M.P. 1963, Rules 3 & 5, Civil Procedure Code, 1908, Order 18 Rule 4 & 13 - Procedure to be followed - Memorandum of substance of evidence -* Petitioner was rightly allowed to produce the examination-in-chief on affidavit - However, subsequently to that Court had to make the memorandum of substance of evidence of witnesses examined - Memorandum of substance of witness not recorded - Evidence of petitioner taken by Court could not be deemed to be taken in accordance with law.

ग. नगरपालिक निगम अधिनियम, म.प्र. (1956 का 23), धारा 441-सी, नगरपालिक निगम (निर्वाचन याचिका) नियम, म.प्र. 1963, नियम 3 व 5, सिविल प्रक्रिया संहिता, 1908, आदेश 18 नियम 4 व 13 - प्रक्रिया जिसका अवलम्ब किया जाना चाहिए - साक्ष्य के सार का ज्ञापन - याची को मुख्य परीक्षण शपथपत्र पर प्रस्तुत करने की अनुमति उचित रूप से दी गई - तथापि, उसके पश्चात् न्यायालय को परीक्षण कराये गये साक्षियों की साक्ष्य के सार का ज्ञापन बनाना था - साक्षी के सार का ज्ञापन अभिलिखित नहीं किया गया - न्यायालय द्वारा ली गई याची की साक्ष्य, विधि अनुसार ली जाना नहीं मानी जा सकती।

D. *Municipal Corporation Act, M.P. (23 of 1956), Sections 132, 135, 136 & 138, Municipalities (Determination of Annual Letting Value of Buildings/Lands) Rules, M.P. 1997 - Non-payment of Property Tax -* Ground raised in election petition - Dismissal of election petition on the ground of non-payment of property tax without considering the amended provisions of Sections 132, 135, 136 & 138 of Act of 1956 and Rules, 1997 bad - Findings bad.

घ. नगरपालिक निगम अधिनियम, म.प्र. (1956 का 23), धाराएँ 132, 135, 136 व 138, नगरपालिका (भवनो/भूमियों के वार्षिक भाड़ा मूल्य का अवधारण) नियम, म.प्र. 1997 - सम्पत्ति कर भुगतान न किया जाना - निर्वाचन याचिका में आधार उठाया गया - 1956 के अधिनियम की धाराएँ 132, 135, 136 व 138 के संशोधित उपबंधों और नियम 1997 पर विचार किये बिना सम्पत्ति कर का भुगतान न किये जाने के आधार पर निर्वाचन याचिका की खारिजी दोषपूर्ण - निष्कर्ष दोषपूर्ण।

E. *Municipal Corporation Act, M.P. (23 of 1956), Sections 441-B(b), (d)(ii), 441-G - Corrupt practice - Defeated candidate -* Cannot

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be declared as disqualified to contest such election on the ground of corrupt practices - He could be declared to be disqualified to vote in such election for five years and such disqualification could be removed by the State Govt.

इ. नगरपालिक निगम अधिनियम, म.प्र. (1956 का 23), धाराएँ 441-बी(बी), (डी)(ii), 441-जी - भ्रष्ट आचरण - हारा हुआ प्रत्याशी - भ्रष्ट आचरण के आधार पर ऐसा निर्वाचन लड़ने के लिए अनर्हित घोषित नहीं किया जा सकता - उसे पाँच वर्षों के लिए ऐसे निर्वाचन में मतदान करने से अनर्हित घोषित किया जा सकता है और ऐसी अनर्हिता राज्य सरकार द्वारा हटाई जा सकती है।

F. Municipal Corporation Act, M.P. (23 of 1956), Section 441 - Election Petition - Non-joinder of defeated candidates - Maintainability of Election Petition - There is no provision under Act 1956 like Representatives of People Act, 1951 that in case petitioner seeks relief of his declaring him to be elected, then election petition is liable to be dismissed for not joining all defeated candidates - Election Petition could have been entertained and adjudicated for the remaining prayer except the prayer for declaring him elected.

च. नगरपालिक निगम अधिनियम, म.प्र. (1956 का 23), धारा 441 - निर्वाचन याचिका - हारे हुए प्रत्याशियों का असंयोजन - निर्वाचन याचिका की पोषणीयता - लोक प्रतिनिधित्व अधिनियम, 1951 जैसा कोई उपबंध अधिनियम 1956 के अंतर्गत नहीं है कि जब याची उसे निर्वाचित घोषित किये जाने का अनुतोष चाहता है, तब हारे हुए सभी प्रत्याशियों को संयोजित न करने से निर्वाचन याचिका खारिज किये जाने योग्य है - उसे निर्वाचित घोषित करने की प्रार्थना को छोड़कर शेष प्रार्थना के लिए निर्वाचन याचिका ग्रहण की जा सकती थी और न्यायनिर्णीत की जा सकती थी।

Cases referred :

1976 MPLJ 571, AIR 1996 SC 2856, (2001) 4 SCC 9, AIR 1993 SC 1182, AIR 1996 MP 243, 2000(1) J LJ 373, AIR 2008 SC 1006, 1976 MPLJ 571.

Ravish Agrawal & R.P. Neekhara with Sujoy Paul & Sanjay Verma, for the applicant.

J.N. Tripathi & R.S. Rathor, for the non-applicant No.1.

Ansuman Singh, Ravindra Gupta & Ravendra Tiwari, for the intervenors.

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Short Note

(47)*

Before Mr. Justice Abhay M. Naik

C.R. No.95/2010 (Gwalior) decided on 6 October, 2010

RAJNI SAHU (SMT.)

.... Applicant

Vs.

SMT. ASMA & ors.

... Non-applicants

A. Municipalities Act, M.P. (37 of 1961), Section 20 - Forum - And in any other case - Words "and in any other case" are significant and important - Election in question was held Karera where the permanent post of ADJ exists - Election petition filed before District Judge, Shivpuri - Held - It is not always necessary that Civil District and Revenue District must be common - Where election is held within Revenue District in which the Court of District Judge is situated, the election petition is to be necessarily presented to the District Judge alone - If the Court of District Judge is not situated in Revenue District in which election is held, the election petition may be presented to the Additional District Judge having permanent seat.

क. नगरपालिका अधिनियम, म.प्र. (1961 का 37), धारा 20 - फोरम - और किसी अन्य मामले में - शब्द "और किसी अन्य मामले में" अर्थपूर्ण एवं महत्वपूर्ण है - प्रश्नगत चुनाव करैरा में हुये जहाँ अपर जिला न्यायाधीश का स्थायी पद है - निर्वाचन याचिका जिला न्यायाधीश, शिवपुरी के समक्ष प्रस्तुत की गयी - अभिनिर्धारित - यह सदैव आवश्यक नहीं है कि सिविल जिला तथा राजस्व जिला एक ही हों - जहाँ चुनाव राजस्व जिला के अन्तर्गत होते हैं जिसमें जिला न्यायाधीश का न्यायालय स्थित है, वहाँ निर्वाचन याचिका अनिवार्य रूप से सिर्फ जिला न्यायाधीश के समक्ष प्रस्तुत की जानी चाहिए - यदि राजस्व जिले में, जिसमें चुनाव हुआ है, जिला न्यायाधीश का न्यायालय स्थित नहीं है, तो निर्वाचन याचिका स्थायी बैठक वाले अपर जिला न्यायाधीश के समक्ष प्रस्तुत की जा सकती है।

B. Municipalities Act, M.P. (37 of 1961), Section 20 - Assignment of election petition to ADJ - District Judge has power to assign election petition to ADJ by virtue of Section 7 of M.P. Civil Courts Act, 1958.

ख. नगरपालिका अधिनियम, म.प्र. (1961 का 37), धारा 20 - निर्वाचन याचिका का अपर जिला न्यायाधीश को सौंपना - जिला न्यायाधीश को म.प्र. सिविल न्यायालय अधिनियम, 1958 की धारा 7 के आधार पर निर्वाचन याचिका अपर जिला न्यायाधीश को सौंपने की शक्ति है।

NOTES OF CASES SECTION

Cases referred :

1969 J.L.J. 441, 2001(2) MPLJ 82, 1971 MPLJ 765, 1987(II) MPWN SN 158.

K.N. Gupta with Sunil Jain, for the applicant.

M.P.S. Raghuvanshi with Dharmendra Nayak, for the non-applicant No.1.

Short Note (DB)

(48)*

Before Mr. Justice S.L. Kochhar & Mrs. Justice S.R. Waghmare

M.Cr.C. No.4511/2010 (Indore) decided on 4 October, 2010

RAMESH

... Applicant

Vs.

STATE OF M.P. & ors.

... Non-applicants

A. Prevention of Corruption Act (49 of 1988), Section 13(1)(d), Criminal Procedure Code, 1973, Section 156(3) - Direction to investigate - Director of S.P.E. is a police station - Special Judge appointed under P.C. Act, 1988 has jurisdiction to take cognizance of offences without the accused being committed to him for trial - Special Judge can direct the S.P.E. to investigate as per provisions of Section 156(3) of Cr.P.C.

क. भ्रष्टाचार निवारण अधिनियम (1988 का 49), धारा 13(1)(डी), दण्ड प्रक्रिया संहिता, 1973, धारा 156(3) - अन्वेषण का निदेश - विशेष पुलिस स्थापना का निदेशक एक पुलिस थाना है - भ्रष्टाचार निवारण अधिनियम, 1988 के अन्तर्गत नियुक्त विशेष न्यायाधीश को विचारण के लिए अभियुक्त का उसे उपार्पण किये बिना ही अपराधों का संज्ञान लेने की अधिकारिता है - विशेष न्यायाधीश द.प्र.सं. की धारा 156(3) के उपबंधों के अनुसार विशेष पुलिस स्थापना को अन्वेषण करने का निदेश दे सकता है।

B. Lokayukt Evam Up-Lokayukt Adhiniyam, M.P. (37 of 1981), Section 8, Special Police Establishment Act, M.P. 1947, Section 4 - Limitation - Limitation of five years as envisaged u/s 8(c) of Adhiniyam, 1981 is applicable only for Lokayukta and Up-lokayukta and not for S.P.E.

ख. लोकायुक्त एवं उप-लोकायुक्त अधिनियम, म.प्र. (1981 का 37), धारा 8, विशेष पुलिस स्थापना अधिनियम, म.प्र. 1947, धारा 4 - परिसीमा - अधिनियम, 1981

NOTES OF CASES SECTION

की धारा 8(सी) के अन्तर्गत यथा परिकल्पित पाँच वर्ष की परिसीमा केवल लोकायुक्त एवं उप-लोकायुक्त के लिए लागू होती है, विशेष पुलिस स्थापना के लिए नहीं।

C. Criminal Procedure Code, 1973 (2 of 1974), Section 482 - Exercise of inherent power - Locus standi - Special Judge passed an order u/s 156(3) to investigate into allegations made against the applicants - Held - Applicants have locus standi to challenge the order as order has been passed which would affect them.

ग. दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 482 - अन्तर्निहित शक्ति का प्रयोग - सुने जाने का अधिकार - विशेष न्यायाधीश ने आवेदकों के विरुद्ध किये गये अभिकथनों का अन्वेषण करने के लिए धारा 156(3) के अन्तर्गत आदेश पारित किया - अभिनिर्धारित - आवेदकों को आदेश को चुनौती देने के लिए सुने जाने का अधिकार है क्योंकि पारित किया गया आदेश उनको प्रभावित करेगा।

The order of the Court was delivered by
S.L. KOCHAR, J. :

Cases referred :

(2001) 3 SCC 333, (2009) 6 SCC 576, 2002 CrLJ 4532, AIR 1984 SC 718, 2004 CrLJ NOC 284, (1998) 1 SCC 226, AIR 1989 SC 558.

A.K. Sethi with Rahul Sethi, for the applicant.

L.N. Soni, with Shri Kumawat, for the respondent No.2.

Suresh Seth, respondent in person.

Girish Desai, Amicus Curiae.

Short Note (DB)

(49)*

Before Mr. Justice A.K. Shrivastava & Mr. Justice Brij Kishore Dube

Cr.A. No.503/1997 (Gwalior) decided on 26 November, 2010

STATE OF M.P.

... Appellant

Vs.

SURESH SINGH & ors.

... Respondents

A. Evidence Act (1 of 1872), Section 3 - Conduct of witness - Merely non-shouting of eyewitness would not dilute the prosecution case, because on seeing the incident how a witness would react it depends upon his mind and there cannot be any barometer or yardstick.

क. साक्ष्य अधिनियम (1872 का 1), धारा 3 - साक्षी का आचरण - प्रत्यक्षदर्शी साक्षियों के न चिल्लाते मात्र से अभियोजन मामला कमजोर नहीं होता

NOTES OF CASES SECTION

क्योंकि घटना देखने पर साक्षी कैसी प्रतिक्रिया करेगा यह उसके मस्तिष्क पर निर्भर करता है और इसका कोई बैरोमीटर या मापदंड नहीं हो सकता।

B. Criminal Procedure Code, 1973 (2 of 1974), Section 386 - Powers of appellate Court - Trial Court on unjustified reasonings on the face value of the evidence which is extremely credible and on account of perversity has acquitted the respondents - The judgment of acquittal cannot be allowed to remain stand.

ख. दण्ड प्रक्रिया संहिता 1973 (1974 का 2), धारा 386 – अपीलीय न्यायालय की शक्तियाँ – आत्यंतिक विश्वसनीय साक्ष्य के मुल्यांकन पर अनुचित तर्क तथा विपर्यस्ता के कारण विचारण न्यायालय ने प्रत्यर्थियों को दोषमुक्त किया – दोषमुक्ति का निर्णय स्थिर नहीं रहने दिया जा सकता।

The Judgment of the Court was delivered by
A.K. SHRIVASTAVA, J. :

Cases referred :

AIR 1976 SC 2263, (2005) 1 Crimes 200 (SC), (2009) 6 SCC 712,
AIR 2009 SC 152.

C.S. Dixit, P.P., for the appellant/State.

L.S. Chauhan, for the respondents.

Short Note (DB)

(50)*

Before Mr. Justice Rakesh Saxena & Mr. Justice M.A. Siddiqui

Cr.A. No.568/2001 (Jabalpur) decided on 7 January, 2011

SUNIL DATTA & ors.

... Appellants

Vs.

STATE OF M.P.

... Respondent

A. Evidence Act (1 of 1872), Section 3 - Merely on ground that prosecution witnesses are interested and partisan, their testimony cannot be discarded, but when their evidence appears inconsistent on material particulars & unnatural, it becomes hazardous to place reliance on their evidence to convict the accused persons.

Though the incident occurred in crowded market place, but none of the independent witness appeared before the Court to give correct and truthful account of the incident. Witnesses adduced before Court, are close relatives of the deceased and their conduct is highly unnatural. All the

NOTES OF CASES SECTION

four eye witnesses happened to be the brothers of deceased yet they are said to have witnessed the incident without making any attempt to save the deceased. There was deep enmity between the two parties. The evidence of eyewitnesses is inconsistent to each other on material points.

क. साक्ष्य अधिनियम (1872 का 1), धारा 3 — मात्र इस आधार पर अभियोजन साक्षी हितबद्ध तथा पक्षपाती हैं, उनकी परिसाक्ष्य को अमान्य नहीं किया जा सकता, लेकिन जब उनकी साक्ष्य तात्त्विक विशिष्टियों पर असंगत और अस्वाभाविक प्रतीत हो तो अभियुक्तगणों को दोषसिद्ध करने हेतु उनकी साक्ष्य पर विश्वास करना नुकसानदायक हो सकता है।

B. Penal Code (45 of 1860), Section 302/34 - Murder - Trial Court implicitly accepted the evidence of eyewitnesses without properly considering the inconsistencies and contradictions in their evidence - The Court failed to consider that inherent infirmities in their evidence created grave suspicion and doubt about their presence at the place of occurrence - The Court also failed to notice their highly unnatural conduct - The evidence produced by the prosecution is unfit to be held the appellants guilty for the offence - Conviction & sentence set aside.

ख. दण्ड संहिता (1860 का 45), धारा 302/34 — हत्या — विचारण न्यायालय ने अव्यक्त रूप से प्रत्यक्षदर्शी साक्षियों की साक्ष्य पर उनकी साक्ष्य में आयी असंगतताओं तथा विरोधाभासों पर उचित रूप से विचार किये बिना स्वीकार किया — न्यायालय यह विचार करने में असफल रहा कि उनकी साक्ष्य में अन्तर्निहित दुर्बलताओं ने उनकी घटनास्थल पर उपस्थिति पर गंभीर संदेह उत्पन्न कर दिया — न्यायालय उनके अत्यन्त अस्वाभाविक आचरण पर ध्यान देने में भी असमर्थ रही — अभियोजन द्वारा प्रस्तुत साक्ष्य अभियुक्त को अपराध का दोषी ठहराये जाने के लायक नहीं है — दोषसिद्धि एवं दण्डादेश अपास्त।

The judgement of the Court was delivered by
RAKESH SAKSENA, J. :

Case referred :

AIR 1981 SC 942.

Sharad Verma, for the appellants.

Yogesh Dhandè, Panel Lawyer, for the respondent/State.

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Short Note

(51)*

Before Mr. Justice Rajendra Menon

W.P. No.9989/2008(S) (Jabalpur) decided on 23 November, 2010

VIJAY KUMAR BAJPAYEE

... Petitioner

Vs.

M.P. URJA VIKAS NIGAM LTD.

... Respondents

A. Regularization - Where appointment is not made in accordance with rules for recruitment and is de hors the rules and where appointment order clearly appoints a person against a particular project, appointment cannot be termed to be one in the regular establishment of Company - Merely because benefit of Provident Fund, Gratuity and GIS are extended to the petitioners, it cannot be construed that they become regular employees of establishment.

क. नियमितीकरण - जहाँ नियुक्ति भर्ती के नियमों के अनुसार नहीं की गई है और नियमों से असंबद्ध है और जहाँ नियुक्ति आदेश किसी व्यक्ति को स्पष्टतः किसी विशिष्ट परियोजना के लिये नियुक्त करता है, वहाँ नियुक्ति को कम्पनी की नियमित स्थापना में होना नहीं कहा जा सकता - मात्र इसलिए कि याचियों को भविष्य निधि, उपदान और जी.आई.एस. के लाभ दिये गये हैं, यह अर्थ नहीं लगाया जा सकता कि वे स्थापना के नियमित कर्मचारी बन जाते हैं।

B. Regularization - Where an employee is appointed under particular scheme, he has no right to claim regularization only because he has worked for a particular period of time.

ख. नियमितीकरण - जहाँ किसी कर्मचारी की नियुक्ति विशिष्ट स्कीम के अंतर्गत की जाती है, वहाँ केवल इसलिये कि उसने किसी विशिष्ट समय की कालावधि के लिये कार्य किया है, उसे नियमितीकरण का दावा करने का कोई अधिकार नहीं होता है।

C. Termination - Closure of Project - Termination on closure of a project is proper and not illegal - Petitioners were appointed to work in IREP and after the closure of scheme, the petitioners' appointment will automatically come to an end.

ग. सेवा समाप्ति - परियोजना का बंद होना - परियोजना के बंद हो जाने पर सेवा समाप्ति उचित है अवैध नहीं - याचियों को आई.आर.ई.पी. में कार्य करने हेतु नियुक्त किया गया था और स्कीम के बंद हो जाने के बाद याचियों की नियुक्ति अपने आप समाप्त हो जाएगी।

NOTES OF CASES SECTION

D. Constitution, Articles 14 & 16 - Pick and Choose - Petitioners appointed to work in IREP whereas other employees were appointed to the services of Urja Vikas Nigam and were subsequently asked posted to work in IREP - Retention of employees appointed into the service of Nigam - *Held* - It cannot be said that the respondents have adopted the policy of pick and choose.

घ. संविधान - अनुच्छेद 14 व 16 - छाँटना और चुनना - याचियों को आई.आर.ई.पी. में कार्य करने हेतु नियुक्त किया गया जबकि अन्य कर्मचारियों को ऊर्जा विकास निगम की सेवाओं के लिए नियुक्त किया गया और तत्पश्चात् आई.आर.ई.पी. में कार्य करने के लिए पदस्थ करने को कहा गया - निगम की सेवा में नियुक्त कर्मचारियों को रख लिया गया - अभिनिर्धारित - यह नहीं कहा जा सकता कि प्रत्यर्थियों ने छाँटने और चुनने की नीति अपनायी है।

Cases referred :

AIR 1986 SC 1571, (1990) 3 SCC 38, AIR 2009 SC 1437, (1992) 4 SCC 99, AIR 1997 SC 352, AIR 1997 SC 1445, (2003) 5 SC 12, (2004) 7 SCC 112, 2007 INDLAW SC 323, AIR 2007 SC 2230, (2009) 6 SCC 611, ILR 1996 Delhi 327, W.P. (C) No.1542/2010.

Ashok Lalwani, for the petitioners.

Shobha Menon with Rahul Choubey, for the respondents.

I.L.R. [2011] M. P., 575

FULL BENCH

*Before Mr. Justice Rajendra Menon, Mr. Justice R.S. Jha &
Mr. Justice Sanjay Yadav*

W.P. No.16136/2003 (Jabalpur) decided on 7 January, 2011

KALA BAI (SMT.)

... Petitioner

Vs.

STATE OF M.P. & ors.

... Respondents

A. Land Revenue Code, M.P. (20 of 1959), Section 22(2) - Sub-Divisional Officer has been conferred powers of the Collector to appoint a Patwari and as a consequence thereof he also has the power to remove a Patwari from service. (Para 26)

क. भू राजस्व संहिता, म.प्र. (1959 का 20), धारा 22(2) - उप खण्ड अधिकारी को पटवारी नियुक्त करने हेतु कलेक्टर की शक्तियाँ प्रदत्त की गयी हैं और उसके परिणामस्वरूप उसे पटवारी को सेवा से हटाने की शक्ति भी है।

B. Precedent - Conflict between the decisions - No conflict between the decisions rendered in the case of Vishwanath Prasad vs. Board of Revenue [1964 MPLJ SN 38] and Mangilal vs. State of M.P. & ors. [1995 RN 67] as the factual matrix on the basis of which the two judgments were rendered was totally different and that the Division Bench in the Case of Mangilal on that count has rightly distinguished the case of Vishwanath Prasad. (Para 26)

ख. पूर्व दृष्टान्त - निर्णयों में अन्तर्विरोध - विश्वनाथ प्रसाद वि. बोर्ड ऑफ रेवेन्यू (1964 एम.पी.एल.जे. एस.एन. 38) तथा मांगीलाल वि. म.प्र. राज्य एवं अन्य (1995 आर.एन. 67) के निर्णयों में कोई अन्तर्विरोध नहीं है, क्योंकि तथ्य जिनके आधार पर दोनों निर्णय दिये गये हैं वह बिल्कुल भिन्न थे तथा मांगीलाल के प्रकरण में खण्ड न्यायपीठ ने इस आधार पर विश्वनाथ प्रसाद के प्रकरण से उचित रूप से भेद किया है।

Cases overruled :

ILR 2008 MP 1436, W.P. 7785/2003 dated 10.01.2005 and W.P. 8777/2003 dated on 25.09.2008.

Case affirmed :

W.P. No.10863/2009 decided on 05.08.2010.

Cases referred :

1964 MPLJ SN 38, 1995 RN 67, 1978(II) MPWN Note 116.

Mrigendra Singh with Hitendra Singh, for the petitioner.

Vivek Agrawal, G.A., for the respondents.

ORDER

The Order of the Court was delivered by **R. S. JHA, J.** :—This petition, which involves the question of competence of the Sub Divisional Officer to dismiss a Patwari from service has been referred to the Full Bench by order dated 8.4.2010.

2. The brief facts, leading to the filing of the petition, are to the effect that the petitioner is the wife of one Fattelal Jharia who was appointed as Patwari on 31.7.1978 and at the relevant time was posted as Patwari in Kundam Tehsil, District Jabalpur.

3. A show cause notice was issued to him alleging tampering of 'Rin Pustika' on 23.7.1999 to which a reply was filed by him, not being satisfied by which the respondent no.3 issued a charge sheet to the petitioner's husband on 11.8.1999 which was received by him on 23.9.1999. The petitioner's husband submitted a reply to the charge sheet on 6.12.1999. Thereafter the Tehsildar Kundam was appointed as an Inquiry Officer for conducting the Departmental Enquiry against the petitioner's husband and as many as 14 witnesses were examined therein. The enquiry report was submitted by the Tehsildar on 13.3.2000 pursuant to which order dated 4.4.2000 was issued by the Sub Divisional Officer dismissing the petitioner's husband from service. The petitioner's husband preferred an appeal against the impugned order before the Collector which was also dismissed by order dated 12.6.2000.

4. It is stated that subsequent thereto the petitioner's husband died on 14.6.2000 and, therefore, the petitioner filed a review application before respondent no.2 on 2.8.2000 which was also dismissed by him on 5.8.2000. Being aggrieved by the aforesaid orders, the petitioner has filed the present petition praying for the following reliefs:-

"i. It is therefore prayed that the family pension be given to the petitioner.

ii. It is also prayed that all the service benefits of the husband of the petitioner be also given to the petitioner treating her husband in service with retrospective effect with interest.

iii. It is further prayed that compassionate appointment be also given to the son of the petitioner.

iii(a). It is therefore, prayed that the order dt. 4-4.2000 (Annexure A-6), dt. 12.6.2000 (Annexure A-7) and 5.8.2000 (Annexure A-8) may kindly be quashed giving all benefits to the petitioner with retrospective effect.

iv. Any other relief which this Hon'ble Tribunal deems fit and proper in the facts and circumstances of the case may also kindly be granted in favour of the petitioner."

5. When the matter came up for hearing before the learned Single Judge on 8.4.2010 it was argued that, in view of the provisions of Section 104 of the M.P. Land Revenue Code, 1959 (hereinafter referred to as 'the Code'), the competent authority to appoint as well as dismiss the petitioner's husband, who was a Patwari, was the Collector and in such circumstances, in view of the Division Bench judgment of this Court in the case of *Vishwanath Prasad vs. Board of Revenue*, 1964 MPLJ SN 38 and the recent decision of the Single Bench in the case of *Vinod Kumar Khare vs. State of M.P and Others*, 2008 (4) MPLJ SN 44, the impugned orders be quashed.

6. On the other hand the learned Govt. Advocate appearing for the respondent State brought to the notice of the learned Single Judge another Division Bench judgment of this Court in the case of *Mangilal vs. State of M.P. And Others*, 1995 RN 67 and submitted that the Sub Divisional Officer was competent to dismiss the petitioner's husband in view of the fact that the powers of the Collector under section 104 (2) of the Code had been conferred by the State upon the Sub Divisional Officer by notification dated 9.10.1959. The learned counsel for the State also placed reliance on the provisions of Rule 8 of the Schedule appended to the M.P. Civil Services (Classification, Control and Appeal) Rules, 1966 (hereinafter referred to as 'the Rules of 1966') which prescribed that the Disciplinary Authority of the Patwari would be the Sub Divisional Officer who was also the appointing authority.

7. The learned Single Judge took into consideration the provisions of Section 104 of the Code and the notification dated 1.10.1959 published in the M.P. Gazette dated 9.10.1959 issued under the provisions of Section 24(2) of the Code conferring powers on the Sub Divisional Officer to exercise powers of the Collector and also took into consideration the provisions of Rule 8 of the Schedule appended to the Rules of 1966. The learned Single

Judge, thereafter, took into consideration the Division Bench judgment of this Court rendered in the cases of *Vishwanath Prasad* (supra) and *Mangilal* (supra) and in view of the following discussion has referred the matter to this Full Bench:-

“(10) This question again came up for consideration before another Division Bench in *Mangi Lal* (supra) wherein the Division Bench considered the judgment of *Vishwanath Prasad* held thus:

“9. Learned counsel for the appellant has referred to a case reported in 1964 MPLJ Note (38) (*Vishwanath Prasad v. Board of Revenue*) and submitted that dismissal of a Government servant appointed by the Collector by S.D.O is in valid. We are in agreement with the provision of law made therein, but here case is the different. The power of appointment has been delegated to the S.D.O vide notification referred to above. Thereafter, it is SDO who appointed him, according to the plaintiff appellant, as such the dismissal by him, after due enquiry, would be legal and valid.”

The Division Bench found that in view of the powers conferred by the State Govt. under Section 24(2) by Notification dated 9.10.1959, the SDO was competent authority to pass a punishment order. The Division Bench though agreed with the judgment of *Vishwanath Prasad* but held that the SDO who appointed the Patwari was competent to dismiss him which judgment is apparently in conflict of the law laid down by earlier Division Bench in *Vishwanath Prasad*. Recently, a learned Single Judge of this Court in *Vinod Kumar Khare* held that the Collector is empowered to appoint Patwari and only he can dismiss the patwari. Any order passed of removal of Patwari by the SDO was without jurisdiction. The learned Single Judge considered the notification dated 9.10.1959 and another Single Bench judgment of this Court in *A.K.Khare vs. State of M.P.* in W.P.No.7785/2003 dated 10.1.2005, while laying down such proposition.

(11) From the perusal of the aforesaid, it is apparent that in none of the judgments the provision as contained in M.P.Civil Services (Classification, Control and Appeal) Rules, 1966, in particular Rule 8 and the Schedule, were considered, providing provision for initiating disciplinary proceedings and for imposing penalty. The legislation by the aforesaid Rules specifically provided that the S.D.O shall be the appointing authority and competent authority to impose all the penalties as provided in Rule 9, and the Collector is the appellate authority but the aforesaid aspect has been escaped from the notice of the earlier Benches.

(12). Apart from this, apparently there are two conflicting judgments on the issue one by *Vishwanath Prasad and another by Mangi Lal*.

(13). In view of the aforesaid, matter deserves to be referred to a larger bench for considering the correctness of either of the aforesaid division Bench judgments.”

8. In view of the aforesaid reference, this Full Bench is required to consider the question as to the competency of the Sub Divisional Officer to dismiss a Patwari and as to whether there is any conflict between the law laid down by the Division Bench of this Court rendered in the case of *Vishwanath Prasad* (supra) and *Mangilal* (supra).

9. During the course of the arguments subsequent Single Bench judgments rendered in the case of *Vinod Kumar Khare vs. State of M.P. and Others*, ILR 2008 (M.P.) 1436, *Phulloo Ram Kol vs State of M.P. and Others*, W.P No.8777/2003 decided on 25.9.2008, *Ashok Kumar Khare vs. State of M.P. and Others*, W. P No.7785/2003 decided on 10.1.2005 and *Ravindra Kumar Gupta vs. State of M.P. and Others*, W.P No.10863/2009 decided on 5.8.2010 were also placed before this Court in support of the rival submissions.

10. The provision of Section 104 of the Code, which is relevant for deciding the issue, reads as under:-

“104. Formation of Patwaris' circles and appointment of Patwaris thereto – (1) The Collector shall from time to time arrange the villages of the Tahsil in patwari circles and

may, at any time, alter the limits of any existing circle and may create new circles or abolish existing ones.

(2) The Collector shall appoint one or more patwaris to each patwari circle for the maintenance and correction of land records and for such other duties as the State Government may prescribe.

Sub-Section (2) which was earlier to the amendment dated 23.6.1961 was having following words before the Collector "subject to the rules made under Section 258". The aforesaid words were omitted by Section 5 of the M.P. Act No.24 of 1961."

11. A perusal of Section 104 (2) of the Code clearly indicates that the legislature has conferred upon the Collector power to appoint one or more Patwaris' to each Patwari Circle for maintenance and correction of land records and for such other duties as the State Government may prescribe.

12. Section 22 and 24 of the Code are in the following terms:-

"22. Sub-Divisional Officers-(1) The Collector may place one or more Assistant Collectors or Deputy Collectors in-charge of a sub-division of a district or in-charge of two or more sub-divisions of a district.

(2) Such Assistant Collector or Deputy Collector shall be called a Sub-Divisional Officer and shall exercise such powers of a Collector as the State Government may, by notification, direct.

24. Conferral by State Government of powers of Revenue officers on officials and other persons—(1) The State Government may confer on any person the powers conferred by or under this Code on any Revenue Officer."

13. A perusal of the aforesaid sections makes it clear that while Section 24 is more in general terms, Section 22 which deals with Sub Divisional Officer specifically provides that the Sub Divisional Officer shall exercise such powers of the Collector as the State Government may by notification direct and, therefore, the provisions under section 22 of the Code empowers the State to prescribe such powers of the Collector that may be exercised by the Sub Divisional Officer by issuing a notification.

14. On 1.10.1959 the State Government issued three notifications, two under section 24 of the Code and one under section 22 of the Code which were published in the M.P. Gazette on 9.10.1959. Notification No.11429-CR-653-V11-N-2 dated 1.10.1959 published in the M.P. Gazette on 9.10.1959 issued under section 22 (2) of the Code is in the following terms:-

“In exercise of the powers conferred by sub-section (2) of section 22 of the Madhya Pradesh Land Revenue Code, 1959 (No.20 of 1959), and in supersession of all previous notifications on the subject, the State Government hereby directs that all Sub-Divisional Officers shall exercise powers of a Collector under sub-section (2) of section 57, sub-section (5) of section 59, section 87, sub-section (2) of section 104 and sub-section (2) of section 110 of the said Code, within their respective jurisdictions.”

15. On a perusal of the aforesaid notification it is clear that apart from other persons the power of the Collector under section 104 (2) to appoint a Patwari has been directed to be exercised by the Sub Divisional Officer by the State Government by the aforementioned notification issued in exercise of powers under section 22 (2) of the Code and, therefore, the Sub Divisional Officer has the power to appoint a Patwari in view of the aforesaid provisions of law. The provisions of Rule 8 of the Rules of 1966 and the Schedule appended thereto, which were framed subsequent to the statutory provisions of the Code and the notification issued thereunder, is in tune with and in accordance with the aforesaid statutory provisions and provides that the Sub Divisional Officer shall be the appointing as well as the Disciplinary Authority of the Patwaris:

16. In the case of *Vishwanath Prasad* (supra) it was held as under in paragraph 5 of the judgment record of which was perused by this Court :-

“5. In our judgment, this petition must be accepted. The petitioner having been admittedly appointed by the Collector could not be dismissed by the Sub-Divisional Officer who was subordinate in rank to the Collector. Article 311(1) expressly provides that no civil servant shall be dismissed or removed by an authority subordinate to that by which he was appointed. As pointed out by the Supreme Court in *Mahesh Prasad v. State of U.P* (A.I.R 1955 S.C 70), Article 311(1) cannot be

read as implying that the removal must be by the very same authority who made the appointment or by his direct superior and that it is enough if the removing authority is of the same rank or grade. The subordination of the authority dismissing or removing a civil servant must be in respect of rank and not in respect of functions. This is clear also from the decisions of the Privy Council in *Rangachari v. Secretary of State*, (A.I.R 1937 P.C. 27) and *North-West Frontier Province v. Suraj Narain* (A.I.R 1949 P.C 112). These two Privy Council cases lay down that the authority making the appointment cannot delegate the power of dismissal or removal so as to destroy the protection afforded by section 240 of the Government of India Act, 1935 and section 96B(1) of the Government of India Act, 1919, so that the dismissal of a servant by an authority subordinate to that by which he was appointed will be unlawful and inoperative, even if the subordinate authority was authorized under the rules to dismiss a civil servant. To the same effect are the decisions in *Hiralal v. State of M.P.*, (A.I.R 1954 Nag.258) and *Ramchandra Gopalrao v. D.I.G Police*, (A.I.R 1957 M.P. 126). The dismissal, therefore, of the petitioner by the Sub-Divisional Officer was clearly illegal. The notification issued on 1st October 1959 authorizing the Sub-Divisional Officer to exercise the powers of a Collector under section 104(2) of the Code can be of no assistance to the respondents for the simple reason that the petitioner was not appointed by any Sub-Divisional Officer. No order was placed before us showing that there was a fresh appointment of the petitioner as a patwari by an order made by the Sub-Divisional Officer when his services were placed at the disposal of the Sub-Divisional Officer, Ambikapur, after the implementation of the Nistar scheme. The petitioner's dismissal by the Sub-Divisional Officer, Ambikapur, was clearly in violation of Article 311(1) of the Constitution".

17. From a perusal of the above it is clear that while the Court specifically took note of the notification conferring powers of the Collector on the Sub Divisional Officer it went on to hold that the petitioner therein had admittedly been appointed by the Collector as a Patwari but was dismissed by the Sub

Divisional Officer who was subordinate in rank to the Collector and, therefore, in view of the provisions of Article 311 (1) of the Constitution of India the dismissal of the Patwari by the Sub Divisional Officer was contrary to law.

18. We are constrained to observe that the Division Bench, while holding the aforesaid, went on to wrongly observe that the authority making the appointment would not delegate its power of dismissal or removal to an authority subordinate to it in view of Article 311(1) of the Constitution of India inasmuch as in the instant case the power of appointment or dismissal has not been delegated by the Collector to the Sub Divisional Officer but has in fact been conferred upon the Sub Divisional Officer by the State Government itself in exercise of the statutory provisions of Section 22(2) of the Code.

19. In the case of *Mangilal* (supra) the issue as to the power of the Sub Divisional Officer again came up for adjudication before the Division Bench of this Court. In that case it was alleged by the appellant that he was initially appointed as Patwari on 3.12.1959 by the Collector but was subsequently removed from service by the Sub Divisional Officer and the appeal filed by the petitioner therein before the Collector also suffered dismissal. However, subsequently Mangilal was again given fresh appointment as a Patwari on 18.11.1961 and was again dealt with departmentally and dismissed from service by the Sub Divisional Officer on 12.11.1973.

20. Appellant Mangilal relying upon the decision in the case of *Vishwanath Prasad* (supra) submitted that he could not have been removed by the Sub Divisional Officer as his initial appointment on the post of Patwari had been made by the Collector in view of the provisions of Article 311 (1) of the Constitution of India. However, the Division Bench recorded a finding to the effect that the subsequent fresh appointment of the petitioner having been made by the Sub Divisional Officer, he could have been removed by the Sub Divisional Officer in view of the notification issued by the State Government under section 22(2) of the Code, distinguishing the decision in the case of *Vishwanath Prasad* (supra) on facts, in the following terms:-

“9. Learned counsel for the appellant has referred to a case reported in 1964 MPLJ Note (38) (*Vishwanath Pd. v. Board of Revenue*) and submitted that dismissal of a Government servant appointed by the Collector by S.D.O is invalid. We are in agreement with the provision of law made

therein, but here case is the different. The power of appointment has been delegated to the S.D.O vide Notification, referred to above. Thereafter, it is S.D.O who appointed him, according to the plaintiff appellant, as such the dismissal by him, after due enquiry, would be legal and valid.”

21. On a careful scrutiny of the aforesaid two judgments, it is clear that while in the case of *Vishwanath Prasad* (supra) the appointment of the Patwari had been made by the Collector but he was dismissed from service by the Sub Divisional Officer, in the case of *Mangilal* (supra) the appointment of the Patwari had been made by the Sub Divisional Officer and he was also removed by the same authority and in such circumstances the factual matrix on the basis of which the judgment in the case of *Vishwanath Prasad* (supra) and *Mangilal* (supra) were rendered was substantially different and, therefore, the subsequent Division Bench in the case of *Mangilal* (supra) has rightly distinguished the judgment of *Vishwanath Prasad* (supra) in para 9 of its judgment.

22. In view of the aforesaid it is apparent that there is no conflict in the two Division Benches of this Court, i.e. in the case of *Vishwanath Prasad* (supra) and *Mangilal* (supra) and the reference by the learned Single Judge regarding the correctness of either of the two judgments need not be answered.

23. At the same time we are constrained to clarify and observe that in both the aforesaid Division Bench judgments the narration of facts to the extent that the Collector had delegated his powers to the Sub Divisional Officer to dismiss a Patwari is factually incorrect in view of the fact that the power to appoint a Patwari has been conferred by the State Government itself upon the Sub Divisional Officer and has not been delegated by the Collector as is clear from a perusal of the notification issued by the State in exercise of its statutory powers under section 22 (2) of the Code.

24. In view of the aforesaid provision of law and the notification issued thereunder we are of the considered opinion that the Sub Divisional Officer has been conferred powers to appoint a Patwari by the State Government itself by notification dated 1.10.1959 published in the M.P. Gazette dated 9.10.1959 issued under the provisions of Section 22 (2) of the Code and that the provisions of Rule 8 of the Rules of 1966 and the Schedule appended thereto issued subsequent to the enactment of the Code are in conformity with the statutory provisions of the Code and, therefore, the Sub Divisional

Officer has the power to appoint a Patwari and as a consequence thereof the power to dismiss him.

25. After carefully going through the decisions in the case of *Vinod Kumar Khare vs. State of M.P. And Others*, ILR (2008) M.P. 1436; the judgment in the case of *Ashok Kumar Khare vs. State of M.P. and others*, W.P No.7785/2003 dated 10.1.2005 and the judgment in the case of *Phulloo Ram Kol vs. State of M.P. and others*, W.P No.8777/2003 dated 25.9.2008 we are of the considered opinion that they do not lay down the correct law in view of the fact that they were rendered in ignorance of the provisions of Section 22(2) of the Code, the notification issued thereunder conferring power of the Collector on the Sub Divisional Officer to appoint a Patwari and the Division Bench judgment of this Court rendered in the case of *Vishwanath Prasad* (supra), *Mangilal* (supra) and in the case of *Manmohan Singh Thakre vs. Govt. of M.P. and others*, 1978 (II) MPWN Note 116, which were not brought to the notice of the learned Single Judge while deciding the aforesaid petitions. At the same time on going through the judgment in the case of *Ravindra Kumar Gupta* (supra), we approve and affirm the view taken therein after considering all the aforesaid decisions.

26. The conclusion recorded by us on the question referred to by the Single Bench are summarized as under:-

(a) That the Sub Divisional Officer has been conferred powers of the Collector to appoint a Patwari in view of the provisions of Section 22 (2) of the Code and the notification dated 1.10.1959 published in the M.P. Gazette on 9.10.1959 and as a consequence thereof he also has the power to remove a Patwari from service.

(b) That there is no conflict between the decision rendered in the case of *Vishwanath Prasad* (supra) and *Mangilal* (supra) as the factual matrix on the basis of which the two judgments were rendered was totally different and that the Division Bench in the case of *Mangilal* (supra) on that count has rightly distinguished the case of *Vishwanath Prasad* (supra).

(c) The Single Bench judgments in the case of *Vinod Kumar Khare vs. State of M.P. And Others*, ILR (2008) M.P. 1436; *Ashok Kumar Khare vs. State of M.P. and others*, W.P No.7785/2003 dated 10.1.2005; and *Phulloo Ram Kol vs.*

State of M.P. and others, W.P No.8777/2003 dated 25.9.2008 are hereby overruled while the judgment in the case of *Ravindra Kumar Gupta vs. State of M.P. and Others*, W.P No.10863/2009 decided on 5.8.2010 is hereby affirmed and approved.

The reference made to this Full Bench is answered accordingly.

27. Apart from the aforesaid issue, the other issues raised by the petitioner in the petition challenging the validity of the impugned orders shall be heard and decided by the Single Bench on merits.

28. The petition be, accordingly, placed before the learned Single Judge for further hearing.

Order accordingly.

I.L.R. [2011] M. P., 586

FULL BENCH

*Before Mr. Justice S.S. Kemkar, Mr. Justice S.K. Seth &
Mr. Justice Prakash Shrivastava*

S.A. No. 478/2004 (Indore) decided on 28 January, 2011

BADRILAL (SHRI)

... Appellant

Vs.

SMT. SITA BAI (DEAD)

THROUGH L.RS. BIRDICHAND JOSHI & ors.

... Respondents

Accommodation Control Act, M.P. (41 of 1961), Section 12(1)(f)
- Right of eviction in respect of non-residential accommodation is not restricted to the landlord for his own business - There is a scope for a liberal interpretation of the phrase "his business" so as to include the business of spouse and closely dependent member of the family covered by Section 2(e) of the Act.

Earlier Division Bench judgment of M.P. High Court in matter of Nandkishore Vs. Sarjudevi [1974 MPLJ 293] is no longer a good law.

Keeping in view the law laid down by the Supreme Court in the judgments mentioned above and also the object of the enactment and adopting a balanced approach, we find that phrase "his business" in Section 12(1)(f) of the M.P. Act not only means the need for continuing or starting the

individual business of the landlord but it also includes the need for continuing or starting the business of any member of the family covered by Section 2(e) of the M.P. Act, on whom the landlord is so closely dependent or who is so closely dependent on the landlord that his need for all practical purposes is the need of the landlord. Since major sons and unmarried daughters have been separately included in Section 12(1)(f), therefore, they stand of different footing and the landlord can seek eviction for their independent individual business need even if they are not dependent on landlord or landlord is not dependent on them. (Paras 22 & 30)

स्थान नियंत्रण अधिनियम, म.प्र. (1961 का 41), धारा 12(1)(एफ) – अनिवासिक स्थान के संबंध में बेदखली का अधिकार मूस्वामी के लिए उसके स्वयं के कारोबार तक सीमित नहीं है – सूचित “अपना कारोबार” के उदार अर्थान्वयन की गुंजाईश है, ताकि पति या पत्नी और अधिनियम की धारा 2(ई) के अंतर्गत आने वाले परिवार के नजदीकी आश्रित सदस्य के कारोबार को सम्मिलित किया जा सके।

म.प्र. उच्च न्यायालय की खण्ड न्यायपीठ का नन्दकिशोर वि. सरजूदेवी १९७४ डब्ल्यू २९३, के मामले का पूर्ववर्ती निर्णय अब मान्य विधि नहीं रही है।

Cases referred :

1974 MPLJ 293, 1951 NLJ 250, AIR 1997 SC 628, AIR 2002 SC 2256, AIR 2003 SC 2024, AIR 2005 SC 2362, AIR 1974 SC 1026, (1979) 1 SCC 273, (1980) 1 SCC 290, (1987) 4 SCC 238, (1989) 4 SCC 612, (1998) 2 SCC 1, (1999) 6 SCC 222, (1999) 7 SCC 589, (2008) 9 SCC 699, (2010) 5 SCC 196, (2009) 9 SCC 729.

B.L. Pavecha with Akshat Pahadia & M.B. Baraniya, for the appellant.
S.R. Saraf, for the respondents.

G.M. Chaphekar, Amicus Curiae.

ORDER

The Order of the Court was delivered by **Prakash Shrivastava, J** :- This Full Bench has been constituted for deciding the following question :-

(i) Whether the decision in *Nandkishore Vs Sarjudevi* reported in 1974 M.P.L.J. 293 is no longer good law in view of the subsequent decisions of the Supreme Court and as such, has it lost efficacy as a binding precedent?

2. A brief background is that a suit was filed by the respondent-landlord for eviction of the appellant-tenant inter alia on the ground of bona fide need

of starting the business of her grand-son from the suit accommodation under Section 12(1)(f) of the Madhya Pradesh Accommodation Control Act, 1961 (for short hereinafter referred to as "the M.P. Act). The suit was decreed by the trial Court and the eviction decree was affirmed by the First Appellate Court and the second appeal was admitted by this Court on the substantial question relating to recognizing the business need of grandson of landlord under Section 12(1)(f) of the M.P. Act.

3. At the time of hearing of the second appeal before the learned Single Judge, counsel for the appellant had placed reliance upon the Division Bench judgment of this Court in the matter of *Nandkishore V. Sarjudevi* reported in 1974 MPLJ 293, wherein the need of a landlord's spouse for eviction was not recognized under Section 12(1)(f) of the M.P. Act. As against this the learned counsel for the respondent had advanced arguments based upon the Division Bench judgment of Nagpur High Court in the matter of *V.N. Deshmukh V. K.M. Kothari* reported in 1951 N.L.J. 250 and the judgments of the Supreme Court in the matter of *K.V. Muthu V. Aangamathu Ammal* reported in AIR 1997 SC 628, *Joginder Pal Vs. Naval Kishore Behal* reported in AIR 2002 SC 2256 and *Dwarka Prasad V. Niranjana* reported in AIR 2003 SC 2024, and had submitted that in view of these subsequent judgments of the Supreme Court the need of the grandson of the landlord was covered under Section 12(1)(f) of the M.P. Act and the earlier Division Bench judgment in the matter of *Nandkishore* (supra) was no longer a good law. Learned single Judge further referring to the judgment of the Supreme Court in the matter of *Kailash Chand and Another V. Dharam Das* reported in AIR 2005 SC 2362 observed that in all these decisions while construing other rent legislations, their Lordships of the Supreme Court have preferred dynamic and purposive interpretation and refused to take a narrow and parochial view of the expression "of his own" in the context of eviction of a tenant on the ground of bona fide requirement, therefore, the learned Single Judge had directed for placing the matter before the Hon'ble Chief Justice for referring the above quoted question for decision to a larger bench and accordingly this Full Bench has been constituted.

4. Shri B.L. Pavecha, learned senior counsel appearing for the appellant-tenant submitted that the subject of legislation relating to the rent Act is a State subject, due to which different states have differently worded rent enactments, therefore, they are to be interpreted in the light of the expressed language used therein. Referring to the legislative history of rent enactment in

Madhya Pradesh, he submitted that the Section 12(1)(f) of the M.P. Act has been intentionally worded in such a manner that only the need of the landlord, his major sons or unmarried daughters is covered under this Section. He has also referred to the report of the Select Committee to emphasize his argument relating to the legislative intent. He has submitted that subsequent judgments of the Supreme Court noted in the reference order are on the interpretation of the provisions of the rent Acts of other States, the wordings of which are different from M.P. Act, therefore, those judgments cannot be relied upon for interpreting the provisions of the M.P. Act. He has further submitted that interpretation of Section 12(1)(f) of the M.P. Act done by this Court in the matter of *Nandkishore* (supra) is correct. He has relied upon the judgment of the Supreme Court in the matter of *D.N. Sanghvi and Sons Vs. Ambalal Tribhuwan Das* reported in AIR 1974 SC 1026 and submitted that the question referred is concluded by this judgment.

5. Shri S.R. Saraf, learned counsel appearing for the respondent-landlord referring to the judgments of the Supreme Court has submitted that the words "*his business*" in Section 12(1)(f) of the M.P. Act cannot be narrowly constituted so as to exclude the business need of the other family members of the landlord. He submitted that the judgment of the Supreme Court in the matter of *D.N. Sanghvi* (supra) was on a different issue and the question referred to this Full Bench is not concluded by the said judgment. He has further submitted that in view of the subsequent judgments of the Supreme Court, the earlier Division Bench judgment of this Court in the matter of *Nandkishore* (Supra), is no longer a good law.

6. Shri G.M. Chaphekar, learned senior advocate and the amicus curiae appointed by this Court, has submitted that looking to the object and purpose of the M.P. Act, a meaningful interpretation is required to be given to Section 12(1)(f) of the M.P. Act keeping in view the changing social milieu. Referring to the several judgments of the Supreme Court he submitted that phrase "*his business*" in Section 12(1)(f) of the M.P. Act includes the business need of any family member of the landlord whose need is connected with the need of the landlord. He has further submitted that while interpreting Section 12(1)(f) of the M.P. Act, intention of the legislature and the purpose of the enactment is to be kept in mind and the narrow interpretation given by the Division Bench of this Court in the matter of *Nandkishore* (supra) is no longer a good law in the changed circumstances and in view of the subsequent judgments of the Supreme Court.

7. We have heard the learned counsel for the parties and perused the judgments cited by them.

8. Section 12(1)(f) of the Madhya Pradesh Accommodation Control Act, 1961 provides for eviction of a tenant for the bona fide need of the landlord for the purpose of continuing or starting "*his business or that of his major sons or unmarried daughters*" and reads as under :-

12(1) Notwithstanding anything to the contrary contained in any other law or contract, no suit shall be filed in any civil court against a tenant for his eviction from any accommodation except on one or more of the following grounds, namely :-

(f) that the accommodation let for non-residential purpose is required bona fide by the landlord for the purpose of continuing or starting *his business or that of any of his major sons or unmarried daughters* if he is the owner thereof or for any person for whose benefit the accommodation is held and that the landlord or such person has no other reasonably suitable non-residential accommodation of his own in his occupation in the city or town concerned.

9. Following is the Section 2(e) of the M.P. Act which defines member of the family :-

2(e) "*Member of the family*" in case of any person means the spouse, son, unmarried daughter, father, grandfather, mother, grandmother, brother, unmarried sister, paternal uncle, paternal uncle's wife or widow or brother's son or unmarried daughter living jointly with, or any other relation dependent on him.

10. Prior to the M.P. Act of 1961, under Section 13(3)(vi)(c) of C.P. and Berar Letting of Houses and Rent Control Order, 1949 the landlord could seek eviction for the need of a bona fide business of his own which he intended to start or was already carrying on in the city or town concerned and under Section 4(h) of Madhya Bharat Accommodation Control Act, 1955 the suit for eviction could be filed by the landlord in the case of non residential

accommodation on the ground that the landlord genuinely required the accommodation for continuing or starting "*his own business*" or that of any person of his family bonafidely residing or to reside with him.

11. The Division bench of this Court in the matter of *Nandkishore* (supra) had held that in view of the clear wordings of Section 12(1)(f) of the M.P. Act, there is no scope for liberal interpretation of the phrase "*his business*" so as to include the business of a spouse of the landlord since the legislature wanted to restrict the right of eviction regarding the non residential accommodation, whereas in the subsequent judgments the Supreme Court, while interpreting the similar or slightly differently worded provisions of the rent Acts of other states, has given wider meaning to the business need of the landlord and has included therein the need of the other family members of the landlord subject to satisfaction of certain conditions. Thus we are required to interpret Section 12(1)(f) of the M.P. Act keeping in view the settled principle of interpretation of statutes and to examine if the earlier Division Bench judgment of this Court in the matter of *Nandkishore* (supra) delivered on 15/12/1973 i.e. about 37 years back, is still a good law.

12. It is the settled principle of interpretation that when the words of statute are clear, plain or unambiguous i.e. they are reasonably susceptible to only one meaning, the courts are bound to give interpretation to that meaning. The intention of the legislature is to be gathered from the language used taking into account what has been said or what has not been said.

13. While interpreting the rent legislation, we must keep in mind that some provisions of the rent Act are beneficial to the landlord and some are to the tenant and a balance is required to be struck so that equal treatment is meted out to both the sections of the society. The Supreme Court in various decisions has reiterated the principles which are required to be followed in interpreting the rent legislation.

14. In the matter of *Mst. Bega Begum and others V. Abdul Ahad Khan (dead) by Lrs. and others* reported in 1979(1) SCC 273, the Supreme Court has guarded against any artificial extension, entailing, stretching or straining of language so as to make it impossible or extremely difficult for the landlord to get a decree for eviction by observing that such a course would defeat the very purpose of the rent Act. In the matter of *Kewal Singh Vs. Lajwanti* reported in 1980(1) SCC 290, it is held that the provision regarding bona fide need should be meaningfully construed so as to make the relief granted to

the landlord real and practical. In the matter of *Prabhakaran Nair V. State of Tamil Nadu* reported in 1987(4) SCC 238, the Supreme Court took the view that benefit of society at large needs an equalistic balance between apparently conflicting interests of the owners of the property and the tenant by inducing and encouraging landlords to part with available accommodation for reasonable length of time to accommodate tenants without unreasonably restricting their right to have the property being restored to them, specially when they genuinely require it. The Supreme Court noted that it will ensure a boost to construction activity which in turn will result into availability of more houses and also that tenants are not in all cases weaker sections and there are those who are weak both amongst the landlords as well as the tenants. In the matter of *Arjun Khiamal Makhijani V. Jamnadas C. Tuliani and others* reported in 1989(4) SCC 612 the Supreme Court observed that the rent legislations are capable of being categorized into two: those beneficial to the tenants and those beneficial to the landlord, and interpreting the provision beneficial to the landlord in favour of the tenant, would negate the very principle of interpretation of a beneficial legislation. In the matter of *Malpe Vishwanath Acharya V. State of Maharashtra* reported in 1998(2) SCC 1, the Supreme Court emphasized the need for striking a balance between the rival interests by holding that need to protect the tenants is coupled with an obligation to ensure that the tenants are not conferred with a benefit disproportionately larger than the one needed and that socially progressive legislation must have a holistic perception and not a short sighted parochial approach. In the matter of *Shiv Sarup Gupta V. Dr. Mahesh Chand Gupta* reported in 1999(6) SCC 222, the Supreme Court has reminded that the concept of bona fide need or genuine requirement needs a practical approach keeping in view the realities of life and an approach too liberal or too conservative or pedantic is to be guarded against. The Supreme Court in the matter of *Jogindar Pal* (supra) referring to the earlier judgments on the point, has observed that :-

"8. The Rent Control Legislations are heavily loaded in favour of the tenants treating them as weaker sections of the society requiring legislative protection against exploitation and unscrupulous devices of greedy landlords. The Legislative intent has to be respected by the Courts while interpreting the laws. But it is being uncharitable to legislature if they are attributed with an intention that they lean only in favour of the tenants and while being fair to the tenants go to the extent of being unfair to the landlords. The Legislature is fair to the

tenants and to the landlords – both. The Courts have to adopt a reasonable and balanced approach while interpreting Rent Control Legislations starting with an assumption that an equal treatment has been meted out to both the sections of the society. In spite of the overall balance tilting in favour of the tenants, while interpreting such of the provisions as take care of the interest of landlord the Court should not hesitate in leaning in favour of the landlords. Such provisions are engrafted in rent control legislation to take care of those situations where the landlord too are weak and feeble and feel humble."

15. In the matter of *Dwarkaprasad* (supra) Supreme Court has expressed that the ground of eviction has to be liberally construed and a beneficial provision must be meaningfully construed so as to advance the object of the Act. Similarly in the matter of *Kailash Chand* (supra) it has been expressed that the scope is always there for the Court to interpret the law with pragmatism and consistent with the demands of varying situations and that the life is not static and so the law cannot afford to be static.

16. Before interpreting the provisions of Section 12(1)(f) of the M.P. Act it would be beneficial to look into the judgments of the Supreme Court in which similar or slightly differently worded provisions of the rent Acts of other states have been interpreted. In the matter of *Jogindar Pal* (supra) the Supreme Court while considering the business need of landlord's son and interpreting the expression "*for his own use*" in Section 13(3)(a)(ii) of East Punjab Urban Rent Restriction Act, has held that the requirement is not that of the landlord alone in the sense that the landlord must for himself require the accommodation but the requirement of a member of the family or a person on whom the landlord is dependent or who is dependent on the landlord can be considered to be the requirement of the landlord for his own use. The said interpretation has been done keeping in view the socio religious milieu and the fact that the landlord may require tenanted premises to settle a person closely connected with him to make him economically independent so as to support himself and/or the landlord. The Supreme Court observed that we have to give colour and content to the expression and provide the skin of a living thought to the skeleton of the words which the legislature has not itself chosen to define and the Indian society, its customs and requirement and the context where the provision is set in the legislation are the guides leading to the acceptance of such a interpretation.

17. In the matter of *Dwarkaprasad* (supra) while considering the business need of younger brother of the landlord and interpreting the phrase "*for occupation by himself*" of Section 13(1)(g) of the Bombay Rents, Hotel and Lodging House Rates Control Act (57 of 1947), the Supreme Court observed that even when the plaintiff is sole owner of the property, it is open to him to use the property for the benefit of his larger family which includes his brothers and sisters and the ground for eviction under Section 13(1)(g) has to be liberally construed and confining the said ground to the landlord alone will defeat the very object of the provision.

18. In the matter of *Kailash Chand* (supra) while considering the residential need of large family of landlord and construing the expression "*his own occupation*" in Section 14(3)(a)(1) of the H.P. Urban Rent Control Act (25 of 1987), the Supreme Court held it does not mean occupation by the landlord alone and as an individual, it includes the requirement of the family members of the landlord. While interpreting the provision in such a manner, the Supreme Court observed that such provisions should be so interpreted as to advance the cause of justice instructed by the realities of life and practical wisdom and further, that, while protecting the tenants the relief could not be denied to the landlord who genuinely and bonafidely requires premises for occupation by himself or for the members of his family. The Nagpur High Court also in the matter of *V.M. Deshmukh* (supra), mentioned in reference order, while interpreting expression "*business of his own*" in Section 13(vi)(c) of C.P. and Berar Letting of Houses and Rent Control Act, 1949, had taken the view that need of the landlord's wife to run maternity home would be covered.

19. Thus the Supreme Court has interpreted the similar provision in the rent acts of the other states by giving wider meaning to the need of the landlord and adopted a balanced approach by protecting the eviction of the tenant and at the same time safeguarding the interest of the landlord.

20. Coming to Section 12(1)(f) of the M.P. Act, under this Section a landlord can seek eviction for the purpose of continuing or starting "*his business or that of his major sons or unmarried daughters*". The phrase "*his business*" in this Section can not be held to include the independent business need of any member of the family of landlord since such an interpretation would make the words "*that of his major sons and unmarried daughters*" otiose. These words cannot be held to be surplusage in view of Select Committee Report referred in later part of this judgment.

21. At the same time restricting the phrase "*his business*" to the individual need of the landlord alone would be too narrow an interpretation which would defeat the object of the Act itself and would run counter to the Supreme Court judgments mentioned above. Such a narrow interpretation would also lead to undesirable and absurd result, in as much as in a given case a landlord who is physically handicapped having no source of income, solely dependent upon his spouse or brother, would not be able to seek eviction for their business need though such a need may be practically his own need for survival. Same may also be the position when the landlord would want eviction for the business need of his divorced daughter or widowed daughter-in-law solely dependent on him. It would not be possible to enumerate all such circumstances when the business need of the family member of the landlord would be inextricably connected with that of the landlord, yet due to narrow interpretation of the provision, he would not be able to seek eviction for such a need.

22. Keeping in view the law laid down by the Supreme Court in the judgments mentioned above and also the object of the enactment and adopting a balanced approach, we find that phrase "*his business*" in Section 12(1)(f) of the M.P. Act not only means the need for continuing or starting the individual business of the landlord but it also includes the need for continuing or starting the business of any member of the family covered by Section 2(e) of the M.P. Act, on whom the landlord is so closely dependent or who is so closely dependent on the landlord that his need for all practical purposes is the need of the landlord. Since major sons and unmarried daughters have been separately included in Section 12(1)(f), therefore, they stand on different footing and the landlord can seek eviction for their independent individual business need even if they are not dependent on landlord or landlord is not dependent on them.

23. Thus Section 12(1)(f) of the M.P. Act is more widely worded than the ground for eviction for business need contained in rent Act of some other states, where landlord can seek eviction for his own business, occupation or need because under Section 12(1)(f) of the M.P. Act the landlord can seek eviction for his own business need, business need of any member of his family on satisfaction of certain conditions, and additionally he can also seek eviction for the individual, independent business need of his major sons and unmarried daughters.

24. The scope of Section 12(1)(f) is narrow as compared to Section 12(1)(e) of the M.P. Act because under Section 12(1)(f) a landlord can not

seek eviction for the individual business need of a member of his family who is not dependent on him or on whom he is not dependent, other than his major son and unmarried daughter, whereas under Section 12(1)(e) landlord can seek eviction for independent residential need of any member of his family and dependency is not a relevant criteria.

25. While examining the business need of any family member of the landlord under Section 12(1)(f) of the M.P. Act, other than major son and married daughter, the test which has been laid down by the Supreme Court in the matter of *Jogindar Pal* (supra) is to be applied with slight modification and the concerned court is required to decide :-

Whether the requirement pleaded and proved may properly be regarded as the landlord's own requirement in view of the close dependency of landlord and member of his family for whose business need eviction is sought?

While answering above question, the concerned court would bear in mind :-

(i) the nature and degree of dependence between the landlord pleading the requirement as 'his own' and the member of his family who would actually use the premises.

(ii) the circumstances in which the claim arises and is put forward, and

(iii) the intrinsic tenability of the claim. The Court on being satisfied of the reasonability and genuineness of claim, as distinguished from a mere ruse to get rid of the tenant, will uphold the landlord's claim.

(iv) While casting its judicial verdict, the Court will adopt a practical and meaning full approach guided by the realities of life."

26. The aforesaid interpretation of Section 12(1)(f) of the M.P. Act given by us is not contrary to the legislation intent, which can be gathered from the report of the Select Committee to which the Bill of the M.P. Act was referred to by the State legislature in 1961. The Select Committee had opined that the provision of requiring accommodation for starting business of any member of his family was likely to be misused by the landlord and it was, therefore,

thought fit to restrict it to major sons and unmarried daughters. The interpretation given above coupled with the test which the landlord is required to satisfy, rules out the possibility of misuse of the provision by the landlord.

27. The submission of the learned counsel for the appellant based upon the judgment of the Supreme Court in the matter of *Boddu Narayanamma V. Sri Venkatarama* reported in 1999(7) SCC 589 and in the matter of *Ajit Singh V. Jit Ram* reported in 2008(9) SCC 699 that the decisions interpreting provisions of different Rent Control Acts cannot be applied to interpret a provision of the M.P. Act unless the language of two provisions is haec verba, is also of no help to him since we have interpreted Section 12(1)(f) keeping in view the expressed language of Section 12(1)(f) of the M.P. Act and applying the principles laid down by the Supreme Court, but we have not applied the interpretation given by the Supreme Court in other enactments as it is by ignoring the expressed language of the provision of the M.P. Act.

28. The submission of the counsel for the appellant referring to the judgment of the Supreme Court in the matter of *Pallawi Resources Limited V. Protos Engineering Company Private Limited* reported in 2010(5) SCC 196 and in the matter of *State V. Parmeshwaram Subramani* reported in 2009(9) SCC 729 that golden rule of construction is the grammatical construction without addition or omission of any words and the legislative intent is to be gathered primarily from the language of the statute, is also of no help to him since while interpreting Section 12(1)(f) of the M.P. Act we have neither added nor omitted any words and have kept in mind the legislative intent.

29. The learned counsel appearing for the appellant has placed reliance on the judgment of the Supreme Court in the matter of *D.N. Sanghavi* (supra) in support of his submission that question referred to this Full Bench is concluded by that judgment but such a submission can not be accepted because in that judgment the Supreme Court was dealing with the issue of need of the accommodation for partnership business, where the landlord had not even brought on record that in terms of partnership he was entitled to manage the partnership business and the possibility of other partners, being his brothers, setting up their separate business in suit accommodation was not ruled out. The Supreme Court in that judgment had specifically observed that if the deed of partnership had excluded him expressly or impliedly from the management of firm's business and had made him a sleeping partner, it could not be held that the accommodation was needed directly and substantially for his

occupation by way of business. The Supreme Court in that judgment did not held that the need of a family member covered under Section 2(e) of the M.P. Act on whom the landlord is closely dependent or who is closely dependent on the landlord, will not be covered under Section 12(1)(f) of the M.P. Act. The said aspect was not in issue before the Supreme Court and was not examined. Interpretation of the phrase "*his business*" given by us does not run counter the judgment of the Supreme Court in the matter of *D.N. Sanghavi* (supra). It is also worth noting that even after taking into account the provisions contained under Section 39(2) of the M.P. Act, the interpretation of Section 12(1)(f) of the M.P. Act given above remains unaffected.

30. Thus in view of above interpretation of Section 12(1)(f) of the M.P. Act, we hold that the earlier Division Bench judgment of this Court in the matter of *Nandkishore* (supra) laying down that right of eviction in respect of non residential accommodation under Section 12(1)(f) of the M.P. Act is restricted to the landlord for his own business and there is no scope for a liberal interpretation of the phrase "*his business*" so as to include the business of spouse, is no longer a good law.

31. Before parting we express our gratitude to learned amicus curiae for his valuable assistance.

32. The reference is answered accordingly.

Order accordingly.

I.L.R. [2011] M. P., 598

WRIT APPEAL

Before Mr. Justice Shantanu Kemkar & Mr. Justice S.K. Seth

W.A. No.297/2006 (Indore) decided on 7 July, 2010

SANJAY VICTOR

... Appellant

Vs.

STATE OF M.P. & anr.

... Respondents

Service Law - Voluntary retirement - Withdrawal from - Appellant sought voluntary retirement from service (V.R.S.) - His application was accepted vide order dated 28.11.2001 w.e.f. 7.12.2001 - On 6.12.2001 appellant submitted a letter seeking withdrawal of his proposal of V.R.S. and prayed for giving him an opportunity to serve - Held - Appellant having submitted application seeking withdrawal of his V.R.S. a day

prior to his effective date of retirement - His prayer ought to have been accepted by the employer - Appeal allowed. (Para 11)

सेवा विधि - स्वैच्छिक सेवानिवृत्ति - वापस लेना - अपीलार्थी ने सेवा से स्वैच्छिक सेवानिवृत्ति (वी.आर.एस.) चाही - आदेश दिनांक 28.11.2001 द्वारा 07.12.2001 से प्रभावी कर उसका आवेदन स्वीकार किया गया - दिनांक 06.12.2001 को अपीलार्थी ने अपने वी.आर.एस. के प्रस्ताव को वापस लेना चाहते हुए पत्र प्रस्तुत किया एवं उसे सेवा का अवसर देने की प्रार्थना की - अभিনিर्धारित - अपीलार्थी ने अपनी सेवानिवृत्ति के प्रभावी होने के दिनांक के एक दिन पूर्व अपना वी.आर.एस. वापस लेना चाहते हुए आवेदन प्रस्तुत किया - नियोक्ता द्वारा उसकी प्रार्थना स्वीकार की जानी चाहिए थी - अपील मंजूर।

Cases referred :

Order dt. 10.4.2007 passed in W.A. No. 202/2006 (*M.P. Housing Corporation & anr. Vs. Anil Pradhan & anr.*) 2002 AIR SCW 1165, AIR 1987 SC 2354, AIR 1999 SC 1579, 2006(III) MPWN 82.

S.C. Bagadia with Satpal Singh, for the appellant.

A.S. Kutumble, Addl.A.G. with Anjali Jamkhedkar, P.L., for the respondent No.1.

D.D. Vyas with Ashish Sharma, for the respondent No.2.

ORDER

The Order of the Court was delivered by SHANTANU KEMKAR, J. :-This intra Court appeal has been directed against the order dated 6.02.2002 passed by Single Bench of this Court in W.P. No.188 of 2002.

2. Brief facts, necessary for disposal of this appeal are that the appellant was working on the post of Security Guard in M.P. Police Housing Corporation (for short, "the Corporation"). In pursuance to the Voluntary Retirement Scheme floated by the Corporation on the basis of a decision taken by the State Government to close down the Corporation, the appellant submitted an application seeking voluntary retirement. In the said application he incorporated a condition that his application for voluntary retirement should be considered only in the event of closure of the Corporation and not in the event of amalgamation / re-organization or Transfer. The said application submitted by the appellant was accepted by the Corporation vide order dated 28.11.2001 (Annexure P-7) w.e.f. 7.12.2001.

3. The case of the appellant is that till the order dated 28.11.2001 and

even till today, the Corporation has not been closed down by the State Government and in the circumstances, acceptance of his application for voluntary retirement was illegal. It is also his case that prior to his actual date of release from employment, which was 7.12.2001, as per the acceptance letter dated 28.11.2001 he had already submitted a letter dated 6.12.2001 (Annexure P-8) seeking withdrawal of his proposal of voluntary retirement and prayed for giving him an opportunity to serve. However his prayer was not acceded to and he has been retired on the basis of the said order dated 28.11.2001 w.e.f. 7.12.2001. Feeling aggrieved the appellant had filed a W.P. No.188 of 2002 before this Court.

4. The said writ petition No.188/2002 was dismissed on 6.02.2002 in limine. Challenging the said order dated 6.02.2002 passed by learned Single Judge, this Writ Appeal has been filed.

5. The contention of Shri S.C.Bagadiya, learned Senior Counsel for the appellant is that the appellant had submitted a letter dated 6.12.2001 (Annexure P-8) for withdrawal of his application for voluntary retirement a day prior to his date of release in the circumstances, the Corporation should not have acted upon the order dated 28.11.2001 (Annexure P-7) which was to take effect on 7.12.2001. He submits that because the actual date of release of the appellant was 7.12.2001 and till then the jural relationship of employee and employer between the appellant and respondent Corporation did not come to an end, the appellant had locus poenitentia to withdraw his proposal for voluntary retirement. He argued that appellant's application was a conditional one and the Corporation having not been closed, the impugned order dated 28.11.2001 is contrary to the Scheme for voluntary retirement.

6. Shri DD Vyas, learned Senior Counsel for the second respondent – Corporation argued that in view of a clear clause no.3, contained in the voluntary retirement scheme (Annexure P-5), the option exercised by the appellant could not have been taken back by him. He submits that the appellant having taken new grounds in writ appeal by amending writ petition, this writ appeal may be dismissed directing the appellant to file fresh petition. In the alternative he submits that writ petition being dismissed in motion hearing without issuing notice to the Corporation, the matter be remanded to learned Single Judge for fresh decision. He also placed reliance on the order passed by a Division Bench of this Court in the case of *M.P. Housing Corporation and another vs. Anil Pradhan and another* (W.A. No.202 of 2006) decided

on 10.04.2007. He further submits that in the similar circumstances a W.P. No.1040 of 2002 filed by Smt. Babita Francis was dismissed by a learned Single Judge vide order dated 30.09.2002. The L.P.A. No.347 of 2002 filed against the said order was also dismissed by a Division Bench of this Court vide order dated 2.12.2002.

7. Heard learned counsel for the parties and perused the record.

8. True it is that the writ petition against which this writ appeal has been filed was dismissed in limine. However, in this writ appeal, the Division Bench vide order dated 24.07.2008 allowed the application for amendment filed by the appellant permitting the appellant to amend the writ petition in the presence of the Senior counsel for the respondent/Corporation. The learned Senior Counsel appearing for the Corporation sought leave to file counter affidavit to the writ petition. Thereafter, the return of the writ petition was filed. Before filing of the return the detailed reply to the queries of the Court was also filed by the second respondent – Corporation on 4.02.2003. Thereafter an affidavit was filed by the appellant and an additional affidavit was also filed on 8.04.2008. In the circumstances, taking note of the fact that the pleadings are completed in the matter and it would be futile exercise to remit the matter before the Single Bench, we have heard the matter on merits.

9. On a deep scrutiny of the averments made by the parties, it is revealed that the second respondent – Corporation was neither closed down on the date when the appellant's application for voluntary retirement was accepted, nor has been closed as on date. It is not disputed that the appellant's application for voluntary retirement was accepted on 28.11.2001 w.e.f. 7.12.2001. The appellant's letter dated 6.12.2001 (Annexure P-8) clearly reveals that prior to the end of jural relationship between the appellant and the second respondent – Corporation, the appellant had submitted a letter to withdraw the application for voluntary retirement. In somewhat identical circumstances the Supreme Court in the case of *Shambhu Murari Sinha vs. Project and Development India Ltd. and another* 2002 AIR SCW 1165 after considering the various judgments of Supreme Court including the case of *Balram Gupta vs. Union of India* AIR 1987 SC 2354 has laid down the law that even if application for voluntary retirement of an employee is accepted by Management, he can withdraw his option for voluntary retirement before he has actually released from service. The jural relationship of employee and employer will continue till his date of actual release from service. The employee having sent letters

withdrawing his voluntary retirement before his actual date of release from service which is an effective date, the withdrawal of resignation is valid. The employee has locus poenitentiae to withdraw his proposal for voluntary retirement before the relationship of employer and employee came to an end. The Management cannot refuse to accept the letter of withdrawal of resignation of employee before the jural relationship of employee and employer came to an end. Similarly, in the case of *J.N. Shrivastava v. Union of India and another* AIR 1999 SC 1579 the Supreme Court has held that even if the voluntary retirement notice is moved by an employee and gets accepted by the authority within the time fixed, before the date of retirement is reached, the employee has locus poenitentiae to withdraw the proposal for voluntary retirement.

10. In the case of *DK Burman vs. M.P. Police Housing Corporation Ltd. and another*, decided on 17.10.2005 (2006 (3) MPWN 82), while allowing the writ petition the learned Single Judge noticed that while deciding the case of Smt. Babita Francis, there was no decision of Cabinet not to close the Corporation. Even otherwise in the case of Smt. Babita Francis the Division Bench while dismissing the LPA in motion hearing did not consider the effect of withdrawal of resignation, if made prior to the end of jural relationship and, therefore, the order in the case of *Smt. Babita Francis* (supra) cannot be applied to this case. In the case of *M.P. Police Housing Corporation and another vs. Anil Pradhan and another*, on which strong reliance has been placed by learned Senior Counsel for the second respondent – Corporation, the Division Bench noticing the fact that the employee had already accepted and received amount payable to him under the Scheme, refused to grant any relief in his favour seeking withdrawal of his resignation and permitting him to join the services. Whereas in the present case, there is an un-controverted affidavit on record filed by the appellant stating therein that he did not receive any amount on the basis of the resignation offered by him. In the circumstances, the said order passed in *Anil Pradhan's case*, has also no application to the facts of the case.

11. Having regard to the aforesaid, we are of the view that the appellant having submitted an application (Annexure P-8) on 6.12.2001, a day prior to his effective date of retirement, which was 07.12.2001 as per the acceptance letter dated 28.11.2001 (Annexure P-7) issued by the Corporation the jural relationship of employer and employee was continuing when the appellant submitted letter dated 06.12.2001 (Annexure P-8) seeking withdrawal of his voluntary retirement. The said letter being submitted before the date of actual

release from service his prayer ought to have been accepted by the Corporation. Having not done so, the second respondent – Corporation has committed an error in not allowing the appellant to withdraw his resignation.

12. Thus having regard to the law laid down by the Supreme Court in the case of *Shambhu Murari Sinha* (supra) we allow this appeal by quashing the order dated 28.11.2001 (Annexure P-7) as also the order passed by learned Single Judge and direct the second respondent – Corporation to reinstate the appellant with consequential benefits. No orders as to costs.

Appeal allowed.

I.L.R. [2011] M. P., 603

WRIT APPEAL

Before Mr. S.R. Alam, Chief Justice & Mr. Justice Alok Aradhe

W.A. No.813/2010 (Jabalpur) decided on 6 September, 2010

H.S. TRIPATHI (DR.)

... Appellant

Vs.

NATIONAL COUNCIL FOR TEACHERS

EDUCATION & ors.

... Respondents

***Transfer* - Appellant transferred from Bhopal to Bhubaneshwar - Appellant, though appointed for the post of Regional Director, Bhopal, joined with open eyes that selected officer can be shifted from one regional committee to other on administrative exigency - Candidate applying pursuant to the advertisement will have to abide and will govern by all the terms and conditions given in advertisement - After having selected/appointed cannot renounce other conditions on the pretext that he applied for a particular post - Appeal dismissed. (Para 4)**

स्थानांतरण – अपीलार्थी को भोपाल से भुवनेश्वर स्थानांतरित किया गया – अपीलार्थी यद्यपि क्षेत्रीय निदेशक, भोपाल के पद पर नियुक्त किया गया था, तथा उसने खुली आँख से कार्य ग्रहण किया कि चयनित अधिकारी को प्रशासनिक अत्यावश्यकता पर एक क्षेत्रीय समिति से अन्य में स्थानांतरित किया जा सकता है – विज्ञापन के अनुसरण में आवेदन करने वाले अभ्यर्थी को विज्ञापन में दी गई सभी शर्तों का पालन करना होगा तथा उनके द्वारा वह शासित होगा – चयनित/नियुक्त किये जाने के पश्चात् इस बहाने पर कि उसने विशिष्ट पद के लिए आवेदन किया था अन्य शर्तों को त्याग नहीं सकता – अपील खारिज।

A.S. Raizada, for the appellant.

Sankalp Kochar, for the respondent Nos.1, 2 & 4.

ORDER

The Order of the Court was delivered by **S.R. ALAM, CHIEF JUSTICE.** :-This intra-Court appeal arises from the order of learned Single Judge dated 17.8.2010 passed in W.P. No.10392/2010(s) whereby the writ petition preferred by the appellant has been dismissed.

2. Learned counsel for the appellant vehemently contended that pursuant to the advertisement, the appellant was initially appointed as Regional Director, Western Region, National Council for Teacher Education, Bhopal. He drew our attention to the letter dated 5.12.2006 contained in Annexure-P/1 and submitted that in unequivocal terms, it was mentioned in the application that the appellant has applied for the post of Regional Director, Bhopal. He, however, submitted that in the letter of appointment which is contained in Annexure-P/4 dated 2.6.2010, the respondents have mentioned that the appellant has been selected for appointment as Regional Director in WRC, NCTE, Bhopal on deputation basis and his services will be governed by the provisions contained in the Department of Personnel and Training OM No. 2/29/91-Estt.(Pay-II) dated 5th January, 1994. Thus there is no justifiable reason for transferring him by the impugned order to Bhubaneswar. He further sought to argue that the impugned order of transfer has been passed only with a view to accommodate Dr. P.K. Sharma-respondent No.4.

3. On the other hand Shri Kochar, learned counsel for respondent Nos.1, 2 & 4 has opposed the prayer and submitted that due to administrative exigency appellant's services were required at Bhubaneswar. Therefore he has temporarily been transferred to Bhubaneswar. He further submitted that instructions have been received by him through letter dated 03.09.2010 of Chair person of National Council for Teacher Education in which it is clearly mentioned that the tenure of posting of the appellant will not extend beyond 180 days.

4. It appears that the appellant belongs to State University Services cadre and at the relevant time was working as Deputy Registrar. However, the post of Regional Director, NCTE, Bhopal was advertised through advertisement contained in Annexure-R/1. The appellant also applied for the aforesaid post through application dated 05.12.06 contained in Annexure P/1 for the post of NCTE, Bhopal. Though, it is true that he applied against the post of Regional Director Bhopal, however, the advertisement contained in Annexure-R/1. A perusal thereof clearly indicates that as per Clause 2 of

the General Instruction, the officer selected will be posted at NCTE Head Quarter, New Delhi or at any of the Regional Committees at Jaipur, Bhopal, Bhubaneswar and Bangalore or any other Regional Committee that may be set up later. The said Clause further provides that the officer can be transferred from one Offices to another depending upon the administrative exigencies. Thus, the appellant though appointed no doubt for the post at Bhopal which he joined with open eyes that the selected officer can be shifted from one regional Committee to other on administrative exigency. We are of the view that a candidate applying pursuant to the advertisement will have to abide and will govern by all the terms and conditions given in the advertisement and therefore, after having selected / appointed cannot renounce the other conditions on the pretext that he applied for a particular post and, therefore, the conditions of the advertisement regarding transfer to another office cannot be invoked against him. A candidate is bound by all the terms and conditions of the advertisement.

5. Learned Single Judge has, therefore, rightly found that the order of appointment issued by the NCTE does not indicate in any manner whatsoever, that the post held by him or the appointment is on a non-transferable post and as such he will always remain at Bhopal during the period of appointment and, therefore, we have no reason to differ with the view taken by the learned Single Judge. Besides that, admittedly, the appellant pursuant to impugned order of transfer has already submitted his joining at Bhubaneswar about more than one month back. The respondents in an unequivocal term have stated that the appellant has been transferred on account of administrative exigency. It is not the case of the appellant that the order of transfer is made in violation of any statutory rule or regulation or the same suffers from vice of mala fide. Further the tenure of posting of the appellant at Bhubaneswar is only for a period of 180 days. For the aforementioned reasons, we do not find any merit in the appeal.

6. It is accordingly dismissed.

Appeal dismissed.

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WRIT APPEAL

Before Mr. S.R. Alam, Chief Justice & Mr. Justice Alok Aradhe

W.A. No.186/2010 (Jabalpur) decided on 14 September, 2010

USHA KIRAN DUBEY (SMT.)

Vs.

SECRETARY, UNION OF INDIA & ors.

... Appellant

... Respondents

Service Law - Recruitment - Age relaxation - Appellant was not given appointment order on the ground that she was overage - Standing Instruction 79 provides relaxation in age if candidate has rendered not less than 3 years continuous service on regular basis as Central Government Civilian Employee - Appellant has rendered service in railway department for a period of one year and four months only - Service rendered by appellant in a school run by society and not by Central Govt. cannot be taken into consideration - Since, the appellant had not rendered service for continuous three years therefore not entitled for relaxation in age - Appeal dismissed. (Para 6)

सेवा विधि - मर्ती - आयु में छूट - अपीलार्थी को नियुक्ति आदेश इस आधार पर नहीं दिया गया कि वह नियत से अधिक वय की थी - स्थायी अनुदेश 79 आयु में छूट उपबंधित करता है यदि अभ्यर्थी ने केन्द्रीय सरकार के सिविलियन कर्मचारी के रूप में नियमित आधार पर निरंतर, जो 3 वर्ष से कम न हो, सेवा दी है - अपीलार्थी ने केवल एक वर्ष और चार माह की अवधि के लिए रेल विभाग में सेवा दी है - सोसाइटी द्वारा चलाये जा रहे न कि केन्द्रीय सरकार द्वारा चलाये जा रहे स्कूल में अपीलार्थी द्वारा दी गई सेवा विचार में नहीं ली जा सकती - चूंकि अपीलार्थी ने निरंतर तीन वर्ष के लिए सेवा नहीं दी है, इसलिए आयु में छूट की हकदार नहीं - अपील खारिज।

Munish Saini, for the appellant.

Amrit Ruprah, for the respondents.

ORDER

The Order of the Court was delivered by **S.R. ALAM, CHIEF JUSTICE.** :- Heard on the question of admission.

2. Challenge in this writ appeal has been made to the order dated 27.1.2010 passed by learned single Judge in Writ Petition No.7216/2009 by which the writ petition preferred by the appellant has been dismissed.

3. Facts, leading to filing of the instant writ appeal, briefly stated, are that the appellant had rendered service in Railway Département as constable in

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 Railway Protection Force for a period of one year and four months i.e. 1.7.2006 to 22.10.2007. The appellant was also engaged as a teacher in Bharat Ratna Higher Secondary School, Seoni from 1.7.1999 to 30.4.2005. By an advertisement dated 15.9.2007 applications were invited from the eligible candidates for appointment to the post of Sub-Inspector in Railway Protection Force. Pursuant to the aforesaid advertisement the appellant submitted her candidature and participated in the process of selection. She was permitted to appear in the written test and was called for the interview. However, at the relevant time the appellant was on family way and was asked to report back after the delivery of the child and after being physically fit. The appellant after being fit for joining the duties approached the respondents. However, neither she was permitted to join nor any appointment order was issued. The representation submitted by the appellant was rejected on the ground that the appellant was overage. The appellant therefore, filed the writ petition in which a direction was sought to respondents to appoint her in Railway Protection Force as Sub-Inspector. Learned single Judge vide order dated 27.1.2010 dismissed the writ petition preferred by the appellant on the ground that the appellant did not fulfill the criteria with regard to age.

4. Learned counsel for the appellant vehemently contended that since the appellant was working in paramilitary force therefore she is entitled to get the benefit of relaxation in age as per Standing Instruction No.79. It is manifest that Clause 2(b) of the Standing Instruction No.79 provides that age relaxation in upper age limit is permissible for SC, ST, OBC, Ex-Servicemen and Central Government Employees. Aforesaid clause reads as under:

“2(b) Age: Not less than 20 and not more than 25 years as on 1st January of the year in case the vacancies are advertised in the first half of the year or as on 1st July of the year if the vacancies are advertised in the second half of the year. Relaxation in upper age limit will be admissible to SC, ST, OBC, Ex-Servicemen and Central Government Employees as per extant instructions of the Central Government.”

5. Aforesaid criteria was further amended to the following effect:

“(2) The sentence 'Relaxation in upper age limit will be admissible to SC, ST, OBC, EX-Servicemen and Central Government Employees as per extent instructions of the Central Government' appearing in para 2(b) may be replaced by:

Relaxation in upper age limit will be admissible as under:

- (i) Upto 5 years for SC/ST,
- (ii) Upto 3 years for OBC,
- (iii) Ex-Servicemen will be allowed to deduct military service from their actual age and such resultant age should not exceed the prescribed age limit by more than three years,
- (iv) Upto the maximum of 5 years to candidates who have ordinarily domiciled in the Kashmir Division of the State of J&K during the period from 1.1.1980 to 31.12.1989 (Domicile certificate issued by the competent state authority is necessary for such claim),
- (v) Upto the age of 35 years (upto 40 years for SC/ST candidates and 38 years for OBC candidates) in the case of widows, divorced women and women judicially separated from their husbands, who are not remarried,
- (vi) Upto 5 years for central government civilian employees (including serving railway employees) who have rendered not less than 3 years continuous service on regular basis as on the closing date."

6. Admittedly, the appellant is not covered under any of the categories to which benefit of relaxation of age has been extended. In order to avail the benefit of relaxation in age, serving railway employee has to render not less than three years continuous service on regular basis. The appellant has rendered service in railway department for a period of one year and four months i.e. from 1.7.2006 to 22.10.2007. Therefore, the appellant does not fulfill the aforesaid criteria. Services rendered by the appellant in Bharat Ratna Higher Secondary School from 1.7.1999 to 30.4.2005 is of no assistance to the appellant as the school is neither run nor managed by the Central Government but is being run by a society. The appellant was admittedly overage and did not fulfill the criteria as prescribed under Clause 2(b) of the Standing Instruction No.79. She is not covered under any of the categories to which the benefit of relaxation in age has been extended.

7. For the aforementioned reasons, we do not find any merit in this appeal. The same deserves to and is hereby dismissed.

Appeal dismissed.

I.L.R. [2011] M. P., 609

WRIT APPEAL

Before Mr. S.R. Alam, Chief Justice & Mr. Justice Alok Aradhe

Writ Appeal No.869/2010 (Jabalpur) decided on 22 September, 2010

SUMARWATI BAI (SMT.)

... Appellant

Vs.

THE MINES MANAGER & ors.

... Respondents

A. Limitation Act (36 of 1963), Section 5 - Condonation of delay - Appellant an illiterate lady was not informed by her counsel that an intra court appeal can be filed - She was informed by any another counsel - Held - For the fault on the part of the Counsel, a litigant should not suffer - Delay in filing appeal, condoned. (Paras 2 & 3)

क. परिसीमा अधिनियम (1963 का 36), धारा 5 - विलम्ब माफी - अपीलार्थी, एक अशिक्षित महिला को उसके अधिवक्ता द्वारा यह नहीं बताया गया कि अन्तर्न्यायालयीन अपील प्रस्तुत की जा सकती है - अन्य अधिवक्ता द्वारा उसे बताया गया - अभिनिर्धारित - अधिवक्ता की गलती के कारण किसी वादकर्ता को नुकसान नहीं होना चाहिए - अपील प्रस्तुत करने में हुआ विलम्ब माफ किया गया।

B. National Coal Wages Agreement, Clause 9.5.0 - Employment / monetary compensation of female dependant - Appellant's husband died in harness - Appellant given compassionate appointment - Female dependant of employee who die due to an accident in mine or otherwise would have the option either to accept the monetary compensation of Rs. 3000 per month or employment irrespective of her age - Clause 9.5.0 does not provide for grant of compensation in addition to appointment - Appellant has already opted for appointed and is now estopped from claiming compensation - Appeal dismissed. (Paras 11 & 12)

राष्ट्रीय कोयला मजदूरी करार, खण्ड 9.5.0 - महिला आश्रित की आर्थिक क्षतिपूर्ति/रोजगार - अपीलार्थी के पति की कार्य के दौरान मृत्यु हो गयी - अपीलार्थी को अनुकम्पा नियुक्ति दी गयी - किसी कर्मचारी, जिसकी खदान में दुर्घटना के कारण अथवा अन्य किसी तरह से मृत्यु हो जाती है, की महिला आश्रित को 3,000/- रुपये प्रति माह की आर्थिक क्षतिपूर्ति अथवा आयु का विचार किये बिना रोजगार स्वीकार करने का विकल्प होगा - खण्ड 9.5.0 नियुक्ति के अतिरिक्त क्षतिपूर्ति प्रदान करने का उपबंध नहीं करता - अपीलार्थी द्वारा पूर्व में ही नियुक्ति का विकल्प चुन लिया है और अब क्षतिपूर्ति का दावा करने से विवंधित है - अपील खारिज।

610 Sumarwatibai (Smt.) Vs. The Mines Manager(DB) I.L.R.[2011] M.P.,

Case referred :

AIR 1981 SC 1400.

Bhupendra Mishra, for the appellant.

ORDER

The Order of the Court was delivered by **S.R. ALAM, CHIEF JUSTICE.** :—Heard on I.A. No. 10363/10, an application for condonation of delay.

2. Learned counsel for the appellant submitted that the appellant is an illiterate widow. Her counsel did not advise her that an appeal can be filed before the Division Bench against the order passed by the learned Single Judge. However, when the appellant came to Jabalpur and met another counsel, he advised her to file the appeal. Thereafter, the instant appeal has been filed without any undue delay. The application for condonation of delay is duly supported by an affidavit.

3. It is well-settled in law that for the fault on the part of counsel, a litigant should not suffer [See: *Rafiq and another vs. Munshilal and another*, AIR 1981 SC 1400].

4. Thus, we find that sufficient cause for condonation of delay is made out. Accordingly, the delay in filing the appeal is condoned and the I.A. stands allowed.

5. With the consent of the learned counsel for the appellant, the writ appeal is taken up for hearing on the question of admission.

6. This intra-court appeal arises from the order of the learned Single Judge dated 3-5-2010 passed in W.P. No.5233/2010 (S) whereby the writ petition preferred by the appellant has been dismissed.

7. Learned counsel for the appellant has contended that appellant's husband died in harness on 13-11-1999. However, the appellant was belatedly granted appointment on compassionate basis in the year 2007 and, therefore, the appellant is entitled to get compensation at the rate of Rs.3000/- per month for the period commencing from 13-11-1999 to 6-6-2007. When the amount of compensation for the aforesaid period was not given the appellant approached this Court by filing Writ Petition No.5233/2010(s), inter alia, claiming compensation for the aforesaid period in terms of Clause 9.5.0 of National Coal Wages Agreement V (for short 'NCWA- V').

8. The learned Single Judge having heard the learned counsel appearing for the parties dismissed the writ petition by the order under appeal, dated 3-5-2010 on the ground that as per Clause 9.5(ii) of the NCWA-V, if the dependent is below the age of 45 years, she will have the option either to accept monetary compensation of Rs.3000/- per month or employment and, therefore, since the appellant was given employment vide order dated 6-6-2007 contained in Annexure-P/4, now cannot claim monetary compensation for the period commencing from 13-11-1999 to 6-6-2007. Thus, since the appellant has accepted the employment by submitting her joining it would not be open for her to claim monetary compensation as well. The aggrieved appellant, therefore, has preferred the instant writ appeal.

9. Learned counsel for the appellant relying on the Office order dated 22-9-2005 contained in Annexure-P/3, vehemently contended that the respondents have already accepted her claim of monetary compensation with effect from 01-02-2005 to 01-11-2022 till she attains the age of 16 years or till she marries or till her death, whichever is earlier and, therefore, now they cannot deny the amount of compensation to the appellant from the date of actual death of her husband till she was given the employment. However, neither this aspect has been appreciated nor the order dated 22-9-2005 passed by the respondents has been taken care of by the learned Single Judge and hence, he has fallen in error.

10. We have considered the submissions advanced by the learned counsel for the appellant. However, we do not find any merit in the same. The National Coal Wages Agreement (NCWA Vth) was introduced to provide employment to the dependents of the employees of the Western Coalfields Ltd. To appreciate the controversy, let us have a look at the provision contained in Clause 9.5.0 of the NCWA-V. It reads as under:

"9.5.0 -Employment/monetary compensation of female dependant-provision of employment/monetary compensation to female dependants of workmen who die while in service and who are declared medically unfit as per Clause 9.4.0 above, would be regulated as under:

(i) In case of death due to mine accident, the female dependant would have the option to either accept the monetary compensation of Rs.4000/-per month or employment irrespective of her age.

(ii) In case of death/total permanent disablement due to causes other than mine accident and medical unfitness under Clause 9.4.0, if the female dependant is below the age of 45 years, she will have the option either to accept the monetary compensation of Rs.3000/-per month or employment.

In case the female dependant is above 45 years of age she will be entitled only to monetary compensation and not to employment.

(iii) In case of death either in mine accident or for other reasons or medical unfitness under Clause 9.4.0, if no employment has been offered and the male dependant of the concerned worker is 12 years and above in age, he will be kept on a live roster and would be provided employment commensurate with his skill and qualifications when he attains the age of 18 years. During the period the male dependant is on live roster, the female dependent will be paid monetary compensation as per rates at paras (i) & (ii) above. This will be effective from 01.01.2000.

(iv) Monetary compensation, wherever applicable, would be paid till the female dependant attains the age of 60 years.

(v) The Existing rate of monetary compensation will continue. The matter will be further discussed in the Standardisation Committee and finalised.

11. From perusal of the aforesaid provision it is evident that it provides for giving employment/monetary compensation to the female dependants of workmen who die in harness, or who are declared medically unfit as per Clause 9.4.0 of the NCWA-V. Sub-clauses (i) and (ii) of Clause 9.5.0 in an unequivocal term provides that female dependant of such employee who die due to an accident in the mine or otherwise, would have the option either to accept the monetary compensation of Rs.3000/- per month or employment irrespective of her age. It does not provide for grant of compensation in addition to appointment on compassionate basis. Therefore, the appellant had the option either to claim compensation or employment on compassionate ground. In the case in hand, the appellant was given an offer to accept monetary compensation, vide letter dated 22-9-2005 for the period commencing from

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01-02-2005 to 01-11-2022, but there is nothing on record to show that the appellant accepted the same. On the contrary, she opted to get employment pursuant to the aforesaid provision of the NCWA-V and gave her joining on 30-7-2007. Therefore, the appellant in fact, opted for her appointment on compassionate basis and hence, now she cannot take U-turn claiming both, compensation as well as appointment. The appellant having opted for appointment, is now estopped from claiming compensation too, in view of the doctrine of election which has been defined in "*Advanced Law Lexicon*" by P. Ramanatha Aiyar, 3rd Edition, in the following terms:

"Election is the choosing between two rights by a person who derives one of them under an instrument in which a clear intention appears that he should not enjoy both."

12. The NCWA-V under which the appellant has claim benefit, in clear terms, as noticed above, provides that the claimant could accept either monetary compensation of Rs.3000/- per month or employment irrespective of her age. It does not provide that both, i.e., monetary compensation and employment could be provided. That apart, we are of the view that a person who accepts a benefit under a scheme or an instrument must adopt the whole contents of the scheme or the instrument conforming to all its provisions and renouncing every right inconsistent with it. The scheme, as noticed, does not permit both the benefits, i.e., employment as well as monetary compensation. Since the appellant accepted the employment, therefore, it would amount to renouncing of her right regarding claim of monetary compensation. Both cannot be availed simultaneously, as it would run counter to the scheme and defeat the idea and purpose of launching such a scheme.

13. For the aforementioned reasons, we do not find any ground to differ with the view taken by the learned Single Judge. The writ petition is devoid of any merit. The same deserves to and is hereby dismissed.

Petition dismissed.

WRIT APPEAL

Before Mr. Justice A.K. Shrivastava & Mr. Justice Brij Kishore Dube

W.A. No.506/2010 (Gwalior) decided on 14 October, 2010

SURESH BABA

... Appellant

Vs.

VIRENDRA TYAGI & ors.

... Respondents

A. Panchayat Raj Evam Gram Swaraj Adhiniyam, M.P. 1993 (1 of 1994), Section 36 - Appellant, a convict of life imprisonment was released from Jail after completion of sentence and five years have not yet been elapsed - Rightly held by Writ Court that the appellant was having disqualification for holding the office of Sarpanch. (Paras 10 & 13)

क. पंचायत राज एवं ग्राम स्वराज अधिनियम, म.प्र. 1993 (1994 का 1), धारा 36 - अपीलार्थी, आजीवन कारावास का दोषी, सजा पूर्ण होने पर जेल से रिहा तथा पाँच वर्ष नहीं बीते - रिट न्यायालय द्वारा यह उचित ठहराया गया कि अपीलार्थी सरपंच का पद धारण करने हेतु अनर्ह था।

B. Panchayat Raj Evam Gram Swaraj Adhiniyam, M.P. 1993 (1 of 1994), Section 36(1) & 36(2) - Bar under - Would not come in the way when a writ petition seeking relief of quo warranto is filed. (Para 20)

ख. पंचायत राज एवं ग्राम स्वराज अधिनियम, म.प्र. 1993 (1994 का 1), धारा 36(1) एवं 36(2) - अन्तर्गत वर्जन - अधिकार पृच्छा के अनुतोष हेतु प्रस्तुत रिट याचिका में आड़े नहीं आता।

C. Interpretation of Statutes - A statute is an edict of the Legislature and the conventional way of interpreting or construing a statute is to seek the 'intention' of its maker. (Para 17)

ग. कानूनों का निर्वचन - कानून विधान मण्डल का राज्यादेश होता है तथा कानून के निर्वचन का परम्परागत तरीका अथवा उसकी व्याख्या करना इसके निर्माता का 'आशय' ढूँढना है।

D. Maxim - "mens or sententia legis" - As per Salmon it means that the object of interpreting a statute is to ascertain the intention of the Legislature enacting it. (Paras 17)

घ. सूक्ति - "मेन्स या सेंटेंशिया लेगिस" - सालमन के अनुसार, इसका तात्पर्य है कि कानून के अर्थान्वयन का उद्देश्य इसे बनाने वाले विधान मण्डल के आशय को ढूँढना है।

Cases referred :

(2009) 7 SCC 1, (2009) 10 SCC 541, AIR 1954 Bom 116.

S.K. Jain, S.K. Sharma & D.P.S. Bhadoria, for the appellant.

Vivek Khedkar, G.A., for the respondent Nos.2 to 4.

ORDER

The Order of the Court was delivered by **A.K. SHRIVASTAVA, J.** :—The order dated 21.09.2010 passed by the learned Writ Court has been assailed by the appellant, who was arrayed as respondent no.4 before that Court, by filing this appeal under Section 2 of the Madhya Pradesh Uchcha Nyayalaya (Khand Nyaypeeth Ko Appeal) Adhiniyam, 2005.

2. In Hindu Mythology as well as in all the religions in the world, universally it has been accepted that “be abhorrence to the sin and not to the sinner” (पाप से घृणा करो पापी से नहीं). In holy Quran Sharif also, in Part No. 2, Verse No. 222 of Suraye Bakr, it has been stated that “Undoubtedly, Allah loves those who repent and those who purify themselves from sin” (इन्ललाहा युहिबो तव्वाबीना व योहिबुल मोतताहिरिन — कुछ शक नहीं कि खुदा तौबा करनेवालों और पाक साफ रहनेवालों को दोस्त रखता है). To commit an offence of murder (except the exceptions provided under the Law) is an offence in the Indian Penal Code, but in every religion, the said person is said to be a “Sinner” because taking a life of a person by another is a “Sin”. However, the State Legislature has not permitted the Sinner, who has committed the sin of murder, to contest the Panchayat Election after the expiration of a particular period as envisaged under Section 36 (1) (a) (i) & (ii) of the Madhya Pradesh Panchayat Raj Avam Gram Swaraj Adhiniyam, 1993 (hereinafter for short referred to as the “Adhiniyam”), which reads thus :

“36. Disqualification for being office bearer of Panchayat.—(1) No person shall be eligible to be an office-bearer of Panchayat who -

(a) has, either before or after the commencement of this Act, been convicted:-

(i) of an offence under the Protection of Civil Rights Act, 1955 (No.22 of 1955) or under any law in connection with the use, consumption or sale of narcotics or any law corresponding thereto in force in any part of the State, unless a period of five years or such lesser period as the State

Government may allow in any particular case has elapsed since his conviction; or

(ii) of any other offence and had been sentenced to imprisonment for not less than six months, unless a period of five years or such less period as the State Government may allow in any particular case has elapsed since his release; or”.....

At this juncture, it will be profitable to quote the preamble of the Adhiniyam, which is as under :

“An Act to consolidate and amend the law relating to establishment of Panchayats with a view to ensure effective involvement of the Panchayati Raj Institutions in the local administration and development activities.”

3. It would be pertinent to mention here that originally writ petition was filed as Public Interest Litigation and on 23.07.2010, the Division Bench of this Court held that looking to the reliefs claimed particularly relief no.2, the said petition cannot be said to be a PIL and hence directed the Registry to list the petition before the appropriate Bench. In this manner, the writ petition was placed before learned Single Bench.

4. The learned Writ Court by putting emphasis on Section 36 of the Adhiniyam, came to hold that since undisputedly, the appellant, who was respondent no.4 before the learned writ Court fought the election of Sarpanch and was declared to be elected Sarpanch, is not entitled to hold the Office of Sarpanch.

5. The contention of the writ petitioner before the learned Writ Court was that the appellant having been convicted under Section 302, IPC twice and has been sentenced to life imprisonment and further that nearabout 24 Criminal Cases are registered against him, without disclosing these material facts, fought and won the election of Sarpanch.

6. In an application, which was filed by the appellant before the learned Writ Court, it has been stated that he has been elected as Sarpanch and further contended that the petition filed by the petitioner is not maintainable because there is a remedy available to him to file an Election Petition.

7. The contention of the learned counsel for the writ petitioner before learned writ Court was that the appellant was lacking qualification of being

elected as Sarpanch under the provisions of Adhiniyam, hence, a writ of quo warranto may be issued and placed reliance on some judgments, which are referred in the order of learned writ Court.

8. On the other hand, the learned counsel for the appellant submitted that specific remedy of election petition is there and the petitioner should approach the Election Tribunal and placed reliance on some judgment, which are referred in the order of the learned Writ Court.

9. Learned Counsel for the appellant submits that the election petition is already pending, but frankly admitted that the said election petition has not been filed by the writ petitioner, who has been arrayed as respondent no.1 in this appeal, but has been filed by some other person.

10. The undisputed fact is that the appellant is a convicted person and has been sentenced to life imprisonment by the Second Additional Sessions Judge, Bhind vide judgment dated 30.11.1998 in two Sessions Trials No.8/94 and 58/94 and his conviction has not been set aside by any of the Court. The appellant was released from Jail after completion of jail sentence on 15.08.2009. A copy of the certificate dated 06.02.2010 issued by the Deputy jail Superintendent, Central Jail, Jabalpur to this effect is on record. Apart from these two cases under Section 302 of IPC, in which the appellant was convicted for life imprisonment, there are as many as 28 more Criminal Cases registered against him, which are as under :

S.No	Criminal cases	Sections
1.	170/80	457, 380 IPC
2.	223/80	457, 380 IPC
3.	227/80	390 IPC
4.	230/80	454, 380 IPC
5.	231/80	25 Arms Act
6.	411/80	454, 380 IPC
7.	188/80	307, 34 IPC
8.	117/81	336 IPC
9.	288/81	457, 380 IPC
10.	262/82	147, 148, 149, 506-B of IPC

S.No	Criminal cases	Sections
11.	448/82	380 IPC
12.	554/84	302, 307, 394 IPC
13.	236/83	224 IPC
14.	242/85	224 IPC
15.	88/83	364, 365, 386, 387, 401 IPC and 11, 13 of MPDVPK Act
16.	186/83	302, 24, 394 IPC and Section 11, 13 of MPDVPK Act
17.	237/85	380 IPC
18.	263/86	307 IPC 25, 27 Arms Act
19.	99/87	294, 506-B IPC
20.	148/87	341, 307, 34 IPC
21.	440/87	147, 506-B IPC
22.	0/87	110 Cr.P.C.
23.	499/89	392 IPC
24.	500/89	392 IPC
25.	36/90	392 IPC
26.	70/90	399, 400, 407 IPC
27.	211/92	307, 34 IPC
28.	203/97	224, 225, 120-B IPC

11. The learned writ Court allowed the petition by passing the following operative order :

“Consequently, the petition of the petitioner is allowed. By way of writ of quo warranto, the election of respondent No.4 to the post of Sarpanch of the Gram Panchayat is hereby set aside. It is declared that respondent No.4 is not entitled to hold the post of Sanpanch of the Gram Panchayat, Gaheli, Tehsil Mehgaon, District Bhind.

Looking to the facts of the case, the respondent No.4 is also directed to pay a cost of Rs.5,000/-to the petitioner.”

12. On bare perusal of Section 36 of the Adhiniyam, we find that the disqualification has been prescribed and for ready reference, we have quoted herein above the said provision.

13. On bare perusal of Section 36 (1) (a) (i) (ii) of the Adhiniyam, a person shall be ineligible to be the office bearer of the Panchayat, who has, either before or after the commencement of this Act, been convicted of any other offence other than mentioned in Clause (i) and had been sentenced to imprisonment for not less than six months, unless a period of five years or such less period as the State Government may allow in any particular case has elapsed since the date of his release. Needless to say and undisputedly the appellant was released only on 15.08.2009 and five years have not yet been elapsed and, therefore according to us, rightly it has been held by the learned writ Court that the appellant was having disqualification for holding the office of Sarpanch.

14. The purpose of quoting the preamble in the beginning of the judgment is that the 'Adhiniyam' has been enacted for the purpose of acquiring welfare of citizens and particularly for the residents as well as the voters of the locality for whom this Adhiniyam has been enacted. The preamble of every statute although has not an enacted part of that particular statute, but certainly it explores the scope, object and purpose for which the particular statute is enacted.

15. If we permit the appellant to continue to hold a post of Sarpanch, it would amount to throttling the real aim and object to legislate Section 36 (1) (a) (i) & (ii) of the Adhiniyam because the appellant has been recently released from the jail after undergoing the sentence of life imprisonment imposed on him for committing two murders, and 5 years requisite period as envisaged under Section 36 (1) of the Adhiniyam have not yet been expired from the date of his release.

16. We do not find any merit and force in the submissions of the learned counsel for the appellant that Section 36 (1) of the Adhiniyam does not create any bar to fight the election of Sarpanch because this provision deals with disqualification only after the election has taken place. According to us, if this logic is accepted, then even disqualified person would be permitted to fight the election, which is not the intention of the Law and in order to give logical and workable interpretation, according to us, Section 36 (1) of the Adhiniyam would also be applicable for the candidates to contest the election, who are disqualified under Section 36 (1) of the Adhiniyam. We also do not find any

merit in the contention of the learned counsel for the appellant that in view of sub-Section (2) of Section 36 of the Adhiniyam, if any person having been elected as an office bearer of Panchayat, is removable only after filing the Election Petition. According to us, sub-Section (2) of Section 36 (1) of the Adhiniyam is to be read in context to Section 36 (1) of the Adhiniyam.

17. A statute is an edict of the Legislature and the conventional way of interpreting or construing a statute is to seek the 'intention' of its maker. In this context, we may rely a maxim "mens or sententia legis". The famous author Salmond in its Book "Jurisprudence" 11th Edition at Page 152 has explained the meaning of the maxim by saying that the object of interpreting a statute is to ascertain the intention of the Legislature enacting it.

18. The expression 'intention of the Legislature' is a shorthand reference to the meaning of the words used by the legislature objectively determined with the guidance furnished by the accepted principles of interpretation. If a statutory provision is open to more than one interpretation the court has to choose that interpretation which represents the true intention of the Legislature. In other words the 'legal meaning' or 'true meaning' of the statutory provision. (See, **the Principles of Statutory Interpretation by Justice G.P. Singh 12th Edition, 2010, page 3**).

19. In order to give and construe Section 36 (1) as well as sub-Section (2) of the Adhiniyam, we have to interpret both the provisions in order to make the Section 36 as a whole workable. We may further add that the Courts strongly lean against a construction which reduces the statute to a futility. A statute or any enacting provision therein must be so construed as to make it effective and operative on the principle expressed in the maxim: "ut res magis valeat quam pereat". (See, **Principles of Statutory Interpretation by Justice G.P. Singh 12th Edition, 2010, page 44**). Apart from this reason, for other reasons also, we are not accepting the said contention because this bar would not come in the way when a writ petition seeking relief of quo warranto is filed.

20. Learned writ Court placed reliance on a decision of the Supreme Court *N. Kannadasan Vs. Ajoy Khose* (2009) 7 SCC 1 and by considering the scope of Writ of quo warranto and allowed the petition. According to us, the reasons so assigned by the learned Writ Court are cogent and are not required to be interfered with in this intra-Court appeal.

21. The decision of *Ram Sukh Vs. Dinesh Aggarwal* (2009) 10 SCC 541, relied upon by the learned counsel for the appellant, is not applicable in the present case because in that decision it was held that certain mandatory requirement was not disclosed before contesting the election and the objection was raised in the election petition filed under the Representation of the People Act, 1951. In that case whether a writ of quo warranto is to be issued or not, was not in question, but here the facts of the case are altogether different.

22. Learned counsel for the appellant has also placed reliance on the Division Bench decision of Bombay High Court *Bhairulal Vs. State of Bombay* AIR 1954 Bombay 116, which is in respect of Municipalities Act and relevant provision has not been placed before us.

23. We hereby concur with the view taken by the Writ Court and accordingly this appeal is dismissed in limine.

Appeal dismissed.

I.L.R. [2011] M. P., 621

WRIT APPEAL

Before Mr. S.R. Alam, Chief Justice & Mr. Justice Alok Aradhe

W.A. No.23/2010 (Jabalpur) decided on 9 November, 2010

R.K. MEHRA

... Appellant

Vs.

STATE OF M.P. & anr.

... Respondents

A. Service Law - Promotion - Punishment of stoppage of one increment - Case of promotion cannot be considered during the currency of the punishment. (Para 8)

क. सेवा विधि - पदोन्नति - एक वेतनवृद्धि रोके जाने का दण्ड - दण्ड के चालू रहने के दौरान पदोन्नति के प्रकरण पर विचार नहीं किया जा सकता है।

B. Service Law - Promotion - On 10.11.2003, the case of respondent No.2 was considered and he was not found fit for promotion as he could not secure the minimum bench mark grade fixed by the D.P.C. - At the relevant time when the D.P.C. met, the order of punishment was in force - Subsequently, the case of respondent No.2 was considered for promotion and he was found fit for promotion and promoted vide order dated 10.07.2006 - No direction could have been issued to promote respondent No.2 with retrospective effect. (Para 13)

ख. सेवा विधि - पदोन्नति - तारीख 10.11.2003 को प्रत्यर्थी क्र. 2 के प्रकरण पर विचार किया गया तथा उसे पदोन्नति के लिए योग्य नहीं पाया गया क्योंकि वह विभागीय पदोन्नति समिति द्वारा नियत न्यूनतम स्तरांक श्रेणी प्राप्त नहीं कर सका था - सुसंगत समय पर जब विभागीय पदोन्नति समिति की बैठक हुयी, दण्ड का आदेश प्रभाव में था - उसके पश्चात् पदोन्नति के लिए प्रत्यर्थी क्र. 2 के प्रकरण पर विचार किया गया और उसे पदोन्नति के लिए योग्य पाया गया तथा आदेश तारीख 10.07.2006 द्वारा उसे पदोन्नत किया गया - प्रत्यर्थी क्र. 2 को मूललक्षी प्रभाव से पदोन्नत करने का कोई निदेश जारी नहीं किया जा सकता था।

Cases referred :

1992 Supp (3) SCC 50, (1995) 3 SCC 273, (1998) 9 SCC 261,
1992(6) SLR 734, 1993 MPST 344.

A.P. Shroti, for the appellant.

Ashish Shroti, G.A., for the respondent No.1.

D.K. Dixit, for the respondent No.2.

ORDER

The Order of the Court was delivered by **S.R. ALAM, CHIEF JUSTICE.** :- This intra court appeal is preferred against the judgment of the learned single Judge dated 27.11.2009 whereby the writ petition preferred by respondent No.2 has been allowed.

2. The short facts giving rise to the instant writ appeal stated in brief are that respondent No.2 filed the writ petition inter alia on the averments that he was initially appointed on 14.11.1984 as Assistant Engineer in the Public Works Department and was thereafter promoted to the post of Executive Engineer vide order dated 19.4.2001. In the gradation list of Executive Engineer as on 1.4.2004, name of respondent No.2 appears at serial No.111 whereas name of the appellant appears at serial No.112. At the relevant time, two departmental enquiries were pending against respondent No.2. However, vide order dated 27.6.2005, the appellant was promoted on the post of Superintending Engineer and respondent No.2 was superseded. After conclusion of the departmental enquiries, the respondent No.2 submitted a representation dated 26.9.2005 in which it was stated that since the respondent No.2 has been exonerated in the departmental enquiries, therefore, 'he should be promoted on the post of Superintending Engineer. However, respondent No.2 learnt that the recommendation of the Departmental Promotion Committee which were kept in the sealed cover on account of pendency of departmental enquiries of respondent No.2 were not opened

wherein it was found that respondent No.2 could not attain the bench mark grade fixed by the Departmental Promotion Committee and was not found fit for promotion. In the aforesaid factual matrix, the respondent No.2 sought a direction commanding respondent No.1 to promote him on the post of Superintending Engineer with effect from 27.6.2005 with all consequential benefits.

3. Respondent No. 1 filed a return in which inter alia it was stated that meeting of the Departmental Promotion Committee was convened on 10.11.2003 and the cases of eligible candidates coming within the zone of consideration were considered for promotion. Appellant herein was found fit for promotion on the post of Superintending Engineer. Therefore, an order dated 27.6.2005 has been issued promoting appellant to the post of Superintending Engineer and the recommendation made by the Departmental Promotion Committee in respect of respondent No.2 were kept in sealed cover as two departmental enquiries were pending against him. However, when the sealed cover was opened, it was found that respondent No.2 has not been found fit for promotion to the post of Superintending Engineer. It has further been stated that respondent No.2 has already been promoted on the post of Superintending Engineer vide order dated 10.7.2006. Proceedings of the minutes of the meeting of Departmental Promotion Committee held on 10.11.2003 were also annexed with the return.

4. Learned Single Judge vide order dated 27.11.2009 allowed the writ petition preferred by respondent No.2. It was found that respondent No.2 was denied promotion mainly on the ground that penalty of stoppage of one increment without cumulative effect was imposed on respondent No.2 vide order dated 3.6.2003 and also on the ground that Annual Confidential Report for the period ending 31.3.2000 of respondent No.2 was down graded and was not up to the mark. The learned Single judge held that penalty/punishment of stoppage of one increment was never acted upon and the increment payable to respondent No.2 was never stopped, therefore, the aforesaid penalty cannot come in the way of the appellant for depriving him the benefit of promotion from the date it was granted to respondent No.2. It was further held by learned Single Judge that admittedly before down grading the Annual Confidential Report for the year ending 31.3.2000 neither any notice was issued to respondent No.2 nor he was heard, therefore, the Annual Confidential Report for the year ending 31.3.2000 also cannot come in the way of respondent No.2 in seeking promotion in the light of decision of the

Supreme Court in *Devdutt Vs. Union of India and others*, 2008 AIR SCW 3486. Accordingly, the writ petition preferred by respondent No.2 was disposed of with a direction to convene a Review Departmental Promotion Committee and to grant the benefit of the Circular Annexure-P/7 of upgradation of ACR to the respondent No.2 and thereafter to decide the matter within a period of two months from the date of receipt of certified copy of the order. It was further directed that if respondent No.2 is found fit for promotion by Review Departmental Promotion Committee, he shall be promoted retrospectively with effect from the date the appellant was promoted, with all consequential benefits. Being aggrieved by the order of the learned Single Judge, the appellant who was arrayed as respondent No.2 has preferred the instant intra Court appeal.

5. Learned counsel for the appellant Shri A.P. Shrotri submitted that vide order dated 3.6.2003, respondent No.1 has passed an order awarding minor punishment of stoppage of one increment without cumulative effect to respondent No.2. The Departmental Promotion Committee in its meeting held on 10.11.2003 found the appellant fit for promotion whereas respondent No.2 was not found fit for promotion. It was further submitted that being aggrieved by order dated 3.6.2003 by which penalty of stoppage of one increment without cumulative effect was imposed, an appeal was preferred by the respondent No.2, which was rejected vide order dated 24.7.2004. It is further submitted that pursuant to the recommendation of the Departmental Promotional Committee, the appellant was promoted to the post of Superintending Engineer vide order dated 27.6.2005. However, in the return which was filed by the State Government before the learned Single Judge, the fact regarding rejection of appeal against the order imposing penalty of stoppage of one increment without cumulative effect was not brought on record. Learned counsel for the appellant further submitted that an employee cannot be promoted during currency of punishment which would amount to putting a premium against his misconduct. In support of his submission, learned counsel for the appellant has placed reliance on decisions of Supreme Court in *Union of India Vs. K. Krishnan*, 1992 Supp (3) SCC 50, *State of Tamil Nadu Vs. Thiru K. S. Murugesan and others*, (1995) 3 SCC 273, *State of Madhya Pradesh and another Vs. I. A. Qureshi*, (1998) 9 SCC 261. Alternatively submitted that non-communication of down grading in Annual Confidential Report does not wipe out its effect. The same remains valid. Therefore, learned Single Judge ought not to have directed to consider

the case of the respondent No.2 by constituting a Review Departmental Promotion Committee by ignoring the Annual Confidential Report for the year ending 31.3.2000. At best respondent No.2 could have been directed to submit a representation against the Annual Confidential Report for the year ending 31.3.2000 and the State Government could be asked to consider and decide the representation.

6. Shri Ashish Shroti, learned Government Advocate supported the stand taken by appellant herein and submitted that during currency of the punishment of stoppage of one increment, the case of respondent No.2 could not have been considered for promotion. Respondent No.2 in the meeting of the Departmental Promotion Committee held on 10.11.2003 was not found fit for promotion on the ground that he failed to secure the bench mark grade which was fixed by the Departmental Promotion Committee.

7. Shri D. K. Dixit, learned counsel for respondent No.2 while opposing the submission made on behalf of the appellant submitted that the penalty of stoppage of one increment was imposed vide order dated 3.6.2003. The appellant has been promoted on the post of Superintending Engineer vide order dated 27.6.2005. Therefore, the order of punishment was not operative in the year 2005 as the order of punishment was effective only for a period of one year which expired on 2.6.2004. It was further submitted that as soon as the period of punishment was over, an employee can be promoted. In support of his submission, learned counsel for respondent No.2 has placed reliance on decision of Supreme Court reported in *Union of India and others Vs. K. Krishnan*, 1992 (6) SLR 734, and Division Bench decision of this Court reported in 1993 MPST 344. It was further submitted that the Departmental Promotion Committee did not take into account the penalty of stoppage of one increment which was imposed on respondent No.2 and his recommendations were kept in sealed cover only on the ground that at the relevant time, two departmental enquiries were pending against the respondent No.2. It was further submitted that respondent No.2 was entitled to benefit of Circular contained in Annexure-P/7 with regard to upgradation of Annual Confidential Report and, therefore, the learned Single Judge has rightly issued a direction to convene Review Departmental Promotion Committee and no fault can be found in the same.

8. We have considered the submission made by learned counsel for the parties. In view of the submissions made by learned counsel for the parties

and in the facts and circumstances of the case following issues arise for consideration viz. (i) Whether the case of respondent No.2 for promotion could be considered during the currency of punishment of stoppage of one increment? (ii) Whether the appellant is entitled to benefit of Circular dated 20.3.1973 contained in Annexure-P/7 with regard to upgradation of his Annual Confidential Report and consequentially a direction to constitute review Departmental Promotion Committee could be issued? (iii) Whether the benefit of promotion could have been given to respondent No.2 with retrospective effect? We now proceed to consider and examine the aforesaid issues in seriatim.

9. Admittedly, the meeting of Departmental Promotion Committee was convened on 10.11.2003 for filling up backlog vacant posts of Superintending Engineer as per provisions of M.P. Public Service Department Gazetted Service Recruitment Rules, 1969 read with M.P. Public Service (Promotion) Rules, 2002. The criteria for promotion was merit-cum-seniority. For evaluating the merit of the candidate, his Annual Confidential Report for past five years were required to be taken into account and the candidate was required to secure minimum 15 marks. Admittedly, the case of the appellant as well as respondent No.2 was considered for promotion. From the minutes of the meeting of Departmental Promotion Committee, it is axiomatic that the appellant was found fit for promotion. However, respondent No.2 could not secure the minimum bench mark grade i. e. he could secure only 14 marks. The recommendations made by the Departmental Promotion Committee were kept in sealed cover on account of pendency of two departmental enquiries against respondent No. 2.

10. The Apex Court in *State of Tamil Nadu Vs. Thiru K. S. Murugesan and others*, (1995) 3 SCC 273 has held that when promotion is under consideration, the previous records forms the basis and when the promotion is on merit and ability the currency of punishment based on previous record stands as an impediment. Unless the period of punishment gets expired by efflux of time, the claim for consideration during the said cannot be taken up. Otherwise, it would amount to retrospective promotion which is impermissible and it would be a premium on misconduct. Similarly, in *Union of India and others Vs. K. Krishnan*, 1992 Supp (3) SCC 50 it was held by the Apex Court that on one hand, to punish a government servant and on the other hand to promote him at the same time during currency of punishment may justifiably be termed as self-contradictory. Similar view has been

taken from Supreme Court in *State of M. P. and another Vs. I. A. Qureshi*, (1998) 9 SCC 261.

11. In the backdrop of aforesaid legal position, facts of the case may be adverted to. In the instant case, admittedly vide order dated 3.6.2003, penalty of stoppage of one increment without cumulative effect was imposed on respondent No.2. During pendency of aforesaid order of punishment, meeting of the Departmental Promotion Committee was held on 10.11.2003. Thus, in view of the well settled legal position, the case of respondent No.2 could not have been considered for promotion to the post of Superintending Engineer in the meeting of Departmental Promotion Committee held on 10.11.2003. That apart, respondent No.2 failed to secure the bench mark grade which was fixed by the Departmental Promotion Committee. In our considered opinion, the case of respondent No.2 could not have been considered for promotion in the meeting of the Departmental Promotion Committee which was held on 10.11.2003.

12. Now, we may advert to the second issue whether the appellant is entitled to benefit of Circular dated 20.3.1973 contained in Annexure-P/7 with regard to upgradation of his Annual Confidential Report and consequentially a direction to constitute review Departmental Promotion Committee could be issued. As noticed above the meeting of the Departmental Promotion Committee was held for filing up backlog vacancy of Superintending Engineer as per provisions of M. P. Public Service Department Gazetted Service Recruitment Rules, 1969 read with M. P. Public Service (Promotion) Rules, 2002. Rule 14 of M.P. Public Service (Promotion) Rules, 2002 provides that on commencements 2002 Rules, the provisions of M.P. Civil Services (Reservation in Promotion and Limits on the Extent of Zone of Consideration) Rules, 1997. The Madhya Pradesh Civil Services (Determination of the Basis of Promotion) Rules, 1998 and all other rules and instructions corresponding to these Rules in force immediately before the commencement of these rules and which applies to such public servants to whom these Rules shall apply are hereby repealed. Thus, in view of Rule 14 of 2002 Rules, circular contained in Annexure-P/7 stood repealed and, therefore, respondent No.2 cannot claim its benefit and as such no direction to constitute Review Departmental Promotion Committee could have been given.

13. Now, we may come to third issue namely whether the benefit of

628 Suresh Kumar Sharma Vs. Durgalal Vijay(DB) I.L.R.[2011] M.P., promotion could have been given to respondent No.2 with retrospective effect. It is relevant to mention here that respondent No.2 has already been promoted to post of Superintending Engineer vide order dated 10.7.2006. In the meeting of the Departmental Promotion Committee, which was held on 10.11.2003, the case of respondent No.2 was considered and he was not found fit for promotion as he could not secure the minimum bench mark grade fixed by the Departmental Promotion Committee. For yet another reason, the respondent No.2 was not entitled for consideration of his case for promotion to the post of Superintending Engineer as at the relevant time when the Departmental Promotion Committee met, the order of punishment was in force. Subsequently, the case of respondent No.2 was considered for promotion and he was found fit for promotion and has been promoted vide order dated 10.7.2006. The promotion has to be made on the basis of merit-cum-seniority. Thus, it is apparent that no direction could have been issued to promote respondent No.2 on the post of Superintending Engineer with retrospective effect if he was found fit in Review Departmental Promotion Committee as the same would amount to give premium to his misconduct.

14. For the aforementioned reasons, the appeal deserves to be allowed. In the result, the appeal succeeds and the order of the learned single Judge dated 27.11.2009 is hereby set aside.

Appeal allowed.

I.L.R. [2011] M. P., 628

WRIT APPEAL

Before Mr. Justice S.K. Gangele & Mr. Justice Brij Kishore Dube

W.A.No.496/2006 (Gwalior) decided on 10 November, 2010

SURESH KUMAR SHARMA

... Appellant

Vs.

DURGALAL VIJAY & ors.

... Respondents

A. Criminal Procedure Code, 1973 (2 of 1974), Section 111 - Order by Executive Magistrate - Nature - Proceedings are judicial proceedings and Executive Magistrate performs judicial function. (Para 17)

क. दण्ड प्रक्रिया संहिता, 1973 (1974 का 2). धारा 111 - कार्यपालक मजिस्ट्रेट द्वारा आदेश - प्रकृति - कार्यवाहियाँ न्यायिक कार्यवाहियाँ हैं तथा कार्यपालक मजिस्ट्रेट न्यायिक कर्तव्य निर्वहन करता है।

B. Criminal Procedure Code, 1973 (2 of 1974), Section 172 - Police

Case Diary - Entry recorded by police in case diary and other documents could not be held to be a proof of fact as an evidence. (Para 20)

ख. दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 172 - पुलिस केस डायरी - पुलिस द्वारा केस डायरी में अभिलिखित की गयी प्रविष्टि तथा अन्य दस्तावेज साक्ष्य के रूप में तथ्य का सबूत होना अभिनिर्धारित नहीं किये जा सकते।

C. Judicial Officers Protection Act (18 of 1850), Section 1 - Liability - An act done or ordered to be done in discharge of judicial capacity is within jurisdiction of Magistrate - Protection provided under Act of 1850 is absolute and no enquiry would be entertained even with the act or order was erroneous, irregular or illegal or was done or ordered to be done believing in good faith that he had jurisdiction to do or ordered to be done. (Paras 22 to 26)

ग. न्यायिक अधिकारी संरक्षण अधिनियम (1850 का 18), धारा 1 - दायित्व - न्यायिक हैसियत के निर्वहन में किया गया अथवा किये जाने के लिए आदेशित कोई कार्य मजिस्ट्रेट की अधिकारिता के भीतर है - 1850 के अधिनियम के अन्तर्गत उपबन्धित संरक्षण आत्यंतिक है तथा किसी जाँच पर विचार नहीं किया जायेगा भले ही कार्य या आदेश त्रुटिपूर्ण, अनियमित अथवा अवैध हो अथवा सद्भावपूर्वक यह विश्वास करते हुए किया गया हो अथवा किये जाने के लिए आदेशित किया गया हो कि उसे ऐसा करने अथवा ऐसा किये जाने के लिए आदेशित करने की अधिकारिता थी।

Cases referred :

AIR 1986 SC 494, (2000) 2 SCC 465, AIR 1957 All 189, AIR 1983 SC 1086, AIR 1958 Punjab 471, AIR 1971 All 162, 2009(2) MPHT 435, AIR 1971 SC 2486, AIR 1953 SC 375, (1991) 4 SCC 341, (2006) 5 SCC 558, AIR 1965 SC 1651, AIR 1962 All 137, AIR 1981 SC 755.

Ankur Mody, for the appellant.

V.K. Bhardwaj with Raja Sharma, for the respondent No.1.

C.S. Dixit, Dy.A.G., for the respondent No.2/State.

D.K. Katare, for the respondent No.4.

J U D G M E N T

The Judgment of the Court was delivered by :
S. K. GANGELE, J. :-The appellant has filed this Writ Appeal against the order dated 31/03/2001 passed by the learned Single Judge in Writ Petition No. 559/1997.

2. At the relevant point of time, the appellant was posted as Sub-Divisional

Magistrate-cum-Officer of Sheopurkalan, District Morena. The administration undertaken an anti-encroachment drive to remove encroachment at Sheopurkalan. It also tried to remove the encroachment made by respondent No. 1 - Durgalal Vijay by way of construction of a Lodge, in that incident, the respondent No. 1 inflicted some injuries over the body of then the Additional Collector Mr. M.K. Agrawal. He was medically examined by the Chief Medical Officer and thereafter a FIR was lodged at Police Station at 6.00 pm on 27/01/1997 to this effect. On the basis of the aforesaid FIR, a Criminal Case vide Crime No. 27/97 at Police Station Sheopurkalan under Sections 353, 323, 186, 294 and 506-B of Indian Penal Code was registered against the respondent No. 1. He was produced before the Additional Chief Judicial Magistrate and the Magistrate ordered release of respondent N. 1 on furnishing surety and bail bond. A case under Section 151, 107 and 116 of the Code of Criminal Procedure was also registered against the respondent No. 1 by the Police for breach of peace. He was produced before the Sub-Divisional Magistrate and the authority directed the respondent No. 1 to furnish the bail bond and surety of Rs. 20,000/-, when he did not furnish the bail bond and surety, he was sent to Jail on 28/01/1997. Thereafter, the respondent No. 1 filed a Revision before the Sessions Judge against the order of the Sub-Divisional Magistrate, the Sessions Judge ordered release of the respondent No. 1 on bail. After passing the order, the respondent No. 1 was released from Jail on 30/01/1997.

3. The respondent No. 1 filed a Petition before this Court under Article 226 of the Constitution and pleaded that he was illegally detained from 28/01/1997 to 30/01/1997, hence, a damage of an amount of Rs. One lac be awarded to him against the appellant and prosecution of the appellant be also ordered for tampering with the record of the case registered against him under Sections 151, 107 and 116 of Criminal Procedure Code. He pleaded that on 27/01/1997, Mr. M.K. Agrawal, the respondent No. 3 in the original petition, the appellant S.K. Sharma, respondent No. 2 in the original petition and respondent No. 4 Shri M.L. Todi, the then Town Inspector, Sheopurkalan came to the house of the respondent No. 1 and Mr. M.K. Agrawal manhandled him and beaten him. He had also received injuries, thereafter he had been taken to Police Station Sheopurkalan and detained illegally. A false report was lodged against him at Police Station Sheopurkalan by Mr. M.K. Agrawal and a criminal case under Sections 333, 353, 506-B and 294 of I.P.C. was registered against him. He was arrested for the aforesaid offences on

27/01/1997 at about 6.30 PM, thereafter, an application for bail was moved by him on 28/01/1997 and the Additional Chief Judicial Magistrate granted bail to him of Rs. 20,000/-. The bail was furnished on the same day, consequently, the Additional Chief Judicial Magistrate ordered release of the respondent No. 1 on the same day. The respondent No. 1 also came to know that proceedings under Section 151 of the Code of Criminal Procedure were also undertaken against him, hence, he moved an application for bail before the Appellant and the appellant rejected the aforesaid application for bail and thereafter he was sent to Jail. The respondent No. 1 also moved an application for supplying the copy of the order of the Sub-Divisional Magistrate, the appellant, however, the copy was not supplied to him. Thereafter on 28/01/1997, a Revision Petition was filed before the Sessions Judge, Sheopurkalan and the record of the Court of Sub-Divisional Magistrate was requisitioned and then the respondent No. 1 came to know that the Sub-Divisional Magistrate asked to submit a surety of Rs. 20,000/- and because the respondent No. 1 did not submit the surety, hence he was sent to Jail. The Additional Sessions Judge allowed the interim application of the respondent No. 1 and ordered release on bail of Rs. 1000/- only and thereafter, the bail of the respondent No. 1 was accepted by the appellant and he was released from Jail on 30/01/1997.

4. The respondent No. 1 pleaded that the appellant deliberately sent him to Jail and fabricated the documents and order-sheet of the case. It has further been contended by the respondent that he had wrongly been denied the facility of release on bail by the appellant and he was not at all asked by the appellant to furnish a surety of Rs. 20,000/- and the intention of the appellant was to sent him Jail.

5. The appellant in his written statement denied the pleadings of the respondent No. 1. He specifically pleaded that some persons on behalf of the respondent No. 1 submitted an application before him for bail on 27/01/1997, however, at that time, no challan was produced before him, hence, he had rejected the aforesaid application. He mentioned in the application that it be put up on 30/01/1997. He further stated that thereafter the police filed the challan before him on 28/01/1997 and on the same day, the appellant passed an order under Section 111 of the Criminal Procedure Code and ordered that the respondent No. 1 shall furnish a surety of Rs. 20,000/- and a personal bond of the same amount and when the respondent No. 1 did not furnish the surety, it was ordered to issue a Jail warrant of the respondent No. 1 and

632 Suresh Kumar Sharma Vs. Durgalal Vijay(DB) I.L.R.[2011] M.P., thereafter the respondent No. 1 was sent in judicial custody. The appellant further denied the fact that he had fabricated the order-sheet dated 28/01/1997 and no copy of the order was supplied to the respondent No. 1. It has further been stated by the appellant that the copying section was more than four kilometer away from the Court, hence, the application was handed over to the counsel of the respondent No. 1 for submitting the same in the copying section. It has further been stated that when the order of the Additional Sessions Judge releasing the respondent No. 1 on bail was filed, he accepted the bail of respondent No. 1 on the same day and ordered for release of the respondent.

6. The Town Inspector and Additional Collector also denied the allegations of the respondent No. 1. The Additional Collector has clearly stated in his reply that he had been beaten by the respondent No. 1 and thereafter he lodged a FIR against the respondent No. 1. The same facts have been stated by the Town Inspector.

7. The learned Single Judge in the impugned order accepted the pleadings of the respondent No. 1 by holding that the proceedings under Section 151 of the Criminal Procedure Code were not initiated, properly the signature of the respondent No. 1 had not been taken in the order-sheet and only it has been written in the order-sheet dated 28/01/1997 that a notice under Section 111 of the Criminal Procedure Code was read over to the respondent No.1, however, a notice was not served on the respondent and no notice was issued to the respondent No. 1. The learned Single Judge further observed that the appellant rejected the application of bail of the respondent No. 1 and thereafter a Revision was filed and the Additional Sessions Judge granted bail to the respondent No. 1 and thereafter the bail order was produced before the appellant on 29/01/1997. The learned Single Judge relied on the entries of Rojnamcha Sanha, in which, it has been mentioned that the appellant refused to accept the bail of the respondent No. 1 and thereafter he was sent to Jail. The learned Single Judge further observed that the appellant recorded the proceedings after official time of the Court. The learned Single Judge further observed that there was no occasion to the appellant to proceed against the respondent No. 1 under Section 151 of Criminal Procedure Code when he was arrested for a substantive offence. On the aforesaid findings, the learned Single Judge held that the appellant acted with malice, beyond his jurisdiction and there was intention of the appellant of personal vengeance. The learned Single Judge awarded a damage of Rs. 25,000/- against the respondent No.

1 personally and further directed the State to hold an enquiry against the present appellant for manipulating the records.

8. The learned counsel appearing on behalf of the appellant has contended that the learned Single Judge has committed an error of law in holding that the detention of the respondent No. 1 was illegal and there was no manipulation in the records by the appellant. The learned counsel further contended that the learned Single Judge has committed an error of law in relying on the entries made in Rojnamcha Sanha contrary to the order passed by the appellant in the order-sheet of the case. It has further been contended that the findings recorded by the learned Single Judge that the appellant acted with malice, without jurisdiction and with personal vengeance are contrary to law and without any evidence on record, hence, the impugned order passed by the learned Single Judge is liable to be quashed.

9. Contrary to this, learned Senior Counsel appearing on behalf of respondent No. 1 has contended that the order passed by the learned Single Judge is in accordance with law. The appellant deliberately rejected the application for bail of the respondent No.1, who was at the relevant time was a leading lawyer of the district. It has further been contended that the appellant manipulated the record and prepared a false order-sheet dated 28/01/1997. He deliberately sent the respondent No. 1 to Jail beyond his jurisdiction, hence, the learned Single Judge has rightly held that the detention of the respondent No.1 was illegal and awarded a damage of Rs. 25,000/-. In support of the aforesaid contentions, the learned Senior Counsel relied on the followings judgments:-

- (i) AIR 1986 SC 494 (*Bhim Singh, MLA vs. State of J & K and others*);
- (ii) 2000 (2) SCC 465 (*Chairman Railway Board and others vs. Chandrima Das (Mrs) and others*);
- (iii) AIR 1957 Allahabad 189 (*Shravan Kumar Gupta vs. Superintendent, District Jail, Mathura and others*);
- (iv) AIR 1983 SC 1086 (*Rudul Sah vs. State of Bihar and another*);
- (v) AIR 1958 Punjab 471 (*Jai Prakash Beni Pershad and others vs. Ram Sarup and others*);
- (vi) AIR 1971 Allahabad 162 (*State of U.P. vs. Tulsi Ram and others*); and

634 Suresh Kumar Sharma Vs. Durgalal Vijay(DB) I.L.R.[2011] M.P.,
(vii) 2009 (2) M.P.H.T. 435 (DB)(*Pooran Singh vs. State of M.P.
and others*).

10. Undisputed facts of the case are that the administration undertaken an anti-encroachment drive at Sheopurkalan and during that course of action, a criminal case was registered against the respondent No.1 at Police Station Sheopurkalan vide Crime No. 27/97. The Additional Collector Mr. M.K. Agrawal lodged a FIR on 27/01/1997 at around 7.00 pm to the effect that he along with other persons including the Chief Executive Officer Mr. Sharma had been taking a round of the city, when they reached near Sona Lodge, respondent No. 1/ Durgalal came to him and shouted that he would kill him and thereafter he had beaten him, in that event, the complainant fell down over the ground and he received grievous injuries. He was examined by the doctor and doctor certified that the complainant Mr. M.K. Agrawal received injuries. On the basis of the aforesaid complaint, the police registered offence under Section 353, 333, 186, 294, 323 and 506-B of IPC against the respondent No. 1. Thereafter the respondent No. 1 was produced before the Magistrate and an application for bail was filed before the Magistrate. The Additional Chief Judicial Magistrate granted bail in favour of the respondent No. 1 and ordered that on furnishing a surety of Rs. 20,000/- and a personal bond of Rs. 20,000/-, the respondent No. 1 shall be released on bail. Thereafter, the respondent No. 1 submitted the surety and personal bond and he was released by the appellant.

11. The respondent No. 1 levelled allegations that as the proceeding under Section 151 of the Criminal Procedure Code was also initiated against him, hence, on behalf of him an application was submitted before the appellant for releasing on bail and that application was rejected by the appellant and thereafter he was sent to Jail, actually no proceedings were initiated against him by the appellant, and the appellant fabricated the order-sheet dated 28/01/1997, in which, it has been mentioned that the respondent No. 1 was produced before him and he was ordered to furnish a surety and bond of Rs. 20,000/- and when he refused to furnish the same, he was sent to Jail. Contrary to this, the appellant in his written statement stated that on 27/01/1997, when the application was filed by the respondent No.1 for releasing on bail, no challan was filed by the police before him, hence, he rejected the aforesaid application. On 28/01/1997, the Police filed a Estagasa registered vide Crime No. 8/97 under Section 107, 116(3) and 151 of Cr.P.C. alongwith the Estagasa, the respondent No. 1 was also produced before the appellant in

police custody and because the allegations against the respondent No. 1 were that he had beaten the Additional Collector during the anti-encroachment drive and there was a danger to peace of the area, hence, a notice under Section 111 of the Cr.P.C. was read over to the respondent No.1 and he was also ordered to furnish a surety of Rs. 20,000/- and a personal bond to that amount and when the respondent No. 1 did not furnish the surety and bond amount, then a Jail warrant was issued.

12. Chapter VIII of the Criminal Procedure Code prescribes provisions of surety for keeping the peace and for good behaviour. Section 107 of the Code prescribes of taking surety for keeping peace in certain cases. The relevant section is as under:

“107. surety for keeping the peace in other cases-

(1) When an Executive Magistrate receives information that any person is likely to commit a breach of the peace or disturb the public tranquillity or to do any wrongful act that may probably occasion a breach of the peace or disturb the public tranquillity and is of opinion that there is sufficient ground for proceeding, he may, in the manner hereinafter provided, require such person to show cause why he should not be ordered to execute a bond [with or without sureties] for keeping the peace for such period, not exceeding one year, as the Magistrate thinks fit.

(2) Proceedings under this section may be taken before any Executive Magistrate when either the place where the breach of the peace or disturbance is apprehended is within his local jurisdiction or there is within such jurisdiction a person who is likely to commit a breach of the peace or disturb the public tranquillity or to do any wrongful act as aforesaid beyond such jurisdiction.”

13. Section 111 of Cr.P.C. prescribes that a Magistrate acting under Section 107 shall make an order in writing in regard to amount of bond to be executed by the person and classes of securities to be taken. Section 112 of Cr.P.C. prescribes procedure in respect of person present in Court. It has been mentioned in the aforesaid section that if a person is present in the Court, the order shall be read over to him and facts of the case shall also be explained to him. The relevant sections are as under:

“111. Order to be made: When a Magistrate acting under section 107, section 108, section 109 or section 110, deems it necessary to require any person to show cause under such section, he shall make an order in writing, setting forth the substance of the information received, the amount of the bond to be executed, the term for which it is to be in force, and the number, character and class of sureties(if any) required.

112. Procedure in respect of person present in Court: If the person in respect of whom such order is made is present in Court, it shall be read over to him, or, if he so desires, the substance thereof shall be explained to him.”

14. Section 116 of the Code prescribes a procedure in regard to an enquiry as to truth of information. As per Section 122, if any person ordered to furnish surety under Section 106 or Section 117 of the Code, does not furnish such surety, he shall be committed to prison and if he is already in prison be detained in prison.

15. The Hon'ble Supreme Court in the case of *Madhu Limaye v. Sub Divisional Magistrate, Monghyr and others*, reported in AIR 1971 SC 2486 has considered in detail the aforesaid provisions of Criminal Procedure Code and held as under:

“30. We next proceed to consider the constitutional validity of Chapter VIII of the Code. It finds place in part IV which has the explanatory heading 'Prevention of Offences'. The Chapter is divided into three divisions A, B and C. The purport of the Chapter can be gathered from its sub-heading 'Of Security for keeping the Peace and for good behaviour'.

31. Division A is for security for keeping the peace on conviction. It consists of only one section (S. 106) and it provides that on conviction for certain offences, the Court may, at the time of passing sentence on the person convicted, if of opinion, that it is necessary to take a bond for future good behaviour, order him to execute a bond, with or without sureties for keeping the peace for a period not exceeding three years. The sum for which the bond is taken is proportionate to the means of the person and it becomes void if the conviction ultimately fails. The section is aimed at persons whose past

conduct has proved dangerous to the public and is intended to secure public tranquillity and peace.

32. Division B then consists of 12 sections (Sections 107-110 and 112-119) and applies to cases other than those mentioned in S. 106. Of these, S. 107 is for taking security generally for keeping the peace; S. 108 is for security for good behaviour from persons disseminating sedition; S. 109 for security for good behaviour from vagrants and suspected persons and S. 110 for security for good behaviour from habitual offenders. Sections 112-119 lay down the procedure to be followed in these cases. We are concerned in these cases with the provisions of S. 107 and therefore need not refer to Ss. 108-110.

33. The gist of S. 107 may now be given. It enables certain specified classes of Magistrates to make an order calling upon a person to show cause why he should not be ordered to execute a bond, with or without sureties for keeping the peace for such period not exceeding one year as the Magistrate thinks fit to fix. The condition of taking action is that the Magistrate is informed and he is of opinion that there is sufficient ground for proceeding that a person is likely to commit a breach of the peace or disturb the public tranquillity or to do any wrongful act that may probably occasion a breach of the peace or disturb the public tranquillity. The Magistrate can proceed if the person is within his jurisdiction or the place of the apprehended breach of the peace or disturbance is within the local limits of his jurisdiction. The section goes on to empower even a Magistrate not empowered to take action, to record his reason for acting, and then to order the arrest of the person (if not already in custody or before the court) with a view to sending him before a Magistrate empowered to deal with the case, together with a copy of his reason. The Magistrate before whom such a person is sent may in his discretion detain such person in custody pending further action by him.

34. The section is aimed at persons, who cause a reasonable apprehension of conduct likely to lead to a breach of the peace or disturbance of the public tranquillity. This is an

instance of preventive justice which the courts are intended to administer. This provision like the preceding one is in aid of orderly society and seeks to nip in the bud conduct subversive of the peace and public tranquillity. For this purpose Magistrates are invested with large judicial discretionary powers for the preservation of public peace and order. Therefore the justification for such provisions is claimed by the State to be in the function of the State which embraces not only the punishment of offenders but, as far as possible, the prevention of offences.

35. Both the sections are counter-parts of the same policy, the first applying when by reason of the conviction of a person, his past conduct leads to an apprehension for the further and the second applying where the Magistrate, on information, is of the opinion that unless prevented from so acting, a person is likely to act to the detriment of the public peace and public tranquillity. The argument is that these sections (more particularly S. 107) are destructive of freedom of the individual guaranteed by Art. 19 (1) (a) (b) (c) and (d) and are not saved by the restrictions contemplated by cls. (2) to (5) of the Article. It is also contended that there are no proper procedural safeguards in the sections that follow. Before we deal with these contentions it is necessary to glance briefly at sections 112 -119 of Division B and sections 120-126-A of Division C.

36. We have seen the provisions of S. 107. That section says that action is to be taken 'in the manner hereinafter provided' and this clearly indicates that it is not open to a Magistrate in such a case to depart from the procedure to any substantial extent. This is very salutary because the liberty of the person is involved and the law is rightly solicitous, that this liberty should only be curtailed according to its own procedure and not recording to the whim of the Magistrate concerned. It behoves us, therefore, to emphasise the safeguards built into the procedure because from them will arise the consideration of the reasonableness of the restrictions in the interest of public order or in the interest of the general public.

37. The procedure begins with S. 112. It requires that the

Magistrate acting under S. 107 shall make an order in writing, setting forth the substance of the information received, the amount of the bond, the term for which it is to be in force and the number, character and class of sureties (if any) required. Since the person to be proceeded against has to show cause, it is but natural that he must know the grounds for apprehending a breach of the peace or disturbance of the public tranquillity at his hands. Although the section speaks of the 'substance of the information' it does not mean the order should not be full. It may not repeat the information bodily but it must give propose notice of what has moved the Magistrate to take the action. This order is the foundation of the jurisdiction and the word 'substance' means the essence of the most important parts of the information.

38. Next follow three sections - Ss. 113-115. They deal with the person's presence. Section 113 deals with the situation when the person is present in court, then the order shall be read over to him and if he so desires, the substance of it shall be explained to him. This is not a mere formality. The intention is to explain to the person what the allegations against him are. The next section (S. 114) deals with a situation when the person is not present in court. There the option is two-fold. Ordinarily a summons must issue to him but in cases where the immediate arrest of the person is necessary a warrant for his arrest may issue. This is however subject to the qualification that there must be a report of a Police Officer or other information in that behalf and the breach of the peace cannot otherwise be prevented. The Magistrate must not act on an oral information but must record the substance of it before issuing a warrant. The section also envisages a situation in which the person is already in custody. In that case the Magistrate shall issue a warrant directing the Officer having the custody to produce that person. The provisions of this section are quite clearly reasonable in the three circumstance it deals with. If the presence of the person is to be secured, a summons to him is the normal course except in the other two cases.

39. Section 115 then provides that such summons or

warrant under S. 114, as the case may be, must be accompanied by the order under S. 112 and the person serving or executing the summons or warrant must serve the order on the person. There is enabling power in S. 116 under which the Magistrate may dispense with the presence of the person in Court and allow him to appear by a pleader.

40. Then follows S. 117. That section (omitting the proviso to the third sub-section and omitting sub-sections (4) and (5) which do not concern us) may be read here:

"117. Inquiry as to truth of information-

(1) When an order under section 112 has been read or explained under section 113 to a person present in Court, or when any person appears or is brought before a Magistrate in compliance with or in execution of a summons or warrant issued under S. 114, the Magistrate shall proceed to inquire into the truth of the information upon which action has been taken, and to take such evidence as may appear necessary.

(2) Such inquiry shall be made, as nearly as may be practicable in the manner hereinafter prescribed for conducting trials and recording evidence in summons cases.

(3) Pending the completion of the inquiry under sub-section (1), the Magistrate, if he considers that immediate measures are necessary for the prevention of a breach of the peace or disturbance of the public tranquillity or the commission of any offence or for the public safety may for reasons to be recorded in writing, direct the person in respect of whom the order under section 112 has been made to execute a bond, with or without sureties, for keeping the peace or maintaining good behaviour until the conclusion of the inquiry, and may detain him in custody until such bond is executed or in default of execution, until the enquiry is concluded".

41. The first sub-section read with the second requires the Magistrate to proceed to inquire into the truth of the information. The third sub-section enables the Magistrate to ask for an interim bond pending the completion of the inquiry by him. This is conditioned by the fact that immediate measures are necessary for the prevention of a breach of the peace or disturbance of the public tranquillity or the commission of any offence or for prevention of public safety. This is applicable where the person is not in custody and his being at large without a bond may endanger public safety etc. The Magistrate has to justify his action by reasons to be recorded in writing. If the person fails to execute a bond, with or without sureties, the Magistrate is empowered to detain him in custody.

42. A question was raised before us whether the Magistrate can defer the inquiry and yet ask for an interim bond. There is a difference of opinion in the High Courts. Some learned Judges are of opinion that this action can be taken as soon as the person appears because then the Magistrate may be said to have entered upon the inquiry. Other learned Judges are of the opinion that sub-ss. (1) and (2) envisage that the Magistrate must proceed to inquire into the truth of the information and only after *prima facie* satisfying himself about the truth and after recording his reasons in writing can the interim bond be asked for. Some of the cases on the previous view are - *Emperor v. Nabibux*, AIR 1942 Sind 86, *Dulal Chandra Mondal v. State*, AIR 1953 Cal 238, *Gani Ganai v. State*, AIR 1959 J and K 125 and *Laxmilal v. Bherulal*, AIR 1958 Raj 349. Those representing the other view are - *In re Muttuswami*, ILR (1940) Mad 335=(AIR 1940 Mad 23) (FB), *In re Venkatasubba Reddy*, AIR 1955 Andh Pra 96, *Jagdish Prasad v. State*, AIR 1957 Pat 106, *Jalalludin Kunju v. State* AIR 1952 Trav Co. 262, *Shravan Kumar Gupta v. Superintendent District jail, Mathura*, AIR 1957 All 189, *Jangir Singh v. The State*, AIR 1960 Punj 225, *Rama Gowda v. State of Mysore*, AIR 1960 Mys 259 and *Ratilal Jasraj v. State*, AIR 1956 Bom 385.

43. In our opinion the words of the section are quite clear.

As said by Straight J. in *Empress v. Babua*, (1883) ILR 6 All 132, the order under S. 112 is on hearsay but the inquiry under S. 117 is to ascertain the truth of the necessary information. Subsection (1) contemplates an immediate inquiry into the truth of the information. It is pending the completion of the inquiry that an interim bond can be asked for if immediate measures are necessary, and in default it is necessary to put the person in custody. Therefore, as the liberty of a person is involved, and that person is being proceeded against on information and suspicion, it is necessary to put a strict construction upon the powers of Magistrate. The facts must be of definite character. In *Nafar Chandra Pal v. Emperor*, 28 Cal WN 23 = (AIR 1924 Cal 114) there was only a petition and a report and these were not found sufficient material. In some of the cases before us no effort was made by the Magistrate to inquire into the truth of the allegation. The Magistrate adjourned the case from day to day and yet asked for an interim bond. This makes the proceedings entirely, one sided. It cannot be described as an inquiry within an inquiry as has been said in some cases. Some inquiry has to be made before the bond can be ordered. We therefore, approve of those cases in which it has been laid down that some inquiry should be made before action is taken to ask for an interim bond on placing the person in custody in default. In an old case reported in *A. D. Dunne v. Hem Chunder*, (1869) 12 Suth WR Cr 60 (FB) a Full Bench of the Calcutta High Court went into the matter. The case arose before the present Code of Criminal Procedure and, therefore, there was no provision for an interim bond. But what Sir Barnes Peacock C. J. said applies to the changed law also not only with regard to the ultimate order but also to the interim order for a bond. The section even as it is drafted today, is hedged in with proper safeguards and it would be moving too far away from the guarantee of freedom, if the view were allowed to prevail that without any inquiry into the truth of the information sufficient to make out a *prima facie* case a person is to be put in jeopardy of detention. A definite finding is required that immediate steps are necessary. The order must be one which can be made into a final order unless something to the contrary

is established. Therefore it is not open to a Magistrate to adjourn the case and in the interval to send a person to jail if he fails to furnish a bond. If this were the law a bond could always be insisted upon before even the inquiry began and that is neither the sense of the law nor the wording or arrangement of the sections already noticed.

44. The power which is conferred under this Chapter is distinguished from the power of detention by executive action under Art. 22 of the Constitution. Although the order to execute a bond, issued before an offence is committed, has the appearance of an administrative order, in reality it is judicial in character. Primarily the provision enables the Magistrate to require the execution of a bond and not to detain the person. Detention results only on default of execution of such bond. It is, therefore, not apposite to characterise the provision as a law for detention contemplated by Art. 22. The safeguards are therefore different. The person sought to be bound over has rights which the trial of summons case confers on an accused. The order is also capable of being questioned in superior courts. For this reason, at every step the law requires the Magistrate to state his reasons in writing. It would make his action purely administrative if he were to pass the order for an interim bond without entering upon the inquiry and at least *prima facie* inquiring into the truth of the information on which the order calling upon the person to show cause is based. Neither the scheme of the chapter nor the scheme of S. 117 can bear such an interpretation. We accordingly, held in the case of *Madhu Limaye* (Writ Petn. 307 of 1970- *Madhu Limaye v. Ved Murti*, (reported in AIR 1971 SC 2481) that as the case was simply adjourned from time to time and there was no inquiry before remanding him to custody his detention was illegal. We may now briefly notice the remaining sections of the Chapter.

45. Section 118 then lays down that if upon inquiry it is proved that the person be called upon to execute a bond for keeping the peace or maintaining good behaviour the Magistrate may call upon him to execute a bond. The security

must not be more than that stated in the order under S. 112, nor excessive. Under S. 119 the Magistrate may discharge the person or release him from custody if the necessity for keeping him bound over is not proved.

46. The last Division numbered C relates to proceedings subsequent to S. 118 Sec.120 fixes the terminus a quo for the period for which security is required Section 121 gives the contents of the bond and the conditions under which there is a breach of the bond. Section. 122 empowers the Magistrate to reject sureties but only after inquiry and recording the evidence and his reasons for rejection. Section 123 gives power to commit a person to prison or to be detained in prison if already there for the duration mentioned in the bond. If the period is more than a year then the proceedings have to be submitted to a superior Court. It also provides for ancillary matters. Section 124 empowers the District Magistrate or a Chief Presidency Magistrate to release a person so detained when there is no longer any hazard to the community or to any other person. There are other provisions for reducing security etc. with which we are not concerned. Section 125 enables the same Magistrates to cancel any bond for sufficient reason and under S. 126 the sureties also stand discharged. Section 126A deals with security for the unexpired period of bond to which no special reference is needed.

47. The gist of the Chapter is the prevention of crimes and disturbances of public tranquillity and breaches of the peace. There is no need to prove overt acts although if overt acts have taken place they will have to be considered. The acting being preventive is not based on overt act but on the potential danger to be averted. These provisions are thus essentially conceived in the interest of public order in the sense defined by us. They are also in the interest of the general public. If prevention of crimes, and breaches of peace and disturbance of public tranquillity are directed to the maintenance of the even tempo of community life, there can be no doubt that they are in the interest of public order. As we have shown above 'public order' is an elastic expression which takes within it

various meanings according to the context of the law and the existence of special circumstances. This power was used in England for over 400 years and is not something which is needed only for administration of colonial empires. Its need in our society today is as great as it was before the British left. We find nothing contrary to article 19 (1) (a), (b), (c, and (d) because the limits of the restrictions are well within cls. (2), (3), (4) and (5). We accordingly hold the Chapter as explained by us to be constitutionally valid.

48. Before we leave this topic it is necessary to emphasise that there is no room for invocation of other provisions of the Code such as S. 55 or 91. In some of the cases of the High Courts, to which reference is not necessary, recourse has been taken to these provisions in aid of Chapter VIII. Apart from the fact (which we have sufficiently emphasised above) that S. 55 deals with special cases of arrest and cannot be made applicable S. 107 itself speaks that the procedure of Chapter VIII should be followed, where Ss. 112, 113 and 114 of the Code prescribe their own procedures. Similarly, S. 91 may be available till the order under S. 112 is drawn up. After it is drawn up the Magistrate has to act under Ss. 113 and 117 (1). Then there is no room for Sec. 91. The reasoning in some of the cases of which *Vasudeo Ojha v. State of Uttar Pradesh*. AIR 1958 All 578 is an example, is fallacious.

49. There is also no question of bail to the person because if instead of an interim bond, bail for appearance was admissible Chapter VIII would undoubtedly have said so. Further bail is only for the continued appearance of a person and not to prevent him from committing certain acts. To release a person being proceeded against under S. 107/112 of the Code is to frustrate the very purpose of the proceedings unless his good behaviour is ensured by taking a bond in that behalf."

16. The Allahabad High Court in the case *Ram Charan vs. State*, reported in AIR 1953 SC 375 has held that proceedings under Section 106 of Criminal Procedure Code are judicial proceedings:

"I may add that the action of the City Magistrate, Sri T.R. Barker, in requesting the Magistrate to consider the advisability

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of passing an order under section 106, Cr.P.C., was very
improper. Proceedings under section 106, Cr.P.C. Are not
administrative proceedings. They are no doubt proceedings
for prevention of offences and not for punishment of persons
committing offences.....”

17. From the aforesaid judgment of the Hon'ble Supreme Court as well as Patna High Court, it is clear that the Executive Magistrate has power to initiate proceedings if there is an apprehension of breach of peace. He has power to obtain a surety and also execution of a bond and if a person fails to produce the bond or surety, he has also power to sent the aforesaid person in Jail. The proceedings are the judicial proceedings and the Executive Magistrate performs the judicial function.

18. In the present case, the learned Single Judge has relied on the entries recorded by the police in Rojnamcha Sanha, copy of which has been filed as Annexure R/1-4. It has been mentioned in Annexure R/1-4 that on the basis of to the act of respondent No. 1, the proceedings under Section 151 of Cr.P.C. were initiated against him and he was produced before the appellant and the appellant refused to grant bail to the respondent No.1, hence, a Jail warrant was prepared and the respondent No. 1 was sent to Jail. These proceedings recorded on 28/01/1997 are contrary to the order-sheet written by the appellant on 28/01/1997, in which, it has been mentioned that the respondent No. 1 was directed to furnish a surety and a personal bond of Rs. 20,000/- each and when he did not furnish the surety, he was sent to Jail.

19. Section 172 of the Code of Criminal Procedure gives mandate to the Police Officer to keep the diary of the proceedings of the investigation. The relevant section is as under:

“172. Diary of proceedings in investigation:

(1) Every police officer making an investigation under this Chapter shall day by day enter his proceedings in the investigation in a diary, setting forth the time at which the information reached him, the time at which he began and closed his investigation, the place or places visited by him, and a statement of the circumstances ascertained through his investigation.

[(1A) The statements of witnesses recorded during the course of investigation under Section 161 shall be inserted in the case diary].

(2) Any Criminal Court may send for the police diaries of a case under inquiry or trial in such Court and may use such diaries, not as evidence in the case, but to aid it in such inquiry or trial.

(3) Neither the accused nor his agents shall be entitled to call for such diaries, nor shall he or they be entitled to see them merely because they are referred to by the Court; but, if they are used by the police officer who made them to refresh his memory' or if the Court uses them for the purpose of contradicting such police officer, the provisions of section 161 or Section 145, as the case may be, of the Indian Evidence Act, 1872, shall apply."

20. The Hon'ble Supreme Court in *Malkiat Singh and others vs. State of Punjab*, reported in (1991) 4 SCC 341 has held in regard to evidenciary value of the entry recorded in case diary as under:

"11. It is manifest from its bare reading without subjecting to detailed and critical analysis that the case diary is only a record of day to day investigation of the Investigating Officer to ascertain the statement of circumstances ascertained through the investigation. Under sub-s. (2) the Court is entitled at the trial or enquiry to use the diary not as evidence in the case, but as aid to it in the inquiry or trial. Neither the accused, nor his agent, by operation of sub-s. (3), shall be entitled to call the diary, nor shall he be entitled to use it as evidence merely because the Court referred to it. Only right given thereunder is that if the police officer who made the entries in the diary uses it to refresh his memory or if the Court uses it for the purpose of contradicting such witness, by operation of s.161 of the Code s. 145 of the Evidence Act, it shall be used for the purpose of contradicting the witness, i.e. Investigation Officer or to explain it in re-examination by the prosecution, with permission of the court. It is, therefore, clear that unless the investigating officer or the Court uses it either to refresh the memory or contradicting the investigating officer as previous statement under s.161 that too after drawing his attention thereto as is enjoined under s.145 of the Evidence Act. The entries cannot be used by the

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accused as evidence. Neither PW-5, nor PW-6, nor the court used the case diary. Therefore, the free use thereof for contradicting the prosecution evidence is obviously illegal and it is inadmissible in evidence. Thereby the defence cannot place reliance thereon. But even if we were to consider the same as admissible that part of the evidence does not impinge upon the prosecution evidence.”

It is clear from the aforesaid judgments that the entry cannot be used as an evidence.

21: The Hon'ble Supreme Court further in the case of *Anil Rishi vs. Gurbaksh Singh*, reported in 2006 (5) SCC 558 has held as under in regard to onus of burden of proof:

“The elementary rule in Section 101 is inflexible. In terms of Section 101, Evidence Act, 1872, ordinarily, the burden of proving the fact rests on the party who substantially asserts the affirmative of the issue and not on the party who denies it. The said rule may not be universal in its application and there may be exception thereto. The suit will fail if both the parties do not adduce any evidence, in view of Section 102 of the Evidence Act. In terms of Section 102 the initial onus is always on the plaintiff and if he discharges that onus and makes out a case which entitles him to a relief, the onus shifts to the defendant to make out a case which entitles him to a relief, the onus shifts to the defendant to prove those circumstances, if any, which would disentitle the plaintiff to the same.”

From the aforesaid judgment of the Hon'ble Supreme Court, it is clear that the entry recorded by the police in case diary and other documents could not be held to be a proof of fact as an evidence. In the present case, the learned Single Judge has relied upon on the entries recorded in the Rojnamcha Sanha to prove the fact of illegal detention of the respondent No.1, in our opinion, the learned Single Judge has committed an error of law in relying on the aforesaid entries.

22. Apart from this, the learned Single Judge has completely over looked the provisions of Judicial Officers Protection Act, 1850. The aforesaid Act has been enacted for giving protection to Magistrate and those acting judicially. The relevant section is as under:

"1. Non-liability to suit of officers acting judicially, for official acts done in good faith, and of officers executing warrants and orders: No Judge, Magistrate, Justice of the Peace, Collector or other person acting judicially shall be liable to be sued in any Civil Court for any act done or ordered to be done by him in the discharge of his judicial duty, whether or not within the limits of his jurisdiction:

Provided that he at the time, in good faith, believed himself to have jurisdiction to do or order the act complained of; and no officer of any Court or other person, bound to execute the lawful warrants or orders of any such Judge, Magistrate, Justice of the Peace, Collector or other person acting judicially shall be liable to be sued in any Civil Court, for the execution of any warrant or order, which he would be bound to execute, if within the jurisdiction of the person issuing the same."

23. The Hon'ble Supreme Court in the case of *Anowar Hussain vs. Ajoy Kumar Mukherjee and others*, reported in AIR 1965 SC 1651 has approved the judgment of the Allahabad High Court in *Tayen vs. Ram Lal*, ILR 12 Allahabad 115 and held as under:

"8. In this appeal, the only question raised is that in ordering the arrest of the respondent the appellant acted in discharge of his judicial duties, and he was on that account protected by the Judicial Officers' Protection Act, 1850. Section 1 of the Act, in so far as it is material provided :

"No Judge, Magistrate, * * * Collector or other person acting judicially shall be liable to be sued in any Civil Court for any act done or ordered to be done by him in the discharge of his judicial duty, whether or not within the limits of his jurisdiction: Provided that he at the time, in good faith, believed himself to have jurisdiction to do or order the act complained of;".

The statute is clearly intended to grant protection to Judicial Officers against suits in respect of acts done or ordered to be done by them in discharge of their duties as such officers. The statute, it must be noticed, protects a Judicial Officer only when he is acting in his judicial capacity and not in any other capacity. But within the limits of its operation it grants large protection

to Judges and Magistrates acting in the discharge of their judicial duties. If the act done or ordered to be done in the discharge of judicial duties is within his jurisdiction, the protection is absolute and no enquiry will be entertained whether the act done or ordered was erroneously, irregularly or even illegally, or was done or ordered without believing in good faith, that he had jurisdiction to do or order the act complained of. If the act done or ordered is not within the limits of his jurisdiction, the Judicial Officer acting in the discharge of his judicial duties is still protected, if at the time of doing or ordering the act complained of, he in good faith believed himself to have jurisdiction to do or order the act. The expression "jurisdiction" does not mean the power to do or order the act impugned, but generally the authority of the Judicial Officer to act in the matter: *Tayen v. Ram Lal*, ILR 12 All 115."

24. The Allahabad High Court in the case of *State of U.P. vs. Lakshmi Narain Singhal*, Criminal Misc. Cont. Case 22 of 1960 reported in AIR 1962 Allhabad 137 has held as under:

"6. The fundamental question is whether in the circumstances of this case the serving of the notice under Sec.80 C.P.C. on the Magistrate by Laxmi Narain Singhal amounts to contempt or not. I am satisfied that there may be cases in which the service of such a notice on a Magistrate by a person who is being tried or proceeded against in that Magistrate's court will not necessarily constitute contempt. The test is whether the person concerned has any valid cause of action against the Magistrate on which he can legally base a suit; for if he is legally entitled to file a suit, the essential preliminary for which is the service of a notice under Sec.80 C.P.C., it would obviously amount to stifling his legitimate remedy if he were held to be precluded from serving the notice. The crux of the matter therefore is whether the respondent in the present case could legally file a suit against the Magistrate.

7. The Judicial Officers Protection Act, 1950, provides as follows:-

"No Judge, Magistrate, Justice of Peace, Collector or other

person acting judicially shall be liable to be sued in any civil Court for any act done or ordered to be done by him in the discharge of judicial duty, whether or not within the limits of his jurisdictions: Provided that he at the time, in good faith, believed himself to have jurisdiction to do or order the act complained of."

This section affords protection to a Judge or Magistrate acting judicially in two classes of cases: (a) in respect of acts done or ordered to be done within the limits of his jurisdiction, and (b) for acts done or ordered to be done outside the limits of his jurisdiction. In the first class of cases the protection afforded by the Act is absolute and the officer concerned will not be liable to be sued, whether or not he has acted erroneously, irregularly or even illegally or in bad faith, vide the Division Bench decision in *Teyen v. Ramlal*, ILR 12 All 115, whereas in the second class of cases protection can be claimed only if the officer in good faith believed himself to have jurisdiction to do or order the act complained of.

8. In the present instance I am satisfied that the act ordered to be done by the City Magistrate, i.e. detaining the respondent in custody from 9-2-1960 to 10-2-1960, was clearly within his jurisdiction. Section 117(3), Cri. P.C. Provides:

"Pending the completion of the inquiry under sub-section (1) the Magistrate, if he considers that immediate measures are necessary for the prevention of a breach of the peace or disturbance of the public tranquillity or the commission of any offence or for the public safety, may, for reasons to be recorded in writing, direct the person in respect of whom the order under Sec.112 has been made to execute a bond, with or without sureties, for keeping the peace or maintaining good behaviour until the conclusion of the inquiry, and may detain him in custody until such bond is executed or, in default of execution, until the inquiry is concluded."

Under this section the Magistrate was fully empowered to demand a bond with sureties from Laxmi Narain Singhal and to order his detention in custody until such bonds were executed.

9. The main ground taken by Laxmi Narain Singhal in the notice under Sec.80 C.P.C. as the basis for challenging the action of the Magistrate was that as soon as the required bonds were written out and signed by the two sureties who came forward on 9-2-1960, 'execution' of the bonds was complete, and that the Magistrate was bound under Sec.117 (3) to release the respondent from custody without further ado. It is obvious, however, that this is not a correct reading of the section. The mere drafting, writing out and signing of the bonds is not enough: they must also be presented by persons whom the Magistrate considers to be fit to stand as sureties. This is clear from Sec.122, Cri. P.C. which lays down that:-

"A Magistrate may refuse to accept any surety offered.....on the ground that such surety is an unfit person for the purposes of the bond:

Provided that, before so refusing to accept.....he shall either himself hold an inquiry on oath into the fitness of the surety, or cause such inquiry to be held and a report to be made thereon by a Magistrate subordinate to him."

It was just such an inquiry as is envisaged by Sec.122 that the Magistrate embarked on in the present case on 9-2-1960. He felt unsatisfied regarding the fitness and solvency of the persons who were offering themselves as sureties and consequently declined to accept them then and there but instead, after having allowed the proposed sureties to be cross-examined, postponed consideration of the matter to the following day. In such circumstances it is obvious that there was no acceptance of the proposed sureties as fit persons and therefore it cannot be said that any bonds had been executed as required by Sec.117(3), Cri. P.C. It follows that the suggestion made in the notice under Sec.80, C.P.C. that merely because the proposed sureties had signed their bonds, the Magistrate acted illegally or without jurisdiction in continuing to detain the respondent in custody, is entirely without force.

10. An attempt has also been made to argue that if the Magistrate was not satisfied with the sureties who were offered, he should straightaway have rejected them on 9-2-1960; and

that he had no jurisdiction to postpone the matter for consideration to the following day But I see no force in this line of argument either. No Judge or Magistrate can be obliged to give immediate orders on any matter if in the exercise of his discretion he thinks it necessary to postpone the case to another date; and there can be no doubt that he has full jurisdiction to order postponement of the matter in such circumstances.

11. The Magistrate's action in detaining the respondent in custody has also been assailed on the ground that when his two lawyers personally offered to stand as his sureties, the offer was summarily turned down, by the Magistrate.

The learned Government Advocate has objected that this plea was not taken at all in the notice under Sec.80, C.P.C. and therefore should not be considered in the present proceedings; but since it appears to have been included (by a subsequent amendment of the plaint) as a cause of action in the suit that was filed in pursuance of the notice, I do not think it proper to exclude it from consideration. It can be argued that if the suit is found to be maintainable on any ground, whether specifically mentioned in the notice under section 80, C.P.C. or not, the respondent must be deemed to have had a legal remedy against the Magistrate and in such circumstances the issue of notice to the Magistrate under Sec.80, C.P.C., being merely a prelude to the enforcement of that legal remedy would not amount to contempt.

12. Sri M.C. Gupta has denied that the respondent's lawyers offered themselves as sureties or that he refused to accept them; and the learned District Judge of Moradabad, who was asked by me to conduct an inquiry into the matter, has come to the conclusion that actually no such offer was made. It is to be noted, however, that Sri Zaka Ullah Khan Advocate and Sri Matru Lal, Retired Public Prosecutor, have both sworn affidavits asserting that they did offer themselves personally as sureties for the respondent Laxmi Narain Singhal, when they found the Magistrate reluctant to accept the sureties who had been first proposed.

I do not consider it necessary, however, to give any finding

on this question of fact, for even assuming that the respondent's allegations in this respect are true, his case is not materially furthered thereby. A Magistrate demanding a bond with sureties from a person under Sec.117(3), Cri. P.C. "may detain him in custody until such bond is executed"; and there is not the slightest suggestion that any bond was ever actually executed either by Sri Zaka Ullah Khan or by Sri Matru Lal. Even if it be a fact that Sri Zaka Ullah Khan and Sri Matru Lal suggested to the Magistrate that they were prepared to stand as sureties, this mere suggestion on their part would not be any sufficient reason for him to release Laxmi Narain Singhal from custody. Only if they had actually executed bonds and presented them before the Magistrate, would he have been bound to decide (if necessary after holding an inquiry under Sec.122, Cri. P.C.) whether he considered them fit persons to act as sureties or not; and until that was done the Magistrate would not be required to pass any order of release and his action in detaining the respondent in custody would be fully in accordance with law.

13. My conclusion is therefore that even if the allegations of the respondent are accepted in to the Magistrate has committed no illegality and was acting fully within his jurisdiction in detaining the respondent in custody on 9-2-1960 and in not releasing him until acceptable sureties were eventually furnished on 10-2-1960, and no suit would lie against the Magistrate for acting in this manner. The question whether the Magistrate acted in good faith or not does not call for decision at all, for even if he acted in complete bad faith in doing what he did, he would be entitled to absolute immunity from suit, since the acts complained of were within the limits of his jurisdiction."

25. The Hon'ble Supreme Court in the case of *Rachapudi Subba Rao vs. The Advocate General, Andhra Pradesh*, reported in AIR 1981 SC 755 further held in regard to Judicial Officers Protection Act as under:

"Section 1 of the Judicial Officers' Protection Act, 1850 affords protection to two broad categories of acts done or ordered to be done by a judicial officer in his judicial capacity. In the first category fall those acts which are within the limits of his jurisdiction. The second category encompasses those

acts which may not be within the jurisdiction of the judicial officer, but are, nevertheless, done or ordered to be done by him, believing in good faith that he had jurisdiction to do them or order them to be done. If the judicial officer is found to have been acting in the discharge of his judicial duties, then, in order to exclude him from the protection of this statute the complainant has to establish that, (1) the judicial officer complained against was acting without any jurisdiction whatsoever, and (2) he was acting without good faith in believing himself to have jurisdiction. Held that the tone, temper and contents of the notice issued by the appellant, particularly of the passages which imputed malice, partiality and dishonesty to the Subordinate Judge in the judicial adjudication of the suits against the appellant constituted a deliberate attempt to scandalise the judge, to terribly embarrass him and to lower the authority of his office and the Court. The act and conduct of the appellant in issuing this notice therefore, fell squarely within sub-clauses (i) and (ii) of the definition of "criminal contempt" given in Section 2 (c) of the Contempt of Courts Act."

From the aforesaid judgment, it is clear that if an act done or ordered to be done in discharge of judicial capacity is within the jurisdiction of the Magistrate, the protection provided under Act of 1850 is absolute and no enquiry would be entertained even when the act or order was erroneous, irregular or illegal or was done or ordered to be done believing in good faith that he had jurisdiction to do or ordered to be done.

26. As per the judgments of the Allahabad High Court in the case of *Ram Charan* (supra) and Hon'ble Supreme Court in the case of *Madhu Limaye* (supra) that any proceeding initiated before the Magistrate under Chapter VIII of the Cr.P.C. are judicial proceedings, hence, the appellant is entitled protection under Judicial Officers Protection Act, 1850, because the act of the appellant is under the provisions of Criminal Procedure Code and he passed the order under the provisions of the Criminal Procedure Code. Consequently, the appeal filed by the appellant is hereby allowed. The impugned order passed by the learned Single Judge is hereby set aside.

No order as to costs.

Appeal allowed.

WRIT PETITION

Before Mr. Justice R.S. Jha

W.P. No.5569/2008 (Jabalpur) decided on 1 September, 2009

DURGA PRASAD & anr.

... Petitioners

Vs.

STATE OF M.P. & anr.

... Respondents

Prisoners' Release on Probation Act, M.P. (16 of 1954), Section 9, Prisoners' Release on Probation Rules, M.P. 1964, Rule 2 - Release of prisoner on probation - Manner of commission of offence is a relevant consideration - The manner of commission of offence may be so brutal that it by itself may be a good and sole ground to decline the licence to release. (Para 8)

बंदियों का परिवीक्षा पर छोड़ा जाना अधिनियम, म.प्र. (1954 का 16), धारा 9, बंदियों का परिवीक्षा पर छोड़ा जाना नियम, म.प्र. 1964, नियम 2 — बंदी का परिवीक्षा पर छोड़ा जाना — अपराध करने का ढंग सुसंगत बात है — अपराध करने का ढंग इतना नृशंस हो सकता है कि मुक्त किये जाने की अनुज्ञा अस्वीकार करने का वह अपने आप एक उचित और एकमात्र आधार हो सकता है।

Cases referred :

(2007) 10 SCC 799, (2003) 6 SCC 144.

D.D. Bhargava, for the petitioners.*Samdarshi Tiwari, G.A.*, for the respondent/State.**ORDER**

R.S. JHA, J. :-The petitioners have filed this petition being aggrieved by the orders dated 18.1.2008 and 7.3.2008 (Petitioner No. 1) and orders dated 13.12.2007 and 21.2.2008 (Petitioner no.2) by which their applications seeking release on probation under the provisions of M.P. Prisoners Release on Probation Act, 1954 (for brevity "the Act") and the M.P. Prisoners, Release on Probation Rules. 1964 (for brevity "the Rules") have been rejected.

2. It is submitted by the learned counsel for the petitioners relying upon several unreported judgments, that the authority is required to look into each and every factum specifically antecedents and conduct of the prisoners in the prison and thereafter take a decision but in the instant case the authority has rejected the application for release on probation solely on the ground that the

manner in which the petitioners have committed the offence was extremely brutal and heinous which is impermissible. It is also submitted that the impugned order passed by the respondent suffers from non-application of mind, therefore, deserves to be quashed.

3. Per contra, learned Government Advocate appearing for the State/ Respondents submits that the authority under the Act and Rules has considered the application filed by the petitioners and taking into consideration the brutal and heinous manner in which the offence was committed, has rejected the applications of the petitioners for release on probation relying upon the judgment of Supreme Court rendered in the case of *State of M.P. Vs. Kusum* (2007) 10 SCC 799.

4. I have heard the learned counsel for the parties at length.

5. From a perusal of the record and the impugned order, it is clear that the petitioners along with Jageshwar, Damodar and others brutally assaulted Rajkumar with stick and continued to do so till he died and in such circumstances, the petitioners being found guilty have been sentenced to life imprisonment by the sixth Additional Sessions Judge, Jabalpur in S.T. No. 63/83 under sections 302, 149, 323 and 149 of the I.P.C.

6. It is also apparent from the perusal of the impugned orders that the authority, after taking into consideration the manner of commission of the offence, has rejected the applications of the petitioners for release on probation on the ground that the petitioners were not entitled to be released on probation in view of the manner in which the offence was committed by them by forming an unlawful assembly and brutally committing the murder with lethal weapons.

7. In the Case of *Kusum* (supra), the Supreme Court while affirming the order passed by this court quashing the circular dated 3.8.2005 with regard to prohibition to entertain applications for release on probation, has reaffirmed the relevant factors that are required to be considered by the authorities while dealing with an application for release on probation and has quoted paragraph 7 of the judgment, rendered in the case of *Arvind Yadav Vs. Ramesh Kumar and others* (2003) 6 SCC 144. Paragraph 7 of the aforesaid judgment is in the following terms:-

"7. Apart from the fact that there are factual infirmities in the impugned judgment, it is also to be borne in mind that the victim and the family of the victim who have suffered at the hands of

the convict have also some rights. The convicts have no indefeasible right to be released. The right is only to be considered for release on licence in terms of the Act and the Rules. The Probation Board and the State Government are required to take into consideration the relevant factors before deciding or declining to release a convict. In the present case, the Probation Board had not recommended the release. The State Government had confirmed the order of the Board. The writ petition had failed before the learned Single Judge. The facts of individual cases were not considered by the Division Bench. In the case of *Ramesh Kumar*, the stand of the State Government was that he along with six others had formed an unlawful assembly and murdered Jitendra son of Shashi Mohan Yadav on 20th September, 1994 in Hoshangabad Madhya Pradesh causing 17 injuries on him with swords, knives and gupti and that Ramesh Kumar was the accused in fourteen cases filed under various sections of the Indian Penal Code. The manner of commission of crime is a relevant consideration. In a given case, the manner of commission of offence may be so brutal that it by itself may be a good sole ground to decline the licence to release. The Rules provide for a detailed procedure for consideration of application for release. Once rejected, again application for release can be made after two years. The Board comprises of the Home Secretary of the State Government or any other empowered officer, I.G. of Prisons or Deputy I.G. and another member."

8. A bare reading of the aforesaid paragraph makes it clear that the manner of commission of offence is a relevant consideration and in a given case, the manner of commission of the offence may be so brutal that it by itself may be a good and sole ground to decline the licence to release.

9. In the instant case, the authorities on going through the record have held that the brutal and preplanned manner in which the murder of the victim was committed by the petitioners along with others in broad day light did not warrant their release on licence under the provisions of the Act and rules.

10. In such circumstances, no perversity or material irregularity can be found in the impugned order rejecting the application of the petitioners for

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release on probation. I am also of the considered opinion that in view of the
judgment of the Supreme Court in the case of *Kusum* (supra), the applications
for release on probation can be rejected on the sole ground of the brutal
manner of commission of offence, as has been held therein.

11. In the circumstances, I do not find any merits in the petition which is
accordingly dismissed. Consequently, interim relief granted on earlier occasion
stands vacated.

Petition dismissed.

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WRIT PETITION

Before Mr. Justice Shantanu Kemkar &

Mr. Justice Prakash Shrivastava

W.P. No.9785/2010(S) (Indore) decided on 1 September, 2010

BHERU LAL

... Petitioner

Vs.

GRASIM INDUSTRIES LTD., BIRLAGRAM, UJJAIN ... Respondent

Service Law - Change of Date of Birth - Petitioner, prior to his
retirement submitted an application dated 16.08.2000 before the
respondent seeking correction of his date of birth so as to make it
09.03.1953 in place of the date of birth (year) declared by him as 1943
- The said prayer made by the petitioner was rejected by the respondent
(employer) - Petitioner by the order of his retirement approached the
Labour Court and the Labour Court allowed the petitioner's application
u/s 31(3) of M.P. Industrial Relations Act, 1960 and set aside the order
of his retirement - In appeal the Industrial Court held that the petitioner
himself declared his date of birth as 1943 at time of entry in service
and that the date of birth as 09.03.1953 which is being claimed by him
has not been proved - Petitioner challenged the order of Industrial Court
and argued that School Leaving Certificate produced by him before
Labour Court was doubted by the respondent - Held - Industrial Court
committed no error in holding that the School Leaving Certificate not,
properly proved, can not be relied upon - Further, if the date of birth
now claimed, is taken to be correct, then the age of the petitioner while
joining the services initially, would come to 11 years, which can not be
accepted - **Petition dismissed.** (Paras 3 & 10)

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सेवा विधि – जन्म तिथि में परिवर्तन – याची ने अपनी सेवानिवृत्ति से पूर्व प्रत्यर्थी के समक्ष आवेदन दिनांक 16.8.2000, यह चाहते हुए प्रस्तुत किया कि उसके द्वारा घोषित जन्म तिथि (वर्ष) 1943 के स्थान पर उसकी जन्म तिथि 9.3.1953 का सुधार किया जाए – याची द्वारा की गई उक्त प्रार्थना, प्रत्यर्थी (नियोक्ता) द्वारा अस्वीकार की गई – याची अपनी सेवानिवृत्ति के आदेश द्वारा श्रम न्यायालय पहुँचा और श्रम न्यायालय ने याची का आवेदन अंतर्गत धारा 31(3) म.प्र. औद्योगिक संबंध अधिनियम, 1960 मंजूर किया एवं उसकी सेवानिवृत्ति का आदेश अपास्त किया – अपील में औद्योगिक न्यायालय ने अभिनिर्धारित किया कि सेवा में प्रवेश करते समय स्वयं याची ने अपनी जन्म तिथि 1943 के रूप में घोषित की और जन्म तिथि 9.3.1953 होना, जिसका उसके द्वारा दावा किया जा रहा है, वह साबित नहीं किया गया है – याची ने औद्योगिक न्यायालय के आदेश को चुनौती दी और यह तर्क किया कि उसके द्वारा श्रम न्यायालय के समक्ष प्रस्तुत किये गये विद्यालय त्याग प्रमाण पत्र पर प्रत्यर्थी द्वारा संदेह किया गया था – अभिनिर्धारित – औद्योगिक न्यायालय ने यह अभिनिर्धारित करने में कोई त्रुटि नहीं की, कि विद्यालय त्याग प्रमाण पत्र समुचित रूप से साबित नहीं किया गया, उस पर विश्वास नहीं किया जा सकता – इसके अतिरिक्त, यदि अब दावा की गई जन्म तिथि को सही माना जाए, तब आरंभ में सेवा का पद ग्रहण करते समय याची की आयु 11 वर्ष बनती है, जो स्वीकार नहीं की जा सकती – याचिका खारिज।

Cases referred :

(2002) 7 SCC 719, Order dated 07.02.2005 passed in W.P.
No.3114/2000 H.K. Khandelwal vs. State of M.P.

S.H. Moyal, for the petitioner.

ORDER

The Order of the Court was delivered by SHANTANU KEMKAR, J. :-The petitioner has filed this writ petition under Article 227 of the Constitution of India challenging the order dated 8.03.2010 (Annexure P-2) passed by the President, Industrial Court of Madhya Pradesh, Indore in Civil Appeal No.151 of 2009 by which the respondent's appeal has been allowed and the order dated 15.07.2009 passed by Labour Court, Ujjain in Case No.185 of 2001 (Labour) has been set aside.

2. Briefly stated, the petitioner was working as an employee in the maintenance department of the respondent Grasim Industries Limited, Nagda. On attaining the age of superannuation, he was retired by the respondent vide order dated 23.3.2001 w.e.f. 30.06.2001.

3. According to the petitioner, prior to his retirement he had submitted an application dated 16.08.2000 before the respondent seeking correction of

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his date of birth so as to make it 9.03.1953 in place of the date of birth (year) declared by him as 1943. The said prayer made by the petitioner was rejected by the respondent (employer) vide order dated 4.09.2000.

4. Aggrieved by the order of his retirement w.e.f. 30.06.2001, the petitioner approached to the Labour Court by filing an application under **section 31(3) of the M.P. Industrial Relations Act, 1960** (for short the Act of 1960) The Labour Court after giving opportunity of filing reply to the respondent and after recording evidence led by the parties vide order dated 15.07.2009 allowed the petitioner's application, set aside the order of his retirement, and directed the respondent to continue the petitioner in service till 8.03.2011 treating his date of birth to be 9.03.1953.

5. Aggrieved by the aforesaid order dated 15.07.2009 passed by the Labour Court, the respondent (employer) filed an appeal under section 65 of the Act of 1960 before the Industrial Court. The President, Industrial Court, vide impugned order dated 8.03.2010 passed in Appeal No.151/2009 allowed the respondent's appeal. The Industrial Court held that the petitioner himself declared his date of birth as 1943 at the time of entry in the service. It held that the date of birth which is being claimed by him vide application dated 16.08.2000 as 9.03.1953, has not been proved by him by producing a reliable and admissible evidence, in the circumstances, the same cannot be treated to be his date of birth. Aggrieved, the petitioner has filed this petition under Article 227 of the Constitution of India.

6. Shri S.H.Moyal, learned counsel for the petitioner (employee) argued that the President Industrial Court has committed error in not relying upon the School Leaving Certificate produced by the petitioner before the Labour Court when its authenticity was not doubted by the respondent. According to him, in view of the provision contained in Rule 14-A (2) of the Standard Standing Orders for short S.S.O. framed by the State Government and legally enforceable in relation to the undertaking of the respondent, the said certificate was rightly relied upon by the Labour Court. Thus according to him the order of Industrial Court being contrary to Rule 14-A of the S.S.O. the same deserves to be quashed.

7. Rule 14-A of the S.S.O. on which the petitioner as well as the Industrial Court has placed reliance reads as under :-

“14-A – Retirement (1) – An employee shall retire from the service of the employer on the date he attains the

age of 58 years. He may, however, be retained in service by the employer after the date of attaining the age of 58 years if his services are necessary in the interest of the undertaking but he shall not be retained in service after the age of 60 years.

Provided that nothing in this clause shall adversely affect the operation of the terms of any contract, agreement, settlement or award on this subject, if the age of retirement is not less than 58 years :

Provided further that before retiring an employee from the service in accordance with the provisions contained in this clause, the employer shall give to the said employee at least one month's intimation in writing of such retirement. However, failure to give such intimation will not entitle the employee to continue in service after attaining the age of retirement. On the employer's failure to give such intimation, he shall be liable to pay to the employee concerned one month's wages.

(1-a).....

(2) "14-A(2)- For the purpose of clause (1) the age shall be reckoned by any of the following methods in order of priority :-

(i) The date of birth as given by the employee at the time of his employment and accepted by the Manager,

(ii) The date of birth as given in the Higher Secondary School Certificate or equivalent examination Certificate;

(iii) The certificate issued by the Local Authority of the place where the employee was born, on the basis of the records maintained by such authority or certified copy of the entry in the Birth and Death Register in which date of birth is mentioned ;

(iv) The date of birth as declared by the employee in his declaration card for purpose of membership of the Employees' Provident Fund".

(3) Notwithstanding anything contained in the foregoing clause, if any dispute arises regarding the date of birth intimated at the time of employment or declared in the declaration card for the purpose of membership of the Employees Provident Fund, as the case may be, then the date of birth shall be determined on the basis of School Leaving Certificate and in its absence, the date of birth determined by a Registered Medical Practitioner, not below the rank of Civil Surgeon, shall be considered as final, but any such dispute shall not be entertained within the period of six months before the date of retirement".

8. On going through the impugned order of the Industrial Court we find that applying the provision contained in Rule 14-A of the S.S.O. the Industrial Court scrutinized the evidence led by the parties. In Paragraph 6 of its order the Industrial Court recorded the following finding :-

"In this appeal the learned Counsel for the appellant and the Representative of the respondent have been heard. The pleadings and the evidence on record have been scrutinized by this Court. Applicant Bherulal, PW1, has deposed that his date of birth is 9.3.1953. He has submitted a photo-copy of the School Leaving Certificate dated 15.10.1999, i.e. Ex. P-3. In this certificate the date of birth of the applicant has been shown as 9.3.1953. This certificate is of Grasim Primary School. In cross-examination Bherulal, PW 1, has admitted in para 14 that before entering in the service of the non-applicant he was employed by Bharat Commerce and Industries Limited. He has further admitted in para 17 that in that company he had worked for six years and after leaving the service of that company he came in the service of the factory of the non-applicant. In case the age of the applicant, as contended by him, is accepted as 9.3.1953 then his age at the time of entry in the service of Bharat Commerce and Industries Limited comes to 11-12 years.

It is impossible to accept the case of the applicant that he entered in the service of Bharat Commerce and Industries Limited at that age. Therefore, the School Leaving Certificate (Ex. P-3) produced by the applicant is on the face of it false.”

9. After appreciation of the oral and the documentary evidence as also Rule 14-A of the S.S.O. the Industrial Court noticed that the date of birth now claimed by the petitioner by his application dated 16.8.2000, if accepted to be correct then in that eventuality the age of the petitioner at the time of entry in the service of Bharat Commerce and Industries Limited would be 11-12 years. As regards the petitioner's reliance on the School Leaving Certificate we find that the Industrial Court has rightly held the same to be not proved in view of the fact that the petitioner did not place on record the original School Leaving Certificate. He produced a photo copy of the duplicate School Leaving Certificate. He also failed to prove the said certificate by any reliable evidence. In the circumstances, the President Industrial Court did not commit any error in not relying the same. The Industrial Court after scrutinizing the evidence of the petitioner and the evidence of respondent's witness Ashok Tiwari (DW 1), reached to the conclusion that the petitioner had himself declared his date of birth (year) as 1943 in the Provident Fund Declaration. The details of petitioner's service record filed by the respondent clearly established that the petitioner was appointed on 17.03.1970. The document Exhibit D-2 also finds mention that prior to joining the service of respondent the petitioner had worked in Bharat Commerce and Industries Limited as Helper.

10. Having regard to the aforesaid as also keeping in view the provision contained in SSO 14-A, we are of the view that the Industrial Court has committed no error in holding that the School Leaving Certificate which has not been properly proved, can not be relied upon. In view of the admission made by the petitioner himself that he joined the services of respondent on 17.03.1970 and prior to his joining services of the respondent, he had worked for 6 years in Bharat Commerce and Industries Limited. Taking into consideration the aforesaid period, the employment of the petitioner began in the year 1964, and therefore, if the date of birth now claimed by the petitioner is taken to be correct, then the age of the petitioner while joining the services of Bharat Commerce and Industries Limited would come to 11 years, which can not be accepted. The Supreme Court in the case of *State of M.P. and others vs. Mohanlal Sharma*, 2002 (7) SCC 719 has held that any

interpretation or revision of date of birth that would make the employee ineligible for entry in service as on the date of entry in service i.e. being of age lesser than the minimum age of entry, should not be accepted or encouraged. This view has been also taken by a Division Bench of this Court at Principal Seat Jabalpur vide order dated 07.02.2005 in the case of *HK Khandelwal vs. State of M.P.*, Writ Petition No.3114 of 2000.

11. Accordingly, we find no merit in this writ petition so as to interfere in the order passed by the Industrial Court. Thus, the petition fails and is hereby dismissed in limine.

Petition dismissed.

I.L.R. [2011] M. P., 665

WRIT PETITION

Before Mr. Justice Sanjay Yadav

W.P. No.4779/2000 (Jabalpur) decided on 15 September, 2010

RAJESH KUSHWAHA

... Petitioner

Vs.

M.P. RAJYA BEEJ AVAM FARM VIKAS NIGAM & anr ..Respondents

Industrial Disputes Act (14 of 1947), Section 25F - A workman who rendered services continuously for 10 years cannot be terminated without following the provisions contained in Section 25F - Petition allowed. (Paras 12 to 15)

औद्योगिक विवाद अधिनियम (1947 का 14), धारा 25एफ - कोई कर्मकार जिसने निरंतर 10 वर्षों से सेवाएँ दी हैं, को धारा 25एफ में अन्तर्विष्ट उपबंधों का पालन किये बिना बर्खास्त नहीं किया जा सकता।

Case referred :

(2010) 5 SCC 497.

Vivek Rusia, for the petitioner.

Rahul Diwakar, for the respondents.

ORDER

SANJAY YADAV, J. :-Controversy raised in the present petition lies within the narrow compass as to whether the petitioner, a workman, could have been terminated from service which he rendered as a workman for 10 years without following the provisions contained under section 25F of the Industrial Disputes Act (hereinafter referred to as the Act of 1947).

2. The respondents/M. P. Rajya Beej Avam Farm Vikas Nigam is an industry as defined under section 2(j) of the Act of 1947 as the same is engaged in activities as defined thereunder. "Industry" under the Act of 1947 is defined as :

" (j) "industry" means any business, trade, undertaking, manufacture or calling of employers and includes any calling, service, employment, handicraft, or industrial occupation or avocation of workmen; "

3. The petitioner was engaged as semiskilled worker on daily wages on the muster roll since 1989 and uninterruptedly continued to discharge his work in the said capacity till 1993.

4. That in the year 1995 the petitioner was considered for regular appointment on the post of Junior Production Assistant but the same was rejected on the ground that the petitioner was not eligible for such a regular appointment.

5. Thereafter, vide order dated 08-07-2000 services of the petitioner were terminated on the ground that the same are no more required and the petitioner was paid towards one month notice.

6. It is this order of termination which is being assailed by the petitioner in the present petition on the ground that the same is illegal and discriminatory because the respondents have permitted other daily wage workers engaged much after the petitioner and that there was non-compliance of section 25F of the Industrial Disputes Act, 1947 before terminating the petitioner from service.

7. During the course of hearing it was submitted by the learned counsel for the petitioner that the petitioner having rendered more than 240 days of service was entitled for the protection as is granted under section 25F of the Act of 1947. It is urged that the petitioner though has worked for more than 10 years was not granted any retrenchment compensation and was terminated from service only on notice pay.

8. Learned counsel for the petitioner places reliance on the judgment rendered by the Supreme Court in *Anoop Sharma v. Executive Engineer, Public Health Division No. 1, Panipat (Haryana)* : (2010) 5 SCC 497. It is urged that the services of the petitioner have been terminated without following the procedure laid down under section 25F of the Act of 1947, the same is therefore liable to be set aside and the petitioner be reinstated with full back wages.

9. The respondents while refuting the contentions put forth on behalf of the

petitioner, raises an objection that the petitioner if he claims himself to be workman and respondents as an industry, has a remedy available under the Act of 1947 before the Labour Court; wherein, the dispute can be sorted out in accordance with the provisions therein. It is further contended that the petitioner was engaged purely on daily wages and though worked for about 10 years, did not acquire any status in the respondents' establishment nor any lien on any post as the petitioner was not engaged against any vacant regular post. It is submitted that the petitioner was daily wage worker and since his services were no more required the same were rightly dispensed with by tendering notice pay.

10. Having considered the submissions put forth by the respective counsel and in view the facts of present case and the law laid down in *Anoop Sharma* (supra) this Court is of the considered opinion that the petition deserves to be allowed.

11. True it is that, there exists an alternative remedy under the Act of 1947 but the same would be when there are disputed facts to be adjudicated calling for recording evidence of the employee and the management.

12. In the instant case since it is not in dispute that the petitioner was initially engaged in the year 1989 and continuously discharged his duties till 2000 when his services were terminated by the impugned order dated 08-07-2000 and that there is non-compliance of section 25F of the Act of 1947 coupled with the fact that the respondents being engaged in the business activities are an "industry" under the Act of 1947.

13. In *Anoop Sharma* (supra) it was observed by their Lordships :

"16. An analysis of the above reproduced provisions shows that no workman employed in any industry who has been in continuous service for not less than one year under an employer can be retrenched by that employer until the conditions enumerated in Clauses (a) and (b) of Section 25-F of the Act are satisfied. In terms of Clause (a), the employer is required to give to the workman one month's notice in writing indicating the reasons for retrenchment or pay him wages in lieu of the notice. Clause (b) casts a duty upon the employer to pay to the workman at the time of retrenchment, compensation equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months.

17. This Court has repeatedly held that Section 25-F(a) and (b) of the Act is mandatory and non-compliance thereof

renders the retrenchment of an employee nullity - *State of Bombay v. Hospital Mazdoor Sabha*, *Bombay Union of Journalists v. State of Bombay*, *SBI v. N. Sundara Money*, *Santosh Gupta v. State Bank of Patiala*, *Mohan Lal v. Bharat Electronics Ltd.*, *L. Robert D'Souza v. Southern Railway*, *Surendra Kumar Verma v. Central Govt. Industrial Tribunal cum Labour Court, Gammon India Ltd. v. Niranjana Dass*, *Gurmail Singh v. State of Punjab* and *Pramod Jha v. State of Bihar*.

18. This Court has used different expressions for describing the consequence of terminating a workman's service/employment/engagement by way of retrenchment without complying with the mandate of Section 25-F of the Act. Sometimes it has been termed as ab initio void, sometimes as illegal per se, sometimes as nullity and sometimes as non est. Leaving aside the legal semantics, we have no hesitation to hold that termination of service of an employee by way of retrenchment without complying with the requirement of giving one month's notice or pay in lieu thereof and compensation in terms of Section 25-F(a) and (b) has the effect of rendering the action of the employer as nullity and the employee is entitled to continue in employment as if his service was not terminated.

19. The question whether the offer to pay wages in lieu of one month's notice and retrenchment compensation in terms of Clauses (a) and (b) of Section 25-F must accompany the letter of termination of service by way of retrenchment or it is sufficient that the employer should make a tangible offer to pay the amount of wages and compensation to the workman before he is asked to go was considered in *National Iron and Steel Company Ltd. v. State of West Bengal*. The facts of that case were that the workman was given notice dated 15.11.1958 for termination of his service with effect from 17.11.1958. In the notice, it was mentioned that the workman would get one month's wages in lieu of notice and he was asked to collect his dues from the cash office on 20.11.1958 or thereafter during the working hours. The argument of the Additional Solicitor General that there was sufficient compliance

of Section 25-F was rejected by this Court by making the following observations:

"9. The third point raised by the Additional Solicitor-General is also not one of substance. According to him, retrenchment could only be struck down if it was mala fide or if it was shown that there was victimisation of the workman etc. Learned counsel further argued that the Tribunal had gone wrong in holding that the retrenchment was illegal as Section 25-F of the Industrial Disputes Act had not been complied with. Under that section, a workman employed in any industry should not be retrenched until he had been given one month's notice in writing indicating the reasons for retrenchment and the period of notice had expired, or the workman had been paid in lieu of such notice, wages for the period of the notice. The notice in this case bears the date 15-11-1958. It is to the effect that the addressee's services were terminated with effect from 17th November and that he would get one month's wages in lieu of notice of termination of his service. The workman was further asked to collect his dues from the cash office on 20-11-1958 or thereafter during the working hours. Manifestly, Section 25-F, had not been complied with under which it was incumbent on the employer to pay the workman, the wages for the period of the notice in lieu of the notice. That is to say, if he was asked to go forthwith he had to be paid at the time when he was asked to go and could not be asked to collect his dues afterwards. As there was no compliance with Section 25-F, we need not consider the other points raised by the learned counsel."

20. In *SBI v. N. Sundara Money* the Court emphasised that the workman cannot be retrenched without payment, at the time of retrenchment, compensation computed in terms of Section 25-F(b).

21. The legal position has been beautifully summed up in *Pramod Jha v. State of Bihar* in the following words: (SCC pp.624-25, para.10)

" 10. The underlying object of Section 25-F is twofold. Firstly, a retrenched employee must have one month's time

available at his disposal to search for alternate employment, and so, either he should be given one month's notice of the proposed termination or he should be paid wages for the notice period. Secondly, the workman must be paid retrenchment compensation at the time of retrenchment, or before, so that once having been retrenched there should be no need for him to go to his employer demanding retrenchment compensation and the compensation so paid is not only a reward earned for his previous services rendered to the employer but is also a sustenance to the worker for the period which may be spent in searching for another employment. Section 25-F nowhere speaks of the retrenchment compensation being paid or tendered to the worker along with one month's notice; on the contrary, clause (b) expressly provides for the payment of compensation being made at the time of retrenchment and by implication it would be permissible to pay the same before retrenchment. Payment or tender of compensation after the time when the retrenchment has taken effect would vitiate the retrenchment and non-compliance with the mandatory provision which has a beneficial purpose and a public policy behind it would result in nullifying the retrenchment."

(emphasis in original)

22. If the workman is retrenched by an oral order or communication or he is simply asked not to come for duty, the employer will be required to lead tangible and substantive evidence to prove compliance of Clauses (a) and (b) of Section 25-F of the Act."

14. In view of above and the facts obtaining in present writ petition that the provision contained under section 25F of the Act of 1947 was not followed, the petition is allowed. The termination order dated 08-07-2000 is hereby set aside. In the peculiar facts of present case the petitioner is held entitled for 50% of the back wages from 08-07-2000 till reinstatement. Let the compliance be effected within a period of three months from the date of communication of this order.

15. The petition is allowed to the extent above. However, no costs.

Petition allowed.

I.L.R. [2011] M. P., 671

WRIT PETITION

Before Mr. Justice A.K. Shrivastava & Mr. Justice Brij Kishore Dube

W.P. No.4057/2010(I) (Gwalior) decided on 6 October, 2010

RAMBABU

... Petitioner

Vs.

SHRIKRISHNA & ors.

... Respondents

A. Civil Procedure Code (5 of 1908), Order 6 Rule 18 - Closing of Courts during summer vacation and sad demise of family member of petitioner may be a sufficient and good cause for extending the time to incorporate the amendment. (Paras 9 & 10)

क. सिविल प्रक्रिया संहिता (1908 का 5), आदेश 6 नियम 18 – ग्रीष्मकालीन अवकाश में न्यायालयों का बंद होना और यात्री के परिवार के सदस्य का दुःखद निधन संशोधन समाविष्ट करने का समय बढ़ाने के लिए पर्याप्त और अच्छे कारण हो सकते हैं।

B. Procedural Law - Is enacted to provide justice to the parties and not to stall the process of law. (Para 13)

ख. प्रक्रिया संबंधी विधि – पक्षकारों को न्याय प्रदान करने के लिए अधिनियमित की जाती है न कि विधि की प्रक्रिया में बाधा डालने के लिए।

Cases referred :

1980(I) MPWN SN 170, 2007(2) MPLJ 215, ILR [2010] MP 1588, 1975 JLJ 52, 1976 JLJ 12, 1971 JLJ 693.

K.B. Chaturvedi with *G.P. Chaurasiya*, for the petitioner.

D.K. Katare, for the respondent Nos.1 to 9.

ORDER

The Order of the Court was delivered by **BRIJ KISHORE DUBE, J.** :—Invoking the extraordinary and inherent jurisdiction of this Court under Article 227 of the Constitution of India, the petitioner / plaintiff has called in question the defensibility and tenability of the order dated 29th June, 2010 (Annexure P/1) passed by the learned First Additional District Judge, Bhind in Civil Suit No.21-A of 2009, by which his application filed under Order VI Rule 18 of the CPC., has been dismissed and the suit filed by the plaintiff has also been dismissed.

2. Shri K.B.Chaturvedi, learned senior counsel for the petitioner has submitted that the plaintiff filed an application under Order VI Rule 17 of the

CPC., which was allowed by the learned Trial Court on 13th May,2010. Thereafter, on 29th June,2010, the plaintiff filed an application under Order VI Rule 18 of the CPC., on the ground that the amendment could not be carried out in the plaint due to sad demise of a family member of the counsel for the plaintiff and thereafter Courts were closed for summer vacation from 14th May,2010 to 18th June, 2010 and, therefore, prayed for condonation of delay in carrying out the amendment as well as to permit him to incorporate the amendment in the plaint but the learned Trial Court failed to exercise the jurisdiction and not only dismissed the application under Order VI Rule 18 of the CPC but also dismissed the suit itself, therefore, learned Trial Court committed an illegality in passing the impugned order.

3. Learned senior counsel for the petitioner placing reliance on the decisions rendered by a learned Single Judge, in the case of *Devhans Vs. Jagmohan Singh*, 1980 (1) MPWN SN 170, *Amar Singh and others Vs. Pooran and others*, 2007(2) MPLJ 215 and a Division Bench of this Court, in the case of *Shyama Prasad Datta and others Vs. Arun Kumar Vasudeo and others*, ILR [2010] MP 1588, prayed that the impugned order dated 29th June, 2010 be set aside and the application filed by the petitioner under Order VI Rule 18 of the CPC., be allowed. Learned counsel has also placed reliance on the Division Bench decision of this Court in the case of *Chamrain Vs. Budhiyarin and another*, 1975 J LJ 52.

4. Per contra, Shri D.K.Katare, learned counsel for the respondents / defendants has submitted that application preferred by the plaintiff under Order VI Rule 17 of the CPC., was allowed. Thereafter, the plaintiff was required to amend the plaint by incorporating the name of Smt. Hukuma Devi as defendant No.11 and further to pay the process fee for issuance of summons to the newly added defendant but no steps have been taken and neither the amendment was carried out nor the process fee was paid, but, submitted an application under Order VI Rule 18 of the CPC was submitted which was rejected by the learned trial Court for non-compliance of the Court's order and the suit itself was rightly dismissed. It has been further contended that the present petition under Article 227 of the Constitution of India is not maintainable inasmuch as the plaintiff must have filed an appeal. In short, the contention of learned counsel for the respondents/defendants is that the order of dismissal of the suit on the ground of non-compliance of Court's order amounts to a decree which is appealable and as such, no petition under Article 227 of the Constitution of India would lie.

5. Learned counsel for the respondents/defendants in support of his contention has relied upon the decisions in the case of *Shantibai Vs. Chokhelal*, 1976 J LJ 12, rendered by a Full Bench and a Division Bench of this Court in the case of *Madanlal Kanhaiyalal Vs. Jai Narayan Gendalal*, 1971 J LJ 693.

6. We have heard learned counsel for the parties and perused the record.

7. We think it appropriate to reproduce the impugned order dated 29th June, 2010 passed by the learned Trial Court before adverting to the rival contentions of the learned counsel for the parties, which reads as under:

“प्रकरण आज प्रति0क्र0-11 की उपस्थिति एवं जबाब हेतु नियत है।

प्रकरण में न्यायालय के पूर्व आदेशानुसार वादी द्वारा नये जोड़े गये प्रतिवादी की तलबी हेतु दस्तावेज एवं तलवाना अदा नहीं किये जाने के कारण प्रति0क्र0-11 को नोटिस जारी नहीं किया जा सका।

वादी अधिवक्ता द्वारा एक आवेदन पत्र अन्तर्गत आदेश 6 नियम 18 सी0पी0सी0 का प्रस्तुत कर कहा गया कि न्यायालय के पूर्व आदेश दिनांक 13-5-10 के अनुशरण में वादी अधिवक्ता के यहाँ गमी हो जाने के कारण आदेश का पालन नहीं कर सके। अतः आदेश पालन हेतु समय दिये जाने की प्रार्थना की गई। और विपक्षी अधिवक्ता को इस आवेदन की प्रति दिये जाने पर उनके द्वारा इस आवेदन का विरोध किया गया।

अभिलेख के अवलोकन से यह स्पष्ट है कि प्रकरण में पारित आदेश दिनांक 19-02-10 के अनुसार ही वादी अधिवक्ता द्वारा न्यायालय के पूर्व आदेश के अनुशरण में विधिवत् तलवाना अदा नहीं किये जाने पर प्रतिवादी को नोटिस जारी नहीं किया गया था और इस संबंध में वादी द्वारा प्रस्तुत आवेदन पत्र स्वीकार किया जाकर वादी को तलवाना अदायगी हेतु एक समय दिया गया था। इस तरह इन आधारों पर यह स्पष्ट है कि वादी द्वारा न्यायालय के आदेश का पालन पूर्व में भी नहीं किया जाता रहा है। इसके अतिरिक्त यह प्रकरण दिनांक 23-12-06 को प्रस्तुत किया गया है और इन्ही कारणों से वर्तमान में भी प्रतिवादी की उपस्थिति के लिये ही नियत है। इसके अतिरिक्त आदेश की तामीली हेतु करीब डेढ़ माह का समय प्राप्त होने के बाद भी न तो न्यायालय के आदेश के अग्रशरण में वादपत्र में संशोधन किया गया है और न ही नये जोड़े गये प्रतिवादी को तामीली हेतु तलवाना अदा किया गया है। अतः ऐसी स्थिति में वादी अधिवक्ता के यहाँ गमी हो जाने के कारण उसमें लगने वाले समय को छोड़कर भी वादी के पास न्यायालय के आदेश की तामीली हेतु पर्याप्त समय रहा है। परन्तु उसके बाद भी वादी द्वारा आदतन न्यायालय के आदेश का पालन नहीं किया गया है। अतः ऐसी स्थिति में वादी द्वारा प्रस्तुत यह आवेदन सदभाविक दर्शित नहीं होता है अतः अस्वीकार किया जाता है।

इस तरह वादी द्वारा न्यायालय के आदेश का पालन नहीं करने और वादी द्वारा आदेशानुसार वादपत्र में संशोधन समाहित नहीं करने तथा नये जोड़े प्रतिवादी की तलबी हेतु आदेशानुसार तलवाना अदा नहीं किये जाने के कारण वादी द्वारा प्रस्तुत यह दावा खारिज किया जाता है।”

8. On going through the record, we find that the petitioner/plaintiff filed a suit for specific performance of an agreement to sale dated 01st April, 2005 against the defendants No.1 to 8. The defendant No.4 sold some area of land from disputed survey No.1393/1 to one Siroman Singh by a registered sale deed dated 16th October,2007, therefore, Siroman Singh was impleaded as defendant No.9. Subsequently, defendants No.1 to 4 have executed an agreement of sale in respect of some area from the disputed land in favour of Smt.Hukuma Devi and said Smt.Hukuma Devi had started the construction on it, therefore, the plaintiff had made an application for amendment and impleading Smt.Hukuma Devi as defendant No.11 in the suit. Vide order dated 13th May,2010, the learned Trial Court allowed this application and directed to incorporate the amendment in the plaint. Thereafter, the plaintiff was required to incorporate the amendment, in the plaint and has to deposit the process fee for issuing summons but no steps have been taken by the plaintiff.

9. On 29th June, 2010, the plaintiff filed an application under Order VI Rule 18 of the CPC alleging that due to sad demise of the family member of the counsel for the plaintiff and thereafter Courts were closed for summer vacation from 14th May,2010 to 18th June, 2010, amendment in the plaint could not be made, therefore, permit him to incorporate the amendment in the plaint.

10. In view of the averments made in the application under Order VI Rule 18 of the CPC (Annexure P/6), according to us, sufficient and good cause is made out for extending the time to incorporate the amendment in the plaint which was already allowed by the learned Trial Court.

11. Indeed, even if the application under Order VI Rule 18 of the CPC could not be allowed then the Civil Suit could not have dismissed by the learned Trial Court on account of failure to incorporate the amendment in the plaint. Thus, the approach of the learned trial Court in this regard is perverse and illegal.

12. Since the amendment was not made in the plaint and the name of Smt.Hukuma Devi, proposed defendant No.11 was not incorporated in the

cause title then in absence thereof, the suit could not be dismissed on the ground that the process fee was not paid. The learned Trial Court acted with material irregularity in dismissing the suit itself.

13. It is well settled in law that the Legislature has enacted the procedural laws for providing justice to the parties and not to stall the process of law to provide justice.

14. In the case of *Madanlal Kanhaiyalal* (Supra), the procedure in case of absence of a party in the proceeding is laid down whereas in the case of *Shantibai* (Supra), it has been held that where the Court expressly decide the suit under Rule (3) of Order 17 of the CPC., the proper remedy for the party concerned would be to file an appeal. Considering the facts and circumstances of the case in hand, we are of the view that the judgments relied upon by learned counsel for the respondents in the case of *Madanlal Kanhaiyalal* (Supra) and *Shantibai* (Supra) are distinguishable on facts and not applicable.

15. As regards, the power of the High Court under Article 227 of the Constitution of India, this Court in the case of *Amar Singh* (Supra) has observed as under:

"11. However, this Court cannot ignore the fact that the present writ petition is under Article 227 of the Constitution of India and if the Court below has misunderstood the scope of its jurisdiction, the constitutional power of the High Court under Article 227 can be invoked to set right such error and prevent gross injustice. The Supreme Court has recognized the power of the High Court to interfere with the orders of subordinate Courts and tribunals where (1) there is an error manifest and apparent on the face of the proceedings such as when it is based on clear misreading or utter disregard of the provisions of law, and (2) a grave injustice or gross failure of justice has occasioned thereby in the case of *State of A.P. vs. P.V. Hanumantha Rao (dead) through L.Rs and another*, reported as (2003) 10 SCC 121."

16. Further, a Division Bench of this Court in the case of *Shyama Prasad Datta* (Supra), has held that the High Court has to exercise its power under Article 226/227 of Constitution of India and it has to strike with the sword of its power against each and every illegality wherever it is and whenever it is brought to the notice of the Court.

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17. For the reasons stated hereinabove, we are of the considered view that the order dated 29th June 2010 as contained in Annexure P/1 is not sustainable in the law and in exercise of the powers conferred under Article 227 of the Constitution of India, it should be set aside.

18. Resultantly, the impugned order dated 29th June 2010 as contained in Annexure P/1 is hereby set aside and the application under Order VI Rule 18 of the CPC, filed by the plaintiff/ petitioner is hereby allowed. The suit is restored to its original number, the plaintiff/ petitioner is directed to incorporate the proposed amendment in the plaint within a period of three weeks from today. The learned Trial Court is directed to decide the suit thereafter on merits, in accordance with law.

19. With the aforesaid, this petition is allowed and disposed of with no order as to cost.

Petition allowed.

I.L.R. [2011] M. P., 676

WRIT PETITION

Before Mr. Justice A.K. Shrivastava & Mr. Justice Brij Kishore Dube

W.P. No.2074/2009(I) (Gwalior) decided on 12, October, 2010

DHARMDEV SINGH RAJPUT

... Petitioner

Vs.

KAVINDRA SINGH & ors.

... Respondents

Civil Procedure Code (5 of 1908), Order 39 Rule 1 & 2 - Temporary injunction against alienation of Hindu Undivided Family Property - Suit property which is recorded jointly in the name of plaintiff and defendants No.1 & 2, for the purpose of deciding the application of temporary injunction, shall be deemed to be the property of HUF. (Para 13)

सिविल प्रक्रिया संहिता (1908 का 5), आदेश 39 नियम 1 व 2 - हिन्दू अविभाजित परिवार की सम्पत्ति के अन्य संक्रामण के विरुद्ध अस्थायी व्यादेश - वाद सम्पत्ति जो कि वादी एवं प्रतिवादी क्र. 1 एवं 2 के नाम पर संयुक्त रूप से दर्ज थी, अस्थायी व्यादेश के आवेदन का निराकरण करने के प्रयोजन हेतु हिन्दू अविभाजित परिवार की सम्पत्ति समझी जावेगी।

Cases referred :

(2004) 8 SCC 488, 1997 RN 238, 1999(II) MPWN 11, 1996 JLJ 477.

D.D. Bansal, for the petitioner.

K.S. Tomar with Arshad Ali, for the respondent Nos.1 & 2.

P.N. Gupta, G.A., for the respondent No.3/State.

ORDER

The Order of the Court was delivered by **A.K. SHRIVASTAVA, J.** :—Feeling aggrieved by the order dated 16.2.2009 passed by learned Third Additional District Judge, Vidisha, in Misc. Civil Appeal No.29/2008, whereby the order dated 21.8.2008 passed by learned Second Civil Judge, Class II, Vidisha, in civil suit No.69-A/2008 allowing the application of temporary injunction of plaintiff has been reversed and the appeal of defendants 1 and 2 has been allowed by dismissing the application for issuance of temporary injunction of plaintiff, this petition under Article 227 of the Constitution of India has been filed by the plaintiff/petitioner.

2. No exhaustive statement of facts are required to be narrated for the purpose of disposal of this petition. Suffice it to say that a suit for declaration in respect to certain agricultural lands, which are the subject matter of the suit, has been filed by the plaintiff/petitioner praying that the suit land is of Joint Hindu Family and the plaintiff is having 1/2 share in it. A relief of injunction has also been sought that a decree of injunction be issued against defendants 1 and 2 restraining them to alienate the suit property in any manner.

3. An application for issuance of temporary injunction under Order 39 Rule 1 and 2 of CPC has also been filed by the plaintiff praying in it that till the decision of the suit, defendants 1 and 2 be restrained from alienating the suit property.

4. The defendants refuted the averments made in the application for issuance of temporary injunction by filing a reply praying therein that plaintiff is not entitled for the relief which he has prayed for, and hence, it has been prayed that application for issuance of temporary injunction be dismissed.

5. The learned Trial Court on the basis of the pleadings, affidavits and other material placed on record, allowed the application of temporary injunction of plaintiff and restrained defendants 1 and 2 from alienating the suit property vide order dated 21.8.2008 (annexure P/2).

6. The defendants, feeling aggrieved by the said order of learned Trial Court, filed Misc. Civil Appeal before learned first appellate Court which has been allowed by the impugned order and the application for issuance of temporary injunction of the plaintiff has been dismissed.

7. In this manner, this petition under Article 227 of the Constitution of India has been filed by the plaintiff/petitioner.

8. Shri Bansal, learned counsel for the plaintiff/petitioner, submits that plaintiff and defendant No.1 are the real brothers and defendant No.2 is the son of defendant No.1. Learned counsel further submits that there is a specific pleading of the plaintiff that parties belong to Joint Hindu Family. Further, it has been pleaded in para 2 that the agricultural land, the description whereof is mentioned in this para, is owned by HUF in which the plaintiff and defendants are having 1/2 share each. Further, it has been pleaded that the defendants are intending to alienate the suit property, and hence, the suit has been filed. It has been further submitted by learned counsel that the revenue record has been filed by the plaintiff in the Trial Court in which except survey No.157/7/1, which is in the exclusive name of defendant No.1, and survey No.157/7/2, which is in the exclusive name of his son Mahesh Yadav, and survey Nos.157/5, 157/06, 1735, which have been recorded in the exclusive name of plaintiff, rest other survey numbers, namely 22, 27, 53/1, 54/2, 146, 152, 153, 154, 156, 471/3 and 471/4, the names of plaintiff and defendant No.1 have been mentioned. Hence, it has been contended by learned counsel that the defendants be restrained from alienating the entire suit property which includes all the survey numbers mentioned in para 2 of the plaint since it is in the joint name of plaintiff and defendants.

9. So far as survey Nos.157/7/1 and 157/7/2 recorded in the name of defendant No.1 and defendant No.2 respectively are concerned, the contention of learned counsel for the petitioner/plaintiff is that from the nucleus of HUF, these two properties were purchased although they are in the name of defendants 1 and 2 respectively, and therefore, the defendants are not entitled to alienate the entire suit property including survey Nos. 157/7/1 and 157/7/2 recorded exclusively in the name of defendants as well as survey Nos.157/5, 157/06, 1735 recorded exclusively in the name of plaintiff, but it is of HUF only. In support of his contention, learned counsel has placed reliance on the decision of Supreme Court *Maharwal Khewaji Trust (Regd.) Faridkot v. Baldev Dass*, (2004) 8 SCC 488 and two Single Bench decisions of this Court in *Kallu v. Smt. Prem Bai and others*, 1997 RN 238 and *Shobhna Sardesai v. Radhey Shyam*, 1999 (II) MPWN 11.

10. By placing reliance on the decision of Supreme Court *Surendra Kumar v. Phoolchand and another*, 1996 JLJ 477, it has been contended that since

the major portion of the suit property is in the name of plaintiff and defendants, it would mean that from the nucleus of HUF survey Nos.157/7/1 and 157/7/2 were purchased although they are in the name of Kavindra Singh and Mahesh Yadav, defendants 1 and 2 respectively.

11. On the other hand, Shri K.S.Tomar, learned senior counsel for respondents 1 and 2/defendants, argued in support of the impugned order passed by learned first appellate Court and has submitted that as per plaintiff's own showing in para 2 of the plaint, apart from survey Nos.157/7/1 and 157/7/2, two more survey Nos.197/1 area 0.31 hectare and 200/1 area 3.44 hectare, total area 3.75 hectares of Patwari Halka No.36 of village Mundara Harisingh are also recorded exclusively in the name of defendant No.2 although other survey numbers are recorded jointly in the name of plaintiff and defendant No.1. Learned counsel further submits that merely because the family is joint, there is no presumption that the property owned by a coparcener is also of Joint Hindu Family and it is for the person who alleges it to be the property of HUF, to prove by pleading necessary averments and further by placing relevant material in that regard. Learned senior counsel further submits that cogent reasons have been assigned by learned first appellate Court dismissing the application of temporary injunction of plaintiff and looking to the limited scope of Article 227 of the Constitution of India, this Court should decline to interfere in the order and hence it has been prayed that this petition be dismissed.

12. Having heard learned counsel for the parties, we are of the considered view that this petition deserves to be allowed in part.

13. There is specific pleading of the plaintiff/petitioner that certain survey numbers, the description whereof we have mentioned hereinabove, have been recorded in the joint name of plaintiff and defendants. Further, there is pleading of plaintiff that the family of plaintiff and defendants is Hindu Undivided Family. Hence, there is specific pleading of the plaintiff in respect of existence of HUF and the averments made in para 2 of the plaint that certain survey numbers, which are recorded in the joint name of plaintiff and defendants, are the property owned by HUF. The existence of HUF has not been denied by defendants/respondents in their reply to the application under Order 39 Rule 1 and 2 of CPC. We have been informed that written statement is yet to be filed. Hence, according to us, that part of the suit property which is recorded jointly in the name of plaintiff and defendants No.1 and 2, for the purpose of deciding the application of temporary injunction, shall be deemed to be the property of

HUF since the averment made in the plaint of plaintiff is also supported by the documents, which are the revenue record, in which the property has been shown to be in the joint name of plaintiff and defendant. Needless to say, plaintiff and defendant No.1 are the real brothers and defendant No.2 is the son of defendant No.1 and hence prima facie so far as these properties, which are recorded in the joint name, are concerned, it appears that plaintiff and defendants are the co-Bhumiswamis having half share each in it.

14. Since there is overwhelming evidence placed on record and this point has also been taken note of by learned Trial Court in para 8 of its order dated 21.8.2008 that an advertisement was published in daily newspaper "Dainik Bhaskar" in respect of alienation of the suit property, and therefore, there was an apprehension in the mind of plaintiff that the suit property will be alienated and he will suffer irreparable loss in case defendants succeed in alienating that property which is jointly recorded in the name of defendants and plaintiff. The decision of Supreme Court *Maharwal Khewaji Trust (Regd.) Faridkot* (supra) as well as to decisions of learned Single Bench *Kallu and Shobhna Sardesai* (supra) placed reliance by learned counsel for the petitioner/plaintiff are quite relevant and are fully applicable in the present facts and circumstances of the case.

15. However, we are not convinced with the submission of Shri Bansal, learned counsel for the petitioner, that survey No.157/7/1 and 157/7/2 recorded in the name of defendants No.1 and 2 respectively as well as survey No.197/1 and 200/1 exclusively recorded in the name of defendant No.2 would be deemed to be the property of HUF. According to us, these properties are recorded exclusively in the name of defendant No.1 and defendant No.2. Merely because defendants 1 and 2 are the members of HUF, there cannot be any legal presumption that the property, which is exclusively owned by them, is of HUF and in this regard it is for the plaintiff to demonstrate that the property although is in the exclusive name of a coparcener, but it is of HUF. In this context, we may profitably place reliance on Article 231 (2) of Mulla's Hindu Law 20th Edition Vol.1 page 394, which reads thus:-'

"(2) No presumption that a joint family possesses joint property-

There is no presumption that a family, because it is joint, possesses joint property or any property. When in a suit for partition, a party claims that any particular item of the property

is joint family property, or when in a suit for a mortgage, a party contends that the property mortgaged is joint family property, the burden of proving it rests on the party asserting it.”

There is no specific pleading of plaintiff that from the funds of HUF these survey Nos. 157/7/1, 157/7/2 as well as 197/1, 200/1 were purchased although they were bought in the name of defendants 1 and 2 respectively. We also do not find any merit in the contention of Shri Bansal, learned counsel for the petitioner, that he has also challenged the revenue entry indicating the names of defendants exclusively on these survey numbers, for the simple reason that though there is some whisper in the body of plaint in that regard, but in the relief clause no such relief has been prayed that revenue entry be corrected accordingly. Since the law is very clear that it is for the person, who says that the property is of HUF and was purchased from the funds of HUF and not by the person in whose name that property exclusively is recorded, to prove it and in absence of any pleading, affidavits and other material placed on record, the bald statement of plaintiff in the plaint would not constitute prima facie case in his favour so far as these survey numbers 157/7/1, 157/7/2 as well as 197/1, 200/1 are concerned. The decision of *Surendra Kumar* (supra) is tangentially off the point and is not applicable in the facts and circumstances of the present case for the simple reason that nucleus in that case was found to be proved and it was not in dispute, but in the present case, there is no such admission of the defendants.

16. For the reasons stated hereinabove, this petition is allowed in part. The application of plaintiff for temporary injunction is hereby allowed in part and except survey Nos. 157/7/1, 157/7/2 as well as 197/1, 200/1, for rest other suit property, the defendants are restrained from alienating it till the decision of the suit. The application of temporary injunction of plaintiff for survey Nos. 157/7/1, 157/7/2 as well as 197/1 and 200/1 is hereby dismissed. The orders of two Court below stand modified accordingly with no order as to costs.

Petition partly allowed.

WRIT PETITION

Before Mr. Justice A.K. Shrivastava & Mr. Justice Brij Kishore Dube

W.P. No.5857/2010(I) (Gwalior) decided on 13, October, 2010

NARENDRA GOLE

... Petitioner

Vs.

RAM KRISHNA SHARMA

... Respondent

Civil Procedure Code (5 of 1908), Order 11 Rule 12 - Every document which will throw any light on the case is a document relating to a matter in dispute in the proceedings, though it might not be admissible in evidence. (Para 11)

सिविल प्रक्रिया संहिता (1908 का 5), आदेश 11 नियम 12 — प्रत्येक दस्तावेज जो मामले पर कोई प्रकाश डालता है, वह कार्यवाही में विवादित विषय से संबंधित दस्तावेज है, यद्यपि वह साक्ष्य में ग्राह्य न हो।

Case referred :

AIR 1972 SC 2379.

Suresh Kushwah, for the petitioner.

Sanjeev Jain, for the respondent.

ORDER

The Order of the Court was delivered by **A.K. SHRIVASTAVA, J.** :-By this petition filed under Article 227 of the Constitution of India, the petitioner has challenged the validity of the impugned order dated 10.09.2010 passed in Civil Suit No. 15-A/2010 by 14th Civil Judge, Class-II, Gwalior, by which the application under Order XI Rule 12 of the Code of Civil Procedure of the petitioner-defendant has been rejected.

2. On bare perusal of the impugned order, we find that on the settlement date, an application under Order XI Rule 12 of the Code of Civil Procedure for the discovery of the documents has been filed by the defendant and it has been prayed that the respondent-plaintiff shall disclose on affidavit the documents which are in his possession.

3. Learned Trial Court has rejected the said application.

4. Shri Suresh Kushwah, learned counsel for the petitioner-defendant by inviting our attention to Rule 12 of Order XI of the Code of Civil Procedure has submitted that it was not incumbent upon the defendant to file an affidavit

alongwith an application under Order XI Rule 12 of the Code of Civil Procedure and it was also not necessary to specify the documents in the application and, therefore the learned trial Court has erred in rejecting the application, which was filed on the settling date itself. In support of his contention, heavy reliance has been placed by the learned counsel on the decision of Supreme Court *M. L. Sethi Vs. R.P. Kapur* AIR 1972 SC 2379.

5. On the other hand, Shri Sanjeev Jain, learned counsel for the plaintiff-respondent argued in support of the impugned order and submitted that the application appears to be misconceived and all the documents related to the suit have already been filed by the plaintiff.

6. Having heard the learned counsel for the parties, we are of the view that this petition deserves to be partly allowed.

7. On bare perusal of the provisions of Order XI Rule 12 of the Code of Civil Procedure, we find that any party may, without filing any affidavit, apply to the Court for an order directing any other party to any suit to make discovery on oath of the documents which are or have been in his possession or power, relating to any matter in question therein.

8. On bare perusal of the aforesaid provision, nowhere it is gathered that any party is required to pray for any specific document although he may specify a particular document to be discovered.

9. On bare perusal of the impugned order, we find that on the settling date itself, the application was filed.

10. The Supreme Court in *M.L. Sethi* (Supra) in Para 5 has categorically held that generally speaking, a party is entitled to inspection of all documents which do not themselves constitute exclusively the other party's evidence of his case or title. If a party wants inspection of documents in the possession of the opposite party, he cannot inspect them unless the other party produces them. The party wanting inspection must, therefore, call upon the opposite party to produce the document. And how can a party do this unless he knows what documents are in the possession or power of the opposite party? Hence, the Supreme Court has categorically laid down the law of the land that unless the party seeking discovery knows what are the documents in the possession or custody of the opposite party which would throw light upon the question in controversy, how is it possible for him to ask for discovery of specific documents?

11. On bare perusal of the provision of Order XI Rule 12 of the Code of Civil Procedure, we find that every document which will throw any light on the case is a document relating to a matter in dispute in the proceedings, though it might not be admissible in evidence. In other words, a document might be inadmissible in evidence yet it may contain information which may either directly or indirectly enable the party seeking discovery either to advance his case or damage the adversary's case or which may lead to a trial of enquiry which may have either of these two consequences.

12. By placing reliance on the aforesaid dictum of the Supreme Court, we are of the view that the learned Trial Court rejected the application de hors to the provisions of Order XI Rule 12 of the Code of Civil Procedure and hence the order cannot be allowed to remain stand.

13. Resultantly, this petition succeeds and is hereby allowed. The impugned order is hereby set aside and the application Order XI Rule 12 of the Code of Civil Procedure filed by the petitioner-defendant is allowed in part and that prayer is allowed by which the discovery of the documents has been sought. However, that part of the relief, by which the discovery of fact has been sought, is hereby rejected. The petitioner shall be entitled to costs of this petition. Counsel's fee Rs.500/-, if pre-certified.

Petition allowed.

I.L.R. [2011] M. P., 684

WRIT PETITION

Before Mr. Justice A.K. Shrivastava & Mr. Justice Brij Kishore Dube

W.P. No.1980/2009(I) (Gwalior) decided on 20, October, 2010

ASHARAM & anr.

... Petitioners

Vs.

SURAJ SINGH BAGHEL & ors.

... Respondents

Evidence Act (1 of 1872), Section 45 - Even if the application to get the document examined by handwriting expert was filed at the fag end of the trial when the case was fixed for final argument, the law is not so much harsh so as to shut down the doors to provide justice to the parties.

(Para 5)

साक्ष्य अधिनियम (1872 का 1), धारा 45 - मले ही दस्तावेजों का परीक्षण

हस्तलिपि विशेषज्ञ से करवाये जाने हेतु आवेदन पत्र विचारण के अंतिम छोर पर प्रस्तुत किया गया, जब कि प्रकरण अंतिम तर्क हेतु नियत था, कानून इतना कठोर नहीं है कि पक्षकारों को न्याय प्रदान किये जाने के दरवाजे बंद हो जायें।

R.K. Soni & J.S. Kaurav, for the petitioners.

P.C. Chandil, for the respondent Nos.1 & 2.

C.S. Dixit, Dy.A.G., for the respondent No.3/State.

ORDER

The Order of the Court was delivered by **A.K. SHRIVASTAVA, J.** :- A suit for specific performance of contract has been filed by plaintiffs/petitioners in respect of certain immovable property which is the subject matter of the suit. The factum of execution of the agreement of sale has been denied right from very beginning by the defendant Nos.1 and 2/ respondents in their written statement. The defendants further denied their thumb impression on the document of agreement of sale.

2. At the stage of final argument, an application under Section 45 of the Evidence Act was filed by the plaintiffs to get the document examined by handwriting expert in order to take out the grain from the chaff.

3. This application was vigorously opposed by learned counsel appearing for the respondents, who were defendants in the Trial Court.

4. The learned Trial Court dismissed the said application by the impugned order and in this manner, this petition has been filed under Article 227 of the Constitution of India.

5. In their usual vehemence Shri Soni and Shri Kaurav, learned counsel appearing for the petitioners, submitted that under Sections 47 and 67 of the Evidence Act no particular mode has been legislated by the Legislature to prove a document and a document can be proved by several modes including one of the mode to get it examined by handwriting expert. Hence, learned counsel submitted that in order to take out the grain from the chaff, even if the application to get the document examined by handwriting expert was filed at the fag end of the trial when the case was fixed for final argument, the law is not so much harsh so as to shut down the doors to provide justice to the parties.

6. Shri Chandil, learned counsel for the respondents/defendants, submitted that when all the cards were opened at the time of final argument filing such type of application before learned Trial Court under Section 45 of the Evidence Act to get the impugned document examined by handwriting expert is nothing

but filling up the lacuna of the case which is not at all permissible and, therefore, learned counsel submitted that learned Trial Court has rightly dismissed the application.

7. We have considered the submissions made by learned counsel for the parties.

8. True, the plaintiffs should be vigilant during the trial and should have filed such an application if they want to get the said document proved by the handwriting expert at an early stage. But, one important fact which cannot be marginalized and blinked away is that the procedural law is always ment to provide substantial justice to the parties and not to put hurdles while administering justice. Under Sections 47 and 67 of the Evidence Act no particular mode is provided by the Legislature that how and in what manner a document should be proved. There are several modes of proving a document and one of the mode is to get the document proved by examining the handwriting expert. If the plaintiffs are praying to the Court to provide an opportunity to prove a document by handwriting expert, according to us, the procedural law is not that much tight not to provide justice to the plaintiffs.

9. Apart from the reasons which we have assigned hereinabove, as submitted by learned counsel for the parties, on the document of agreement of sale the thumb impression is said to have been of the defendant No.2 and if that would be the position, since the examination of thumb mark is a complete science because the thumb impression of two persons cannot be similar and, therefore, in order to take out the grain from the chaff, the examination of document of agreement of sale was required to be examined by the handwriting expert. According to us, the learned Trial Court has traversed beyond the scope of Sections 47 and 67 of the Evidence Act and has dismissed the application of the plaintiffs to get the impugned document examined by handwriting expert and, hence, we have no exception except to set aside the impugned order and we, accordingly, do so.

10. Resultantly, this petition succeeds and is hereby allowed. The application under Section 45 of the Evidence Act of the plaintiffs is allowed on payment of cost of Rs.5,000/- (Rs. Five Thousand Only). It is further made clear that except the examination of the handwriting expert and getting the document examined by him, since the plaintiffs have already closed their evidence, the learned Trial Court will not give any further more opportunity to them to adduce any more evidence. It is also made clear that defendants too will not adduce

any other evidence except in the rebuttal of the evidence of the handwriting expert. Let the cost be deposited in the Trial Court prior to the examination of handwriting expert and getting the impugned document examined by him. Looking to the facts and circumstances of the case the parties shall abide by the cost of this petition.

Petition allowed.

I.L.R. [2011] M. P., 687

WRIT PETITION

Before Mr. S.R. Alam, Chief Justice & Mr. Justice Alok Aradhe

W.P. No.15264/2007 (Jabalpur) decided on 9 November, 2010

SUKHENDRA SINGH

... Petitioner

Vs.

STATE OF M.P. & ors.

... Respondents

A. Public Interest Litigation - Petitioner being elected as representative of District Central Co-operative Bank Ltd. filed writ petition as PIL seeking quo warranto for restraining respondent Nos.5 & 6 (who were elected as Directors) from participating in the management of the Bank - *Held* - Petitioner being a person who cannot be said to be unbiased, and therefore, the petition is not maintainable as PIL. (Para 11)

क. लोकहित वाद — जिला केन्द्रीय सहकारी बैंक लिमिटेड के प्रतिनिधि के रूप में निर्वाचित याची ने प्रत्यर्थी क्रं. 5 व 6 (जो निदेशकों के रूप में निर्वाचित थे) को बैंक के प्रबंधन में सहभागी होने से रोकने के लिये अधिकार पृच्छा चाहते हुये लोकहित वाद के रूप में रिट याचिका प्रस्तुत की — अभिनिर्धारित — याची ऐसा व्यक्ति है, जिसे निष्पक्ष नहीं कहा जा सकता है। इसलिये याचिका लोकहित वाद के रूप में पोषणीय नहीं है।

B. Constitution, Article 226 - It is not permissible to invoke jurisdiction under Article 226, by-passing the machinery designated for determination of the election dispute. (Para 12)

ख. संविधान, अनुच्छेद 226 — निर्वाचन विवाद के अवधारण के लिये विहित तंत्र की अवहेलना कर, अनुच्छेद 226 के अतर्गत अधिकारिता का अवलंब लेना अनुज्ञेय नहीं है।

Cases referred :

AIR 1999 SC 1723, AIR 2006 SC 3106, AIR 1988 SC 66, (2010) 8 SCC 110, (2003) 7 SCC 546.

Sanjay Agrawal, for the petitioner.

Kumaresh Pathak, Dy.A.G., for the respondent Nos.1 to 4.

Manikant Sharma, for the respondent Nos. 5 & 6.

ORDER

The Order of the Court was delivered by **ALOK ARADHE, J.** :—Petitioner who has been elected as representative of District Central Cooperative Bank Limited, Rewa has filed the instant writ petition as public interest litigation seeking writ of quo-warranto for restraining respondents 5 and 6 from participating in the management of District Central Cooperative Bank Limited, Rewa.

2. Facts leading to filing of the instant petition, briefly stated, are that petitioner is a member of Sewa Sahkari Sanstha Maryadit, Banna, a primary society. Petitioner has been elected as representative of the said society in the District Central Cooperative Bank Limited, Rewa. Affairs of the aforesaid cooperative bank are governed by bye-laws. Chapter IV of the bye-laws deals with capital of the bank. Clause (a) thereof prescribes the mode of collection of share capital. Clause (b) provide that paid up capital of bank shall be Rs. 1 crore which shall be divided in five categories of shares. Shares falling in category (d) can be allotted only to members falling in categories (c), (d) and (e) of clause 7 (1) of the bye-laws. It is specifically provided that persons, holding share under category (c), (d) and (e) shall not be entitled to participate in the management of the Bank. Clause 7 of the bye-laws deals with membership of the Bank. Clause (c) provides that a public trust registered under the M.P. Public Trusts Act, 1951 can be inducted as a member of the Bank. Similarly clauses (d) and (e) provide that a Firm, Company or other body corporate registered, established or constituted under any law for the time being or a society registered under the Societies Registration Act may be inducted as member of the Bank. It is averred in the writ petition that though power of Registrar for registration as 'cooperative' has been delegated to Joint Registrar yet Deputy Registrar, Cooperative Societies, Rewa vide orders dated 29.6.2007 and 3.7.2007 registered two cooperatives, namely, Mahima Beej Utpadak Swayatt Sakh Sahkarita Maryadit Hariharpur and Pradhan Beej Utpadak Swayatt Sakh Sahkarita Maryadit, Ajarha. Thereafter in exercise of power under Section 53 (13) of the 1960 Act, Joint Registrar constituted a committee and respondent No.5 was nominated as Chairman of the Bank. While acting as nominated Chairman of the Bank, respondent No. 5 inducted three cooperatives as Member of the District

Central Cooperative Bank. Decision of the respondent No.5 was ratified by the Managing Committee in its meeting held on 23.8.2007. Three cooperatives which were included as members of the Bank were included in category (b) along with marketing, processing and weavers industrial societies. It is the case of petitioner that aforesaid three cooperatives could not have been kept in (b) category as they fall in category (d) as provided in clause 7 (i) of the bye-laws. Since, aforesaid cooperatives fall under category (d) of clause 7 (i) of the bye-laws, such category of members does not have any right to participate in the management of the Bank. Petitioner has alleged that three cooperatives were included in (b) category of membership in order to enable respondents 5 and 6 to participate in the process of election. It is further alleged that respondents 5 and 6 submitted their nominations as representatives of the two cooperatives included in membership category (b). One Rajendra Prasad Mishra submitted detailed objection (Annexure P-8) before the Returning Officer. However, the Returning Officer did not take cognizance of the aforesaid objection and accepted the nomination of respondents 5 and 6. Ultimately respondents 5 and 6 were declared elected as Directors from category (b). It is alleged by petitioner that respondents 5 and 6 are not entitled to participate in the management of the Bank and they have unlawfully usurped public offices of Member of Committee of District Central Cooperative Bank.

3. Petitioner submitted a complaint to the Returning Officer requesting him not to permit respondents 5 and 6 to participate in the meeting of the Bank. On the basis of the complaint an enquiry was conducted by Deputy Registrar, Cooperative Societies, Rewa under the orders of Registrar. In the enquiry report it was found by enquiry officer that respondents 5 and 6 are not entitled to participate in the management of the Bank. In the aforesaid factual scenario, petitioner has approached this Court seeking a writ of quo-warranto restraining respondents 5 and 6 from participating in the management of the District Central Cooperative Bank Rewa. Petitioner has also sought a direction to respondent No.3 to forthwith convene a meeting of duly elected members for election of the Chairman, Vice-Chairman and representative. Petitioner has further sought a direction to initiate appropriate disciplinary and criminal action against the authorities of the Cooperative Department who have unlawfully and deliberately permitted usurpation of public office by respondents 5 and 6.

4. Respondents 1 to 4 have filed the return inter alia, stating that petitioner has approached this Court without availing alternative and efficacious remedy

by raising an election dispute under the provision of Section 64 (2) (v) of the Madhya Pradesh Cooperative Societies Act, 1960. It has further been averred that petitioner in fact is challenging the nomination of respondents 5 and 6 for the post of Director of Bank. It is averred that grievance with regard to illegal acceptance of nomination paper can be raised in an election dispute.

5. Respondent No.5 has filed return in which it has been pointed out that petitioner is guilty of mis-representation of fact. Respondent No.5 was nominated as Chairman of Bank in continuation of the order passed under section 53 (13) of the 1960 Act. Name of respondent No.5 was recommended on 8.12.2006 by Registrar, Cooperative Societies vide Annexure R-5/1. Petitioner has deliberately not filed the copy of the order by which respondent No.5 was nominated as Chairman of the Bank. It has further been submitted that respondent No.5 has been nominated as he was already the representative of Prathamik Upbhokta Sahakari Bhandar Ward No.1 which is a society belonging to (a) category. A copy of the certificate has been annexed as Annexure R-5/3. Respondent No. 5 has also annexed certificate issued by Assistant Registrar, Cooperative Societies, Rewa to the effect that petitioner is Member of Prathamik Upbhokta Sahakari Bhandar Ward No. 1. It has further been averred in the return that on 6.10.2006 respondent No.5 was elected as a representative from the said society. Copy of the proceedings has been annexed as Annexure R-5/5. It has further been submitted that nomination of respondent No. 5 has been done in the capacity of representative of Prathamik Upbhokta Sahakari Bhandar Ward No. 1 and not in the capacity of representative from Pradhan Beej Uptadak Swayatt Shakh Sahakarita Maryadit, Ajarha. The object of aforesaid society is to produce and market the seeds taken from the members of the society and in view of Section 10 of the 1960 Act, the marketing society is entitled to be categorised as (b) category society and therefore, the society has rightly been placed in 'b' category in which respondent No.5 has been elected as representative. It has also been pleaded that on earlier occasion vide Annexure R-5/8 similar direction was issued in respect of society of which respondent No.5 is the representative, be placed in the category of marketing society.

6. This Court vide order dated 15.2.2008 directed that notices be issued for convening the meeting so that election of Chairman and other office-bearers could take place. Pursuant to the order of this Court meeting was convened on 22.2.2008. Against the order dated 15.2.2008 respondent No.5 had filed S.L.P. before the Supreme Court which has been dismissed by order

dated 7.3.2008. After the order was passed by the Supreme Court, elections were held for the post of Chairman, Vice-Chairman and representatives and results have duly been notified on 20.3.2008. Thus, relief contained in para 7(ii) of the writ petition has been rendered infructuous.

7. We have heard the learned counsel for the parties.

8. Shri Sanjay Kumar Agrawal, learned counsel for the petitioner while referring to Chapter IV of the bye-laws and clause 7 (1) of bye-laws contended that society of which respondents 5 and 6 were elected as representative fall in category 'D' and, therefore, respondents 5 and 6 were not entitled to participate in the management of the Bank. He has also drawn our attention to the findings contained in enquiry report (Annexure P-12) in support of his contention that respondents 5 and 6 are not entitled to participate in the management of the Bank. Learned counsel has relied on the decision of the Supreme Court in *K. Veakatachalam v. A. Swamickan and Another*, AIR 1999 SC 1723 to contend that this Court in exercise of power under Article 226 of the Constitution of India can declare that election of respondents 5 and 6 is illegal inasmuch as they were not qualified to contest the election. It is further submitted by him that continuance of respondents 5 and 6 amounts to illegal usurpation of public office and they are not entitled in law to hold the office.

9. On the other hand, Shri Kumaresh Pathak, learned Deputy Advocate General contended that instant writ petition should not be entertained in view of the alternative efficacious remedy available to the petitioner under Section 64(2) (v) of the 1960 Act. It has further been contended that there is no element of public interest involved in the instant writ petition.

10. Learned counsel for respondent No.5 while supporting the submission made by learned Deputy Advocate General, contended that respondent No.5 was nominated as he was representative of Prathamik Upbhokta Sahakari Bhandar Ward No. 1 which is a society falling under the category 'a'. Respondent No.5 has not been nominated in the capacity of representative from Pradhan Beej Uptadak Swayatt Shakh Sahakarita Maryadit, Ajarha. Therefore, the grievance raised by petitioner is misconceived. It has also been contended that the instant writ petition is not genuine public interest litigation and the petitioner has vested interest inasmuch as he is also representative of the District Central Cooperative Bank Limited, Rewa.

11. We have considered the submissions made by learned counsel for the

parties. In *B. Srinivasa Reddy v. Karnataka Urban Water Supply & Drainage Board Employees' Association & Others*, AIR 2006 SC 3106, the Supreme Court has held that a petition praying for a Writ of Quo Warranto being in the nature of public interest litigation, is not maintainable at the instance of a person who is not unbiased. From the averments made in the petition we find that petitioner is a member of Sewa Sahkari Sanstha Maryadit, Banna, and has been elected as representative of the said society in the District Central Cooperative Bank Limited, Rewa. Therefore, the petitioner cannot be said to be a person who is unbiased as he has been elected as representative of the District Central Cooperative Bank Limited, Rewa in the same election in which respondents 5 and 6 have been elected. Therefore, at the instance of petitioner, the present writ petition is not maintainable as public interest litigation. Apart from this respondent No. 5 has taken a categorical stand that he has been nominated as chairman of the Bank in the capacity of representative of Prathamik Upbhokta Sahakari Bhandar Ward No.1 and not in the capacity of representative from Pradhan Beej Uptadak Swayatt Shakh Sahakarita Maryadit, Ajarha. Aforesaid stand has not been controverted by petitioner by filing rejoinder. In view of the interim order passed by this Court on 15.2.2008 elections have already been held on 20.3.2007.

12. It is well settled in law that it is not permissible to invoke the jurisdiction of the High Court under Article 226 of the Constitution by-passing the machinery designated by the Act for determination of the election dispute. In this connection, reference may be made to the decisions of the Supreme Court in *Gujarat University v. N.U. Rajguru*, AIR 1988 SC 66 and *United Bank of India v. Satyawati, Tandon*, (2010) 8 SCC 110. Now, the petitioner has the efficacious alternative remedy under Section 64 (2) (v) of the 1960 Act as elections have already been held. Besides that Supreme Court in *Guruvayoor Devaswom Managing Committee vs. C.K. Rajan*, (2003) 7 SCC 546 held that principle of exhaustion of alternative remedy applies to public interest litigation as well. The forum created under the Act for ventilation of grievance of the affected persons should be moved at the first instance. Therefore, no interference in the matter is called for.

13. Accordingly, the writ petition, being bereft of any substance, deserves to and is hereby dismissed.

Petition dismissed.

I.L.R. [2011] M. P., 693

WRIT PETITION

Before Mr. S.R. Alam, Chief Justice & Mr. Justice R.K. Gupta

W.P. No.6672/2005(PIL) (Jabalpur) decided on 29 November, 2010

MOHD. NANHE

... Petitioner

Vs.

STATE OF M.P. & ors.

... Respondents

Constitution, Article 21 - Life - Basic amenities in residential colony
- Word 'life' has much wider meaning which includes right to livelihood, better standard of living, hygienic conditions in workplace and leisure - Non-providing of basic amenities in residential colony by concerned authority or agency would be violative of Article 21. (Paras 7 & 8)

संविधान, अनुच्छेद 21 - जीवन - आवासिक कॉलोनी में मूलभूत सुविधाएँ - शब्द 'जीवन' का बहुत व्यापक अर्थ है जिसमें जीविका का अधिकार, निर्वाह का बेहतर स्तर, कार्यस्थल में स्वास्थ्यकर हालात तथा अवकाश सम्मिलित है - सम्बंधित प्राधिकारी अथवा एजेंसी द्वारा आवासिक कॉलोनी में मूलभूत सुविधाएँ प्रदान न करना अनुच्छेद 21 का उल्लंघन होगा।

Cases referred :

(1995) 3 SCC 42, (1986) 2 SCC 68.

*None, for the petitioner**P.R. Bhawe with B.P. Yadav, for the respondent Nos.3 to 5.***ORDER**

The Order of the Court was delivered by
S.R. ALAM, CHIEF JUSTICE. :-We have perused the record.

2. In the instant writ petition filed as a public interest litigation the petitioner has alleged that the inhabitants of New Anand Nagar Housing Board Colony situated at Adhartal within the city of Jabalpur are facing serious inconvenience due to lack of basic amenities such as constant supply of electricity, pure drinking water, drainage, sewerage and poor condition of roads etc.

3. The petitioner claims to be the President of New Anand Nagar Kalyan Samiti formed by the residents of the locality. It has further been stated that the New Anand Nagar Housing Board Colony, Adhartal was developed by the M.P. Housing Board, Jabalpur. It has been alleged that basic amenities such as proper supply of pure drinking water, electricity, drainage and roads

etc. have not been provided in the aforesaid Colony, which causes a lot of inconvenience to the residents of the Colony. In these circumstances the petitioner has prayed for issuance of directions commanding the respondents to supply pure drinking water and electricity, and also to maintain drainage, sewerage and roads etc. of the Colony so that the people of the locality can lead a decent and healthy life.

4. The respondents No.3 to 5 have filed common return wherein it has been stated that steps have already been taken for providing regular supply of drinking water to the inhabitants of the Colony. It has further been stated that the road conditions are being improved. Steps to remove encroachments over the roads have also been initiated. It has been stated in the return that the respondents to the best of their ability and resources are doing all the needful to provide basic amenities to the residents of the Colony for more than 20 years. It has further been stated that six employees are looking after the maintenance of sewer lines, manhole chamber and septic tanks and four persons are deputed to look after the supply of water. It has further been stated that the respondents have constructed cement roads and have also dug three bore-wells 500 ft. deep to provide good quality of water to the residents of the Colony regularly. It has also been stated in the return that tube-well water is being checked regularly in the District Laboratory and it is found fit for drinking purpose. A copy of the report, dated 27-8-2004 is enclosed as Annexure-R-3/1 in the return. It has further been disclosed in the return that about 150 persons have made encroachment upon the premises in question and for that purpose notices have been issued to the encroachers and steps have been taken to remove the encroachment. It has also been stated that a complaint register is made available in the office. Whenever any complaint is received, employees of the respondents No. 3 to 5 immediately visit the spot and take steps for necessary repair and to remove defects.

5. On the other hand, the petitioner has not filed any rejoinder controverting those statements made in the return.

6. Shri P.R. Bhave, learned senior counsel, appearing for the respondents No.3 to 5, however, stated before us that all necessary steps have been taken to provide necessary basic amenities to the residents of the Colony. He further assured the Court that in future too, the respondents shall make all endeavour to maintain the supply of pure drinking water to the residents of the Colony and other basic amenities such as roads, sewerage and sanitation etc. so that they can lead a decent healthy life.

7. Admittedly, the aforesaid Colony was developed by the M.P. Housing Board and, therefore, it is the duty of the respondents Nos.3 to 5 to provide basic amenities to the residents of the area.

8. In *Consumer Education and Research Centre vs. Union of India*, (1995) 3 SCC 42 the Apex Court in paragraph 22 has observed that expression 'life' assured in Article 21 of the Constitution does not connote mere animal existence or continued drudgery through life but it includes the quality of life as understood in its richness and fullness by the ambit of the Constitution. The Apex Court while taking note of the expression of the word 'life' under Article 21 of the Constitution of India further observed that it has much wider meaning which includes right to livelihood, better standard of living, hygienic conditions in the workplace and leisure. Therefore, non-providing of basic amenities in the residential colony by the concerned authority or the agency would be violative of Article 21 of the Constitution of India.

9. In *State of Himanchal Pradesh and another vs. Umed Ram Sharma and others*, (1986) 2 SCC 68 the Apex Court in paragraph 11 observed that there should be road for communication in reasonable conditions in view of our constitutional imperative and denial of that right would be denial of the life as understood in its richness and fullness by the ambit of the Constitution.

10. In view of the enunciation of law by the Apex Court the basic amenities to the residents of the area are to be provided, otherwise it would be violative of the rights enshrined in Article 21 of the Constitution of India. However, in view of the assurance given on behalf of the respondents No. 3 to 5 through their learned Senior Counsel that all possible basic facilities/amenities are being provided and respondents shall continue to provide in future also to the residents of the Colony, we are of the view, that no purpose would be served by keeping this matter further pending and it would be appropriate to dispose of the instant writ petition at this stage with the direction to the respondents to provide all necessary basic amenities to the residents of the area in question, and they shall maintain roads, drainage and sewerage etc. including supply of potable water.

11. With the above directions, the writ petition stands finally disposed of.

Petition disposed of.

WRIT PETITION

Before Mr. Justice R.S. Jha

W.P. No.10303/2009 (Jabalpur) decided on 2 December, 2010

ARPITA BISEN

... Petitioner

Vs.

M.P. BHOJ (OPEN) UNIVERSITY & anr.

... Respondents

Education - Admission - Compensation - Petitioner took admission in M.Sc. (Botany) Previous - Eligibility criteria for granting admission in M.Sc. (Botany) is Biology as per brochure published by University - Petitioner subsequently not allowed to appear in theory examination as she did not possess B.Sc. (Biology) with Botany as subject - Held - University did not specify that B.Sc. with Botany as a subject was essential qualification - Petitioner under Bona fide belief took admission in M.Sc. (Botany) and was allowed to prosecute her studies and to participate in practical examination - Petitioner was denied permission to appear in M.Sc. (Botany) Previous Year examination without any justification - Five days time given to petitioner by University to appear in examination cannot be said to be sufficient or adequate for preparing oneself for an annual exam - Petitioner entitled for compensation of Rs.25,000 for loss of her one year. (Paras 7 & 14)

शिक्षा - प्रवेश - प्रतिकर - याची ने एम.एससी. (वनस्पति विज्ञान) पूर्वाद्ध में प्रवेश लिया - विश्वविद्यालय द्वारा प्रकाशित विवरण पुस्तिका के अनुसार एम.एससी. (वनस्पति विज्ञान) में प्रवेश देने के लिए पात्रता मानदंड जीव विज्ञान है - तत्पश्चात् याची को सैद्धांतिक परीक्षा में बैठने की अनुमति नहीं दी गई क्योंकि वह वनस्पति विज्ञान विषय के साथ बी.एससी. (जीव विज्ञान) नहीं थी - अभिनिर्धारित - विश्वविद्यालय ने विनिर्दिष्ट नहीं किया कि विषय के रूप में वनस्पति विज्ञान के साथ बी.एससी. आवश्यक अर्हता थी - याची ने सद्भाविक विश्वास के साथ एम.एससी. (वनस्पति विज्ञान) में प्रवेश लिया और उसे अध्ययन की तथा प्रायोगिक परीक्षा में भाग लेने की अनुमति दी गई - याची को बिना किसी औचित्य के एम.एससी. (वनस्पति विज्ञान) पूर्वाद्ध वर्ष परीक्षा में बैठने की अनुमति देने से इन्कार किया गया - विश्वविद्यालय द्वारा याची को परीक्षा में बैठने के लिए दिया गया पाँच दिनों का समय, उसे वार्षिक परीक्षा की तैयारी करने के लिए पर्याप्त एवं उपयुक्त होना नहीं कहा जा सकता - याची उसकी एक वर्ष की हानि के लिए रुपये 25,000 के प्रतिकर की हकदार।

Cases referred :

2009(5) MPHT 178, 2010(4) MPLJ SN 7, 2002(2) MPLJ 588.

Sanjay K. Agrawal, for the petitioner.

D.K. Mishra, for the respondents.

ORDER

R.S. JHA, J. :-The petitioner who had approached this Court in the year 2009 had initially sought a relief of a direction to the respondent University to forthwith conduct a special examination of M.Sc Previous (Botany) Course and allow her to appear in it. The petitioner in the alternative has sought relief of awarding compensation to the tune of Rs.5 lacs only for causing undue mental agony and hardship and for wasting one precious year of the petitioner.

2. The brief facts, leading to the filing of the present petition, are that the petitioner, who was a Science Graduate i.e. B.Sc (Biology) with Bio-Technology as a subject, applied for admission in M.Sc (Botany) Course for which applications were invited by the respondent University by information brochure published for the year 2008-09. The petitioner deposited her form with the respondents on 26.2.2009 alongwith the requisite fees of Rs.6,900/- and was granted admission in the M.Sc (Botany) Course. The petitioner was also permitted to participate in the practical examination held sometime in the month of June-July 2009. In August 2009 the respondent University published the schedule for M.Sc (Botany) Previous Examination which was notified to be held from 25.9.2009 to 7.10.2009 which date was later deferred to 5.10.2009.

3. As required, the petitioner deposited her examination form alongwith the requisite fees on 26.8.2009 but the same was returned to her on 28.8.2009, Annexure P-7, with a note that the petitioner was not eligible to participate in the Examination of M.Sc (Botany) Previous as she did not have Botany as a subject in her B.Sc course. Similar communication was issued to the petitioner on 29.8.2009. Being aggrieved by the aforesaid, the petitioner served a legal notice upon the respondent University on 10.9.2009 in response to which the respondent University issued a letter on 26.9.2009 which was received by the petitioner on 29.9.2009 to the effect that the petitioner would be permitted to participate in the M.Sc (Botany) Previous examination provided she withdrew her legal notice.

4. As the examination was scheduled to commence from 5.10.2009 and the period given to the petitioner was far too short to enable her to appear in the aforesaid examination, she immediately filed the present petition before this Court praying for the reliefs as stated in para-7.

5. It is submitted by the learned counsel for the petitioner that the petitioner has lost one valuable academic year on account of the casual and negligent act on

the part of the respondent University and in such circumstances the petitioner is entitled to cost and compensation to the tune of Rs.5 lacs on that count. The learned counsel has relied upon the decision of this Court rendered in the case of *Board of Secondary Education, Bhopal vs. Rakesh Kewat and another*, 2009 (5) MPHT 178; *Madan Singh Thakur vs. Board of Secondary Education M.P., Bhopal*, 2010 (4) MPLJ SN 7 and *Prem Ratan Agrawal vs. Board of Secondary Education, Bhopal and others*, 2002 (2) MPLJ 588.

6. Per contra the learned counsel for the respondent University submitted that the petitioner did not possess the degree in B.Sc (Biology) with Botany as a subject which was necessary for prosecuting studies in M.Sc (Botany) Previous. It is stated that the petitioner was given admission inadvertently and was also permitted to participate in the practical examination. However, while scrutinizing her form at the time of the examination it was found that the petitioner was not eligible and in such circumstances the impugned communication dated 28.8.2009 and 29.8.2009 were issued to the petitioner. It is further submitted that on the petitioner issuing a legal notice to the respondent on 10.9.2009 the respondent University issued a letter permitting the petitioner to appear in the M.Sc (Botany) Previous examination in spite of which she chose not to appear in the same. In such circumstances, it is submitted that there is lapse on the part of the petitioner in not approaching this Court promptly and in not availing of the opportunity provided by the respondent University to appear in the M.Sc (Botany) Previous examination and in such circumstances the relief sought by the petitioner regarding award of cost and compensation is misconceived as in the peculiar facts and circumstances of the present case the petitioner's negligence is evident on the face of record. It is further submitted that as far as the respondents are concerned, they had subsequently permitted the petitioner to participate in the examination to be held on 5.10.2009 and have thereafter also informed the petitioner that she could appear in the M.Sc (Botany) Previous examination in the subsequent year but the petitioner has chosen not to avail of the opportunity and, therefore, the relief claimed by the petitioner cannot be granted to her. The learned counsel for the respondents further pointed out that in fact the petitioner by implication had withdrawn her claim for appearing in the examination by submitting an application dated 14.10.2009, Annexure R-2, praying for refund of the admission and examination fees and in such circumstances the claim of the petitioner is misconceived and deserves to be rejected.

7. I have heard the learned counsel for the parties at length. From a perusal of the averments in the petition and the documents filed therewith it is clear that the brochure published by the respondent University specifically prescribes Biology as the eligibility criteria for granting admission in M.Sc (Botany) Previous. It is, therefore, clear that the respondent University did not either specify that B.Sc with Botany as a subject was an essential qualification nor did they clarify that a student who had passed B.Sc with Bio-Technology as a subject was ineligible. On the contrary, the eligibility prescribed was B.Sc with Biology group and in such circumstances the petitioner, under bonafide belief that she was eligible, applied and was granted admission to the M.Sc (Botany) Previous course by the respondent University. It is also clear that she was permitted to prosecute her studies and to participate in the practical examination conducted by the University and that it was only at the time of the theory examination that the petitioner's eligibility was questioned and she was not permitted to participate in the examination. It is also clear that on the petitioner issuing a legal notice on 10.9.2009, the respondent authorities permitted the petitioner to participate in the examination by their communication dated 26.9.2009 subject to her withdrawing the legal notice. It is further clear that the permission to appear in the examination granted to the petitioner was received by the petitioner on 29.9.2009, only five days prior to the date of commencement of the examination i.e. 5.10.2009.

8. In view of the aforesaid admitted facts, it is clear that the petitioner was denied permission to appear in the M.Sc (Botany) Previous year examination by the respondent authorities without any justification and that the permission ultimately granted to her after issuance of the legal notice, gave the petitioner only five days time to prepare for the examination which by no stretch of imagination can be said to be sufficient or adequate for preparing oneself for an annual exam.

9. In such circumstances, I am of the considered opinion that the said act of the respondents has resulted in loss of one academic year of the petitioner and the subsequent permission granted by the respondent authorities to the petitioner to appear in the next year examination would not compensate or wipe away the loss of one academic year of the petitioner specifically in view of the statement made by the learned counsel for the petitioner that on the petitioner being denied permission to appear in the examination, she has subsequently obtained admission in MBA and is prosecuting her studies and that she has infact lost one academic year.

10. In the case of *Prem Ratan Agrawal* (supra), this Court was dealing

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with a case of a student who had appeared in the 12th class examination and was given a wrong mark-sheet indicating that he had failed in the subject of Physics and on that count was denied admission in the Govt. Science College, Jabalpur. However, subsequently the Board of Secondary Education in the month of October 1999 informed the petitioner therein that he should deposit the old mark sheet and collect the fresh mark sheet in which he was awarded 70 marks out of 100 in place of 17 marks in Theory Paper and was given distinction in all the subjects. In such circumstances, the Court held that the petitioner therein was entitled to compensation of Rs.10,000/- by observing the aforesaid in para-11 with a further direction to the concerned evaluator to pay compensation of Rs.15,000/- to the petitioner for her negligence in correcting the answer copies.

“11. The loss caused to the petitioner cannot be made good by grant of compensation, but the Board has to be put to task. A statutory body has to remain awake and act with alacrity and should not take an ambivalent stance. It is its duty to ameliorate itself and conceive of positive paradigm. The Board cannot afford to pave the path of anfractous and create a maze. It must understand the marrow of feelings and sensitivity of a young man. In the case at hand, as the Board has failed to do so, I am inclined to direct that it shall pay a compensation of Rs.10,000/- (Rupees Ten Thousand Only) to the petitioner within a period of two months from today.”

11. In the case of *Rakesh Kewat* (supra) the Court was dealing with the case of a student whose result was wrongly withheld on account of a complaint of copying which was subsequently found to be incorrect. However, by the time the mistake was detected and the result was declared the supplementary and the main examination were over as a result of which the petitioner therein who got supplementary in the subject of English (General), could not appear in the examination and suffered loss of one academic year on account of the delay and mistake on the part of the respondent Board. This Court, again considering the aforesaid lapse on the part of the respondent Board, upheld the award of compensation of Rs.25,000/- by the learned Single Judge in Writ Appeal in the following terms:-

“6 The fact remains that the Board had treated the respondent No.1 to be involved in copying, though he was not involved. His result was cancelled. The mistake was that

rectified later on, but by that time had expired to sit in the supplementary examination. This led to waste of one year of the respondent No.1. The Board, as it seems, tried to redeem the situation by permitting him to appear in the 2009 Supplementary Examination. What appears to be redemption for the Board is humiliation to the writ petitioner, respondent No.1 herein, and waste of his time. What flows with the efflux of time, cannot always be redeemed. It is not loss of money that one can recover. It is not a case where one is deprived of promotion and given promotion with retrospective effect with all consequential benefits. The factual scenario, as is luculent, put the writ petitioner in such a situation that he had to lose a valuable span of one year. The time that passed, never comes back. It does not revisit. One may, hypothetically sit in a time machine and reconstruct the past but in the sphere of living reality the clock is never put back. It is an impossible facet of life. It is not only difficult to chain time but well nigh, impossible to arrest it even for a while. The Board, which has been bestowed the responsibility under the Statute and the Regulations to conduct the examination, is expected to have the requisite expertise and is expected to be extremely cautious and vigilant. No acts of the Board should be done in a hurry as it deals with the life and career of young students. Today's youth is tomorrow's social governor. Any authority while putting forth an allegation of copying has to be really careful so that, an innocent student is not put to unnecessary harassment and suffer mental agony. The anguish which a student suffers because of these kinds of faults can be very well imagined. Not for nothing it has been said, he who enjoys the power has to act with commensurate responsibility. The Board cannot advance a spacious plea that it has to conduct examination for lakhs of students and, therefore, this kind of mistake may sometimes happen because for the Board it may be conducting an examination but for the students it is the life time participation in life and for life of a student. A single lackdaisical act of the Board can mar the career and destroy the life. No Statutory Authority which has the responsibility towards the students can be unfair to them. It is worthnoting

a student who is at fault is bound to suffer. He who gets involved in copying or indulges in malpractice, has to face the wrath of law. But, a pregnant one, he who is innocent, cannot become a victim because of fault of the Board. Whoever may be the authority at fault, it is the vicarious liability of the Board to pay compensation to the grieved student, the writ petitioner. Therefore, we are disposed to think that the learned Single Judge has appositely awarded compensation or Rs.25,000/- keeping in view the relief sought for by the writ petitioner, for in the relief clause there is a prayer for grant of compensation.”

12. In similar circumstance, this Court has again awarded compensation to the petitioner therein in the case of *Madan Singh Thakur* (supra).

13. In view of the Division Bench judgment of this Court rendered in the case of *Rakesh Kewat* (supra), which I am respectfully bound, I am of the considered opinion that the petitioner, in the instant case, is also entitled to cost for the act of the respondents which resulted in loss of one academic year to the petitioner. While the exact compensation to which the petitioner is entitled cannot be computed in writ proceedings and compensation to that extent cannot be awarded, however, in view of the aforesaid judgment, compensation on account of the negligence and casual attitude of the respondents which has resulted in uncompensatable loss of one academic year to the petitioner deserves to be awarded.

14. Taking the totality of the facts and circumstances into consideration, I am inclined to impose cost of Rs.25,000/- (Rupees Twentyfive Thousand) on the respondent University which would include the tuition fees and other charges paid by the petitioner for prosecuting the aforesaid course. The aforesaid amount be paid to the petitioner by the respondent University within one month from the date of receipt of a certified copy of the order passed today.

15. With the aforesaid direction the petition, filed by the petitioner, stands allowed to the extent mentioned hereinabove.

Petition allowed.

I.L.R. [2011] M. P., 703

WRIT PETITION

Before Mr. Justice Rajendra Menon

W.P. No.17081/2010(S) (Jabalpur) decided on 14 December, 2010

KAMLESH SHARMA

... Petitioner

Vs.

DIVISIONAL MANAGER & ors.

... Respondents

Constitution, Article 226 - Alternative and efficacious remedy -
Petitioner has challenged the disciplinary proceedings and dismissal from service - Petitioner has efficacious and alternative remedy of raising dispute u/s 2(A) of Industrial Disputes Act - Petition disposed off with liberty to take recourse of remedy available under Industrial Disputes Act. (Paras 1 to 3)

संविधान, अनुच्छेद 226 - वैकल्पिक तथा प्रभावी उपचार - याची ने अनुशासनिक कार्यवाही तथा सेवा से बर्खास्तगी को चुनौती दी - याची के पास औद्योगिक विवाद अधिनियम की धारा 2(ए) के अन्तर्गत विवाद प्रस्तुत करने का प्रभावी तथा वैकल्पिक उपचार है - याचिका औद्योगिक विवाद अधिनियम के अन्तर्गत उपलब्ध उपचार का आश्रय लेने की स्वतंत्रता के साथ निराकृत।

Cases referred :

1995(I) LLJ 351.

Vipin Yadav, for the petitioner.

Rajesh Tiwari, G.A., for the respondents.

ORDER

RAJENDRA MENON, J. :-Petitioner is a dismissed Conductor in the respondents establishment and has challenged the disciplinary proceedings initiated and dismissal from service on various grounds particularly pertaining to violation of Standard Standing Orders formulated under the M.P. Industrial Employment (Standing Orders) Act. Petitioner is a workman within the meaning of Section 2(S) of the Industrial Disputes Act and has efficacious remedy of raising the dispute under Section 2(A) of Industrial Disputes Act and by intervention of the Labour Court. Wide powers are conferred on the Labour Court to go into the punishment also and in view of the provisions of Section 11 (A) of Industrial Disputes Act, Labour Court has full jurisdiction to enquire into factual aspects of the matter including the validity of departmental enquiry conducted and the quantum of punishment.

2. The Karnataka High Court in the case of *Mohini Vs. General Manager, Syndicate Bank* - 1995(1)-LLJ-351 (karn.) has laid down a principle that when efficacious remedy under the Industrial Disputes Act is available and when benefit of Section 11 (A) can be availed of, interference directly by a writ Court is not warranted.

3. In the case of *Mohini* (supra) it has been so held by the learned Court :-

"Whether the Tribunal is dealing with an industrial dispute, if it is satisfied that no enquiry has been held or that enquiry held is not fair and proper, or the findings recorded in the domestic enquiry are perverse, the whole issue is at large before the Tribunal. As a corollary, it follows that the power and jurisdiction of the Labour Court in examining the validity of the domestic enquiry far exceeds that of the writ court as it cannot go beyond the point of examining the validity of the enquiry to look into the merits of the charges framed against the employee. To that extent, therefore, the remedy provided by the Act is certainly more comprehensive than that available under Art. 226 of the Constitution.

The power under Section 11-A of the Act is also peculiar to the scheme of the Act and may not be exercisable under Art. 226 of the Constitution."

Keeping in view the aforesaid and finding the efficacious alternate remedy available to the petitioner, the preliminary objection raised by the respondents in this regard is upheld.

Petition is disposed of with liberty to the petitioner to take recourse of the remedy available under the Industrial Disputes Act.

Petition is accordingly disposed of.

c.c. as per rules.

Petition disposed of.

I.L.R.[2011]M.P., Ramesh Prasad Tihaiya Vs. M.P. High Court (DB) 705

I.L.R. [2011] M. P., 705

WRIT PETITION

Before Mr. Justice K.K. Lahoti & Mrs. Justice Sushma Shrivastava

W.P. No.4126/1997 (Jabalpur) decided on 11 January, 2011

RAMESH PRASAD TIHAIYA

... Petitioner

Vs.

M.P. HIGH COURT & anr.

... Respondents

A. Service Law - Disciplinary Proceedings against a Judge - Discharging the accused by weighing and evaluating the evidence and considering the possibility of his innocence - Suffered from patent illegality, being contrary to the settled principle of law - Could form the basis of disciplinary proceedings. (Para 18)

क. सेवा विधि - न्यायाधीश के विरुद्ध अनुशासनिक कार्यवाही - अभियुक्त को साक्ष्य का परीक्षण एवं मूल्यांकन कर और उसके निर्दोष होने की संभावना पर विचार करते हुए उन्मोचित करना - विधि के स्थापित सिद्धांत के विपरीत होने के कारण प्रकट रूप से अवैधता से ग्रसित - अनुशासनिक कार्यवाही का आधार बन सकता है।

B. Service Law - It was competent for the disciplinary authority, i.e. High Court, to take a dissenting view from the findings of Enquiry Officer and to record its own finding on the basis of material available - Mere non-challenge of the order in question by way of appeal or revision or suo moto revision, could not be an impediment in taking disciplinary action against the petitioner on the basis of an order, which was patently illegal. (Para 19)

ख. सेवा विधि - अनुशासनिक प्राधिकारी अर्थात् उच्च न्यायालय, जाँचकर्ता अधिकारी के निष्कर्षों से विसम्मत दृष्टिकोण लेने के लिए और उपलब्ध सामग्री के आधार पर अपने स्वयं का निष्कर्ष अभिलिखित करने के लिए सक्षम था - अपील या पुनरीक्षण या स्वप्रेरित पुनरीक्षण द्वारा प्रश्नगत आदेश को चुनौती न देना मात्र, आदेश, जो प्रकट रूप से अवैध था, के आधार पर याची के विरुद्ध अनुशासनिक कार्यवाही करने में बाधक नहीं हो सकता।

C. Service Law - Punishment - Disciplinary proceedings relating to illegal discharge of the accused u/s 302 of IPC - View taken by the High Court that the order of discharge was actuated by improper motive, and consequent imposition of the penalty of withholding of two increments without cumulative effect - Was a minor punishment, after

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**holding due enquiry and giving proper opportunity of hearing - Does
not call for any interference.** (Para 21)

ग. सेवा विधि - दण्ड - भा.द.सं. की धारा 302 के अंतर्गत अभियुक्त के अवैध उन्मोचन से संबंधित अनुशासनिक कार्यवाहियाँ - उच्च न्यायालय द्वारा लिया गया दृष्टिकोण कि उन्मोचन का आदेश अनुचित हेतुक द्वारा परिणत किया गया था और परिणामस्वरूप संचयी प्रभाव के बिना दो वेतन वृद्धियों की रोक की शास्ति का अधिरोपण - सम्यक जाँच करने एवं सुनवाई का उचित अवसर देने के पश्चात लघु दण्ड था - किसी प्रकार का हस्तक्षेप आवश्यक नहीं।

Cases referred :

AIR 2001 SC 2788, (2007) 4 SCC 247, (1993) 2 SCC 56, (1992) 3 SCC 124, (1994) 3 SCC 357, (2000) 1 SCC 416, AIR 1963 SC 1723, AIR 1977 SC 2018(1).

K.P. Mishra with Amresh Mishra, for the petitioner.

Kishore Shrivastava with Manoj Kumar Jha, for the respondent

No.1.

Vivek Agrawal, G.A., for the respondent No.2.

ORDER

The Order of the Court was delivered by **SUSHMA SHRIVASTAVA, J.** :-This is a writ petition challenging the order (Annexure P-20) dated 20.08.96 passed by High Court of Madhya Pradesh on its administrative side, imposing punishment of withholding of two increments without cumulative effect on the petitioner.

2. Petitioner is a judicial officer. He was appointed as a Civil Judge Class-II vide order dated 13.6.75; he was promoted as Additional District Judge in due course and joined as Additional District Judge, Rewa as per order dated 14.6.89. While posted as Additional District Judge, Manendragarh, District Sarguja, disciplinary proceedings were initiated against the petitioner and a departmental inquiry was conducted against him in respect of three charges. A charge-sheet was served on the petitioner on 15.11.94 by Madhya Pradesh High Court on administrative side (hereinafter referred to as 'High Court'), alongwith the article of charges, statements of imputations, list of witnesses and list of documents. After submission of reply by the petitioner, District and Sessions Judge, Ambikapur was appointed as Enquiry Officer, who after completing the inquiry, submitted his report to the High Court. The Enquiry Officer exonerated the petitioner of all the charges, but the High Court had not agreed with the finding of the Enquiry Officer with regard to charge no. 1

I.L.R.[2011]M.P., Ramesh Prasad Tihaiya Vs. M.P. High Court(DB) 707 against the petitioner. Article of charge no.1 related to an order (Annexure P-24) passed by the petitioner as an Additional Sessions Judge, Manendragarh, District Sarguja on 30.09.93 in S.T. No.213/93 (*State Vs. Omprakash*), whereby he discharged the accused despite there being sufficient material for framing of charge under Section 302 of IPC, contrary to the settled principle of law that the evidence could not be assessed while framing of charge, which was an act of grave misconduct.

3. The High Court disagreeing with the finding of the Enquiry Officer with regard to the aforesaid article of charge no.1, reversed the finding for the reasons recorded by it and found that the petitioner was guilty of aforesaid charge no.1 and a show cause notice was issued to the petitioner on 1.6.96 as to why the finding recored by the High Court with regard to the charge no.1 should not be accepted and why he should not be punished for the same. The petitioner filed his reply dated 29.6.96 vide Annexure P-19 to the High Court and prayed for his exoneration. The High Court by its order dated 20.08.96 (Annexure P-20) imposed punishment of withholding of two increments without cumulative effect on the petitioner, as specified in Rule 10(4) of M.P. Civil Services Control and Appeal Rules, 1966. The administrative appeal (Annexure P-21) filed by the petitioner under Rule 23/29 of M.P. Civil Service (Classification Control and Appeal) Rules, 1966 was also dismissed.

4. The writ petition is preferred inter alia on the ground that the judicial order (Annexure P-24) passed by the petitioner dated 30.09.93 in S.T.No.213/93 as Additional Sessions Judge, Manendragarh, District Sarguja does not provide any factual basis for imputation of any misconduct and misbehaviour against the petitioner. The petitioner passed a judicial order, which was not legally challenged by anybody in any manner, neither by Police or the prosecution, nor by any relative of the deceased and even the High Court had not acted suo-moto to revise the order when it came to its notice. The petitioner passed a judicial order (Annexure P-24) as judicial officer on the basis of records of the case, and the documents filed by prosecution in the Court under Section 173 of the Cr.P.C. did not make out any eyewitness account of the case; even the possibility of forming a different opinion on the material available in the case by itself could not form the basis of imputing misconduct on the petitioner or for initiating a disciplinary proceeding. There was no evidence to the fact that the order (Annexure P-24) passed by the petitioner was actuated by any motive, nor an error or even gross error in writing the order by itself is enough to attribute the improper motive or misconduct to the petitioner.

5. According to petitioner, on account of the pendency of departmental inquiry and consequent punishment imposed on the petitioner, his claim for grant of selection grade as Member of Higher Judicial Service in Madhya Pradesh has been rejected, as communicated to him by District and Sessions Judge, Shahdol vide Annexure P-23 and the junior members of the Higher Judicial Services have been promoted to the selection grade ignoring the claim of the petitioner. Petitioner, therefore, prayed that the order (Annexure P-20) imposing the punishment of withholding of two increments without cumulative effect on him and the order (Annexure P-23) regarding his unsuitability for grant of Selection Grade be quashed by issuing a writ of certiorari and the petitioner be granted consequential reliefs and the benefits, of which he has been deprived on account of order-Annexure P-20.

6. In the return filed by High Court/respondent no.1, it has been contended that the report of the Enquiry Officer is not binding on the disciplinary authority; the disciplinary authority has jurisdiction under law to arrive at its own conclusion with regard to the guilt by examination of material on record, which has been done. The petitioner was given due opportunity of hearing to show cause against disagreement of the disciplinary authority with the finding of Enquiry Officer and thereby he was granted full opportunity of hearing. After due consideration of the material on record in the form of oral and documentary evidence, circumstances appearing against the petitioner and culpable negligence of the petitioner indicating deliberate act of discharge of the accused, disciplinary authority recorded the finding that the act of the petitioner in discharging the accused was actuated by corrupt and improper motive. There was no violation of principle of natural justice or any other illegality or irregularity in holding inquiry, the finding recorded by the disciplinary authority not being perverse and based on preponderance of probability, may not be interfered with in exercise of the extra-ordinary jurisdiction under Article 226 of the Constitution of India. Mere non-challenge of the order passed by the petitioner in the superior court does not create any legal bar to hold any disciplinary action against the petitioner. Sufficiency of the material or otherwise cannot be gone into in a petition under Article 226 of the Constitution of India, as it cannot be treated as an appeal to the Appellate Authority. Standard of proof required in disciplinary cases is not as strict as required in criminal cases. The petitioner was afforded full opportunity of hearing and no interference is called for. Petitioner is not entitled to any relief claimed in the petition.

7. We have heard learned counsel for the parties.

Learned counsel for the petitioner mainly submitted that the judicial order passed by the petitioner could not form the basis of punishing him in the disciplinary proceedings, particularly when there was no proof that the judicial order (Annexure P-24) passed by the petitioner was actuated by any corrupt or improper motive and the same was never called in question by either party by way of an appeal or revision and none was aggrieved by it. Learned counsel for the petitioner vehemently urged that an error in the order or possibility of arriving at a different conclusion cannot be a ground to indict a judicial officer for taking one view, and to attribute misconduct or corrupt motive. Reliance was placed on the decisions rendered by the Apex Court in the case of *P.C. Joshi Vs. State of U.P. and others* reported in AIR 2001 Supreme Court page 2788 and *Ramesh Chander Singh Vs. High Court of Allahabad & another* reported in (2007)4 Supreme Court Cases page 247.

8. Learned counsel for the High Court/respondent no.1, on the other hand, submitted that even a judicial order passed by a judicial officer, if it suffers from illegality or is actuated by malice and bias, can form the basis for initiating disciplinary proceedings. Relying on a judgment of the Apex Court rendered by its three Judges' Bench in the case of *Union of India & others Vs. K.K. Dhawan* reported in (1993)2 Supreme Court Cases page 56 learned counsel for respondent no.1 vehemently urged that there is no legal bar in initiating disciplinary proceedings against a judicial officer on the basis of a judicial order passed by him. He mainly referred to para 26 of the judgment in the aforesaid case, wherein the Apex Court reiterated the legal position enunciated in its earlier decision in the case of *Union of India Vs. A.N. Saxena* reported in (1992)3 Supreme Court Cases page 124 as under:-

"In our view, an argument that no disciplinary action can be taken in regard to actions taken or purported to be done in the course of judicial or quasi-judicial proceedings is not correct. It is true that when an officer is performing judicial or quasi-judicial functions disciplinary proceedings regarding any of his actions in the course of such proceedings should be taken only after great caution and a close scrutiny of his actions and only if the circumstances so warrant. The initiation of such proceedings, it is true, is likely to shake the confidence of the public in the officer concerned and also if lightly taken likely to undermine his independence. Hence, the need for extreme care

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and caution before initiation of disciplinary proceedings against an officer performing judicial or quasi-judicial functions in respect of his actions in the discharge or purported to discharge his functions. **But it is not as if such action cannot be taken at all.** Where the actions of such an officer indicate culpability, namely a desire to oblige himself or unduly favour one of the parties or an **improper motive there is no reason why disciplinary action should not be taken."**

9. Learned counsel for the High Court/respondent no.1 also submitted that the legal position laid down in the case of *K.K. Dhawan* (supra) has not been upset by the Apex Court in its later decision rendered by the Bench of the equal strength in the case of *Ramesh Chander Singh* (supra), cited by learned counsel for the petitioner; on the other hand, it transpires from the following observations made by their Lordships in para 11 of the judgment in *Ramesh Chander's case* (supra) that disciplinary proceedings can be based on a judicial order, if there are grounds to suspect officer's bonafides and the order itself is actuated by malice or illegality:-

"If the High Court were to initiate disciplinary proceedings based on a judicial order, there should have been strong grounds to suspect officer's bonafides and the order itself should have been actuated by malice, bias or illegality."

10. Learned counsel for High Court/respondent no.1 also submitted that since there was no reference to *K.K. Dhawan's case* (supra) in the later decision of the Apex Court rendered in the case of *Ramesh Chander's case* (supra), the legal position as enunciated in its earlier decision in *K.K. Dhawan's case* (supra) shall still have a binding force.

11. Learned counsel for the High Court/respondent no.1 further submitted that any violation of principle of justice or any illegality or irregularity in holding the enquiry was nowhere alleged in the writ petition; the disciplinary authority had recorded reasons for dissenting from the findings of the Enquiry Officer with regard to article of charge no.1 and a show-cause notice was also issued to the petitioner in this regard; as such the finding recorded by the disciplinary authority cannot be interfered with in exercise of the extraordinary jurisdiction under Article 226 of the Constitution. Reliance was placed in this regard on the two decisions of the Apex Court rendered in the case of *Union of India and others Vs. Upendra Singh* (1994)3 Supreme Court Cases page 357

I.L.R.[2011]M.P., Ramesh Prasad Tihaiya Vs. M.P. High Court(DB) 711 and *High Court of Judicature At Bombay through Registrar Vs. Shashikant S. Patil and another* reported in (2000)1 Supreme Court cases page 416. Attention was drawn particularly to the following observations made by their Lordships in para-17 of the judgment in the case of *Shashikant Patil* (supra), wherein the Apex Court reiterated the legal position laid down in the case of *State of A.P. Vs. S. Sree Rama Rao* (AIR 1963 Supreme Court page 1723) thus:-

"The High Court is not constituted in a proceeding under Article 226 of the Constitution as a Court of appeal over the decision of the authorities holding departmental enquiry against a public servant; it is concerned to determine whether the enquiry is held by an authority competent in that behalf and according to the procedure prescribed in that behalf and whether the rules of natural justice are not violated. Whether there is some evidence, which the authority entrusted with the duty to hold the enquiry has accepted and which evidence may reasonably support the conclusion that the delinquent officer is guilty of the charge, it is not the function of the High Court in a petition for a writ under Article 226 to review the evidence and to arrive at an independent finding on the evidence."

12. Lastly, learned counsel for the High Court/respondent no.1 submitted that the report of the Enquiry Officer was not binding on the disciplinary authority and the disciplinary authority was empowered under law to disagree with any of the findings of the Enquiry Officer and could record its own findings and therefore, the action taken by the disciplinary authority after issuance of a show cause notice to the petitioner and consequent imposition of penalty on him, did not call for any interference in the writ jurisdiction.

13. We have considered the rival submissions of the learned counsel for the parties.

14. There can be no dispute to the legal proposition that the disciplinary authority can disagree with the findings of the Enquiry Officer on any article of charge and can record its own finding on the said charge after recording the reasons for its disagreement. Rule 15 Sub Rule 2 of the M.P. Civil Services (Classification, Control and Appeal) Rules, 1966 also provides the same, which reads thus:-

"The disciplinary authority shall, if it disagrees with the findings of the inquiring authority on any article of charge, record its reasons for such disagreement and record its own finding on such charge, if the evidence on record is sufficient for the purpose."

15. The Apex Court in its three Judges' Bench decision rendered in the case of *Shashikant S. Patil* (supra) also held that the findings of the Enquiry Officer are not binding on the disciplinary authority as the decision-making authority is the punishing authority and, therefore, that authority can come to its own conclusion and it is also not necessary that the disciplinary authority should discuss the materials in detail and contest the conclusions of the Enquiry Officer.

16. A perusal of show cause notice (Annexure P-17) dated 1.6.1996 issued by the High Court/disciplinary authority to the petitioner reveals that it contained elaborate reasons for disagreement with the finding of the Enquiry Officer, as to article of charge no.1, also indicating that there was sufficient material on record, and the case diary statements of witnesses disclosed prima facie case for framing of a charge under Section 302 of IPC against the accused in S.T. No.213/93. Thus it is manifest that the High Court reversed the finding of the Enquiry Officer with regard to article of charge no.1, which related to discharge of the accused under Section 302 of IPC by the petitioner/Judicial Officer, after recording reasons on the basis of the material available on record and recorded its own findings against the petitioner finding him guilty for charge no.1.

17. On perusal of the judicial order in question (Annexure P-24) dated 30.9.93 passed by the petitioner in S.T.No.213/93 discharging the accused under Section 302 IPC, we find that it is a detailed order wherein the petitioner has assessed and evaluated the evidence in detail as if he was writing a judgment of acquittal and has gone even to the extent of assigning some hypothetical reasons for discharging the accused, which was not warranted at the stage of framing of charge. The law is well settled that at the stage of framing of charge the Court is not to see whether there is sufficient ground for conviction of the accused or whether trial is sure to end in his conviction. The Apex Court in the case of *State of Bihar Vs. Ramesh Singh* reported in AIR 1977 Supreme Court page 2018(1), has observed that if there is a strong suspicion against the accused at the initial stage of framing of charge, which leads the Court to think that there is ground for presuming that the accused

has committed an offence, in that event it is not open to the Court to say that there is no sufficient ground for proceeding against the accused.

18. In the aforesaid facts and circumstances, the judicial order (Annexure P-24) passed by the petitioner in S.T.No.213/93 discharging the accused under Section 302 of IPC by weighing and evaluating the evidence and considering the possibility of his innocence, suffered from patent illegality, being contrary to the settled principle of law and thus could form the basis of disciplinary proceedings in view of the legal position enunciated in *K.K. Dhawan's case* (supra) as well as in the case of *Ramesh Chander* (supra). we are, therefore, unable to accept the submission of learned counsel for the petitioner that the judicial order in question (Annexure P-24) could not form the basis for initiating departmental enquiry against the petitioner.

19. In view of factual and legal position as described hereinabove, it was competent for the disciplinary authority, i.e. High Court, to take a dissenting view from the findings of Enquiry Officer and to record its own finding on the basis of material available. Mere non-challenge of the order in question by way of appeal or revision or suo-moto revision, could not be an impediment in taking disciplinary action against the petitioner on the basis of an order, which was patently illegal. As said hereinabove, a show cause notice was issued by the disciplinary authority to the petitioner vide Annexure P-17 in respect of the disagreement with the finding of the Enquiry Officer and recording its own finding of guilt against the petitioner in respect of the article of charge no.1, as also proposing the penalty; as such it could not be said that there was any violation of principle of natural justice. It is also manifest from the record that the reply (Annexure P-19) to show cause notice dated 1.6.96 was also submitted by the petitioner before the High Court. It was a detailed reply, therefore, it could not be said that the petitioner was deprived of the opportunity of hearing. In the aforesaid facts and circumstances, personal hearing of the petitioner was also not necessary.

20. The submission of learned counsel for the petitioner that there was no proof that the judicial order (Annexure P-24) was actuated by any corrupt or improper motive, also sans merit in view of the law laid down by the Apex Court in the case of *Shashikant S. Patil* (supra).

21. In the wake of reasons recorded by the High Court in Annexure P-17 as to finding of guilt of the petitioner with regard to the charge no.1, in the disciplinary proceedings relating to illegal discharge of the accused under

Section 302 of IPC in S.T.No.213/93 by him, the view taken by the High Court that the order (Annexure P-24) was actuated by improper motive, and consequent imposition of the penalty of withholding of two increments of the petitioner without cumulative effect vide order Annexure P-20, which was a minor punishment, passed by the High Court/respondent no.1, after holding due enquiry and giving proper opportunity of hearing, in the peculiar facts and circumstances of the case, does not call for any interference in exercise of writ jurisdiction of this Court.

22. As regards non-granting of the selection grade to the petitioner, as communicated to him by (Annexure P-23), the petitioner never made any representation before the High Court against this communication. Moreover, a perusal of the extract of minutes of High Court's Full Court Meeting, (Annexure R-1) dated 20-4-96 reveals that after consideration of the ACR's, other materials and over all performance of the petitioner, he was not found fit for grant of selection grade. It does not appear to be an offshoot of the order (Annexure P-20), which was passed subsequently. For the foregoing reasons and in absence of any representation against the communication (Annexure P-23) regarding unsuitability of the petitioner for the selection grade in Higher Judicial Services, no interference is called for in the decision taken in the Full Court Meeting of the High Court, as per Annexure R-1, communicated to the petitioner vide Annexure P-23.

23. Thus, no case for interference in the orders (Annexure P-20 and P-23) is made out.

The writ petition being devoid of merit is hereby dismissed. No costs.

Petition dismissed.

I.L.R. [2011] M. P., 714

WRIT PETITION

Before Mr. Justice S.N. Aggarwal

W.P. No.7488/2010 (Gwalior) decided on 11 January, 2011

VIRENDRA KUMAR GUPTA

... Petitioner

Vs.

STATE OF M.P. & ors.

... Respondents

Municipalities Act, M.P. (37 of 1961), Section 323 - Collector had no power or jurisdiction to set aside the resolution passed by the

Municipality deciding to regulate the holding of functions in the town hall itself instead of giving it to the private contractor. (Para 6)

नगरपालिका अधिनियम, म.प्र.(1961 का 37), धारा 323 — टाऊन हाल में आयोजित कार्यक्रमों का विनियमन प्रायवेट ठेकेदार को देने के स्थान पर स्वयं करने का विनिश्चय लेने वाले नगरपालिका द्वारा पारित संकल्प को अपास्त करने की कलेक्टर को कोई शक्ति या आधिकारिता नहीं है।

R.B.S. Tomar, for the petitioner.

Praveen Newaskar, Dy.G.A., for the respondent Nos.1 & 2/State.

Deepak Chandna, for the respondent No.4.

ORDER

S.N. AGGARWAL, J. :-The short question that arises for decision in this writ petition is whether the Collector, Morena, M.P. could in exercise of powers under Section 323 of the M.P. Municipalities Act, 1961 set aside the resolution passed by the Municipality, Juara, District Morena on 18.05.2010 (Annexure P/ 2 at page 12 of the paper book), whereby a decision was taken not to give town hall for marriage purpose on contract to a private contractor and to regulate the holding of the functions in the town hall by the Municipality itself.

2. The challenge to the impugned decision of the Collector has been made by the petitioner, who happens to be a resident of the area under the jurisdiction of the Municipal Council, Juara, District Morena. His grievance is that the impugned order of the Collector, Morena is without jurisdiction. It is contended on behalf of the petitioner that if the impugned order is allowed to stand then it would work to the detriment of the public at large inasmuch as the private contractor can exploit the intended users of the venue of function in the town hall at exorbitant rates at his own fancies and thereby the residents of that area may be forced to book the town hall at rates to be dictated by the contractor. In substance, the submission of learned counsel appearing on behalf of the petitioner is that the Collector, Morena had no jurisdiction to set aside the resolution of the Municipality passed on 18.05.2010 whereby decision was taken to regulate the holding of functions in the town hall by the Municipality itself instead of giving it on contract to the private contractors. The learned counsel for the petitioner has referred to and relied upon the statutory provisions contained in Section 323 of the M.P. Municipalities Act, 1961 in support of his contentions in this regard.

Per contra, Mr. Deepak Chandna, learned counsel appearing on behalf of respondent No. 4 (private contractor herein) has argued to oppose the maintainability of the present writ petition mainly on the following two grounds :-

(i) The petitioner who was not a party in proceedings before the Collector, Morena has no locus standi to file the present writ petition.

(ii) The impugned order passed by the Collector, Morena is revisable by the revisional authority in view of provisions contained in Section 331 of the M.P. Municipalities Act, 1961.

3. Mr. Deepak Chandna, learned counsel for the private respondent No. 4 contends that in view of his above two objections raised against maintainability of the present writ petition, the present writ petition should be dismissed with costs.

4. On giving my anxious consideration to the above submissions advanced by the learned counsel for the private respondent No. 4, I have not been able to persuade myself to agree with the same for reasons to follow hereinafter :-

5. I would first like to deal with the contention of the private respondent No. 4 regarding availability of an alternate remedy of revision against the impugned order passed by the Collector, Morena. This objection taken on behalf of private respondent No. 4 is of no legal consequence because the impugned order passed by the Collector, Morena has been assailed on the ground that the said order is without jurisdiction. The provisions contained in Section 323 of the M.P. Municipalities Act, 1961 are relevant and are extracted below :-

“323. Power to suspend execution of orders, etc. of Council :- (1) If, in the opinion of the Divisional Commissioner, the Collector, or any other officer authorized by the State Government, in this behalf, the execution of any order or resolution of a council, or of any of its Committee or any other authority or officer subordinate thereto, or the doing of any act which is about to be done or is being done by or on behalf of the Council, is not in conformity with law or with the rules or bye-laws made thereunder and is detrimental to the interests of the Council or the public or is causing or likely to cause injury or annoyance to the public or any class or body of persons or is likely to lead to a breach of the peace, he may, by order in writing under his signature, suspend the execution of such resolution or order or prohibit the doing of any such act.

(2) When any order under sub-section (1) is passed, the

authority making the order, shall forthwith forward to the State Government and to the Council affected thereby, a copy of the order with a statement of reasons for making it; and it shall be in the discretion of the State Government to rescind the order, or to direct that it shall continue to be in force with or without modification, permanently or for such period as it thinks fit:

Provided that the order shall not be revised, modified or confirmed by the State Government without giving the Council reasonable opportunity of showing cause against the order."

6. A plain reading of the above statutory provisions contained in Section 323 makes it clear that the Collector, Morena had no power or jurisdiction to set aside the resolution in question passed by the Municipality deciding to regulate the holding of functions in the town hall itself instead of giving it to the private contractor. At best the Collector, Morena in exercise of his powers under Section 323 of the Act could have kept the resolution of the Municipality in abeyance by suspending its operation till the time decision on the legality and validity of the resolution is taken by the State Government being the competent authority to decide the correctness and legality of the resolution passed by the Municipality. Even this power of the Collector to keep the resolution of the Municipality in abeyance can be exercised on his being satisfied about the existence of twin conditions, which are pre-requisites for exercise of jurisdiction under Section 323 of the Act. These twin conditions are :-

(i) The resolution of the Municipality under challenge was not in conformity with law or with the rules or bye-laws made thereunder and;

(ii) The resolution under challenge was detrimental to the interests of the Council or the public or is causing or likely to cause injury or annoyance to the public or any class or body of persons or is likely to lead to a breach of the peace.

7. On a perusal of the impugned order of the Collector, Morena, it is apparent that it does not record any satisfaction about existence of either of the twin conditions mentioned above, which in the opinion of this Court, is a pre-requisite for exercise of powers under Section 323. It is crystal clear from the record that the impugned order passed by the Collector, Morena at

the behest of the contractor is without jurisdiction and challenge to such an order by a person affected thereby cannot be thrown to winds merely on the ground of availability of an alternate remedy of revision under Section 331 of the M.P. Municipalities Act, 1961.

8. Now reverting to the objection of the private respondent No. 4 regarding locus standi of the petitioner to file the present writ petition against the impugned order of the Collector, Morena, it may be noted that the law is well settled that the person who is adversely affected by the impugned order is competent in law to take recourse to legal proceedings against such an order. In the present case, this Court has found that the impugned order of the Collector, Morena passed at the behest of the private contractor is without jurisdiction. Therefore, the petitioner cannot be ousted on a technical objection of locus standi raised by the private contractor /respondent No. 4. I do not find any merit in this objection of locus standi taken on behalf of the respondent No. 4.

The respondents have not urged any other ground in opposition to the present writ petition.

9. In view of the foregoing and having regard to the facts and circumstances of the present case, this writ petition is allowed. The impugned order of the Collector, Morena, dated 11.10.2010 is hereby set aside. There shall be no order as to costs.

Petition allowed.

I.L.R. [2011] M. P., 718

WRIT PETITION

Before Mr. Justice Ajit Singh & Mr. Justice Sanjay Yadav

W.P. No.18616/2010 (Jabalpur) decided on 17 January, 2011

BHAGWANDAS TIWARI (SHRI)

... Petitioner

Vs.

STATE OF M.P. & ors.

... Respondents

Electricity Act (36 of 2003), Section 156 - The High Court while dealing with the criminal appeal against the conviction can also deal with the finding of civil liability determined by the Special Court and can even pass appropriate interlocutory orders on the question of its recovery.
(Para 9)

विद्युत अधिनियम (2003 का 36), धारा 156 - उच्च न्यायालय दोषसिद्धि के

विरुद्ध क्रिमिनल अपील की कार्यवाही के दौरान विशेष न्यायालय के द्वारा अवधारित सिविल दायित्व के निष्कर्ष पर भी कार्यवाही कर सकता है तथा इसके प्रत्युद्धरण संबंधी प्रश्न पर समुचित अंतरिम आदेश भी पारित कर सकता है।

Arpan Shrivastava, for the petitioner.

ORDER

The Order of the Court was delivered by AJIT SINGH, J. :-By this petition, filed under Article 226 of the Constitution, the petitioner has prayed for quashing of judgment dated 10.8.2010, Annexure P4, passed in Special Case No.1/2007 by the Special Court (Electricity Act), Khandwa, insofar as it relates to determining his civil liability.

2. On 26.4.2006 a team of Vigilance Cell of Madhya Pradesh Western Area Electricity Distribution Company, Khandwa, during inspection found the petitioner committing theft of electricity for the purposes of running a motor grinding mill (Chakki). The petitioner was, therefore, prosecuted for offences under sections 135 and 138 of the Indian Electricity Act (in short, "the Act") in the Special Court. The Special Court by judgment dated 10.8.2010 convicted the petitioner under sections 135 and 138 of the Act and sentenced him for a period of six months rigorous imprisonment and a fine of Rs.5,000/- on both counts. The Special Court also determined the civil liability of Rs.1,05,075.94 against the petitioner. Aggrieved, the petitioner has filed Criminal Appeal No.1715/2010 in the High Court which is pending. Along with the appeal, he also filed two applications - one for suspension of sentence and the other for staying the operation of judgment to the extent it relates to civil liability. A learned Single Judge by order dated 8.9.2010, Annexure P5, has admitted the criminal appeal for final hearing. The learned Judge has also allowed the application for suspension of sentence but dismissed the application in respect of civil liability of the petitioner with a liberty for its filing before the appropriate forum. It appears that the learned Single Judge was of the view that in criminal appeal, no relief can be granted to the petitioner against the determination of civil liability by the Special Court. It is in this background the petitioner has filed the present petition.

3. The question, therefore, which calls for our consideration is whether the High Court, while exercising powers of an appellate court conferred under section 156 of the Act, can interfere with the finding of civil liability arrived at by the Special Court against a person in terms of money for theft of electricity.

4. Part XV of the Act deals with Special Courts and appellate and revisional powers of the High Court against the judgment or order of Special Court. Section 153 provides for the constitution of Special Courts by the State Government to ensure speedy trial of offences referred to in sections 135 to 139. Section 154 states about the procedure and power of Special Court.

5. The relevant extract of section 154 reads as under:

"154. Procedure and power of Special Court.- (1)

Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), every offence punishable under sections 135 to 139 shall be triable only by the Special Court within whose jurisdiction such offence has been committed.

(5) The Special Court may determine the civil liability against a consumer or a person in terms of money for theft of energy which shall not be less than an amount equivalent to two times of the tariff rate applicable for a period of twelve months preceding the date of detection of theft of energy or the exact period of theft if determined whichever is less and the amount of civil liability so determined shall be recovered as if it were a decree of civil court."

6. Section 155 of the Act provides for the powers of Special Court and it reads as under:

"155. Special Court to have powers of Court of Session. Save as otherwise provided in this Act, the Code of Criminal Procedure, 1973 (2 of 1974), insofar as they are not inconsistent with the provisions of this Act, shall apply to the proceedings before the Special Court and for the purpose of the provisions of the said enactments, the Special Court shall be deemed to be a Court of Session and shall have all powers of a Court of Session and the person conducting a prosecution before the Special Court shall be deemed to be a Public Prosecutor.

7. Section 156 of the Act also reads as under:

"156. Appeal and revision.- The High Court may exercise, so far as may be applicable, all the powers conferred by Chapters XXIX and XXX of the Code of Criminal Procedure, 1973 (2

of 1974), as if the Special Court within the local limits of the jurisdiction of the High Court is a District Court, or as the case may be, the Court of Session, trying cases within the local limits of jurisdiction of the High Court."

8. The trial before the Special Court is one composite trial for the determination of the offence and also for the civil liability. The Special Court under section 155 of the Act quoted above is deemed to be a Court of Session under the provisions of Code of Criminal Procedure (in short, "the Cr.P.C."). There are provisions such as section 257 in the Cr.P.C. where a criminal court is given power to determine civil liability of providing compensation. The Special Court similarly although a criminal court and deemed to be a Court of Session under section 155 of the Act has been given power to determine the civil liability against a consumer. It is to be noted that under section 155 a Special Court is deemed to be a Court of Session and is authorized to exercise powers under the Cr.P.C. which are not inconsistent with the provisions of the Act. But it is nowhere deemed to be a civil court or a District Court under the Code of Civil Procedure (in short, "the CPC").

9. The provision of appeal and revision under section 156 of the Act quoted above provides that the High Court may exercise all the powers under Chapters XXIX and XXX of the Cr.P.C. as if the Special Court within the local limits of its jurisdiction is a District Court or as the case may be the Court of Session. The section does not in any way provide that the High Court will have the power of appeal or revision under the CPC against the order of the Special Court. The civil liability determined by the Special Court is dependant upon the criminal liability. If a person concerned is acquitted of the offence in appeal for which he is convicted, the civil liability will also have to be set aside. This also indicates that there cannot be two proceedings in an appeal - one against the conviction and the other against the civil liability. The whole case has to be heard together or else difficulty in the disposal of appeal will occur. It is only when the civil liability determined by the Special Court becomes final and the amount is not paid by the consumer, it is deemed to be a decree of a civil court for its recovery under section 154(5) of the Act. But from this provision it cannot be inferred that there can be two separate proceedings in appeal before the High Court, one under the Cr.P.C. and the other under CPC. The expression "District Court" occurring in section 156 of the Act also refers to the Sessions Court because under section 7 of the Cr.P.C. every sessions division is a district and the Sessions Court can also be described as a District

Court for the purposes of Cr.P.C. The expression "District Court" cannot be construed to mean a court of the District Judge under the CPC because there is no reference whatsoever to the CPC in section 156 of the Act and the only powers the High Court can exercise are those conferred by Chapters XXIX and XXX of the Cr.P.C. The words "as the case may be" as they occur in section 156 of the Act appear to be redundant and their presence in the section is apparently a result of bad drafting. It is well settled that in discharging its interpretative function, the court can correct obvious drafting errors and so in suitable cases "the court will add words, or omit words or substitute words" (See Principles of Statutory Interpretation by Justice G. P. Singh, 12th Edition, page 78). We, therefore, hold that the High Court while dealing with the criminal appeal against the conviction can also deal with the finding of civil liability determined by the special court and can even pass appropriate interlocutory orders on the question of its recovery. Thus, the petitioner is at liberty to apply afresh in the criminal appeal for an appropriate interim relief.

The petition stands finally disposed of.

Petition disposed of.

I.L.R. [2011] M. P., 722

APPELLATE CIVIL

Before Mr. Justice Abhay M. Naik

S.A. No.261/2001 (Gwalior) decided on 13 September, 2010

OM PRAKASH & ors.

... Appellants

Vs.

SHRI RAM & ors.

... Respondents

Hindu Law - Joint Hindu Family Property - Two different properties purchased jointly in the names of Kannomal and Gullimal (real brothers) - Plaintiff admitted that Firm Kannomal and Gullimal was in existence - In absence of contrary evidence, it may be presumed that HUF firm must be in existence during the lifetime of brothers - Presumption about existence of particular state of affairs is available not merely in forward direction but may also be raised in backward direction - Joint nucleus of said firm about purchase of property in 1928 has been rightly inferred. (Paras 12 & 18)

हिन्दू विधि - संयुक्त हिन्दू परिवार सम्पत्ति - कानोमल एवं गुलीमल (सगे भाइयों) के नाम से दो अलग सम्पत्तियाँ संयुक्त रूप से क्रय की गयीं - वादी ने

स्वीकार किया कि फर्म कानोमल एवं गुलीमल अस्तित्व में थी — विपरीत साक्ष्य के अभाव में यह उपधारणा की जा सकती है कि भाइयों के जीवनकाल में संयुक्त हिन्दू परिवार की फर्म अस्तित्व में होगी — किसी विशिष्ट कार्यकलाप के अस्तित्व के सम्बन्ध में उपधारणा न केवल आगे की दिशा में अपितु पीछे की दिशा में भी की जा सकती है — वर्ष 1928 में सम्पत्ति क्रय करने के संबंध में उक्त फर्म का संयुक्त केन्द्रक होने बावत् निष्कर्ष उचित।

Cases referred :

AIR 1966 SC 605, (2010) 1 MPJR (SC) 99, AIR 1942 Oudh 155, AIR 1992 AP 270, 2009(3) MPLJ 501, AIR 1969 SC 1076, AIR 1965 SC 289, 1982 MPWN 196, AIR 2003 SC 3800.

H.D. Gupta & K.S. Tomar with Santosh Agrawal, for the appellants.
Vinod Bhardwaj with Anand V. Bhardwaj, for the respondents.

J U D G M E N T

ABHAY M. NAIK, J. :- This is plaintiffs' appeal against judgment and decree dated 27.03.2001 passed in Civil Appeal No.31A/95 dismissing thereby the suit of the plaintiffs/appellants for restoration of possession.

2. Brief facts relevant for the purpose of this appeal are as under:

(A) Initially, one Babulal [predecessor of plaintiffs/appellants] instituted a suit for possession with averments that the house property bearing Municipal No. 38/293(A) situated in Chiteraoli, Lashkar, with the following boundaries is owned by him:

- (i) In front direction — Road Chiteraoli
- (ii) On back-side-plaintiff's another house which is also claimed by the defendant as partner.
- (iii) On right side-Mandir Radhakrishna and a portion of back-side property.
- (iv) On left side-Gali and thereafter house of Kishorilal.

A roadside room on the first floor of the said house is described as the suit property which was the part and parcel of the aforesaid house and which was purchased by the plaintiff vide sale-deed dated 25.10.1928.

(B) Original defendant Gopaldas [predecessor of defendants/respondents] was the son of plaintiff's uncle and, was, therefore, permitted to use the disputed room on account of cordial & blood relationship.

(C) Plaintiff withdrew the permission granted to the defendant for user of the

disputed room and prayed for restoration of possession. He also sought perpetual injunction against the defendant restraining him from using the disputed room.

3. Original defendant submitted his written statement refuting thereby the claim of the plaintiff. He stated that the house bearing Municipal No.38/293(A) is not owned by the plaintiff. He further stated that the property bearing Municipal No.38/293 belongs to temple Shri Radhakrishna. Plaintiff fraudulently got his name entered in the municipal record by providing municipal number 38/293(A) to the alleged portion whereas he did not have any personal house. It is further stated that defendant's father, namely, Kannomal and plaintiff's father, namely, Gullimal were real brothers. They lived jointly as members of the joint family and were running joint family business. All the houses were purchased during this period by the HUF. This continued up to the year 1956. A partition took place in respect of movable property between plaintiff and defendant on 28.05.56 which was reduced into writing. Immovable property was not partitioned at all at that time.

Disputed property is a part and parcel of the property belonging to the defendant. It is denied that the plaintiff purchased the said house on 25.10.1928. It is denied that the disputed room was part and parcel of plaintiff's alleged house.

It is denied that any kind of permission was obtained by the defendant for user of the room. It is further denied that the defendant was in occupation of the disputed room under the alleged permission granted by the plaintiff's father and/or by the plaintiff. It is stated that the defendant was born in Samvat 1974 [corresponding year 1917] whereas the plaintiff was born about 8 years thereafter. Both were born in Joint Hindu Family. A house situated in Kamathipura, Lashkar, was purchased on 19.12.1924 in the name of Kannomal and Gullimal. Similarly, another big house situated in Madhavganj was purchased in the name of aforesaid two on 31.12.1925. A small old adjacent house in a dilapidated condition was also purchased on 25.10.1928 by the joint family of Kannomal and Gullimal which was incidentally shown to have been purchased in the sale-deed dated 25.10.1928 in the name of Gullimal alone. Since there was no dispute between the brothers, no objection on this count was raised. Properties purchased vide sale deeds dated 31.12.1925 and 25.10.1928 situated in Madhavganj were reconstructed by the joint family of Kannomal and Gullimal. Similarly, property purchased by registered sale deed dated 19.12.1924 was also reconstructed. Thus, all the aforesaid

properties continued to be joint family properties. Defendant submitted an application before the Municipal Corporation to enter his name along with plaintiff's name for the entire house in the year 1964 which was allowed.

Disputed property is a residential property. Plaintiff is in occupation of blue coloured portion whereas defendant is in occupation of red coloured portion of the entire house. Defendant asserted his possession as owner before the Municipal Corporation in file no.1295/64-3/11. This being so, the suit instituted on 30.01.1978 is barred by limitation.

4. During pendency of the suit, original plaintiff as well as defendant died. Consequently, their legal representatives were brought on record. Learned Trial Judge, after recording the evidence, vide her judgment and decree dated 23.02.95, granted a decree for possession in favour of plaintiff.

5. Aggrieved by the aforesaid, the defendants preferred Civil Appeal No.31A/95 which has been allowed vide impugned judgment and decree dated 27.03.01 dismissing thereby the suit of the plaintiff. Hence, the present appeal is preferred which has been heard on the following substantial questions of law:

(1) Whether the finding of the learned lower appellate judge in respect of the house in dispute stands vitiated in law as in the facts and circumstances of the case the defendants could not be said to be entitled to any presumption either about the existence of the joint nucleus or its sufficiency for the acquisition of the property in dispute?

(2) Whether the lower appellate court has erred in placing the burden of proof on the plaintiff which in the circumstances of the case rested on the defendants who had failed to discharge the same?."

6. Shri H.D. Gupta and Shri K.S. Tomar, Senior Advocates for plaintiffs/appellants & Shri V. K. Bhardwaj, Senior Advocate for defendants/respondents made their respective submissions which have been considered in the light of the material on record and the law governing the situation.

7. For clarity, I feel it proper to describe the pedigree of the parties:

	Jhingamal (D)	
Kannomal(D).1934		Gullimal (D)
		15.12.1966
Gopaldas [died during pendency of suit]		

[Original Defendant]

Babulal

[died during pendency of suit]

[Original plaintiff]

L.Rs. of Defendant/Respondent

L.Rs. of Plaintiff/Appellant

(D) = Deceased

8. It is submitted by the learned counsel appearing on behalf of the plaintiffs/appellants that registered sale-deed dated 25.10.1928 [Ex.P-1] is in favour of Gullimal alone whereby the house comprising the disputed room was purchased by Gullimal. This has been refuted by the defendants with allegations that the Joint Hindu Family Firm in the name of M/s. Kannomal Gullimal was constituted during the lifetime of Kannomal and Gullimal and the purchase of all the properties during the existence of the said Firm up-to 28.05.1956 was made by the earnings of the HUF. The said firm continued despite death of Kannomal in the year 1934 with Gullimal and Gopaldas as its members. This has been countered by the appellants' learned counsel in a manner that Gopaldas and Babulal constituted a partnership firm which was partitioned on 28.05.1956 and, therefore, Gullimal is not a signatory of Ex.D-9, dated 28.05.1956. Since the purchase of the house vide Ex.P-1 was made by Gullimal alone, it is contended that the house comprising the disputed room is owned by him and, therefore, the dismissal of the suit is not sustainable in law. Argument to substantiate this contention was made that no source of HUF has been established and, similarly, existence of the nucleus of HUF was also not equally established. Since Gullimal and Kannomal were separately living, no presumption may be raised about the ancestral business or existence of the nucleus.

9. Before advertng to various rulings cited by the parties, I feel it proper to refer to the evidence on record which obviously would help this Court to form an opinion about the correctness of factual findings recorded by the learned lower Appellate Judge..

10. It may be seen that the defendant pleaded, in specific, that Kannomal and Gullimal constituted a Joint Hindu Family. Kannomal and Gullimal lived jointly. They constituted a Joint Hindu Family and were running a joint business. Purchases vide registered sale deed dated 19.12.1924 and registered sale deed dated 31.12.1925 were, therefore, made in the names of Kannomal and Gullimal by the HUF. Similarly, purchase vide registered sale deed dated 25.10.1928 was also made by the said HUF though it was incidentally got

executed in the name of Gullimal alone. Since there was no indifference between the brothers, none was apprehensive from other side and no objection was raised in respect of singular name of Gullimal described in the sale deed dated 25.10.1928. Various other averments have also been made in the written statement to substantiate the said plea. Plaintiff despite averments contained in the written statement did not plead in the plaint that Gullimal was having any personal business and was having any independent source of income. It is nowhere averred in the plaint that Babulal and Gopaldas were running a partnership business. Though it has been tried to be argued that deed dated 28.05.1956 [Ex.D-9] depicts the partition of the partnership, it has nowhere been pleaded in the plaint despite its specific disclosure in the written statement that the same was in respect of partition of partnership firm constituted by Gopaldas and Babulal. It may be seen that vide registered sale deed dated 19.12.1924 [Ex.D-1C], a property situated in Kamathipura, Madhavganj was purchased in the name of Kannomal and Gullimal jointly. Vide registered sale deed dated 31.12.1925 [Ex.D-2C], another property situated in Madhavganj, Lashkar was purchased by Kannomal and Gullimal both for a consideration of Rs.1,200/-paid jointly. Although plaintiff Babulal (PW-6) stated in paragraph 11 of his statement that his father Gullimal and uncle Kannomal were running separate businesses, he has admitted in paragraph 23 of his statement that it is correct that there was a firm in the name of Kannomal Gullimal. He has further admitted in the same paragraph that a partition of the said firm did take place in the year 1956 vide Ex.D-9. He has also acknowledged his own signatures on Ex.D-9. Ex.D-9 is a statement of accounts of firm Kannomal Gullimal, wherein it is mentioned that the cash and jewellery were partitioned on 28.05.1956. Thus, it is crystal clear that firm Kannomal Gullimal was in existence up to 28.05.1956. It is further mentioned in Ex.D-9 that the arrears of house-tax as well as prospective water, electricity charges etc., would be contributed by both the parties in half proportion each. This document clearly establishes that, firstly, the firm Kannomal Gullimal was in existence and, secondly, the house-tax, water and electricity charges etc., in respect of the properties would be paid by both the branches in the proportion of 50:50. Since this document has been admitted by the plaintiff in his own statement, it is not open for him to deny the existence of firm Kannomal Gullimal and that the said firm was not having any earning. It is clearly mentioned in Ex.D-9 that money credited with others would be recovered by the plaintiff and defendant and the expenses for such realization would be made half each by every branch. This makes it clear that the firm Kannomal Gullimal had a

business. It had purchased certain properties and there was nucleus belonging to HUF. Contrary to this, plaintiff has been unable to establish that Gullimal was having an independent source of income and had made purchase vide registered sale-deed dated 25.10.1928 [Ex.P-1] by his own earnings.

11. Apart from this, it may be seen that plaintiff Babulal in the written statement [Ex.D-6C] submitted by him in Civil Suit No.366/60 [*Nandkishore Vs. Gopaldas & others*] in the Court of Ist Civil Judge Class II, Gwalior, has admitted that there was Joint Hindu Family and he and defendant were members of such Joint Hindu Family. Ex.D-7 is a certified copy of statement of Babulal to the aforesaid effect. It is true that Ex.P-1 [Registered Sale Deed dated 25.10.1928] is in the name of Gullimal alone, however, in view of the clinching evidence about the existence of the HUF constituted by Kannomal and Gullimal, sufficient nucleus of the said firm and the purchases made during existence of such firm, it is difficult to infer that the purchase vide Ex.P-1 during the existence of HUF was made by Gullimal alone by his independent earnings, more so in the absence of specific evidence to this effect. It is revealed in Ex.D-3C that an application was submitted by the defendant in the year 1964 that the house in question may be entered in the name of HUF of Kannomal and Gullimal. Though it was opposed by the plaintiff, Secretary of Municipal Corporation, Gwalior, on behalf of the Commissioner passed an order and held that the house in question belonged to Kannomal and Gullimal and the same may be entered in the name of Kannomal and Gullimal. This order was upheld by the Commissioner, Municipal Corporation, Gwalior, vide order dated 20.08.1968 [Ex.D-4C]. Identical finding was also given by the Property Tax Officer vide its order dated 28.03.1977 [Ex.D5C]. Existence of firm Kannomal Gullimal is also established by Ex.D-10.

12. Learned counsel for the plaintiffs/appellants placed reliance on Article 228, 231, 233 and 234 of Principles of Mulla Hindu Law, Eighteenth Edition. However, since it has clearly been found that there was a Joint Hindu Family Firm in the name of Kannomal Gullimal which was having its business, it has rightly been found proved that it had earnings and the properties purchased during existence of such firm belonged to the HUF.

Since the plaintiff himself has admitted in paragraph 22 of his statement that business of firm Kannomal Gullimal continued up to the year 1956, learned Additional District Judge is not found to have committed any error in inferring that the property purchased vide Ex.P-1 belongs to HUF. It is true that there

are certain documents showing that permission for construction as well as house tax etc., in respect of the house in question were in the name of the plaintiff alone. This by itself is no proof because in the registered sale deed dated 25.10.1928 Gullimal was alone shown as purchaser though the property was purchased during the existence of HUF firm and it could not be proved that Gullimal had any separate earning.

It is true that there is no specific proof about the year of commencement of the HUF firm, however, since it has already been admitted by the plaintiff himself that the firm Kannomal Gullimal was in existence which continued up to year 1956, it may be presumed that the firm must be in existence during the lifetime of Kannomal and Gullimal. Presumption about the continuance of a particular state of affairs is available not in forward direction but may be raised in the facts and circumstances of the case also in backward direction as has been held by the Hon'ble Supreme Court of India in the case of *Ambika Prasad Thakur and others etc., Vs. Ram Ekbal Rai (dead) by his legal representatives and others*, AIR 1966 SC 605.

Kannomal and Gullimal, both were alive during the period of Ex.D-1 and Ex.D-2 as revealed in the document itself. They were also admittedly alive during the execution of Ex.P-1. Considering it and further considering the existence of firm Kannomal Gullimal up to the year 1956, learned Lower Appellate Judge is not found to have committed any error in holding the purchase of all these three properties to have been made by the HUF.

13. Finding of fact with regard to status of the suit property as joint family property returned by the first appellate court is ordinarily final unless its correctness is questioned on the basis of no evidence or perverse as observed by the Supreme Court of India in the case of *Narendra Gopal Vidyarthi Vs. Rajat Vidyarthi*, 2010 (I) MPJR (SC) 99. Learned counsel for the appellants has been unable to point out in correctness or perversity as discussed in preceding paragraphs.

14. Admittedly, Kannomal and Gullimal were having joint business until the year 1956. In *Lachmi Narain Vs Musaddi Lal*, AIR 1942 Oudh 155, it is held that the fact that a firm is a joint family concern is itself a nucleus and the property acquired by the joint labours of the members must be deemed to be the joint family property. This view has further been approved by the High Court of Andhra Pradesh in the case of *Purna Bai and others Vs. Ranchhoddas and others*, AIR 1992 AP 270. This Court, in the case of

Shyamlal and others Vs. Babulal and others, 2009(3) MPLJ 501, has observed:

“7. It is again a settled law that the plaintiff seeking partition of a particular property as joint family property is required to establish that there was a sufficient nucleus which could have been the source of acquisition. Whole of the money required for the purchase of the property in partition suit is not required to be proved to have actually come out from nucleus or that the nucleus was sufficient to have yielded all the necessary funds for acquiring the property in dispute. It is sufficient in law that there is proof about the nucleus which could have been the source of the acquisition. Once the existence of such a nucleus is proved obviously it is for the person asserting his self acquired property to prove affirmatively that he acquired it from his own self acquired funds.”

15. It has been observed long back by the Hon. Apex Court in the case of *Mudigowda Gowdappa Sankh and others Vs. Ramchandra Revgowda Sankh (dead) by his legal representatives and another*, AIR 1969 SC 1076 :

“6. The law on this aspect of the case is well settled. Of course there is no presumption that a Hindu family merely because it is joint, possesses any joint property. The burden of proving that any particular property is joint family property, is, therefore, in the first instance upon the person who claims it a coparcenary property. But if the possession of a nucleus of the joint family property is either admitted or proved, any acquisition made by a member of the joint family is presumed to be joint family property. This is however subject to the limitation that the joint family property must be such as with its aid the property in question could have been acquired. It is only after the possession of an adequate nucleus is shown, that the onus shifts on to the person who claims the property as self-acquisition to affirmatively make out that the property was acquired without any aid from the family estate.”

In the case in hand running business of joint family firm in the name of and style of M/s. Kannomal Gullimal up to the year 1956 is well established. The Hon'ble Apex Court in the case of *K. V. Narayanaswami Iyer Vs. K. V. Ramakrishna Iyer & Others*, 1965 SC 289 has held:

“15. The legal position is well settled that if in fact at the date of acquisition of a particular property the joint family had sufficient nucleus for acquiring it, the property in the name of any member of the joint family should be presumed to be acquired from out of family funds and so to form part of the joint family property, unless the contrary is shown.”

16. This Court in the case of *Kashiram Vs. Kishore*, 1982 MPWN SN 196 has clearly held that even if property standing in an individual's name, the same having found to have been purchased before partition out of joint family fund is a joint family property.

In the case of *D.S. Lakshmaiah and another Vs. L. Balasubramanyam and another*, AIR 2003 SC 3800, the Hon. Supreme Court of India has observed:

“18. The legal principle, therefore, is that there is no presumption of a property being joint family property only on account of existence of a joint Hindu family. The one who asserts has to prove that the property is a joint family property. If, however, the person so asserting proves that there was nucleus with which the joint family property could be acquired, there would be presumption of the property being joint and the onus would shift on the person who claims it to be self-acquired property to prove that he purchased the property with his own funds and not out of joint family nucleus that was available.”

In the case in hand, it has already been found on the basis of evidence on record that firm Kannomal Gullimal was a joint family firm and was in existence until the year 1956. It was having its business in the same name. Suit property was purchased during the lifetime of Kannomal and Gullimal both. Thus, there was sufficient nucleus of the HUF for the purchase of the property in question. Plaintiff having failed to prove his separate earnings has been rightly non-suited.

17. Learned Lower Appellate Judge has rightly observed that plaintiff has nowhere pleaded that when was permission of the user of the disputed room was granted. There is no specific averment in this regard in the plaint. Moreover, it may be seen that the plaintiff instituted the suit in the year 1978 for restoration of possession with a mere plea that the defendant was permitted to use it by the plaintiff on account of cordial relationship due to blood relations.

It was after about 15 years when the plaintiff realized that he was not even born on the date of purchase of the house in question, he amended the plaint to incorporate that the permission was granted by his father. There is absolutely no explanation for absence of incorporation of such important fact at the time of institution of the suit itself. In the absence of specific proof about the grant of permission, learned lower appellate judge is not found to have erred in holding that the theory of the plaintiff about grant of permission for user of the disputed room is not believable.

18. In view of the aforesaid discussion, it is observed that the existence of HUF Kannomal and Gullimal and sufficiency about existence of joint nucleus of the said firm have rightly been inferred by the learned lower appellate Judge in the light of the evidence on record and no error has been committed by him in recording such findings. Similarly, in the light of plaintiff's own admission about the business of HUF till year 1956, the defendants are found to have discharged their burden by placing sufficient evidence on record. On the contrary, the plaintiff himself has failed to discharge the initial burden to prove that he was having separate business and separate earning at the time of purchase vide Ex.P-1. This being so, both the substantial questions of law are answered against the appellants. The appeal being devoid of substance is hereby dismissed with cost. Respondents' counsel fee to the tune of Rs.5,000/-, if already certified.

Appeal dismissed.

I.L.R. [2011] M. P., 732

APPELLATE CIVIL

Before Mr. Justice Abhay M. Naik

F.A. No.179/2001 (Gwalior) decided on 14 September, 2010

RADHYSHYAM MISHRA

... Appellant

Vs.

PREMNARAYAN SHARMA

... Respondent

A. Stamp Act (2 of 1899), Section 36 - Admissibility of document - Where an instrument has been admitted in evidence, such admission shall not, except as provided in Section 61, be called in question at any stage of the same suit or proceeding on the ground that the instruments has not been duly stamped. (Para 9)

क. स्टाम्प अधिनियम (1899 का 2), धारा 36 – दस्तावेज की ग्राह्यता – जहाँ किसी लिखत को साक्ष्य में ग्राह्य किया जा चुका है वहाँ ऐसे ग्रहण को, धारा 61 में यथा उपबंधित के सिवाय एक ही वाद या कार्यवाही के किसी प्रक्रम पर इस आधार पर प्रश्नगत नहीं किया जायेगा कि लिखत सम्यक् रूप से स्टाम्पित नहीं है।

B. Stamp Act (2 of 1899), Section 2(5), (22) - Bond, Agreement and Promissory Note - Distinction - Explained. (Paras 11 & 12)

ख. स्टाम्प अधिनियम (1899 का 2), धारा 2(5), (22) – बंधपत्र, करार एवं वचन पत्र – विभेद – स्पष्टीकृत।

C. Stamp Act (2 of 1899), Section 2 - Application of stamp duty to instruments - Principles governing application of Stamp Act to instrument - explained. (Paras 14 & 15)

ग. स्टाम्प अधिनियम (1899 का 2), धारा 2 – लिखत पर स्टाम्प शुल्क का लागू होना – लिखत पर स्टाम्प अधिनियम की प्रयोज्यता शासित करने वाले सिद्धान्त – स्पष्टीकृत।

Cases referred :

1981 JLJ 388, (2003) 8 SCC 753, AIR 1961 SC 1655, 1976 MPLJ 238, AIR 1956 SC 12, 1969 MPLJ 827.

H.D. Gupta with Santosh Agrawal, for the appellant.

S.S. Bansal with Amit Bansal, for the respondent.

J U D G M E N T

ABHAY M. NAIK, J. :- This appeal has been preferred by the defendant/appellant against a money decree granted against him by the Trial Court for a sum of Rs.1,55,000/- with interest from the date of suit @ 9% p.a.

2. Plaintiff instituted a suit against defendant with allegations that the defendant acknowledged on 10.07.1993 to have received Rs.1,55,000/- from the plaintiff vide written agreement. Money was repayable in monthly installments of Rs.1,000/- with an agreement that on receipt of payment from the GPF, he would refund the entire money. Defendant is an employee of police department. He did not make payment of installment, but assured that he would return the entire money on receipt of money from the head of GPF. Plaintiff made a complaint on 14.09.1993 to the Deputy Inspector General of Police in writing. Plaintiff was asked to institute civil suit, hence the same for recovery of Rs.1,55,000/- towards principal amount plus Rs.45,390/- towards interest, after issuing notice dated 18.08.1994 by registered A/D.

3. Defendant/appellant submitted his written statement denying inter-alia the claim of the plaintiff. He denied to have borrowed any amount from the plaintiff. Execution of the alleged agreement dated 10.07.1993 was also denied. Instead, it has been pleaded that the plaintiff forcibly obtained the signature of defendant on plain stamp paper on 10.07.1993, which was reported to Police Station Janakganj. Since, defendant did not owe any amount to the plaintiff, there was no question of making promise to repay the same, after receipt of amount from GPF.

4. Learned Trial Judge after recording the evidence granted a decree to the tune of Rs.1,55,000/-with interest pendente lite @ 9% p.a. till realisation. Aggrieved by it, plaintiff has submitted the present Appeal.

5. It has been contended on behalf of the appellant that the case of the plaintiff is not proved, at all. Defendant denied his signature and therefore, learned Trial Judge ought to have exercised powers under Section 73 of the Indian Evidence Act, 1872.

6. On perusal, it is found that in paragraph 1 of written statement, it has been stated that the plaintiff obtained signature of the defendant forcibly on plain stamp paper on 10.07.1993. Though, in the statement on oath, defendant has stated that his signature was obtained on plain paper, his version is not liable to be accepted in the light of the specific pleadings that he has put his signature on plain stamp paper on 10.07.1993. The agreement dated 10.07.1993, setup by the plaintiff is Ex.P-1. It has been attested by two witnesses. Plaintiff has proved Ex.P-1 by his own statement as well as by the statement of attesting witnesses, namely, Anil Vijayvargiya (PW-2) and R.S. Gupta (PW-3).

7. Division Bench of this Court in the case of *Ramibai Vs. Life Insurance Corporation of India*, 1981 J.L.J 388 has observed the following with regard to proof of the document:

“.....Before we proceed to dwell upon the evidence relating to the proof of the signature of the deceased on these deeds, it would be pertinent to point out that these deeds do not fall into the category of those documents which by law are required to be attested and, therefore, for the proof of these deeds section 68 of the Evidence Act would not apply. It is section 67 which would apply. Section 67 does not lay down

any particular mode of proof for proving that a particular writing or signature is in the hand of a particular person. Thus, the signatures may be proved in any one or more of the following modes:

- (i) By calling a person who signed or wrote a document;
- (ii) By calling a person in whose presence the documents are signed or written;
- (iii) By calling handwriting expert;
- (iv) By calling a person acquainted with the handwriting of the person by whom the document is supposed to be signed or written;
- (v) By comparing in Court, the disputed signature or handwriting with some admitted signatures or writing;
- (vi) By proof of an admission by the person who is alleged to have signed or written the document that he signed or wrote it;
- (vii) By the statement of a deceased professional scribe, made in the ordinary course of business, that the signature on the document is that of a particular person;

A signature is also proved to have been made, if it is shown to have been made at the request of a person by some other person, e.g. by the scribe who signed on behalf of the executant:

- (viii) By other circumstantial evidence.”

Considering the aforesaid law, Ex.P-1 is found duly proved. Though, the defendant drew attention of this Court to minor discrepancies in the evidence but over all effect of such discrepancies is not found vital more so because the defendant himself has nowhere stated in the chief-examination that he did not borrow the money from the plaintiff and further did not owe the amount as claimed in the plaint.

This being so, exercise of powers under Section 73 of the Indian Evidence Act, 1872 is not warranted, at all.

8. Further submission on behalf of appellant is that Ex.P-1 is a bond since it has been attested by two witnesses and the same is not admissible for want of proper stamp duty.

9. Defendant/appellant placed reliance in the case of *R.V.E. Venkatachula*

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Gounder Vs. Arulmigu Viswesaraswami & V.P. Temple and another
[(2003) 8 SCC 753] to contend that Ex.P-1 being not duly stamped, is inadmissible in evidence and the impugned judgment based on it, is liable to be set-aside. In the alternative, prayer has been made to remand the matter for deciding admissibility of document (Ex.P-1).

In the case of *R.V.E.Venkatachala Gounder* (supra), the court was dealing with a case when photocopy of a document was tendered and admitted in evidence without objection. In the case in hand, no objection was raised for want of proper stamp duty. Section 36 of the Indian Stamp Act, 1899 clearly lays down that where an instrument has been admitted in evidence, such admission shall not, except as provided in section 61, be called in question at any stage of the same suit or proceeding on the ground that the instrument has not been duly stamped.

10. I may successfully refer to the Apex court decision in the case of *Javer Chand and others Vs. Pukhraj Surana* [AIR 1961 SC 1655], wherein it has been observed :

“.....In our opinion, the High Court misdirected itself, in its view of the provisions of S. 36 of the Stamp Act. Section 36 is in these terms:

“Where an instrument has been admitted in evidence, such admission shall not, except as provided in section 61, be called in question at any stage of the same suit or proceeding on the ground that the instrument has not been duly stamped.”

That section is categorical in its terms that when a document has once been admitted in evidence, such admission cannot be called in question at any stage of the suit or the proceeding on the ground that the instrument had not been duly stamped. The only exception recognized by the section is the class of cases contemplated by S. 61, which is not material to the present controversy.

..... Once a document has been marked as an exhibit in the case and the trial has proceeded all along on the footing that the document was an exhibit in the case and has been used by the parties in examination and cross-examination of their witnesses, S. 36 of the Stamp Act comes into operation.

Once a document has been admitted in evidence, as aforesaid, it is not open either to the Trial Court itself or to a Court of Appeal or revision to go behind that order. Such an order is not one of those judicial orders which are liable to be reviewed or revised by the same Court or a Court of superior jurisdiction.”

11. Essentials of a bond are described by the Full Bench of this Court in the case of *Santsingh Ladharam Vs. Madandas Gyandas Panika and another* [1976 MPLJ, 238], in the following manner:

- “1. There must be an undertaking to pay;
2. The sum should be a sum of money but not necessarily certain;
3. The payment will be to another person named in the instrument.
4. The maker should sign it;
5. The instrument must be attested by a witness; and
6. It must not be payable to order of bearer.”

On perusal of Ex.P-1, it is found that the defendant has acknowledged the borrowing in various installments in all to the tune of Rs.1,55,000/-. The agreement was executed between plaintiff and defendant, wherein it was agreed that defendant would pay entire amount after withdrawing the amount from his GPF account. Thus, in the light of the Full Bench decision in the case of *Santsingh Ladharam* (supra), Ex.P-1 cannot be treated as a bond, but is an agreement containing acknowledgment as well as promise by the defendant to make repayment after withdrawal from the GPF account.

12. Defendant further contended that Ex.P-1 may be treated as a promissory note, therefore, the same is not admissible for want of proper stamp duty.

Promissory note is defined in Section 4 of the Negotiable Instruments Act, 1881, which reads as under:

“4. Promissory note”. - A “promissory note” is an instrument in writing (not being a bank-note or a currency-note) containing an unconditional undertaking signed by the maker, to pay a certain sum of money only to, or to the order of, a certain person, or to the bearer of the instrument.”

13. Hon'ble Supreme Court of India in the case of *V.E.A. Annamalai Chettiar and another Vs. V.S. Veerappa Chettiar and others* [AIR 1956 SC 12] has observed, that nature of transaction has to be judged from the intention of the parties and circumstances of the case. It has been observed in para 9 :

“9. The words “we shall pay the said sum” did not make any difference to the position. Even though the transaction was a transaction of deposit as above stated the deposit could be coupled with an agreement that it would be payable on demand. Such an agreement could be express or implied and if an express agreement in that behalf was recorded in the document in the terms above, the transaction of deposit could not be thereby converted into a transaction of loan and the words “we shall pay the said sum” could not convert the document into a promissory note.....”

It has been further observed in para 10:

“10. There is also a further difficulty in the way of the appellants and it is that the document having been admitted in evidence such admission could not be called in question at any stage of the proceedings on the ground that it had not been duly stamped. The provisions of S. 36, Stamp Act preclude the appellants from raising any objection against the admission of the document at this stage and the appellants are not entitled now to urge this objection before us.”

14. This Court considered the language of Ex.P-1. It is mentioned in it, that the plaintiff and defendant were having family terms and cordial relations. Defendant was in receipt of a sum of Rs.1,55,000/-, which was received by him in various installments, for the purpose of vehicle. He has suffered a loss, therefore, he agreed that he would repay the same after withdrawal from his GPF account. Until such withdrawal, he would make payment @ Rs.1,000/- per month and no interest would be payable on the said amount. It is further mentioned that if the defendant fails to comply with the terms and conditions contained in Ex.P-1, the plaintiff shall have a right to recover it from the defendant's department or from the movable or immovable property belonging to him. Document contained in Ex.P-1 is an agreement and not a bond or promissory note. In view of the terms and conditions contained in Ex.P-1, it cannot be construed even as a promissory note, but it has been rightly treated by the Trial Court as an agreement.

15. Full Bench of this Court in the case of *Balkrishna Vs. The Board of Revenue, M.P. Functioning as the Chief Revenue Controlling Authority, under the Indian Stamp Act and others* [1969 MPLJ Vol 14 827], has laid down principles governing the application of stamp duty to the instrument in the following manner:

“7. The following principles govern the application of the Stamp Act to instruments:

(i) The first is that duty is payable on the instrument and not on the transaction. The leading case on this point is *Commissioner of Inland Revenue v. Angus*. In that case, Esher M.R., observed thus:

“The first thing to be noticed is, that the thing which is made liable to the duty is an 'instrument'..... It is not the transaction of purchase and sale which is struck at; it is the instrument whereby the purchase and sale are effected which is struck at.”

It is not open to the revenue to say that the instrument should be deemed to be that which it is not on the record and that the object of the transaction was to achieve a purpose not disclosed in the instrument.

(ii) The second rule is that the Court is not bound by the apparent tenor of the instrument; it is the real nature of the transaction which will determine the stamp duty. See, for instance, *Mortgage Insurance Corporation v. Commissioner of Inland Revenue* (2); *Inland Revenue v. James John Oliver* (3) and *Deddington Steamship Company Ltd. v. Commissioner of Inland Revenue* (4). But the true meaning of this rule is really this that the recitals in the instrument should not be lost sight of merely because the parties gave a particular description of its nature. But the rule does not go beyond this. Here may be recalled the weighty observations of Lord Cairns, who said many years ago in *Partington v. The Attorney-General* (5):

“As I understand the principle of all fiscal legislation, it is this: If the person sought to be taxed comes within the letter of the law he must be taxed,

however great the hardship may appear to the judicial mind to be. On the other hand, if the Crown, seeking to recover the tax, cannot bring the subject within the letter of the law, the subject is free, however apparently within the spirit of the law the case might otherwise appear to be.”

It was observed in *Bank of Chettinad v. I.T. Commissioner (1)*:

“Their Lordships think it necessary once more to protest against the suggestion that in revenue cases 'the substance of the matter' may be regarded as distinguished from the strict legal position.”

Their Lordships then referred to *Inland Revenue Commissioners v. Duke of West-minister (2)*. See also *Board of Revenue v. Narsimhan (3)*.

(iii) The third rule is that the Court must look at the document itself as it stands and it is not permissible to show, by evidence, any collateral circumstances. The nature of the document can be determined only from the language it employs and the purpose which it is intended to serve. Although it is permissible to look behind the form and at the substance of the transaction, this can be done only by construing the instrument itself and not by taking into consideration any collateral or other evidence de hors the instrument. In *Chandrakant v. Kartickchram (4)*, Peacock C.J., said:

“It appears to me that in applying the stamp law the stamp must be paid upon what is stated in the instrument and cannot depend upon collateral evidence.....”

(iv) The fourth rule is that in determining stamp duty, the substance of the transaction as disclosed by whole of the instrument has to be looked to, and not merely the operative part of the instrument.

(v) The fifth rule is that stamp duty is payable on an instrument according to its tenor and it does not matter that it cannot be given effect to for some independent cause.

(vi) The sixth rule is that there can be no objection to a device

effectuating a transaction in a manner that lower rate of duty is attracted. See, for instance, *Littlewoods Mail Order Stores Ltd. v. Inland Revenue Commissioners* (5)."

Applying the aforesaid principles, Ex.P-1 is found to be a duly stamped agreement in view of the conditions contained in it.

16. It has been further contended that the plaintiff did not make compliance of the provisions of Madhya Pradesh Money Lenders Act, 1934, therefore, he is not entitled to interest and cost of the suit.

It is true that for want of registration as money lender, a suit may not be maintainable. However, there is no evidence on record, as rightly observed by the learned Trial Judge in paragraph 17 of the impugned judgment that the plaintiff was engaged in the business of money lending and the amount in question was advanced in the course of such business. This being so, there is no force in the contention of the appellant.

17. In the result, the appeal has no force and is liable to be dismissed with cost. Appellant to bear expenses of the respondent. Lawyers fee as per schedule, if pre-certified.

Appeal dismissed.

I.L.R. [2011] M. P., 741

APPELLATE CIVIL

Before Mr. Justice Abhay M. Naik

M.A. No.737/2003 (Gwalior) decided on 20 September, 2010

URMILA TIWARI (SMT.) & ors.

... Appellants

Vs.

SMT. KANTI DEVI & anr.

... Respondents

Payment of Gratuity Act (39 of 1972), Section 2(h), Employees Provident Funds Scheme, 1952, Section 61 - Family - Claim of Gratuity and Provident Fund made on the basis of Will - Claimants/beneficiaries of Will not the members of family as defined under the Act, 1972 and Scheme, 1952 - Held - Despite proof of Will, they are not entitled to receive dues of the gratuity and provident funds on the strength of probate.
(Paras 21 to 24, 33 & 34)

उपदान संदाय अधिनियम (1972 का 39), धारा 2(एच), कर्मचारी भविष्य निधि योजना, 1952, धारा 61 - परिवार - वसीयत के आधार पर किया गया उपदान एवं

भविष्य निधि का दावा — दावेदार/वसीयत के हिताधिकारी, अधिनियम 1972 तथा योजना 1952 के अंतर्गत यथा परिभाषित परिवार के सदस्य नहीं — अमिनिघारित — वसीयत के सबूत के बावजूद, वे प्रोबेट के बल पर उपदान और भविष्य निधि के देय प्राप्त करने के हकदार नहीं हैं।

Cases referred :

1999(I) MPWN SN 102, (2006) 3 SCC 3282, AIR 1995 SC 1684, (2002) 2 SCC 85, AIR 2002 SC 317, AIR 2006 SC 370, 1998(II) MPWN SN 19, AIR 1984 SC 346, AIR 1996 Raj. 6, AIR 2002 AP 279, (1999) 5 SCC 237, 1987 (Supp) SCC 263, (1991) 1 SCC 725.

J.S. Bhati, for the appellants.

B.B. Shukla, for the respondent No.1.

None, for the respondent No.2 though served.

J U D G M E N T

ABHAY M. NAIK, J. :- Facts relevant for the purpose of this appeal are that the deceased Harendra Nath Tiwari @ Harendra Kumar Tiwari was an employee of Military Engineering Services (M.E.S.) and was posted as Refrigerator Mechanic in the office of Garrison Engineer, Airforce Station, Maharajpura, Gwalior. He was married to Kanti Devi (respondent No.1) on 30.05.1983, whose name was entered in the office record, as wife of Harendra Nath Tiwari. He died on 19.04.1995.

2. After death of Harendra Nath Tiwari, applicants/appellants submitted an application under Section 276 of the Indian Succession Act, for grant of probate in respect of the Will alleged to have been executed by the deceased on 11.04.1995 in favour of appellant No.1. It is alleged in the application that Kanti Devi, respondent No.1 separated herself from Harendra Nath after 1 ½ years from the date of marriage and, thus, they had separated themselves from each other. Harendra Nath, thereafter married to appellant No.1 on 19.04.1984, according to Hindu customs. Applicants No.2 & 3 were born to appellant No.1 from Harendra Nath. Appellant No.1 resided with Harendra Nath as his wife, since 1984 which was well within the knowledge of respondent No.1. Appellant No.1 made an application for release of service benefits of Harendra Nath in her favour, which was not accepted despite her entitlement. Otherwise also, in view of the Will having been executed in favour of appellant No.1, she is entitled to service benefits of the deceased. Appellants prayed that probate may be issued in their favour in respect of the Will dated 11.04.1995 executed by the deceased Harendra Nath, during his lifetime.

3. Respondent No.1 submitted her reply refuting thereby the claim of the appellants. She inter-alia stated that she is widow of the deceased. Her marriage with Harendra Nath was not dissolved, at all. It was denied that she separated herself from Harendra Nath. On the contrary, it was stated, in specific, that she has been residing throughout with the in-laws in their native village. It has been denied in the reply that appellant No.1 was married to Harendra Nath and appellants No.2 & 3 were born from the relationship of Harendra Nath with appellant No.1. Alleged Will dated 11.04.1995 has been disputed as a forged and concocted one. It is stated in specific that applicants/appellants are not legally entitled to the service benefits payable to deceased Harendra Nath, and the application for grant of probate is therefore liable to be dismissed.

4. Learned Trial Judge after recording evidence held that Will setup by the appellants is doubtful. Alleged Will dated 11.04.1995 is not found to be proved in accordance with law, therefore, the application for grant of probate has been dismissed by the learned Trial Judge vide impugned judgment dated 29.08.2003.

5. Aggrieved by the aforesaid, present appeal has been preferred, wherein, Shri J.S. Bhati and Shri B.B. Shukla, learned counsel for the parties made their respective submissions.

6. It is contended by Shri Bhati, learned counsel for the appellants that the Will (Ex.P-1) has been duly proved in accordance with Section 63 of the Indian Succession Act, 1925 and Section 68 of the Indian Evidence Act, 1872 and the learned Trial Judge has committed an illegality in holding otherwise. The reasons assigned by the learned Trial Judge for disbelieving the Will according to appellants' learned counsel are not sustainable in law. Thus, it is submitted that probate ought to have been granted in favour of appellants.

7. Per contra, Shri B.B. Shukla, learned counsel for the respondent No.1, it is submitted that the Will (Ex.P-1) has been rightly disbelieved by the learned Trial Court and the reasons assigned by the learned Trial Judge are not liable to be interfered with.

8. Apart from the rival contentions, this Court is of the opinion that the claim setup on the strength of the Will is in respect of service benefits including gratuity and provident fund. Relevant provisions of law governing them are also liable to be taken into consideration while dealing with this matter. Accordingly, appeal is being dealt with.

9. Will dated 11.04.1995 is on record as Ex.P-1. It is a notarially registered

document with attestation by Umesh Kumar Sharma and Parmanand Gupta. The Will is stated to have been drafted by Jagdish Prasad Sharma, Advocate, as revealed in the Will itself. Appellants have examined scribe, namely, Jagdish Prasad Sharma (PW-1), Parmanand Gupta and Umesh Kumar Sharma as it's attesting witnesses. Ex.P-1 contains a photograph pasted on it which is stated to be of Harendra Nath Tiwari, which has not been disputed by respondent No.1. Jagdish Prasad Sharma, Advocate-cum-scribe has stated on oath that the Will in question was prepared by him according to instructions of the person whose photograph is affixed on the Will. He was not acquainted with Harendra Nath who was introduced to him by another acquaintance, namely, Anil Sharma. At that time Harendra Nath was admitted in Cure Well Hospital at Deendayal Nagar, Morar, Gwalior. The scribe came from the Hospital after receiving instructions in details from deceased Harendra Nath. Accordingly, he prepared the Will (Ex.P-1). He again went to the Hospital accompanied by Notary. Will was read over to Harendra Nath, which was also read by Harendra Nath Tiwari himself. Thereafter, Harendra Nath put his signature on the Will in the presence of Umesh Kumar Sharma and Parmanand Gupta, who also put their signatures in attestation of the Will in presence of the testator as well as each other. The scribe put his own signature and it was registered notarially at about 4:30 PM. He has further stated on oath, that Harendra Nath was in sound condition of mind while giving instructions at the relevant time. Nothing could be pointed out in the cross-examination which would make the aforesaid statement unbelievable.

10. Attesting witness Parmanand Gupta (PW-2) has stated on oath that he was colleague of Harendra Nath Tiwari and was working in the same office as Pump Operator. He visited Harendra Nath in the Cure Well Hospital, before proceeding for the office. He was asked by Harendra Nath to remain present at 4 PM, since he wished to execute a Will. Accordingly, this witness again went to the Hospital in the evening at about 4:20 PM. Will was read by Jagdish Prasad Sharma, Advocate in his presence. It was again read by Harendra Nath and was executed in the presence of himself and another attesting witness Umesh Kumar Sharma. Jagdish Prasad Sharma and Notary were also present. Attestation was made by him and Umesh Kumar Sharma, in presence of testator and each other and also the scribe and Notary. Like wise, another attesting witness Umesh Kumar Sharma (PW-3) had also stated on oath about the execution of the Will by the testator in the presence of the aforesaid persons. He too, stated about the attestation by him and Parmanand Gupta in presence of all.

11. Section 63 of the Indian Succession Act, 1925 and Section 68 of the Indian Evidence Act 1872, are relevant for the purpose of this appeal and hence reproduced below:

Section 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.”

XXXXX XXXX XXXX XXXX XXXXXX

Section 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.]”

12. On perusal of the statements of the Scribe Jagdish Prasad Sharma and the attesting witnesses Parmanand Gupta and Umesh Kumar Sharma, it is clear that compliance of the aforesaid two provisions has been duly made. This Court in the case of *Poonjibai (Smt.) Vs. Smt. Kewalbai* [1999 (1) MPWN SN 102] held that if Will is duly proved to be executed by testator and attested by the attesting witnesses and physical and mental sound condition of the testator is also proved, the Will can be held to be duly proved, in accordance with Section 63 of the Indian Succession Act, 1925 and Section 68 of the Indian Evidence Act 1872.

13. Learned Trial Judge vide paragraph 9 of the impugned judgment has doubted the Will (Ex.P-1) on the ground that natural heir i.e. respondent No.1 has been deprived of succession.

Hon'ble Supreme Court of India, in the case of *Sadhu Singh Vs. Gurdwara Sahib Narike & Ors.* [2006 (3) SC 3282] has clearly held that an owner of property has normally the right to deal with the property including the right to devise or bequeath the property. When he does that, a succession under the Act stands excluded and the property passes to the testamentary heirs. Accordingly, he may execute a Will even in favour of third person depriving natural heir.

Hon'ble Supreme Court of India in the case of *Rabindra Nath Mukherjee and another Vs. Panchanan Banerjee (dead) by L.Rs. and others*, [AIR 1995 SC 1684], has clearly held that the deprivation of the natural heirs by the testatrix is itself no reason to raise suspicion. It has been observed in paragraph 4 :

“4. As to the first circumstance, we would observe that this should not raise any suspicion, because the whole idea behind execution of will is to interfere with the normal line of succession. So natural heirs would be debarred in every case of will; of course, it may be that in some cases they are fully debarred and in others only partially.....”

14. This apart, it may be seen that reason for depriving respondent No.1 is implicit in paragraphs 1 & 2 of Ex.P-1, wherein, it has been mentioned that the testator was not having good and cordial relations with respondent No.1, and was residing separately. Therefore, it cannot be said that respondent No.1 has been deprived for no reason. This being so, reason assigned in paragraph 9 of the impugned judgment for doubting the Will is not acceptable.

15. Learned Trial Court has further mentioned in paragraph 10 that the

appellant No.1 has not claimed the immovable property situated in village Dumaria, which has been bequeathed to her by the Will (Ex.P-1). This reason is also not sustainable because it seems from the record that appellant no.1 was residing with the deceased from 1984 and has given birth from him to appellants No.2 & 3. Respondent No.1 being duly wedded wife of the deceased was residing with other family members of the deceased in the native village Dumaria. It seems that both the ladies knew the said state of affairs and had virtually accepted each other as fate. If the appellant No.1 did not interfere with the user of immovable property, this is no reason to disbelieve the Will.

16. Application under Section 276 of the Indian Succession Act, has been submitted for issuance of probate in respect of the Will (Ex.P-1). Probate is a certification that the testator has executed a Will in question as his last Will in sound condition of mind. When the appellant No.1 approached the office of deceased for release of service funds, her claim was not accepted, which forced her to seek grant of probate. Thus, non-mentioning of other assets of the deceased could not have been made a ground by the learned Trial Judge to dispute the Will as per paragraph 11 of the impugned judgment.

17. Learned Trial Judge has disbelieved the Will also on the ground that appellant No.1 has stated that the deceased Harendra Nath during his lifetime informed the lawyer that he wanted to make a provision for the children i.e. appellants No.2 & 3. His this version is also reflected in paragraph 5 of the Will, wherein it has been mentioned that appellant No.1 would deposit Rs.20,000/- each in the names of children from the amount received from the funds. Thus, the Will executed Ex.P-1 could not have been doubted for the reasons assigned in paragraph 13 of the impugned judgment. Both attesting witnesses Parmanand Gupta and Umesh Kumar Sharma are also colleagues of the deceased-testator and were working in the same department of the deceased himself. Thus, attestation by them could not have been treated as a ground to disbelieve the Will as revealed in paragraph 14 of the impugned judgment.

18. It has been submitted by learned counsel for respondent No.1 that despite the Will (Ex.P-1) having been executed in the Hospital, no doctor has been examined about the sound condition of mind of the testator nor medical certificate in respect of the testator was placed on record.

I am not impressed with this submission in view of the following passage from the Apex Court decision in the case of *Madhukar D. Shende Vs. Tarabai Aba Shedage* [(2002) 2 SCC 85], wherein it has been observed:

“.....There is no rule of law or of evidence which requires a doctor to be kept present when a will is executed. In short, the courts below have allowed their findings to be influenced by such suspicion and conjectures as have no foundation in the evidence and have no relevance in the facts and circumstances of the case and unwittingly allowed their process of judicial thinking to be vitiated by irrelevant reasonings and considerations.....”

19. This Court has gone through the entire evidence available on record. Will is found to be duly proved in accordance with Law. There is no evidence that the testator was not having sound condition of mind at the time of execution of the Will. Minor discrepancies referred to in the impugned judgment are not sufficient to discard their testimony. Deceased Harendra was admittedly married to respondent No.1. It is proved from the material on record that appellant No.1 resided with him since 1984 as his wife and appellants No.2 & 3 were born to him from the deceased-testator. Thus, there is nothing unnatural if the Will is executed in favour of appellant No.1 in order to make provision for all the three appellants, more so, when the respondent No.1 being legally wedded wife was residing in the native village with the in-laws of the deceased.

Hence, the Will being duly proved, cannot be disbelieved on the basis of minor discrepancies in view of the Apex Court decisions in the cases of *S. Sundaresa Pai and others Vs. Mrs. Sumangala T. Pai and another* [AIR 2002 SC 317] and *Hazara Bradri & Ors. Vs. Lokesh Dutta Multani* [AIR 2006 SC 370].

Accordingly, it is held that the Will (Ex.P-1) is duly proved and contrary finding about the same by the learned Trial Judge is hereby set-aside.

In the case of *Ramkishan v. Jankidevi* [1988 (Part 2) MPWN SN 19], Will was executed and got registered in the hospital. There was no certificate of fitness by the doctor. This Court while dealing with it has observed the following while upholding the Will:

“Indeed, there is nothing to suggest that the testator lacked mental capacity in any manner to understand the content of the document executed and registered or the effect of execution or registration of the Will. Though the testator was an indoor patient in the hospital there is nothing to show that she was seriously ill or that she was counting her last hours and was on the verge of death.”

20. Respondent No.1 has objected to the grant of probate on the ground that the respondent No.1 being un-divorced legally wedded wife of the deceased, the applicants/appellants are not entitled to the said service benefits on the strength of the alleged Will. Learned Trial Judge is not found to have adverted himself to this crucial aspect of the matter.

Now, the crucial question in this matter is that whether the appellants are entitled to service benefits including gratuity and provident fund on the basis of Will in question.

21. Section 6 of the Payment of Gratuity Act, 1972 obliges an employee that he shall make within such time, in such form and in such manner as may be prescribed, nomination for the purpose of the Act. Sub-section (3) further obliges that in case of having a family by an employee at the time of making a nomination, the nomination shall be made in favour of one or more members of his family and any nomination made by such employee in favour of a person who is not a member of his family, shall be void.

22. Word "Family" has been defined in clause (h) of Section 2 of the said Act. Relevant definition for the purpose of the appeal of the said clause (h) of section 2 of the Act is reproduced below:

"(h) "family" in relation to an employee, shall be deemed to consist of

(i) in the case of a male employee, himself, his wife, his children, whether married or unmarried, his dependent parents [and the dependent parents of his wife and the widow] and children of his predeceased son, if any,

(ii)"

23. Likewise Section 61 of the Employees Provident Funds Scheme, 1952 provides for nomination. Subsection (1) of Section 61 makes it obligatory to make a nomination in declaration Form 2, conferring the right to receive the amount that may stand to his credit in the fund in the event of his death before the amount standing to his credit has become payable, or where the amount has become payable before payment has been made. Subsection (3) further makes it obligatory to make nomination in case of employee having family at the time of making nomination in favour of one or more persons belonging to his family. It further lays down that any nomination made in favour of a person not belonging to his family shall be invalid.

24. Family has been further defined in clause (g) of the said scheme. Relevant portion for the purpose of this appeal is reproduced below:

“(g) “family” means

(i) in the case of a male member, his wife, his children, whether married or unmarried, his dependent parents and his deceased son's widow and children:

Provided that if a member proves that his wife has ceased, under the personal law governing him or the customary law of the community to which the spouses belong, to be entitled to maintenance she shall no longer be deemed to be part of the member's family for the purpose of this Scheme, unless the member subsequently intimates by express notice in writing to the Commissioner that she shall continue to be so regarded; and

(ii)

25. Kanti Devi, respondent No.1 has placed on record the wedding invitation card of her with Harendra Nath (Ex.D-2) and voter list Ex.D-1 showing her as wife of Harendra at Sl. No.424 of village Dumwaliya (native village of the deceased). Ex.D-3 is a document pertaining to family register of village Dumwaliya describing her as wife of Harendra. She has also placed on record Ex.D-5 which is a letter written by the office of the deceased certifying that as per the records in respect of MES-420389 Shri Harendra Nath Tiwari, Refg/ Mech maintained by his office, Smt. Kanti Devi's name is only mentioned in the nomination form furnished by the individual as his wife. Though, the employer of the deceased Harendra is arrayed before this Court as respondent No.2, none has appeared on its behalf despite service to assist the court.

26. Judge has to act judiciously while deciding a matter. His position is not akin to Umpire or Referee, who is under an obligation to ensure compliance of the rules of the game and further to point out the fault of the player. A Judge is obliged to keep in mind that he has to act judiciously while imparting justice. In a case of present nature when it has been contended by respondent No.1 that she being legally wedded wife of Harendra Nath is alone entitled to service benefits of the deceased, learned Trial Judge was required to decide the said contention after taking into consideration the law governing the situation. He cannot be permitted only to decide the question of due execution of the Will in question. Illustratively, suppose, a Will is executed in respect of Archaeological

Fort and an objection is raised that the beneficiary on the strength of such Will would not be entitled to such benefit, the question is, obviously, to be dealt with by the Court.

27. Learned counsel Shri J.S. Bhati appearing for the appellants submitted, firstly that the nominee is merely a trustee who does not get absolute right merely on the basis of nomination. He placed reliance in the case of *Smt. Sarbati Devi and another V. Smt. Usha Devi* [AIR 1984 SC 346].

Case of *Smt. Sarbati Devi* (supra) was relating to nomination under the Insurance Act, 1938 which does not contain a mandatory provision for nomination in favour of members of family as it exists in the Payment of Gratuity Act, 1972 and Employees Provident Funds Scheme, 1952, therefore, the appellants do not get any assistance from the case of *Smt. Sarbati Devi* (supra).

28. It has been further contended by Shri Bhati, learned counsel on behalf of the appellants that jurisdiction of the Civil Court under Section 276 is confined to a decision on the question of due execution of the Will alone. Will (Ex.P-1) having been duly proved, probate ought to have been granted in favour of the appellants. For this purpose, he placed reliance in the case of *Smt. Suraj Devi Vs. Smt. Sita Devi* [AIR 1996 Raj. 6], wherein, it has been observed in paragraphs 15 & 16:

“15. Then the learned counsel submitted that the Gratuity and Pension are not property as contemplated by Sec. 6 of the Transfer of Property Act. In his submission, pension payable to a Government Servant is not a property which can be transferred and Gratuity is a mere possibility of or chance of receiving the same. This submission is illfounded. Payment of Gratuity is made under the provisions of the Payment of Gratuity Act and Gratuity is payable according to those provisions as a preliminary benefit. Gratuity can be a mere possibility of getting legacy only when the man seeks to transfer it prior to his becoming eligible thereto under the provisions of the Payment of Gratuity Act. In the present case, Sohanlal served the Rajasthan Electricity Board for several years and has superannuated before his death. The Gratuity payable to him was, therefore, certainly a property within the meaning of Sec. 6. It must, further be noted that what is denied by Sec. 6 of the Transfer of Property Act is property which can be transferred and property described in clauses (a)

to (i) are not considered to be property but only rights. Those are made non-transferable by the provisions of Sec. 6. Even if the contention is accepted, which we do not accept, that Gratuity is not transferable, the transfer will become void. If that is so, the bequest cannot become void for that reason. Even if one of the bequest becomes void by operation of law, it cannot be a ground for refusal of Probate u/S. 276 of the Indian Succession Act and hence, it becomes irrelevant whether the property sought to be bequeathed under the Will is not transferable. A property can be untransferable under the provisions of any given law but that cannot render grant of Probate of a Will which seeks to bequeath such property bad. There is, therefore, no substance in this contention raised for the first time in this appeal and the same is rejected.

16. The submission that Pension is not transferable is also unsustainable in law. What is provided by Section 6, clause (g) is that stipends allowed to Military, Naval, Airforce and Civil Pensioners to the Government and Political Pensioners cannot be transferred. What is made nontransferable is, therefore, stipend paid to Civil Pensioners and not the Pension of that Civil Pensioner. On the face of it, the submission is unacceptable. It is, therefore rejected.”

29. In the case in hand, it has already been found that respondent No.1 was duly wedded wife of the deceased-testator and was not divorced, in accordance with law. In the case of *Gettam Israil Vs. Siromani and others* [AIR 2002 AP 279], it has been held in paragraphs 13 & 14:

“.....If the plaintiff and 1st defendant, during the subsistence of their marriage, think it fit to live with some other man and woman respectively, without obtaining a divorce from the Court as contemplated by law, their marriage would not get dissolved automatically. Even assuming that Jhansi is not the daughter of the 1st defendant, then also the marriage between the plaintiff and 1st defendant would not automatically get dissolved. Plaintiff or 1st defendant have to approach a competent court, and obtain a decree for dissolution of their marriage, and till such time as they get their marriage dissolved, it subsists, irrespective of the fact whether they are faithful to

each other or not, are living a life on their own. With some other man or woman respectively, and so it has to be held that plaintiff continues to the wife of 1st defendant.....

14. Since plaintiff continues to be the wife of 1st defendant and since as per the Regulations of the 2nd defendant, family members can only be nominated to receive the death or retiral benefits, 1st defendant nominating Koteswaramma as his wife is not proper. The 1st defendant, after taking steps to get the marriage between him and the plaintiff dissolved, only can make such a nomination, but till such time the marriage between him and the plaintiff is subsisting, he cannot nominate a woman who is not his wife or family member to receive the death or retiral benefits."

30. There is a provision for nomination in the Central Civil Services (Pension) Rules, 1972 in favour of widow/widower. Hon'ble Supreme of India has held in the case of *G.L. Bhatia Vs. Union of India and another* [(1999) 5 SCC 237], that where the rights are governed by statutory provision, the nomination contrary to the said statutory provision would not be operative. Conclusively, it has been held in paragraph 5:

"5. In the light of the aforesaid provisions and there being no divorce between the husband and wife even though they might be staying separately, the appellant husband would be entitled to the family pension in terms of the rules as noted aforesaid and the authorities, therefore, committed error in not granting family pension to the appellant relying upon the nomination made by the deceased wife of the appellant....."

31. Likewise the Apex Court in the case of *Rampyari Bai Vs. Municipal Corporation and another* [1987 (supp) SCC 263], has held:

"The special leave petition is against the judgment of the High Court of M.P. at Jabalpur. The question was whether the petitioner Rampyari Bai was valid married wife of Mannulal. According to the plaintiff she had married Mannulal about 30 years prior to his death and had been living with him as his wife. Ramdulari Bai has not been living with him. It has been held by the first appellate court that the factum as well as the validity of the plaintiff's marriage with Mannulal has not been proved and, therefore, there could not be any valid nomination

made in her favour by Mannulal, according to the rules applicable to the payment of family pension. The first appellate court on facts found that there was no marriage. In appeal the High Court of M.P. affirmed the decision of the first appellate court and negatived the claim of the petitioner. Having considered the facts and circumstances of the case we do not see any reason to interfere with the decision of the High Court. There is no merit in this case. The special leave petition is accordingly dismissed.”

32. I may also refer to the case of *Smt. Violet Issaac and others Vs. Union of India and others* [(1991) 1 SCC 725], wherein, widow of the deceased-railway employee was found entitled notwithstanding the Will alleged to have been executed by the deceased. I may successfully quote paragraphs 4 & 6 of the said decision:

“4. The dispute between the parties relates to gratuity, provident fund, family pension and other allowances, but this Court while issuing notice to the respondents confined the dispute only to family pension. We would therefore deal with the question of family pension only. Family Pension Rules, 1964 provide for the sanction of family pension to the survivors of a Railway employee. Rule 801 provides that family pension shall be granted to the widow/widower and where there is no widow/widower to the minor children of a Railway servant who may have died while in service. Under the Rules son of the deceased is entitled to family pension until he attains the age of 25 years, an unmarried daughter is also entitled to family pension till she attains the age of 25 years or gets married, whichever is earlier. The Rules do not provide for payment of family pension to brother or any other family member or relation of the deceased Railway employee. The Family Pension Scheme under the Rules is designed to provide relief to the widow and children by way of compensation for the untimely death of the deceased employee. The Rules do not provide for any nomination with regard to family pension, instead the Rules designate the persons who are entitled to receive the family pension. Thus, no other person except those designated under the Rules are entitled to receive family pension. The Family Pension Scheme confers monetary benefit on the wife and children of the deceased Railway employee, but the employee has no title to it. The employee has

no control over the family pension as he is not required to make any contribution to it. The family pension scheme is in the nature of a welfare scheme framed by the Railway administration to provide relief to the widow and minor children of the deceased employee. Since, the Rules do not provide for nomination of any person by the deceased employee during his lifetime for the payment of family pension, he has no title to the same. Therefore, it does not form part of his estate enabling him to dispose of the same by testamentary disposition.

6. We, accordingly hold that Mrs Violet Issac the widow of the deceased Railway employee is entitled to receive the family pension, notwithstanding the will alleged to have been executed by the deceased on September 9, 1984 in favour of his brother Elic Alfred. As regards appellants 2 to 6 are concerned, it has been stated on behalf of the Railway administration that they are not minors, therefore, under the Rules they are not entitled to any family pension. We, accordingly allow the appeal, set aside the order of the Tribunal and direct the respondent Railway administration to sanction family pension in accordance with the Rules to appellant 1 and to pay the arrears within two months. The respondent's suit, so far as it relates to the family pension cannot proceed but we do not express any opinion with regard to other claims raised therein."

33. In view of the law enunciated by Hon'ble Supreme Court of India in the cases cited herein above, it is held that the appellants on the strength of the Will (Ex.P-1), will not be entitled to provident fund as well as gratuity in view of the specific provisions contained in Payment of Gratuity Act, 1972 and Employees Provident Funds Scheme, 1952, referred to herein above despite proof of the Will (Ex.P-1) in accordance with Section 63 of the Indian Succession Act, 1925 and Section 68 of the Indian Evidence Act 1872.

34. In the result, appeal is allowed in part. Will (Ex.P-1) dated 11.04.1995 is found to have been duly proved. Since, the Will in question contains a provision also for other items, learned Trial Judge is hereby directed to grant probate in accordance with law, however, with a specific mention that the appellants will not be entitled to receive dues of gratuity as well as provident fund on the strength of the probate. Needless to say that the parties may avail other legal recourses permissible to them in law for seeking relief in respect of Gratuity and/or Provident

Fund. They may also seek declaration about status and entitlement in respect of deceased's property with consequential relief from competent court of law.

No order as to costs.

Appeal partly allowed.

I.L.R. [2011] M. P., 756

APPELLATE CIVIL

Before Mr. Justice U.C. Maheshwari

S.A. No.2695/2005 (Jabalpur) decided on 6 October, 2010

JAGDISH & anr.

... Appellants

Vs.

ACHHELAL & ors.

... Respondents

A. Land Revenue Code, M.P. (20 of 1959), Section 51 - Review -
Tahsildar reviewed the order without obtaining permission of review -
Order liable to be discarded. (Para 10)

क. भू राजस्व संहिता, म.प्र. (1959 का 20), धारा 51 - पुनर्विलोकन -
तहसीलदार ने पुनर्विलोकन की अनुमति अभिप्राप्त किये बिना आदेश का पुनर्विलोकन
किया - आदेश निरस्त किये जाने योग्य।

**B. Land Revenue Code, M.P. (20 of 1959), Sections 169(2) &
185(2) - Occupancy tenant -** Appellants claiming right on the basis of
agreement to sell - Possession could not be deemed to be possession
as lessee and their rights could not be deemed to be protected as
occupancy tenant. (Para 13)

ख. भू राजस्व संहिता, म.प्र. (1959 का 20), धाराएँ 169(2) व 185(2) -
मौरूसी कृषक - अपीलार्थी ने विक्रय करार के आधार पर अधिकार का दावा किया
- कब्जा पट्टेदार के रूप में कब्जा नहीं समझा जा सकता तथा उनके अधिकार मौरूसी
कृषक के रूप में संरक्षित नहीं समझे जा सकते।

**C. Transfer of Property Act (4 of 1882), Section 53-A - Part
performance -** Appellants neither proved their case in consonance of
ingredients of S. 53-A nor proved their readiness and willingness to
get sale deed executed - Plea of defence discarded by Trial Court -
This could not be termed to be substantial question of law for admission
of appeal. (Para 13)

ग. सम्पत्ति अन्तरण अधिनियम (1882 का 4), धारा 53-ए - भागिक पालन -

अपीलार्थियों ने न तो धारा 53-ए के तत्वों के अनुरूप अपना मामला साबित किया और न ही विक्रय विलेख का निष्पादन करवाने की उनकी तैयारी और रजामंदी साबित की – विचारण न्यायालय द्वारा बचाव के अभिवाक् को अमान्य किया गया – इसे अपील ग्रहण किये जाने हेतु विधि का सारवान प्रश्न नहीं कहा जा सकता।

Cases referred :

AIR 1999 SC 2213, 1998 RN 194, 2000 RN 30.

Rakesh Khare, for the appellants.

S.P. Tripathi, P.L., for the respondents.

ORDER

U.C. MAHESHWARI, J. :-The appellants -defendants no. 2 and 3 have filed this appeal under Section 100 of Code of Civil Procedure being aggrieved by the judgment and decree dated 11.10.2005 passed by Additional District Judge, Lakhnadon, district Seoni in Civil Regular Appeal No. 31-A/02, decreeing the suit of the respondents no. 1 to 3 for declaration and possession against them by setting aside the judgment and decree dated 19.8.02 passed by Civil Judge, Class-II, Lakhnadon in Civil Original Suit No. 55-A/2000, whereby such suit was dismissed.

2. The facts giving rise to this appeal in short are that one Achhelal, predecessor in title of respondent no. 1 (1) to 1 (3) filed the above mentioned suit against the appellants and respondent no. 2 and 3 for declaration and possession with respect of agricultural land bearing survey no. 0.10, 165/1, 170, 27/3, 169 and 235/1, area 0.10, 2.59, 0.19, 0.50, 0.09 and 0.39 hectares respectively, total area 3.56 hectares situated at village Gunehari, tah. Ghansour contending that in Revenue Case No. 6-A/27 of 1997-1998, the Naib Tahsildar, Ghansour, vide order dated 24.10.1998 in partition of the co – parcenary land had given such land to said Achhelal one of the co-parceners of the family. Pursuant to it the name of Achhelal was mutated as Bhumiswami separately on the abovementioned land in revenue record. While other ancestral land was given in such partition to other coparceners of the family. It is also pleaded that after such mutation, the Bhooadhihar Rin Pustika, Part -I and Part-II with the signatures of the Tahsildar were also given to Achhelal. Since then he became the sole Bhumiswami of it. As per further averments said Achhelal being heart patient in connection of his treatment was residing at Jabalpur with his son and due to such reason in the year 1994 he gave his land for cultivation to the appellants and respondent no. 2 for four years. On expiry of such period, inspite of making the demand by Achhelal and respondent no.

1 (2) his son, from appellants and respondent no. 2, the possession of such land was not given to them, on which Achhelal -plaintiff filed the impugned suit for declaration and possession of the aforesaid land.

3. The respondent no. 2 and 3 namely Govind and the State of M.P. proceeded ex parte in the trial court.

4. In the joint written statements of the appellants by denying the averments of plaint, it is stated that the plaintiff Achhelal was not the Bhoomi Swami of the alleged land. The alleged order of Naib Tahsildar dated 24.10.1998 passed in Revenue Case 6-A/27/1997-1998 being contrary to law and rights of the parties, the same was modified by the Naib Tahsildar, vide order dated 12.5.2000 in Revenue Case No. 8-A/27/1999-2000. So in view of such modification the earlier order had not given any right or title to the plaintiffs. It is denied that after partition the disputed land was given to the appellants in the year 1994 for agricultural purposes. In further pleadings, it is stated that the principle plaintiff deceased – Achhelal voluntarily entered in an agreement to sell with the appellants and respondent no. 2 – Govind, vide dated 17.5.1996 whereby after receiving the consideration of Rs.17,000/- said Achhelal handed over the possession of such land to them. As the parties were belonging to the different branches of the real brothers, thus, in order to save the expenses of the registered sale deed only formal agreement was carried out between them. In such premises, on the strength of such agreement till registration of sale deed the appellants had a right to protect their possession of the land under the part performance defined under Section 53-A of Transfer of Property Act and prayer for dismissal of the suit is made.

5. In view of pleadings of the parties after framing the issues and recording the evidence, on appreciation of the same, by holding that the aforesaid land was neither given by Achhelal to the appellant and respondent no. 2 on contract for four years to cultivate the same nor the alleged agreement to sell had taken place between the principle plaintiff -Achhelal and the appellants and respondent no. 2 dismissed the suit.

6. Such decree of the trial court was challenged by the deceased plaintiff – Achhelal before the subordinate appellate court. In pendency of such appeal, the principle plaintiff appellant passed away, on which the respondent no. 1 (1) to 1 (3), his legal representatives were substituted on record. Thereafter on consideration by allowing such appeal and setting aside the judgment and decree of the trial court the aforesaid suit filed by Achhelal, the predecessor in title of respondent

no. 1 (1) to 1 (3) has been decreed, on which the present appellants – defendant no. 2 and 3 have come with this appeal under Section 100 of CPC.

7. Shri Rakesh Khare, learned appearing counsel of the appellants, after taking me through pleadings of the parties, the available evidence and the exhibited documents, said that in the available circumstances, the subordinate appellate court has committed grave error in decreeing the suit of the respondent no. 1 (1) to 1 (3) by setting aside the judgment and decree of trial court dismissing such suit on cogent grounds. In continuation he said that the approach of the appellate Court being contrary to the entries made in the revenue record is not sustainable under the law. It was also argued that contrary to the rights and title of the appellants over the disputed land mere on the basis of old revenue record and taking into consideration the earlier partition order passed by the revenue court, without taking note that at subsequent stage such earlier order was modified by the revenue authorities, the suit of the respondents has been decreed under wrong premises by the appellate court. With these submissions, he prayed for admission of this appeal on the proposed substantial questions of law, mentioned in the appeal memo.

8. After hearing the counsel, in order to consider the question of admission, I have carefully gone through the records of the courts below and also perused the impugned judgments. I have not found any deformity or perversity in appreciation of the evidence by the appellate court in passing the impugned judgment decreeing the suit of the respondents. I have found the approach of the appellate court in consonance with the evidence available on record and also in accordance with the existing legal position.

9. As per record the disputed land alongwith some other land being ancestral property of the predecessor in title of the appellants and respondent no. 2 and of deceased – plaintiff Achhelal was partitioned between them in Revenue Case No. 6-A/27/1997-1998 by Naib Tahsildar, Ghansour, vide order dated 24.10.1998, in which the land in disputed was given to the said Achhelal while other land was given to the branches of other co-parcener of the family. In compliance of such order after carrying out the mutation of Achhelal in the revenue record, the Bhoo Adhikar and Rin Pustika Part – 1 and Part 2 bearing no. 136132 were also given to Achhelal. In such premises, there was sufficient circumstance to draw an inference that the present appellants or/and the respondent no. 2 subsequent to aforesaid partition did not have any title over the disputed land.

10. So far subsequent order of Naib Tahsildar, Ghansour passed on 12.5.2000 in Revenue Case No. 8-A/27/1999-2000 is concerned, on perusing such order it is apparent that firstly such order was passed, without having or obtaining any permission of the review under Section 51 of M.P. Land Revenue Code from the senior official and secondly such subsequent order was passed by Naib Tahsildar without considering the circumstance that earlier order of his court was not set aside either by the revisional authority or appellate authority in any competent proceeding. It also appears from the impugned judgment of the appellate court that such subsequent order of revenue court has not been discarded only on the aforesaid count but was also discarded on the ground that the circumstances, described in such order, the revenue court did not have any authority to decide the title of the disputed property. Such approach of the appellate court appears to be in consonance with the legal position. Thus, in the lack of any document of title, mere on the basis of khasra, in which the name of the appellants and respondent no. 2 was recorded on the basis of aforesaid subsequent inadmissible order of the revenue court, the appellate court has not committed any error in deciding the title of the parties on the basis of their existing legal rights and title over the property. So such findings being based on revenue record is a finding of fact and the same could not be termed to be substantial question of law under Section 100 of CPC for admission of this appeal.

11. The courts below have concurrently held that the appellants did not have any legal title or right to retain the possession of the disputed land. The alleged agreement to sell off such property, projected on behalf of the appellants have also not been found to be proved. Thus, such findings based on appreciation of evidence being findings of facts, in view of law laid down by the Apex Court in the matter of *Kondiba Dagadu Kadam Vs. Savitribai Sopan Gujar and others* reported in AIR 1999 S.C. 2213, could not be interfered under Section 100 of CPC at the stage of Second appeal, in which it was held as under :-

“ The right of appeal is neither natural nor an inherent right attached to the litigation. Being a substantive statutory right, it has to be regulated in accordance with law in force of the relevant time. The conditions mentioned in the Section must be strictly fulfilled before a second appeal can be maintained and no Court has the power to add to or enlarge those grounds. The second appeal can not be decided on merely equitable

grounds. The concurrent findings of facts however, erroneous can not be disturbed by the High Court in exercise of the powers under this Section. The substantial question of law has to be distinguished from a substantial question of law.

It is not within the domain of the High Court to investigate the grounds on which the findings were arrived at by the last court of fact, being the first appellate court. It is true that lower appellate court should not ordinarily reject witnesses accepted by the trial court in respect of credibility but even where it has rejected the witnesses accepted by the trial Court, the same is no ground for interference in second appeal when it is found that the appellate Court has given satisfactory reasons for doing so. In a case where from a given set of circumstances two inferences are possible, one drawn by the lower appellate Court is binding on the High Court in second appeal. Adopting any other approach is not permissible. The High Court can not substitute its opinion for the opinion of the first appellate Court unless it is found that the conclusions drawn by the lower appellate Court were erroneous being contrary to the mandatory provisions of law applicable or its settled position on the basis of pronouncements made by the apex Court, or was based upon inadmissible evidence or arrived at without evidence."

12. As per initial case of the deceased – plaintiff the predecessor in title of respondent no. 1 (1) to 1 (3), after partition of the alleged land, he being heart patient had gone to Jabalpur for his treatment and in such premises he gave such land for four years to the appellants to cultivate the same on contract. On consideration the trial court had not relied on such case of the plaintiff and simultaneously holding that by efflux of time the plaintiff has lost his right in the property and dismissed the suit but the appellate court, on re-appreciation of the evidence and documents held that the present appellants claiming the right on the basis of agreement to sell or sale, his possession could not be deemed to be the possession as lessee and his right could not be deemed to be protected as occupancy tenant under Section 169 (2) or 185 (2) of the M.P. land Revenue Code and such findings of the appellate court being based on earlier verdict of this court in the matter of *Rukmanju Vs. State of M.P.* reported in 1998 Revenue Niryan, page 194 and in the case of *Ram Lal Vs. Mangal Singh* reported in 2000 Revenue Nirnay page 30 is not giving rise to any substantial question of law on this count also.

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13. Incidentally one question was also argued on behalf of the appellants that in the available circumstances on the basis of the agreement to sell the appellants had right to protect their possession under Part Performance of the contract defined under Section 53-A of Transfer of Property Act there is specific findings of the appellate court stating that the appellants herein neither proved their case in consonance of the ingredients of Section 53-A of the Transfer of Property Act nor proved their readiness and willingness to get executed sale deed from the deceased – plaintiff in their favour and in such premises such defence was discarded by the appellate court. Such approach of the appellate court based on appreciation of the evidence being finding of fact and in consonance with the available evidence, could not be termed to be substantial question of law for admission of this appeal.

14. In view of aforesaid discussion, I have not found any perversity, infirmity, illegality or any other substance in the case giving rise to any substantial question of law requiring any consideration under Section 100 of CPC at this stage. Resultantly, this appeal being devoid of any such question deserves to be and is hereby dismissed at the stage of motion hearing.

Appeal dismissed.

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APPELLATE CRIMINAL

Before Mr. Justice S.L. Kochar & Mrs. Justice S.R. Waghmare

Cr.A. No.1364/2005 (Indore) decided on 26 August, 2010

GHANSHYAM NARAIN DUBEY

... Appellant

Vs.

STATE OF M.P.

... Respondent

A. Prevention of Corruption Act (49 of 1988), Sections 7 & 13(1)(d) - Demand - No mention in complaint that any demand was made by appellant - Prosecution failed to establish demand by appellant. (Paras 6 to 8)

क. भ्रष्टाचार निवारण अधिनियम (1988 का 49), धाराएँ 7 व 13(1)(डी) – माँग – परिवाद में कोई उल्लेख नहीं कि अपीलार्थी द्वारा कोई माँग की गयी – अपीलार्थी द्वारा माँग किये जाने को स्थापित करने में अभियोजन असफल।

B. Prevention of Corruption Act (49 of 1988), Section 20 - Presumption - Presumption is not available for Section 13(1)(d) -

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Appellant had given immediate spontaneous statement that money was thrust in his pocket and he has not accepted the same - Conviction of appellant set aside - Appeal allowed. (Paras 9 & 10)

ख. अष्टाचार निवारण अधिनियम (1988 का 49), धारा 20 - उपधारणा - धारा 13(1)(डी) के लिये उपधारणा उपलब्ध नहीं है - अपीलार्थी ने तत्काल सहज कथन किया था कि उसकी जेब में पैसा डाला गया था तथा उसने उसे स्वीकार नहीं किया है - अपीलार्थी की दोषसिद्धि अपास्त - अपील मंजूर।

Cases referred :

2009 CrLJ 3450, 2002 CrLJ 2787.

M.I. Ahmed & Sachin Bhatnagar, for the appellant.

L.N. Soni, Addl.A.G. with Shri Kumawat, for the respondent/State.

J U D G M E N T

The Judgment of the Court was delivered by :
S.L. KOCHAR, J. :-The appellant has preferred this appeal against the impugned judgment dated 9/12/2005 passed by learned Special Judge (under Prevention of Corruption Act) and Ist Additional Sessions judge, Dewas in Special Case No.05/2002, thereby convicted the appellant under Section 13(1)(d) r/w Section 13(2) of the Prevention of Corruption Act, 1988 (for short "the Act"), and sentenced him to RI for one year with fine of Rs.10,000/-. In default of payment of fine, he shall to suffer additional RI for three months.

2. Briefly stated, the prosecution case, as unfolded before the trial Court is that complainant Ramakant Potdar was Principal of Govt. Higher Secondary School, Nagda, Distt. Dewas, at that time he was suspended, on charge of not taking confidential material of examination on 09.03.2001. He received chargesheet on 17.04.2001. Shri Shivraj Tyagi was the Block Education Officer of Dewas and complainant was required to send his reply to the chargesheet to Block Education Officer Shri Tyagi. Complainant met Mr. Tyagi and Mr. Tyagi demanded Rs.15,000/- for helping and to save him from demotion, ultimately it was settled for 8,000/- rupees. Complainant was not willing to give bribe to Mr. Tyagi, therefore, submitted a complaint on 20.04.2001 in Lokayukta office. In Lokayukta office after completion of required procedure for trap, Tyagi was trapped on 21.04.2001.

On inquiry Tyagi disclosed before the trap party that appellant Distt. Education Officer Shri Ghanshyam Narayan Dubey had demanded this amount and he accepted the bribe for appellant Shri Dubey. On the basis of this

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3. Appellant refuted the charges, therefore, put to trial. He has not examined any witness in his defence. Learned trial Court after examining the prosecution witnesses and hearing both the parties, convicted and sentenced the appellants as mentioned hereinabove.

4. Learned counsel for the appellant has argued that for conviction of the appellant under Section 13(1)(d) of the Act, the prosecution is mandatory required to establish demand of bribe amount which is not proved and learned trial Court has given specific finding in this regard in paragraph-16 of the impugned judgment. Learned counsel has placed reliance on Supreme Court judgments passed in cases of *A. Subair v. State of Kerala* [2009 CRI.L.J. 3450], *Subash Parbat Sonvane v. State of Gujarat* 2002 CRI. L. J. 2787] and this High Court judgment passed in case of *Sushil Kumar Jain Vs. State of Madhya Pradesh*.

5. On the other hand learned counsel for the respondent has pointed out through the statement of P.W.2 Ramakant Potdar mentioned in paragraph-2 of examination-in-chief and paragraph-4 regarding demand of money by

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appellant and submitted that finding given by the learned trial Court in paragraph-16 is contrary to the record.

6. Having heard learned counsel for the parties and on perusal of the entire record carefully, we find force in the argument of learned counsel for the appellant. In the first complaint (Ex.D/1) submitted on 20.04.2001 before the lokayukta police, there is absolutely no mention in the name of the appellant about demand of any kind of bribe for favouring the complainant. This complaint is only against Shivraj Tyagi, Block Education Officer. If really Shivraj Tyagi had demanded the money on behalf of appellant for helping or favouring the complainant Ramakant, the complainant would have not failed to mention this fact in report Ex.D/1. Complainant was confronted with report Ex.D/1 and he accepted about non-mentioning of any kind of demand directly or indirectly by appellant Dubey. This omission is not a simple omission but amount to contradiction and goes to the root of the case.

"6. There is a glaring feature in the instant case that is for the first time complainant Ramakant and trap party came to know from Shivraj Tyagi, when he alleged to have been caught after taking bribe amount of Rs.8,000/- from the complainant. Tyagi told to trap party that he had received this amount on behalf of the appellant Ghanshyam Narayan Dubey. At that very moment incharge of trap Party got written complaint (Ex.P/1) on 21.04.2001 against the appellant and directed the complainant to bring another Rs.8,000/-. After bringing Rs.8,000/- by the complainant the preliminary memorandum was prepared in which number of notes were mentioned. phenolphthalein powder was not used because it was not available at that moment on the spot. The statement of Ramakant was recorded in the case of Shivraj Tyagi in a separate and independent trial vide Special Criminal Case No.2/2002 and in the said statement he has nowhere mentioned about any kind of demand by appellant Shri Dubey and demand of Rs.8000/- by Tyagi for the appellant. He was confronted with the said statement and accepted non-mentioning of all these facts in the said statement, which is clear from his statement given in paragraph-18 herein this case.

7. Complainant was also confronted with (Ex.P/1) report lodged by him on 21.04.2001, wherein nothing is mentioned about meeting with appellant Dubey on 20.04.2001 and in Ex.P/1 only he had mentioned about meeting with Shri

Tyagi on 18th April, 2001. This material contradictions are sufficient to show that complainant and trap party came to know for the first time through Shivraj Tyagi on the basis of his statement that he received money for appellant Shri Dubey. This statement of Shivraj Tyagi is not admissible in evidence being hit by law of hearsay evidence as per provision under Section 60 of the Evidence Act. Shivraj Tyagi has not been examined as a prosecution witness in this case.

8. In view of the above, finding given by the learned trial Court in paragraph-16 that prosecution has failed to establish demand by the appellant, is just and proper. It is based on effective marshalling and appreciation of evidence. Supreme Court has considered in detail the requirement of Section 13(1)(d) of the Act in case of *A. Subair Vs. State of Kerala* (supra) and observed in paragraph-8, 9 & 10 as under:

"8. Insofar as Section 13 (1)(d) of the Act is concerned, its essential ingredients are: (I) that he should have been a public servant; (ii) that he should have used corrupt or illegal means or otherwise abused his position as such public servant and (iii) that he should have obtained a valuable thing or pecuniary advantage for himself or for any other person.

9. In the case of *C.K. Damodaran Nair v. Government of India*, this Court had an occasion to consider the word "obtained" used in Section 5(1)(d) of the Prevention of Corruption Act, 1947 (now Section 13(1)(d) of Act, 1988), and it was held :

"12. The position will, however, be different so far as an offence under Section 5(1)(d) read with Section 5(2) of the Act is concerned. For such an offence prosecution has to prove that the accused "obtained" the valuable thing or pecuniary advantage by corrupt or illegal means or by otherwise abusing his position as a public servant and that too without the aid of the statutory presumption under Section 4(1) of the Act as it is available only in respect of offences under Section 5(1)(a) and (b) – and not under Section 5(1)(c), (d) or (e) of the Act. "Obtain" means to secure or gain (something) as the result of request or effort (Shorter Oxford Dictionary). In case of obtainment the initiative vests in the person who receives and in that context a demand or request from him will be a primary requisite for an offence under Section 5(1)(d) of the Act unlike an offence

under Section 161 IPC, which, as noticed above, can be, established by proof of either "acceptance" or "obtainment".

10. The legal position is no more *res integra* that primary requisite of an offence under Section 13(1)(d) of the Act is proof of a demand or request of a valuable thing or pecuniary advantage from the public servant. In other words, in the absence of proof of demand or request from the public servant for a valuable thing or pecuniary advantage, the offence under Section 13(1)(d) cannot be held to be established."

9. In case of *Subash Parbat Sonvane* (supra) the three judges Bench of Supreme Court headed by the then Hon'ble Shri Justice M.B. Shah, the same legal position as mentioned hereinabove has been considered. In this judgment Section 20 of the Act has also been considered in paragraph-9 which is extracted herein below:-

"9. Same is the position of statutory presumption under Section 20 of the Act and is available for the offence punishable under Section 7 or Section 11 or clause (a) or clause (b) of sub-section (1) of Section 13 and not for clause (d) of sub-section (1) of Section 13."

10. In view of the above factual and legal discussion, merely on the basis of recovery of amount the appellant cannot be convicted. In the instant case, there is one more feature in favour of the appellant i.e. at the time of recovery the appellant has given immediate spontaneous statement that money was thrust in his pocket and he had not accepted the same.

11. For reasons stated herein above, we allow this appeal. Conviction and sentence, as passed by the learned trial Court against the appellant, are hereby set aside. Fine amount, if deposited by the appellant, be refunded to him. Appellant is on bail. His bail bond and surety bond stand discharged.

Appeal allowed.

I.L.R. [2011] M. P., 768

APPELLATE CRIMINAL

Before Mr. Justice Rakesh Saxena & Mr. Justice G.S. Solanki

Cr.A. No.2727/2000 (Jabalpur) decided on 15 September, 2010

AJJU @ AJAY KUMAR

... Appellant

Vs.

STATE OF M.P.

... Respondent

A. Penal Code (45 of 1860), Sections 302/34, 304 Part-I - Murder or culpable homicide - Deceased himself indulged in quarrel with accused A-1 when A-1 did not accede to his demand of providing liquor - In that quarrel, suddenly A-1 took out Katta and fired at deceased - Deceased and accused persons were on family terms and accused used to visit deceased at his house also - Held - It cannot be held with certainty that accused A-1 intended to cause death of deceased - However, since he used a fire arm, it can be held that he intended to cause such bodily injury to deceased as was likely to cause his death - His act clearly falls within the ambit of S. 304 Part-I.

(Para 13)

क. दण्ड संहिता (1860 का 45), धाराएँ 302/34, 304 भाग-एक - हत्या या आपराधिक मानव वध - मृतक स्वयं अभियुक्त ए-1 के साथ झगड़े में उलझा, जब ए-1 ने उसकी मदिरा देने की मांग अस्वीकार की - उस झगड़े में, ए-1 ने अचानक कट्टा निकाला और मृतक पर गोली दागी - मृतक एवं अभियुक्त के कौटुम्बिक संबंध थे और अभियुक्त का मृतक के घर आना-जाना भी था - अभिनिर्धारित - यह निश्चित रूप से नहीं माना जा सकता है कि ए-1 का आशय मृतक की मृत्यु कारित करना था - तथापि चूंकि उसने आग्नेय अस्त्र का उपयोग किया, यह माना जा सकता है कि उसका आशय मृतक को ऐसी शारीरिक क्षति कारित करना था, जिससे उसकी मृत्यु कारित होना संभाव्य था - उसका कृत्य स्पष्टतः धारा 304 भाग-एक की परिधि में आता है।

B. Penal Code (45 of 1860), Section 34 - Common intention - Accused A-2 was present with accused A-1 when the incident occurred, and ran away with him - Held - Merely from that it cannot be held that A-2 knew that A-1 was armed with Katta and was likely to fire at deceased, especially when incident occurred suddenly - Accused A-2 cannot be held liable for causing death of deceased with the aid of S. 34. (Para 12)

ख. दण्ड संहिता (1860 का 45), धारा 34 - सामान्य आशय - जब घटना हुई

— अभिनिर्धारित — मात्र इससे यह नहीं माना जा सकता कि ए-2 को ज्ञात था कि ए-1 कट्टा लिये हुये था और मृतक पर गोली दाग सकता था. विशेषतः जब घटना अचानक घटित हुई — धारा 34 की सहायता के साथ अभियुक्त ए-2 को मृतक की मृत्यु कारित करने के लिए जिम्मेदार नहीं माना जा सकता।

Siddharth Datt, for the appellant.

Prakash Gupta, Panel Lawyer, for the respondent/State.

J U D G M E N T

The Judgment of the Court was delivered by :
RAKESH SAKSENA, J. :—Since both the above appeals arise out of the common impugned judgment, this judgment shall govern the disposal of both the appeals.

Appellants have filed the above appeals against the judgment dated 31.10.2000 passed by Special Judge (Atrocities) Rewa in Sessions Trial No. 100/2000, convicting appellant Ajju @ Ajay Kumar under Section 302 of the Indian Penal Code and appellant Santosh @ Babloo @ Pandit under Section 302 read with Section 34 of the Indian Penal Code and sentencing them to imprisonment for life with fine of Rs. 500/-.

2. According to prosecution, on 7.3.2000 at about 2.00 P.M., Dilip Choudhary went out of his house to watch T.V. at the house of Brij Kishore. When he reached in front of the house of Mohd. Rahees, he met the accused persons. He asked accused Ajju to arrange for liquor, but Ajju told him that he had no money for purchasing the same. This led to a hot altercation between Dilip and Ajju. Both the accused persons intimidated Dilip and suddenly accused Ajju took out Katta from his waist and pointed at Dilip. When Dilip tried to grab Katta, Ajju fired it. The shot hit Dilip in his abdomen. Accused persons then ran away. The incident was witnessed by Asha Devi (PW9), the Aunt of Dilip and Mohd. Rahees. Dilip was taken to G.M. Hospital, Rewa. At about 3.00 P.M., Sub Inspector Parihar of City Kotwali, Rewa received information from the police out post of G. M. Hospital that Dilip Choudhary was got admitted in the hospital as he was injured by a fire arm. A.S.I. J.P.Tiwari along with other constables reached the hospital, where Asha Devi gave Dehati Nalishi report Ex. P/11 to him. On the above report, an offence under Section 307/34 of the Indian Penal Code was registered and first information report was recorded at City Kotwali, Rewa.

3. Dr. Vijay Tiwari (PW12) in the casualty department examined the injured. Police Officer asked the doctor to record the dying declaration, but according to Dr. Tiwari Dilip was not in fit condition to give the statement so he did not

record it, then A.S.I. J.P.Tiwari (PW11) himself recorded his statement Ex. P/19. At about 7.30 P.M., on the same day, Dilip died in the hospital. On the report from hospital, merg 73/2000 was registered. After inquest, the dead body of Dilip was sent for postmortem examination and the case was altered to Section 302/34 of the Indian Penal Code. Dr. D.K. Mishra (PW13) conducted the postmortem examination of the body.

4. During investigation accused persons were arrested. On the information of accused Ajju, weapon of offence Katta was recovered. After completing the investigation, charge sheet was filed and the case was committed for trial. Both the accused persons abjured their guilt and pleaded false implication. According to accused Ajju, Dilip asked him to get liquor for him, when he told him that he had no money, he quarreled with him and took out Katta. When he tried to snatch it from him, a Katta accidentally went off and the shot fired from it hit Dilip himself.

5. The case before the trial Court rested mainly on the evidence of Asha Devi (PW9), Dipu Choudhary (PW10), Phoolmati (PW1) and Shahbania (PW2), who witnessed the occurrence. The injuries of the deceased were proved by Dr. Vijay Tiwari (PW12) and Dr. D.K.Mishra (PW13). Prosecution also relied upon the police statement (Ex. P/19) as dying declaration of the deceased recorded by A.S.I. J.P.Tiwari (PW11). Trial Court relying on the above evidence held the accused persons guilty and convicted and sentenced them as mentioned earlier.

6. Learned counsel for the appellant Ajju submitted that the evidence of eye witnesses was not reliable. They had made material improvements in their statements before the Court. Witnesses Dipu Choudhary, Phoolmati and Shahbania did not see the occurrence, they merely saw the accused persons running away. According to Dehati Nalishi report Ex. P/11 lodged by Asha Devi, it was apparent that deceased himself indulged in quarrel. In the circumstances of the case, the possibility that deceased himself took out Katta, which in the scuffle accidentally went off could not be ruled out. Learned counsel for the appellant Santosh submitted that he could not be convicted with the help of Section 34 of the Indian Penal Code as there was no evidence to indicate that he knew accused Ajju had Katta in his waist and that he would suddenly take it out, therefore, his conviction was not sustainable.

7. We have heard the learned counsel of both the parties and perused the evidence and material on record carefully.

8. It is not disputed that deceased met with a homicidal death. Asha Devi (PW9), Dipu Choudhary (PW10), Phoolmati (PW1) and Shahbania (PW2) categorically stated that deceased received injury by fire arm and that he was taken to G. M. Hospital, Rewa. Dr. Vijay Tiwari (PW12) deposed that Dilip was brought to hospital. He had a gun shot injury in his abdomen. His intestines were protruding out of the wound. A.S.I. J.P.Tiwari (PW11) deposed that he received information from the hospital that on 7.3.2000, Dilip died. He recorded the merger intimation and conducted the inquest proceedings. The inquest memorandum is Ex. P/5. Dr. D.K.Mishra (PW13) conducted the postmortem examination of the body of deceased and found fire arm injury on his abdomen. Postmortem report given by him is Ex. P/27. According to him, the death of deceased was homicidal in nature. It is thus clearly established that deceased died a homicidal death.

9. Now the question before us is whether accused persons caused the death of Dilip. Asha Devi (PW9) testified that at about 2.00 P.M., when she was sitting at the door of her house, she saw Dilip going to the house of Dipu. In front of the house of Mohd. Rahees accused Ajju and Santosh met him. Dilip told them to arrange liquor for him, but they told to him that they had no money. Suddenly, Santosh abused Dilip and exhorted Ajju to beat him, whereupon Ajju took out Katta and fired at Dilip which hit in his abdomen. Dilip fell down. When she shouted, her daughter Nilam and Dipu reached at the spot and chased the accused persons, but they fled away. Dilip was then shifted to hospital. She lodged the report Ex. P/11 at hospital. In cross examination, this witness stated that she did not know whether there was any dispute between the accused persons and the deceased. They were residents of the same locality and they used to come to Dilip off and on. It appears that there was some confusion while recording the statement of this witness. Though it was typed in the chief examination that accused persons asked Dilip to arrange for liquor, but it was corrected to the effect that deceased asked for liquor from the accused persons. Asha Devi admitted that the report of the incident was written as was spoken by her and she had put thumb impression on it. On perusal of Dehati Nalishi Ex. P/11, it appears that she mentioned therein that Dilip told to accused Ajju that he should arrange for liquor, but Ajju told that he had no money to buy it, whereupon the altercation ensued. This witness though asserted that she disclosed in the report that accused Santosh exhorted Ajju to shoot Dilip, but this fact was found missing in Dehati Nalishi Ex. P/11 lodged by her. She, however, firmly denied the

suggestion put to her by defence counsel that it was Dilip, who took out Katta and that it got fired when accused persons tried to snatch it away from him.

10. The evidence of Asha Devi (PW9) stands corroborated by Dehati Nalishi Ex. P/11 lodged her immediately after the occurrence and also by the statement of deceased Ex.P/19 recorded by Inspector J.P.Tiwari (PW11), which after his death can be treated a dying declaration under Section 32 of the Evidence Act. According to J.P.Tiwari (PW11), he wrote a letter Ex. P/ 17 to the doctor, who was treating injured Dilip, for recording his dying declaration, but since he did not do it, he himself recorded his statement. In the said statement, Dilip stated that at about 2.00 P.M., Pandit and Ajju came near his house and Ajju Lahgir fired 12 bore Katta at him. There is nothing on record to indicate that Inspector Tiwari was inimical or biased against accused Ajju.

11. From the statement of Asha Devi (PW9), it stands established that the deceased asked accused Ajju to arrange for liquor, but on his refusal he indulged in altercation and then suddenly Ajju took out Katta from his waist and fired at him causing injury in his abdomen. The evidence of Asha Devi finds support from the evidence of Phoolmati (PW1), Shahbania (PW2) and Dipu (PW10). These witnesses deposed that after hearing the sound of fire they saw accused persons running away from the spot. Dipu (PW10), though, in his chief examination stated that he saw accused persons abusing Dilip and exhorting accused Ajju to shoot Dilip, but on being confronted with his police statement Ex. D/2, these facts were found missing therein. In Ex. D/2, he merely stated that after hearing the sound of fire he came out of his house and saw Dilip lying on the ground and two persons running towards temple. He admitted that he did not disclose to police that he saw accused Santosh abusing Dilip and Ajju firing Katta at him.

12. On careful appraisal of the evidence of Asha Devi (PW9) and aforesaid witnesses, it seems to us that when accused persons refused Dilip to arrange liquor for him, he indulged in quarrel with them, and in the course of this quarrel, accused Ajju took out Katta from his waist and fired at him, as a result of which, he ultimately died. None of these witnesses attributed any overt act to accused Santosh. The part of evidence of Asha Devi and Dipu Choudhary that Santosh exhorted accused Ajju to fire at Dilip seems unreliable for the reason that this part of their evidence is clearly an improvement by them over their earlier version. It was neither mentioned in the Dehati Nalishi

nor in the statements of witnesses recorded under Section 161 of the Code of Criminal Procedure. It appears true that accused Santosh was present with accused Ajju when the incident occurred, and ran away with him, but merely from that it cannot be held that he knew that Ajju was armed with Katta and was likely to fire at deceased, especially when incident occurred suddenly. In our considered opinion, accused Santosh, therefore, cannot be held liable for causing death of Dilip with the aid of Section 34 of the Indian Penal Code.

13. From the evidence of Asha Devi (PW9), it is proved that accused Ajju fired Katta at deceased and as a result of fire arm injury, deceased died. Dr. D.K.Mishra (PW13) found a fire arm wound of oval shape $3\frac{1}{2} \times 2\frac{1}{2}$ cm. in size on the umbilicus region of the abdomen of deceased. Burn marks and tattooing were present around the wound. Wad, two discs and iron pellets were recovered from the abdominal cavity. In his opinion, the deceased had died due to Cardio Respiratory failure as a result of shock and haemorrhage due to antemortem fire arm injury. His death was homicidal. From the evidence of Asha Devi (PW9), however, it seems that deceased himself indulged in quarrel with accused Ajju when he did not accede to his demand of providing liquor to him and in that quarrel suddenly Ajju took out Katta from his waist and fired at him. It has come in the evidence of Asha Devi that deceased and accused persons were on family terms and accused used to visit deceased at his house also. In these circumstances, it cannot be held with certainty that accused Ajju intended to cause death of deceased. Therefore, in our opinion, in the circumstance Exception-4 to Section 300 of the Indian Penal Code is attracted. The conviction of accused Ajju under Section 302 of the Indian Penal Code, therefore, does not appear justified. However, since he used a fire arm, it can be held that he intended to cause such bodily injury to deceased as was likely to cause his death, therefore, his act clearly falls within the ambit of Section 304-I of the Indian Penal Code.

14. In view of the foregoing discussion-

(A) The conviction and sentence of appellant Santosh @ Babloo @ Pandit under Section 302/34 of the Indian Penal Code deserves to be and is hereby set aside. Criminal Appeal No. 2786/2000 is allowed. He is acquitted. His bail bonds and surety bonds stand discharged, and

(B) the conviction of appellant Ajju @ Ajay Kumar under Section 302 of the Indian Penal Code is set aside, instead he is convicted under Section 304-I of the Indian Penal Code and sentenced to rigorous imprisonment for

774 State of M.P. Vs. T. D. (Thakur Das) Patel (DB) I.L.R. [2011] M.P.,
10 years with fine of Rs. 500/-. In default of payment of fine, he shall undergo
further rigorous imprisonment for one month. Criminal Appeal 2727/2000 is
partly allowed.

Appeal partly allowed.

I.L.R. [2011] M. P., 774
APPELLATE CRIMINAL

Before Mr. Justice R.C. Mishra & Mrs. Justice Vimla Jain

Cr.A. No. 299/1998 (Jabalpur) decided on 30 November, 2010

STATE OF M.P. THROUGH S.P.E., (LOKAYUKTA), BHOPAL ...Appellant
Vs.

T.D. (THAKUR DAS) PATEL

...Respondent

*Prevention of Corruption Act (49 of 1988), Section 13(1)(d),
Criminal Procedure Code, 1973, Section 311 - Examination of material
witnesses - Complainant turned hostile and did not support prosecution
case - Special Public Prosecutor without examining remaining witnesses
closed the prosecution case - Respondent acquitted by the Trial Court -
Held - All the witnesses essential to unfolding of narrative on which the
prosecution is based must be called by prosecution, whether effect of their
testimony is for or against the case of prosecution - Lacuna in prosecution
is not to be equated with the fallout of an oversight committed by Public
Prosecutor during trial, either in producing relevant material or in eliciting
relevant answers from the witnesses - Function of criminal court is
administration of criminal justice and not to count errors committed by
parties or to find out and declare who among the parties performed better
- Case remitted back with direction to call all the remaining prosecution
witnesses and to pass fresh judgment. (Paras 8 to 12)*

*भ्रष्टाचार निवारण अधिनियम (1988 का 49), धारा 13(1)(डी), दण्ड प्रक्रिया
संहिता, 1973, धारा 311 - महत्वपूर्ण साक्षियों का परीक्षण - परिवादी बदलकर
पक्षद्रोही हो गया और अभियोजन के मामले का समर्थन नहीं किया - विशेष लोक
अभियोजक ने शेष साक्षियों का परीक्षण किये बिना अभियोजन मामला बंद कर दिया
- विचारण न्यायालय द्वारा प्रत्यर्थी को दोषमुक्त किया गया - अभिनिर्धारित - जिस
वृत्तांत पर अभियोजन आधारित है, उसे प्रकट करने के लिए सभी महत्वपूर्ण साक्षियों
को अभियोजन द्वारा बुलाया जाना चाहिए, भले ही उनकी परिसाक्ष्य का प्रभाव
अभियोजन मामले के पक्ष में हो अथवा विरुद्ध हो - या तो सुसंगत तथ्य प्रस्तुत
करने में अथवा साक्षियों से सुसंगत उत्तर निकलवाने में, विचारण के दौरान
अभियोजक द्वारा कारित भूल की घटना को अभियोजन में कमी के समान नहीं मानना*

होगा - दण्डिक न्यायालय का कार्य दण्डिक न्याय करना है, न कि पक्षकारों द्वारा की गई त्रुटियों की गिनती करना या पक्षकारों में से किसने बेहतर प्रदर्शन किया है यह खोजकर घोषित करना - मामला इस निदेश के साथ प्रतिप्रेषित किया गया कि शेष सभी अभियोजन साक्षियों को बुलाया जाये एवं नया निर्णय पारित किया जावे।

Cases referred:

(1980) 2 SCC 390, (2004) 4 SCC 158, 1997 (1) JLJ 298, ILR 42 Cal 422, AIR 1999 SC 2292.

Aditya Adhikari, S.P.P., for the appellant.

H.S. Dubey, for the respondent.

J U D G M E N T

The Judgment of the Court was delivered by :
R.C. MISHRA, J. :- The State is in appeal against acquittal of the respondent in respect of the offences punishable under Sections 7 read with 13(1)(d) read with S.13(2) of the Prevention of Corruption Act, 1988 (hereinafter referred to as 'the Act'). The corresponding judgment passed on 18.10.1996 by Special Judge (under the Act) at Seoni in Special Criminal Case No.3/96 is the subject-matter of challenge in this appeal.

2. At the relevant point of time, the respondent was posted as Assistant Commissioner (Tribal Development), Seoni whereas the complainant Alam Singh Dhurve, appointed as Lower Division Clerk in the High School, Dhutera, was attached to his office.

3. The prosecution case, in short, may be stated thus -

On 09.08.1995, the respondent transferred the complainant to the office of District Panchayat at Vinjhawada. Not inclined to work at Vinjhawada due to personal difficulties, on 12.08.1995, the complainant made a representation against the transfer but the respondent not only insisted upon him to join the new assignment but also stopped payment of salary. However, when the complainant again requested him to cancel the transfer as well as to release the salary for the months of July and August, 1995, the respondent demanded a sum of Rs.1000/- as illegal gratification for the purpose. As the complainant was not willing to pay the bribe, he, on 7/9/1995, made a complaint (Ex.P/1) to K.N. Dubey, the then Deputy Superintendent of Police (Lokayukta), Jabalpur, who was

camping at Seoni only. After observing necessary pre-raid formalities, a trap was organized on the same day. At about 6.30 p.m., the complainant entered the office; passed the currency notes smeared with phenolphthalein to the respondent and immediately thereafter, gave a pre-planned signal to the raiding party headed by Inspector M.T. Beg. The Inspector along with other members of the party then entered the office; apprehended the respondent and recovered the tainted money from the right pocket of respondent's trouser. Upon completion of the investigation, charge-sheet was submitted before the Special Court at Seoni against the respondent with the sanction of the State Government under Section 19 of the Act.

4. The respondent pleaded false implication and claimed to be tried. Accordingly, the learned trial Judge, vide order dated 19/8/1996, directed issuance of process to all the prosecution witnesses. However, on 10/10/1996, considering the non-supportive evidence of the complainant, the public prosecutor of the case closed the evidence.

5. Observing that it was not a case of no evidence, learned trial Judge proceeded to examine the respondent, under Section 313 of the Code of Criminal Procedure (for short 'the Code'). But, after hearing the arguments, he recorded the impugned finding of not guilty for the following reasons -

(i) Even though the complainant Alam Singh (PW1) reiterated the allegation as to demand for a sum of Rs.1000/- as illegal gratification for cancellation of his transfer and release of the salary yet, he completely denied the remaining version as contained in the complaint (Ex.P/1).

(ii) Alam Singh also did not support the prosecution story relating to his participation in the trap proceedings.

(iii) Details of the trap as recorded in the documents (Ex.P/3 to Ex.P/7) were not proved by examining Inspector M.T. Beg and other members of the trap party.

(iv) Alam Singh clearly admitted that Collector and not the respondent had the power to cancel his attachment & further that he had already received the pay for the month of Aug., 1995.

(v) As neither demand for bribe nor payment thereof was

proved beyond a reasonable doubt, the statutory presumption engrafted in S.20 of the Act was not attracted to the facts of the case.

6. Learned Special Public Prosecutor has strenuously contended that the order of acquittal is not sustainable in law as, apparently, it is the obvious consequence of dereliction of duty on the part of the Public Prosecutor as well as an indifferent approach of learned trial Judge. Our attention has been invited to the decision of the Apex Court in *Hazari Lal v. State (Delhi Administration)* (1980) 2 SCC 390 wherein the well settled principle was reaffirmed that even in case of non-supportive evidence of the complainant, conviction may be recorded if the evidence of the police officers who led the trap is found to be above reproach or suspicion or interestedness. Making extensive reference to the relevant guidelines laid down by the Supreme Court in *Zahira Habibulla H. Sheikh v. State of Gujarat* (2004) 4 SCC 158, he further contended that it was also the duty of the Court to ensure that there might not be miscarriage of justice due to non-production of the material evidence by the prosecution.

7. In response, learned counsel for the respondent has submitted that the prosecution agency can not be permitted to blow hot and cold in the same breath. According to him, it was at the instance of the public prosecutor in-charge of the case that the prosecution evidence was closed and even on the next date fixed for examination of the accused, learned prosecutor did not make any application for calling the remaining prosecution witnesses. Adverting us to decision of a Division Bench of this Court in *Sunil Gangrade v. State of M.P.* (1997 (1) J.L.J. 298), he has contended that the prosecution was bound by statement of the complainant, who was not declared hostile. He is also of the view that it would not be in the interest of justice to put the respondent on trial once again after a lapse of more than 15 years.

8. However, fact of the matter is that the acquittal of the respondent is primarily based on non-production of material witnesses as to trap organized in pursuance of the complaint (Ex.P/1) admittedly written and signed by Alam Singh (PW1). In this regard, the following illuminating observation made by Jenkins C.J. nearly a century ago in *Ram Ranjan R v. Emperor*, ILR 42 Cal 422 = AIR 1915 Cal 545 may usefully be quoted -

"the purpose of a criminal trial is not to support at all costs a theory but to investigate the offence and to determine the guilt or

innocence of the accused and the duty of a public prosecutor is to represent the administration of justice so that the testimony of all the available eye-witnesses should be before the Court."

(Quoted with approval by the Supreme Court in *Habeeb Mohammad v. State of Hyderabad* AIR 1954 SC 51).

Accordingly, all the witnesses essential to the unfolding of narrative on which the prosecution is based must be called by the prosecution, whether effect of their testimony is for or against the case of the prosecution.

9. Coming to the facts of the instant case, it may be seen that the prosecutor-in-charge of the case had not only failed to seek permission from the Court to cross-examine Alam Singh who had resiled from the recitals of the complaint but also proceeded to close the evidence in complete ignorance of the law on the subject as explained in *Hazarilal's case* (supra).

10. The conventional concept that the Court should not permit lacuna in the prosecution evidence to be filled up is to be examined in the light of what has been said in *Rajendra Prasad v. Narcotic Cell, Delhi* AIR 1999 SC 2292, though in a different context. Accordingly, lacuna in prosecution is not to be equated with the fallout of an oversight committed by the Public Prosecutor during trial, either in producing relevant material or in eliciting relevant answers from the witnesses. After all, function of criminal court is administration of criminal justice and not to count errors committed by the parties or find out and declare who among the parties performed better. Furthermore, as observed by the Apex Court in *Zahira Habibulla's case* (above) -

"The courts have to take a participatory role in a trial.

Even if the prosecutor is remiss in some ways, it can control the proceedings effectively so that the ultimate objective i.e. truth is arrived at. This becomes more necessary where the court has reasons to believe that the prosecuting agency or the prosecutor is not acting in the requisite manner. The court cannot afford to be wishfully or pretend to be blissfully ignorant or oblivious to such serious pitfalls or dereliction of duty on the part of the prosecuting agency. The prosecutor who does not act fairly and acts more like a counsel for the defence is a liability to the fair judicial system, and courts could not also

play into the hands of such prosecuting agency showing indifference or adopting an attitude of total aloofness.

It is as much the duty of the prosecutor as of the court to ensure that full and material facts are brought on record so that there might not be miscarriage of justice".

11. We are conscious of the fact that the acquittal in question was recorded on 18.10.1996. Still, in the light of factual scenario as highlighted above and the well-settled legal position covering the issues involved, we are of the considered opinion that the impugned order of acquittal, based on an unfair trial, deserves to be set aside as being illegal and improper. Hence, there is no option left but to remit the case for completion of trial in accordance with law. Let it be clarified that we are not ordering a de novo trial.

12. For the aforesaid reasons, we allow the appeal, set aside the acquittal under challenge and remit the case to the trial court for disposal according to law. However, it is made clear that learned trial Judge would only be required to -

- (i) call all the remaining prosecution witnesses;
- (ii) examine the respondent under Section 313 of the Code with reference to the incriminating evidence brought on record;
- (iii) to call upon the accused-respondent to enter on his defence and
- (iv) to give a fresh judgment after affording opportunity of advancing arguments to both the parties.

All this exercise shall be undertaken as far as practicable within a period of six months from the date of receipt of copy of this judgment along with record of the case.

13. The respondent is on bail. He is directed to remain present before the trial Court on 12th of January 2011 at 11:00 am positively.

Appeal allowed.

**I.L.R. [2011] M. P., 780
APPELLATE CRIMINAL**

Before Mr. Justice Rakesh Saxena & Mr. Justice M.A. Siddiqui

Cr.A. No.590/2010 (Jabalpur) decided on 14 December, 2010

ABHIJIT SINGH

... Appellant

Vs.

STATE OF M.P.

... Respondent

Narcotic Drugs and Psychotropic Substances Act (61 of 1985), Section 63(2) Proviso - Proviso attached with Section 63(2) would be applicable to a case wherein owner of article/vehicle or his known agent and person-in-charge thereof has not faced the trial - Judgment passed in Prem Narayan's case [2003(1) MPLJ 122] is accordingly overruled. (Para 18)

स्वापक औषधि और मनः प्रभावी पदार्थ अधिनियम (1985 का 61), धारा 63(2) परंतुक - धारा 63(2) के साथ संलग्न परंतुक उस मामले में लागू होगा, जिसमें वस्तु/वाहन के स्वामी या उसके विदित अभिकर्ता एवं उसके प्रभारी व्यक्ति ने विचारण का सामना नहीं किया है - प्रेम नारायण के मामले [2003(1) MPLJ 122] में पारित निर्णय तदनुसार उलटा गया।

Cases referred :

2003(1) MPLJ 122 (over ruled), AIR 1975 SC 1758, AIR 1987 SC 1281, AIR 2000 SC 1390, (1999) 5 SCC 670.

Sandeep Singh, for the appellant.

Yogesh Dhande, Panel Lawyer, for the respondent.

ORDER

The Order of the Court was delivered by **RAKESH SAKSENA, J.** :- Question of law which crops up for consideration on reference by single bench about the applicability of the proviso attached to section 63(2) of Narcotic Drugs and Psychotropic Substances Act, 1985 is :-

"Whether the proviso would be applicable to a case where a registered owner of the vehicle or his known agent and person-in-charge thereof has faced the trial ?"

2. Relevant facts for proper appreciation of the issue raised, are taken from the reference order dated 7.9.2010 that this appeal, under section 454 of the Code of Criminal Procedure, has been preferred against the order directing confiscation of the jeep, bearing registration No. MP-17-B-1901,

as contained in the operative part of the judgment dated 17.9.2009 passed by Special Judge (under the Narcotic Drugs and Psychotropic Substances Act, 1985) [for short 'the Act'], Rewa in Special Case No.14/2008. By that judgment, accused persons viz. Sardar Saket and Babbu Singh alias Prakash Narayan Singh, father of appellant Abhijit Singh, were convicted under section 8(c) read with section 20(b)(ii)(B) read with section 29 of the Act and sentenced to undergo rigorous imprisonment for 15 months and to pay fine of Rs.15,000/- and in default, to suffer rigorous imprisonment for one year.

3. Undisputedly, the appellant, a minor, is the registered owner of the vehicle.

4. Learned counsel for the appellant, before the single bench, placing reliance on the decision of another single bench decision of this Court in *Prem Narayan Gupta vs. State of M.P.* 2003(1) MPLJ 122 submitted that the order of confiscation without affording opportunity to appellant of being heard was not sustainable in law. In case of *Prem Narayan* (supra), order of confiscation of Maruti Van owned by the appellant, who was found guilty of transportation of 1.87 quintals of Ganja, was set aside on the ground that no inquiry as per proviso to sub-section (2) of section 63 of the Act (hereinafter referred to as 'the proviso') was made. Single Bench raised some doubt as to the correctness of the judgment in *Prem Narayan's case* (supra). According to it, the proviso to sub-section (2) of section 63 of the Act is attracted only when a person, who committed offence in connection with the seized vehicle, is not known or cannot be found because it is a cardinal principle of interpretation that a proviso does not travel beyond the provision to which it is appended. Accordingly, the proviso would not be applicable to the subject matter covered by sub-section (1) of section 63 of the Act. In *Prem Narayan's case* (supra), language of the proviso was construed with reference to the provision of sub-section (3) of section 60 of the Act. A known owner of the vehicle, irrespective of whether he is tried as an accused or not as well as irrespective of the decision of the trial Court, in order to save his vehicle from confiscation, has to prove that the vehicle was used for transportation of contraband without knowledge or connivance of himself, or his agent or person-in-charge of the conveyance and that each of them had taken all reasonable precautions against such use.

5. Before proceeding to answer the reference, attention may be directed to the provision of section 63 of the Act which are reproduced hereunder:-

"63. Procedure in making confiscations.- (1) In the trial of offences under this Act, whether the accused is convicted or acquitted or discharged, the court shall decide whether any article or thing seized under this Act is liable to confiscation under section 60 or section 61 or section 62 and, if it decides that the article is so liable, it may order confiscation accordingly.

(2) Where any article or thing seized under this Act appears to be liable to confiscation under section 60 or section 61 or section 62, but the person who committed the offence in connection therewith is not known or cannot be found, the court may inquire into and decide such liability, and may order confiscation accordingly:

Provided that no order of confiscation of an article or thing shall be made until the expiry of one month from the date of seizure, or without hearing any person who may claim any right thereto and the evidence, if any, which he produces in respect of his claim:

Provided further that if any such article or thing, other than a narcotic drug, psychotropic substance, [controlled substance,] the opium poppy, coca plant or cannabis plant is liable to speedy and natural decay, or if the court is of opinion that its sale would be for the benefit of its owner, it may at any time direct it to be sold; and the provisions of this sub-section shall, as nearly as may be practicable, apply to the net proceeds of the sale."

6. A bare perusal of sub-section (1) section 63 reveals that in the trial of offence under the Act, the Court has to decide whether any article or thing seized under the Act is liable to be confiscated under sections 60, 61 or 62 and, if it decides that the article, is so liable, it may order its confiscation irrespective of the fact whether accused is convicted, acquitted or discharged.

7. Sub-section (2) of section 63 is attracted in different circumstances where the person who committed the offence under the Act is not known or cannot be found. Thus, an article seized under the provisions of the Act can be confiscated if it appears liable to confiscation under sections 60, 61 or 62 of the Act. Even if the person who committed the offence in connection with the contraband is not known or cannot be found but the proviso attached to

section 63(2) carves out an exception to this provision that no order of confiscation of the said article shall be made until the expiry of one month from the date of seizure, or without hearing any person who may claim any right thereto and the evidence, if any, which he produces in respect of his claim. The language of this proviso, if construed, normally means that even if the offender is not known or cannot be found still court may inquire into and decide the liability of such vehicle to be confiscated but subject to conditions (i) that no order of confiscation of the article shall be made until the expiry of one month from the date of seizure or (ii) without hearing any person who may claim any right to that contraband or article or considering any evidence produced by him in respect of his claim.

8. There is marked distinction between the provisions of section 63(2) and section 60(3) of the Act. Sub-section (3) of section 60 of the Act reads as under:-

"60. Liability of illicit drugs, substances, plants, articles and conveyances to confiscation.-

(1)....

(2)....

(3) Any animal or conveyance used in carrying any narcotic drug or psychotropic substance [or controlled substances], or any article liable to confiscation under sub-section (1) of sub-section (2) shall be liable to confiscation, unless the owner of the animal or conveyance proves that it was so used without the knowledge or connivance of the owner himself, his agent, if any, and the person-in-charge of the animal or conveyance and that each of them had taken all reasonable precautions against such use.

9. On a plain reading of section 60(3), it can be concluded that for escaping the confiscation under the Act section 60(3) imposes a liability on the owner of the seized animal or conveyance to prove that it was used without the knowledge or connivance of the owner himself, his agent, if any, and the person-in-charge of the animal or conveyance and that each of them had taken all reasonable precautions against such use. The standard of proof required from the owner of the conveyance is similar as lies on the prosecution to prove its case. This is in view of the provision of section 35 of the Act which engrafts a presumption of culpable mental state. It reads as under:-

35. Presumption of culpable mental state.-(1) In any prosecution for an offence under this Act which requires a culpable mental state of the accused, the Court shall presume the existence of such mental state but it shall be a defence for the accused to prove the fact that he had no such mental state with respect to the act charged as an offence in that prosecution.

Explanation.- In this section "culpable mental state" includes intention, motive knowledge of a fact and belief in, or reason to believe, a fact.

(2) For the purpose of this section, a fact is said to be proved only when the court believes it to exist beyond a reasonable doubt and not merely when its existence is established by a preponderance of probability.

Sub-section (2) clearly postulates that a fact under the Act is said to be proved only when the court believes it to exist beyond a reasonable doubt and not merely when its existence is established by a preponderance of probability.

10. The aforesaid standard of proof is required for a person to save the seized vehicle from confiscation and escape the liability for confiscation under both the provisions i.e. under section 60(3) or under section 63(2) of the Act, yet in view of the proviso attached to sub-section (2) of section 63 right of hearing and to adduce evidence if any in respect of his claim is conferred only when the person who committed the offence in connection with the vehicle or article is not known or cannot be found. In *Dwarka Prasad Vs. Dwarka Das Saraf* - AIR 1975 SC 1758, Apex Court held that a proviso must be limited to the subject matter of the enacting clause. It is a settled rule of construction that a proviso must prima facie be read and considered in relation to the principal matter to which it is a proviso. It is not a separate or independent enactment. 'Words are dependent on the principal enacting words, to which they are tacked as a proviso. They cannot be read as divorced from their context'. To expand the enacting clause, inflated by the proviso, sins against the fundamental rule of construction that a proviso must be considered in relation to the principal matter to which it stands as a proviso. In *M/s. Mackinnon Mackenzie and Co.Ltd. v. Audrey D' Costa and another* - AIR 1987 SC 1281, Apex Court held "the proviso cannot travel beyond the provision to which it is a proviso." In *Kush Sahgal and others vs. M.C.Mitter and others* - AIR 2000 SC 1390, Apex Court explained that:- "Since the natural presumption is that but for the PROVISIO, the enacting part of the section would

have included the subject-matter of the PROVISIO, the enacting part has to be given such a construction which would make the exceptions carved out by the PROVISIO necessary and a construction which would make the exceptions unnecessary and redundant should be avoided (See: Justice G.P.Singh's "Principles of Statutory Interpretation" Seventh Edition 1999, p-163). This principle has been deduced from the decision of the *Privy Council in Govt. of the Province of Bombay v. Hormusji Manekji*, AIR 1947 PC 200 as also the decision of this Court in *Durga Dutt Sharma v Navaratna Pharmaceutical Laboratories*, AIR 1965 SC 980.

11. In view of the aforesaid proposition of law, we find that the proviso tacked with sub-section (2) of section 63 is applicable only to enacting part of section 63(2) of the Act. It cannot be stretched out to make applicable to the provision of sub-section (3) of section 60 of the Act where the accused is a known person.

12. It has been observed by the Apex Court in *Ganga Hire Purchase Pvt. Ltd. vs. State of Punjab and others* (1999) 5 SCC 670, that "the very purpose for engrafting sub-section (3) of section 60 of the NDPS Act is to have it as a deterrent measure to check the offences under the Act in question which have been found to be dangerous to the entire society. In the absence of any definition of "owner" in the NDPS Act, it would be reasonable to construe that the expression "owner" must be held to mean the "registered owner" of the vehicle in whose name the vehicle stands registered under the provisions of the Motor Vehicles Act."

13. It is though settled that the PROVISIO does not travel beyond the provision to which it is attached, yet in respect to the proviso attached to section 63(2) of the Act we feel that sometime an occasion may arise where the person who committed the offence, even if is known and/or has been found, the person claiming his right to the article/vehicle liable to be confiscated, should be heard and permitted to adduce evidence in respect of his claim. Such eventuality may arise when the owner of the vehicle is not known. For sake of example if accused steals a car at Ahmedabad and is apprehended at Indore carrying contraband in it and is prosecuted under the Act at Indore, and it is not disclosed to owner of the car of it being seized at Indore, should owner of the car be debarred from claiming his right to car merely because the person who committed the offence in relation to car was known and apprehended.

14. In the aforesaid circumstances, in our opinion, it would be unjust to deny owner of the car to claim his right to it merely because the offender was

known. Of course it would be incumbent on the owner of the car to satisfy the conditions contemplated in sub-section (3) of section 60 of the Act.

15. Where the person who committed the offence is known or has been found, is himself the owner, agent or guardian of the owner of the vehicle/article, the provisions of section 63(2) would not be applicable to him. Provisions of section 63(2) confer jurisdiction on court to decide the liability in respect of an article to confiscation even if the offender is not found or is not known, but the 'PROVISO' attached to it saves right of any person who may claim any right in the article. It incorporates an element of the principles of natural justice that nobody should be deprived of his property without having an opportunity of being heard.

16. It has been clarified by the Apex Court in case of *Ganga Hire Purchase* (supra) that in the absence of any definition of "owner" in the NDPS Act, it would be reasonable to construe that the expression "owner" must be held to mean the "registered owner" of the vehicle in whose name the vehicle stands registered under the provisions of the Motor Vehicles Act.

17. Under the provisions of Motor Vehicles Act, 1988 "owner" means a person in whose name a motor vehicle stands registered, and where such person is a minor, the guardian of such minor,.....". Thus, where the registered owner of the vehicle is minor, his guardian shall be deemed to be the owner of such vehicle.

18. Having thus considered, we are of the view that where the person who committed the offence under the Act is known and has faced the trial and himself is the owner of the vehicle, the proviso attached to sub-section (2) of section 63 would not be applicable. Answer to this reference would therefore be :-

"The 'proviso' would be applicable to a case wherein owner of the article/vehicle or his known agent and person-in-charge thereof has not faced the trial."

19. After due consideration of the matter from different angles, we respectfully say that view taken by the single bench in *Prem Narayan's case* (supra) does not lay down the correct view of law and it is, accordingly, over-ruled.

20. Let the matter be now placed before the single bench for its decision on merit.

Order accordingly.

I.L.R. [2011] M. P., 787

APPELLATE CRIMINAL

Before Mr. Justice N.K. Gupta

Cr.A. No.1771/1995 (Jabalpur) decided on 15 December, 2010

STATE OF M.P.

... Appellant

Vs.

VISHNOO PRASAD

... Respondent

A. Prevention of Food Adulteration Act (37 of 1954), Section 20 - Sanction for prosecution - Officer appointed as Incharge Chief Medical & Health Officer (CHMO) can issue sanction - However, a person who is not appointed as District CHMO or Incharge District CHMO has no authority to grant sanction for prosecution, although he has taken charge (in another capacity) from transferred CHMO. (Para 9)

क. खाद्य अपमिश्रण निवारण अधिनियम (1954 का 37), धारा 20 - अभियोजन के लिए मंजूरी - प्रभारी मुख्य चिकित्सा और स्वास्थ्य अधिकारी के रूप में नियुक्त अधिकारी (सीएचएमओ) मंजूरी जारी कर सकता है - तथापि वह व्यक्ति जो जिला सीएचएमओ या प्रभारी जिला सीएचएमओ के रूप में नियुक्त नहीं है, उसे अभियोजन के लिए मंजूरी प्रदान करने का प्राधिकार नहीं है, यद्यपि उसने स्थानांतरित सीएचएमओ से पदभार (अन्य क्षमता में) लिया है।

B. Criminal Procedure Code, 1973 (2 of 1974), Section 354 - Content of judgment - Each decision should be based on points for determination and reasons for that decision. (Para 11)

ख. दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 354 - निर्णय की अन्तर्वस्तु - प्रत्येक विनिश्चय, अवधारित किये जाने वाले बिन्दुओं पर तथा उस विनिश्चय के कारणों पर आधारित होना चाहिए।

Cases referred :

2008(1) EFR 149.

P.C. Jain, Panel Lawyer, for the appellant/State.

Bhupendra Mishra, for the respondent.

J U D G M E N T

N.K. GUPTA, J. :-The appellant/State has preferred this appeal against the judgment dated 20.12.1993 passed by the Chief Judicial Magistrate, Hoshangabad in Criminal Case No.774/1990 by which the respondent was acquitted from the charge under Section 17 (1) read with Section 16(1)(a)(i) of Prevention of Food Adulteration Act, 1954 (for short the "Act, 1954").

2. Prosecution case, in short, is that, on 9.9.1990 at about 7:30 AM in the morning, Shri V.N. Shrivastava, Food Inspector, District Flying Squad, Hoshangabad had stopped the respondent, who was taking two cans of milk containing 10 liters of cow milk. Shri Shrivastava took three samples of the milk after due intimation. A Panchanama Ex.P/9 was prepared. All the three parts of the samples were properly sealed. One of the sample was sent to the Public Analyst and the report was received that the cow milk possessed by the respondent was adulterated. Therefore, a request has been made to Deputy Director, Khadya Avam Aushadhi Prasashan (hereinafter referred to as the "Deputy Director, KAAP") to grant permission to file a complaint against the respondent. Deputy Director, KAAP vide letter dated 14.11.1990 issued such a permission and then a complaint has been filed before the Chief Judicial Magistrate, Hoshangabad for an offence punishable under section 7 (1) read with section 16 (1) (a) (1) (ii) of the Act, 1954 and an intimation was given to the Deputy Director accordingly. Then Deputy Director, KAAP issued an intimation to the appellant that if he wants to get the other parts of samples analysed by the Central Food Laboratory, then he can apply within ten days before the trial Court.

3. The respondent abjured his guilt in the trial Court. He did not take any specific defence but he challenged the sanction issued by the Deputy Director, KAAP and therefore, Dr. Ravindra Mahadev Dagawkar (D.W.1) was examined as a defence witness.

4. After considering the evidence adduced by both the parties, the Chief Judicial Magistrate, Hoshangabad opined that no valid sanction of the prosecution was issued because the issuing officer was not a competent authority, and therefore the respondent was acquitted from all the charges.

5. It was noticed by the Registry of this Court that Ex.P-21 to Ex.P-24 were not available in the case file of the trial Court. A long correspondence took place, but ultimately vide memo dated 20/4/1995 the Chief Judicial Magistrate, Hoshangabad informed that those documents were sent to the District Magistrate with the file in connection with proposal of appeal and such documents are not deposited in the record room separately. However, on perusal of record of the trial Court, it would be clear that such documents were annexed just after the memo of complaint at page 14 to 16, though no proper endorsement regarding their exhibit is marked by the Criminal Reader or the then Presiding Officer on those documents.

6. I have heard the learned counsel for the parties.

7. Learned Panel Lawyer for the State has submitted before the Court that sanction of the prosecution was issued by the competent authority, who was the Deputy Director, KAAP, and therefore the sanction was valid. As per the provisions of Section 20 of the Act, 1954, it is the State Government who is authorized to issue such sanction for the prosecution. Vide Notification No.2929/4059/17/Medi-2 dated 17/8/1983 the State Government declared the Chief Medical & Health Officer to be Ex-Officio Deputy Director, Khadya Avam Aushadhi Prasashan, who was authorized to grant sanction of the prosecution within the District.

8. In the present case, the Controller, Khadya Avam Aushadhi Prasashan had sent an explanation letter dated 11/3/1993 Ex.P-24 to show that since Dr. R.K. Laad, Chief Medical & Health Officer was transferred to Khandwa, his charge was given to Dr. R.M. Dagawkar, District Family Welfare Officer, and therefore he was the Chief Medical & Health Officer in the District, hence as per the Notification dated 17/8/1983 he was the Ex-Officio Deputy Director, Khadya Avam Aushadhi Prasashan.

9. As per the provisions of Section 20 of the Act, 1954, the State Government has authorized the Deputy Director in each District to grant prosecution sanction and Chief Medical & Health Officer of the District was declared Ex-Officio Deputy Director for this act. Therefore, if Dr. R.M. Dagawkar, was appointed as the Chief Medical & Health Officer, Hoshangabad, then he could issue prosecution sanction. No such order is produced before the trial Court that Dr. R.M. Dagawkar was declared to be Incharge, Chief Medical & Health Officer, Hoshangabad. According to the charge report Ex.P-23, Dr. R.K. Laad handed over his charge as a Chief Medical & Health Officer, Hoshangabad, whereas Dr. R.M. Dagawkar took the charge being DHO and senior most Medical Officer of the District. If he was appointed as Incharge, Chief Medical & Health Officer, then certainly he could issue the sanction for prosecution. There is no order on the record by which it can be said that Dr. R.M. Dagawkar was authorized under any notification or special order. As per the provisions of Section 20 of the Act, 1954, the State Government was authorized to grant prosecution sanction and the Government has sub-delegated such powers to the Deputy Director in each District of the State, therefore it was necessary for the compliance of the provisions of Section 20 of the Act, 1954 that the officer should have been appointed as Chief Medical & Health Officer for this purpose.

10. Dr. R.M. Dagawkar in the charge report Ex.P-23 has used his designation

as DHO, whereas in the document Ex.P-17 he used his designation to be Local Health Officer. Rubber seal of such designation is clearly visible on the document Ex.P-19. From the action of Dr. R.M. Dagawkar, it is clear that he was never appointed as a Chief Medical & Health Officer or Incharge, Chief Medical & Health Officer, Hoshangabad at the relevant time, therefore explanation given by the Controller, Khadya Avam Aushadhi Prasashan vide memo dated 11/3/1993 cannot be accepted. Since Dr. R.M. Dagawkar was not appointed as the District Chief Medical & Health Officer or Incharge, District Chief Medical & Health Officer, Hoshangabad, therefore the notification issued by the State Government dated 17/8/1983 was not applicable in the case of Dr. R.M. Dagawkar and he did not receive any authority of the State Government regarding grant of permission to prosecute under Section 20 of the Act, 1954. In such circumstances, the Chief Judicial Magistrate, Hoshangabad did not commit any mistake in holding that the prosecution sanction was invalid, as it was not issued by the competent authority.

11. Attention of this Court was invited to the provisions of Section 354 of Cr.P.C. in which it is mentioned that each decision should be based on points for determination and reasons for that decision, but the trial Court did not hold that whether sample taken from the respondent was adulterated or not. Also no specific reason was mentioned in the judgment on that point. Such type of judgment writing is erroneous. It is violative of the provisions of Section 354 of Cr.P.C. Suppose the decision based on single point of prosecution sanction is reversed by the Appellate Court after 15 years, then no other finding will be available to consider by the Appellate Court and it would be impracticable to remand the case for its finding on the merits of the case after elapse of 20 years of the incident in which the alleged crime was committed. However, the merits of this case can be discussed at this stage.

12. Looking to the evidence given by the Food Inspector, it appears that he took a sample of cow milk and the Public Analyst by its report Ex.P-15 found the sample adulterated on the basis of Standard given in Article A.11.01.11 in Appendix B of the Act. As per the Standard mentioned in particular Article for Madhya Pradesh minimum percentage of milk fat was required to be 3.5% and minimum percentage of milk solids not fat was required to be 8.5%. As per the report of the Public Analyst Ex.P-15 milk fat was found as 3.9%, whereas milk solids not fat was 5.49%. Therefore milk solids not fat was 3% less in the sample. No extra material was found in the sample. If percentage of the milk solids not fat is found less than the prescribed standard, then the

presumption would be that some water was added in the milk, and therefore percentage of milk solids not fat was less, but if some water is added in the milk, then percentage of solids fat must also be reduced in comparison to the standard percentage. In the present case, percentage of milk fat was found 0.4% higher than the prescribed standard, which was not possible, if water was added to the milk from which sample was taken and therefore it clearly indicates that proper stirring or churning was not made by the Food Inspector at the time of taking sample. Umrao Singh (PW-3) has admitted in the cross examination that the Food Inspector dipped the bottle in the milk container and took the sample, and therefore it would be clear that the sample was not taken according to the rules followed to the provisions of Section 11 of the Act, 1954.

13. In this context, the judgment of the Punjab and Haryana High Court in the case of "*Jarnail Singh Vs. State of Haryana*", [2008 (1) EFR 149] may be referred in which in similar circumstances the Court noticed that milk was not properly made homogeneous, and therefore the accused could not be convicted for the alleged adulteration. In the present case, it is very much clear that before taking the sample, the milk was not properly made homogeneous, and therefore sample was not a representative sample of the milk. In these circumstances, it cannot be said beyond doubt that the milk in question was adulterated.

14. On the basis of aforesaid discussion, it is very much clear that the respondent cannot be convicted for the alleged offence under Section 17 (1) read with Section 16(1)(a)(i) of Prevention of Food Adulteration Act, 1954. Therefore, I am of the opinion that the Court below has not committed any illegality in acquitting the respondent from the charges levelled against him. The judgment of acquittal passed by the Court below seems to be just and proper which does not call for any interference. The appeal is meritless and deserves to be dismissed.

15. In the result, the appeal of the State does not succeed and accordingly it is dismissed.

16. The respondent is on bail, hence it is directed that his bail bonds shall stand discharged.

Appeal dismissed.

I.L.R. [2011] M. P., 792

CIVIL REVISION

Before Mr. Justice N.K. Mody

C.R. No.246/2010 (Indore) decided on 23 November, 2010

NARAYANPRASAD

... Applicant

Vs.

JAGDISH

... Non-applicant

A. Court Fees Act (7 of 1870), Section 7(v) & 7(vi) - When a co-owner files a suit for partition and separate possession, on the ground that he is out of possession, there is no difference between such a suit and a suit for possession based on title. (Para 5)

क. न्यायालय फीस अधिनियम (1870 का 7), धारा 7(v) व 7(vi) - जब सहस्वामी विभाजन और पृथक कब्जे के लिए वाद इस आधार पर प्रस्तुत करता है, कि वह कब्जे से बाहर है, तब ऐसे वाद और हक पर आधारित कब्जे के लिए वाद के मध्य कोई भेद नहीं है।

B. Court Fees Act (7 of 1870) - Amendment - Amendment to the Court Fees Act (Act No.4 of 1976) w.e.f. 01.03.1976 was introduced to clarify that even in cases where possession of a part of the land separately assessed to land revenue was claimed, court fees payable on such claim will be proportionately worked out for such part of the land. (Para 5)

ख. न्यायालय फीस अधिनियम (1870 का 7) - संशोधन - 1.3.1976 से प्रभावी न्यायालय फीस अधिनियम (1976 का अधिनियम क्र. 4) का संशोधन, यह स्पष्ट करने के लिए प्रविष्ट किया गया कि ऐसे मामलों में भी जहाँ भूमि राजस्व के लिए पृथक से निर्धारित भूमि के भाग के कब्जे का दावा किया गया, ऐसे दावे पर देय न्यायालय फीस, भूमि के ऐसे भाग के लिए आनुपातिक रूप से निकाली जाएगी।

Cases referred :

AIR (34) 1947 Nagpur 243, 1972 MPLJ SN 78, 1975 MPLJ SN 28, 1976 MPLJ SN 2, 1980 JLJ SN 36, 1980(II) MPWN Note-22.

V.P. Saraf, for the applicant.

ORDER

N.K. Mody, J. :-Being aggrieved by the order dated 27/09/10 passed by Civil Judge, Class-II, Dhar in Civil Suit No.38-A/10 whereby the application filed by respondent Nos.1,3,4 & 5 under Order VII Rule 11 CPC was allowed and the petitioner was directed to pay the requisite Court fee, present petition has been filed.

2. Short facts of the case are that the petitioner filed a suit for declaration, partition, possession and mesne profit alleging that the respondent NO.3 is the mother of petitioner, while respondent Nos. 1 & 2 and 4 & 5 are the brothers and sisters respectively. It was alleged that the land bearing survey Nos. 113/1, 113/2, 113/2/1, 113/2/2, 113/2/3, 173, 210/1, 256/1, 401, 402/1, 403/2, 404, 419/1 and 419/3 are the land which came into the share of Hiralal in partition, of which the land revenue is Rs.81.80, in which petitioner is having 1/6th share. It was alleged that for the purpose of Court fee, the suit is valued on the basis of which 1/6th of the land revenue of Rs.81.80 multiplied by 20, i.e. 272.06 of which the Court fee of Rs.100/- is paid. Upon notice an application was filed by the respondent Nos. 1,3,4 & 5 wherein it was alleged that the suit has not properly been valued and the Court fee is not accordingly paid, hence the suit be dismissed. After hearing the parties application was allowed against which present petition has been filed.

3. Learned counsel for the petitioner argued at length and submits that the impugned order passed by the learned Court below is illegal incorrect and deserves to be set aside. It is submitted that the petition filed by the petitioner be allowed and the impugned order be set aside.

4. For the purpose of Court fee relevant provisions are Section 7(v) and Section 7(vi-a) of Court Fees Act which are as under:-

Section 7(v)- for possession of lands, houses and gardens.- in suits for possession of lands, houses and gardens, according to the value of the subject matter; and such value shall be deemed to be-where subject matter is land and

- (a) such land is assessed to land revenue or land revenue is payable in respect of such land-twenty times the land revenue so assessed or so payable;
- (b) such land formt part of land which is assessed to land revenue or in respect of which land revenue is payable twenty times of the land. revenue proportionately worked out for such part of land;
- (c) such land is not assessed to land revenue-twenty times of the land revenue worked out at the rate of [five rupees] per acre;

Section 7(vi-a) in suits for partition.-

- (a) according to one half of the value of the plaintiffs share of the property; and

- (b) according to the full value of such share if on the date of presenting the plaint the plaintiff is out of possession of the property of which he claims to be a co-parcener or co-owner, and his claim to be a co-parcener or co-owner on such date is denied.

5. In the matter of *Gujabai Vs. Salubai*, AIR(34) 1947 Nagpur 243 it has been held that where in a suit the plaintiff, who is a co-owner whose right as a co-owner is challenged and who is excluded from possession, claims possession of his share of the property as a co-owner and wants his share to be partitioned off, though partition is claimed, it can still be regarded as a suit in ejectment and, therefore, is primarily a suit which falls under Section 7(v). In the matter of *Ganesha Vs. Radhelal*, 1972 MPLJ, Short Note-78 wherein in a suit for partition, possession and mesne profits in respect of lands of the defendant's joint family, the Plaintiffs claim was decreed and the appeal preferred by the defendants was dismissed inter alia on the ground that Court fee ought to have been paid on the market value, this Court held that defendants had paid Court fee, on the basis of 20 times the land revenue. It was further held that since the decree did not interms direct delivery of possession of a portion of a Khasra number, but it directed demarcation of 1/4th share of the plaintiff, therefore Court fee was payable only on the basis of 20 times the land revenue and not on the market value. In the matter of *Ramkali Bai Vs. Babu Ram*, 1975 MPLJ, Short Note-28 wherein plaintiff suing for joint possession of agricultural land and defendants pleading construction of a petrol pump and development of a garden, this Court held that no Court fees need be paid on the market value of the structures or the garden. In the matter of *Ambaram Vs. Narbad*, 1976, MPLJ, Short Note-2 wherein the suit is for definite share of land, this Court held that in case where plaintiff is not claiming any particular piece of land but a definite share 1/4th or 1/3rd, in that case the value is to be determined on the land revenue paid and not on the basis of market value. In the matter of *Rehmatulla Khan Vs. Aziz Khan*, 1980 J.L.J. Short Note-36 wherein lower Court held that suit being for cancellation of will, must pay the Court-fees accordingly, this Court held that suit of the plaintiff was that his share be declared 1/12th and be put in possession, hence Section 7(iv)(c) attracted and plaintiff can sue for possession without asking for a declaration and cancellation. In the matter of *Bhagwati Vs. Chamar Rai* 1980-II MPWN, Note-22 wherein the suit was instituted for partition and separate possession of 1/4th share in the suit lands which are separately assessed to land revenue, this Court held that perusal of

clause (vi-a) of Section 7 shows that in a suit for partition, without claiming separate possession, the suit has to be valued according to one-half of the value of the plaintiff's share of the property. This is indicative of the facts that Court fees payable or such a suit is less than the Court fee payable when a suit is instituted for partition and separate possession on the ground that the plaintiff is out of possession. The legislative intent is thus clear that when a plaintiff claims partition and separate possession on the ground that he is out of possession, the claim is to be valued just like a suit for possession simpliciter. In fact when a co-owner files a suit for partition and separate possession, on the ground that he is out of possession, there is no difference between such a suit and a suit for possession based on title. The amendment to the Court Fees Act (Act No.4 of 1976) with effect from 01/03/76 was introduced to clarify that even in cases where possession of a part of the land separately assessed to land revenue was claimed, Court fees payable on such claim will be proportionately worked out for such part of the land. This clarification had become necessary to get over some judgment which had laid down that where the claim was for the entire land separately assessed to land revenue, its market value will be deemed to be twenty times the land revenue but if it was for a part of land and that part was not separately assessed, the claim will have to be valued on the actual market value. The intention was to provide relief to agriculturist and the owners of land revenue paying lands.

6. Keeping in view the aforesaid position of law, this Court is of the view that while passing the impugned order learned Court below has not taken into consideration the position of law for the purpose of payment of Court fee in a suit for partition where the agricultural land is involved. However, since the respondents are not before this Court, therefore, instead of issuing notice, petition is disposed of with a short direction that the petitioner shall be at liberty to move an appropriate application for review of the impugned order alongwith an application for condonation of delay. If such an application is filed, then after condoning the delay and after giving an opportunity of hearing to the respondent Nos. 1, 3, 4 & 5 who have filed the application before learned trial Court, learned trial Court shall decide the same keeping in view the aforesaid position of law by passing a speaking order, till then impugned order shall remain in abeyance.

With the aforesaid observations, petition stands disposed of. .

Petition disposed of.

CRIMINAL REVISION

Before Mr. Justice R.C. Mishra & Mrs. Justice Vimla Jain

Cr.R. No.600/2010 (Jabalpur) decided on 19 November, 2010

BRAMHA SWAROOP SAINI

... Applicant

Vs.

STATE OF M.P.

... Non-applicant

A. Interpretation of Statutes - Decision of Court - Judgment of a Court has not to be interpreted like a statute where every word, as far as possible, has to be given a liberal meaning - Observations made have to be understood in the context of facts & circumstances raised. (Para 3)

क. कानूनों का निर्वचन - न्यायालय का विनिश्चय - न्यायालय के निर्णय का निर्वचन उस कानून के समान नहीं करना होगा जहाँ प्रत्येक शब्द को, जहाँ तक संभव हो सके, उदार अर्थ देना होता है - की गयी टिप्पणियों को उठाये गये तथ्यों एवं परिस्थितियों के संदर्भ में समझना होगा।

B. Prevention of Corruption Act (49 of 1988), Section 19 - Sanction - Office - Transfer - Applicant working as Executive Engineer in Division No.1 transferred to Division No.5 in same capacity - Word 'transfer' used by Supreme Court in the case of Prakash Singh Badal Vs. State implies change of authority competent to accord sanction - Since there was no change in authority competent to accord sanction therefore sanction u/s 19 of Act essential - Order of trial Court set-aside - Applicant stands released - However, investigation agency can file charge-sheet after obtaining sanction - Petition allowed. (Para 4 & 5)

ख. भ्रष्टाचार निवारण अधिनियम (1988 का 49), धारा 19 - मंजूरी - कार्यालय - स्थानांतरण - मण्डल क्र. 1 में कार्यपालन यंत्री के रूप में कार्यरत प्रार्थी को मण्डल क्र. 5 में उसी हैसियत में स्थानांतरित किया गया - उच्चतम न्यायालय द्वारा प्रकाश सिंह बादल वि. राज्य के मामले में उपयोग किये गये शब्द 'स्थानांतरण' से विवक्षित है मंजूरी प्रदान करने के लिए सक्षम प्राधिकारी का बदलना - चूंकि मंजूरी प्रदान करने के लिए सक्षम प्राधिकारी में कोई बदलाव नहीं था, इसलिए अधिनियम की धारा 19 के अन्तर्गत मंजूरी आवश्यक - विचारण न्यायालय का आदेश अपास्त - प्रार्थी को मुक्त किया गया - तथापि, अन्वेषण एजेंसी मंजूरी प्राप्त करने के पश्चात् आरोप पत्र प्रस्तुत कर सकती है - याचिका मंजूर।

Cases referred :

(2007) 1 SCC 1, AIR 2003 SC 4195, AIR 2003 SC 2661, (1984) 2 SCC 183.

Vipin Yadav, for the applicant.

Aditya Adhikari, *Special Public Prosecutor*, for the non-applicant/
S.P.E. (Lokayukt).

ORDER

The Order of the Court was delivered by **R.C. MISHRA, J.** :—This revision has been preferred against the order-dated 11/03/2010 passed by Special Judge [under the Prevention of Corruption Act, 1988] (for short the 'Act'), Bhopal in Special Case No.07/2010, rejecting preliminary objection regarding sanction, as contemplated under Section 19(1) of the Act, for prosecution of the petitioner in respect of the offence punishable under Section 13(1)(e) read with 13(2) thereof.

2. Allegations against the petitioner, in substance, are that while working as Executive Engineer in Division No.1 of the Madhya Pradesh Housing Board, a statutory body created under Section 3 of the M.P. Griha Nirman Mandal Adhiniyam, 1972, at Bhopal, he committed criminal misconduct by acquiring assets, disproportionate to his known sources of income for which he could not satisfactorily account. However, the charge sheet was submitted at the time when he was posted as Executive Engineer of Division No.5 of the Board at Bhopal only.

3. A bare reading of the impugned order would show that the objection raised against taking of cognizance of the offence without previous sanction was overruled in view of the fact that the petitioner had ceased to hold office of the Executive Engineer, Division No.1, allegedly abused or misused by him. For this, learned Special Judge placed implicit reliance on the following observations made by the Apex Court in *Parkash Singh Badal v. State of Punjab* (2007) 1 SCC 1 -

The main contention advanced by Shri Venugopal, learned Senior Counsel appearing for the appellant is that a public servant who continues to remain so (on transfer) has got to be protected as long as he continues to hold his office. According to the learned counsel, even if the offending act is committed by a public servant in his former capacity and even if such a public servant has not abused his subsequent office still such a public servant needs protection of Section 19(1) of the Act. According to the

learned counsel, the judgment of this Court in R.S. Nayak case (1984) 2 SCC 183 holding that the subsequent position of the public servant to be unprotected was erroneous. According to the learned counsel, the public servant needs protection all throughout as long as he continues to be in the employment.

The plea is clearly untenable as Section 19(1) of the Act is time and offence related.

However, while doing so, learned trial Judge completely lost sight of the guideline reiterated in that case only that a decision is an authority for what it actually decides. Reference to a particular sentence in the context of the factual scenario cannot be read out of context. Other guiding principles to be followed in applying a decision of the Supreme Court may be summed up as under : -

*The judgment of a Court has not to be interpreted like a Statute where every word, as far as possible, has to be given a literal meaning and no word is to be ignored. The observations made have to be understood in the context of the facts and contentions raised (**Kesar Devi v. Union of India** AIR 2003 SC 4195). Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. Observations of Courts are not to be read as Euclid's theorems nor as provisions of the statute. (**Ashwani Kumar Singh v. U. P. Public Service Commission** AIR 2003 SC 2661). A judgment should be understood in the light of facts of that case and no more should be read into it than what it actually says. It is neither desirable nor permissible to pick out a word or a sentence from the judgment of Supreme Court divorced from the context of the question under consideration and treat it to be complete law decided by Supreme Court. The judgment must be read as a whole and the observations from the judgment have to be considered in the light of the questions, which were before Supreme Court (**Mehboob Dawood Shaikh v. State of Maharashtra** AIR 2004 SC 2890).*

4. Accordingly, after reading the judgment rendered in *Parkash Singh Badal's* case as a whole, it can easily be concluded that the word 'transfer' used in the observations referred to by learned Special Judge implies change

of authority competent to accord sanction under Section 19(1) of the Act viz. the one competent to remove him from the office which he alleged to have misused or abused with corrupt motive. For laying down the proposition that sanction for prosecution in case the public servant is no longer holding the post/office during the holding of which the alleged offence was committed, the following observations made by the Constitution Bench in *R.S. Nayak v. A.R. Antulay* (1984) 2 SCC 183) were quoted by a two-Judge Bench of the Apex Court in *Parkash Singh Badal's case* (above) -

The expression "office" in the three sub-clauses of Section 6(1) [that corresponds to Section 19(1) of the Act] would clearly denote that office which the public servant misused or abused for corrupt motives for which he is to be prosecuted and in respect of which a sanction to prosecute him is necessary by the competent authority entitled to remove him from that office which he has abused. This interrelation between the office and its abuse if severed would render Section 6 devoid of any meaning. And this interrelation clearly provides a clue to the understanding of the provision in Section 6 providing for sanction by a competent authority, who would be able to judge the action of the public servant before removing the bar, by granting sanction, to the taking of the cognizance of offences by the court against the public servant. Therefore, it unquestionably follows that the sanction to prosecute can be given by an authority competent to remove the public servant from the office, which he has misused or abused because that authority alone would be able to know whether there has been a misuse or abuse of the office by the public servant and not some rank outsider.

...

Now if the public servant holds two offices and he is accused of having abused one and from which he is removed but continues to hold the other which is neither alleged to have been used nor abused, is a sanction of the authority competent to remove him from the office which is neither alleged or shown to have been abused or misused necessary? The submission is that if the harassment of the

public servant by a frivolous prosecution and criminal waste of his time in law courts keeping him away from discharging public duty, are the objects underlying Section 6, the same would be defeated if it is held that the sanction of the latter authority is not necessary. The submission does not commend to us. We fail to see how the competent authority entitled to remove the public servant from an office which is neither alleged to have been used or abused would be able to decide whether the prosecution is frivolous or tendentious. [Emphasis supplied]

...

upon a true construction of Section 6, it is implicit therein that sanction of that competent authority alone would be necessary which is competent to remove the public servant from the office which he is alleged to have misused or abused for corrupt motive and for which a prosecution is intended to be launched against him.

5. Adverting to the facts of the case, it may be observed that even after the posting of the petitioner as Executive Engineer of Division No.5, the authority competent to remove him from the office held by him in his former capacity as Executive Engineer of Division No.1 remained unchanged. In other words, for the purpose of Section 19(1) of the Act, he continued to remain in the same office though in a different capacity.

6. In this view of the matter, the preliminary objection raised by the petitioner ought to have been upheld. As such, learned Special Judge committed a serious error of jurisdiction in taking cognizance of the offence under the Act without sanction of the competent authority for prosecution of the petitioner therefor.

7. For these reasons, the revision is allowed and the impugned order-dated 11.03.2010 is hereby set aside. As an obvious consequence, the petitioner stands released. Needless to say that nothing contained herein shall prevent the respondent from filing the charge sheet after obtaining necessary sanction from the competent authority.

Revision allowed.

I.L.R. [2011] M. P., 801
MISCELLANEOUS CIVIL CASE
Before Mr. Justice U.C. Maheshwari

M.C.C. No.510/2009 (Jabalpur) decided on 28 October, 2010

PRATIBHA MISHRA (SMT.)

... Applicant

Vs.

MUKESH MISHRA

... Non-applicant

Civil Procedure Code (5 of 1908), Section 24 - Transfer of suit - Applicant seeking transfer of divorce petition from Satna to Umaria on the ground of apprehension and fear in her mind - No document placed on record to prove the allegation levelled against non-applicant - Held - Case cannot be transferred merely on the ground of apprehension specifically when applicant is a working women and is regularly going to attend the duty at her working place - Petition dismissed. (Para 5)

सिविल प्रक्रिया संहिता (1908 का 5), धारा 24 - वाद का स्थानान्तरण - आवेदिका ने उसके मन में आशंका एवं भय के आधार पर विवाह विच्छेद याचिका का सतना से उमरिया स्थानान्तरण चाहा - अनावेदक के विरुद्ध लगाये गये आरोप साबित करने के लिए अभिलेख पर कोई दस्तावेज प्रस्तुत नहीं किया गया - अभिनिर्धारित - मात्र आशंका के आधार पर मामला स्थानान्तरित नहीं किया जा सकता, विनिर्दिष्टतः जब आवेदिका एक कामकाजी महिला हो तथा कर्तव्य पर उपस्थित होने के लिए नियमित रूप से अपने कर्तव्य स्थल पर जा रही हो - याचिका खारिज।

Cases referred :

2009 AIR SCW 790, 2009 AIR SCW 1347, (2006) 9 SCC 197.

Amit Garg, for the applicant.

Shailendra Verma, for the non-applicant.

ORDER

U.C. MAHESHWARI, J. :- This petition is preferred by the applicant/wife under section 24 of the CPC for transferring the Hindu Marriage Case No. 218-A/07 filed by the respondent/husband under section 13 of the Hindu Marriage Act, 1955 in the Family Court Satna, from such Court to the Family court of Umaria.

2. The facts giving rise to this petition are that the applicant got married with the respondent long before on 22.5.02 in accordance with the Hindu rites and rituals. Subsequent to marriage, on arising some differences between them, under compulsion, the applicant is residing separately at Beersingpurpali. At the instance of the applicant, a proceeding under section 125 of the Cr.P.C

for maintenance was also filed in the Court of Beersingpurpali district Umari which has been allowed on dated 16.1.09. As per further submission, the applicant is not able to defend her case at Satna because the respondent is having connections with the antisocial elements of Satna and, in such premises, there is apprehension in the mind of the applicant that at any moment, on going to Satna for defending the case, she may be killed by the respondent. Besides this, the transfer is also prayed on the ground of distance of both the places i.e near about 200 KM. So, being woman, it is not possible for her to go all-alone for defending such case at Satna. As per further averments she is also under apprehension that the fair trial could not be held at Satna because she has to face the undue pressure of the respondent on every date at such place. With these averments the applicant has filed this petition.

3. In reply of the respondent all the aforesaid grounds stated in the petition for transferring the case are specifically denied. It is also stated that the applicant being employee of the education department, is working as Samvida Shala Shikshak Grade-II at some place of district Umari which is only 50 KM far away from district Satna where she is residing with the family of her real uncle, aunt and maternal uncle. She is in a position to defend the case conveniently at Satna. It is also stated that in compliance of the order of the trial court, respondent is regularly paying her the travelling and other expenses to defend the case at Satna and prayer for dismissal of the petition is made.

4. The applicant's counsel by referring the facts stated in the petition argued that keeping in view the convenience and difficulty of the applicant, the aforesaid case deserves to be transferred from Satna to Umari. He also placed his reliance on reported cases of the Apex Court in the matter of (1) *Anjali Ashok Sadhwani Vs. Ashok Kishinchand Sadhwani*-2009 AIR SCW 790 and (2) *Fatema Vs. Jafri Syed Husain (Parvez)*-2009 AIR SCW 1347. While counsel of the respondent by referring the averments of the reply said that mere apprehension in the mind of the applicant is not sufficient to allow the petition and according to him in view of the law laid down by the Apex Court in the matter of *Anindita Das Vs. Srijit Das*- AIR (2006) 9 SCC 197, this petition deserves to be dismissed and prayed for the same.

5. Having heard the counsel, after perusing the petition, reply and the papers placed on the record, it appears that this petition is preferred on behalf of the applicant only on some apprehension and fear in her mind. As in order to prove the allegation leveled against the respondent no document has been

placed on the record, on which, it could be assumed that any unhappy incident had taken place between the parties earlier on visiting Satna by the applicant for defending the aforesaid case. Thus mere on the basis of apprehension in the mind of the applicant, by allowing this petition, the case could not be transferred from Satna to Umari. Besides this, looking to the distance of near about 200 KM between Satna and Umari and the circumstance that the applicant being working woman in the education department, is regularly going to attend the duty at her working place, in view of the law laid down by the Apex Court in the matter of *Anindita Das* (Supra), the impugned case, mere on the whims of the applicant, by allowing this petition, could not be transferred from Satna to Umari. Consequently this petition deserves to be and is hereby dismissed.

6. So far the case laws cited on behalf of the applicant are concerned, they were decided taking into consideration the long distance between the two cities ie from Indore to Bombay in the earlier case *Anjali Ashok Sadhwani* (supra) and from Aurangabad to Jammu & Kashmir in the later case *Fatema Vs. Jafri Syed Husain* (supra), hence the same being distinguishable on facts, are not helping to the applicant.

7. However, the trial court is directed that in future, if any application is preferred on behalf of the applicant with a prayer to provide the security for defending the case at Satna then such court shall consider the same in accordance with the law for providing such security.

8. The petition is dismissed as indicated above. There shall be no order as to the cost.

Petition dismissed.

I.L.R. [2011] M. P., 803

MISCELLANEOUS CRIMINAL CASE

Before Mr. Justice R.C. Mishra & Mrs. Justice Vimla Jain

M.Cr.C. No.12853/2010 (Jabalpur) decided on 10 December, 2010

P.L. USRETE

Vs.

STATE OF M.P.

... Applicant

... Non-applicant

Criminal Procedure Code, 1973 (2 of 1974), Section 311 - Recall of witness - Prosecution, gave up witnesses and closed the evidence - Final arguments heard and case closed for judgment - Witnesses, given up by prosecution, summoned by the Court - Held - Trial Judge ought to

have assigned cogent reasons so as to justify his observations that evidence of each one of the witnesses who were given up by prosecution was material to just decision of the case by highlighting respective role - Order summoning witnesses set aside - However, Trial Court may call these witnesses only after passing speaking order. (Paras 13 to 15)

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 311 - साक्षी को पुनः बुलाना - अभियोजन ने साक्षियों को छोड़ दिया और साक्ष्य समाप्त घोषित कर दी - अन्तिम तर्क सुने गये तथा मामला निर्णय के लिए बंद कर दिया गया - अभियोजन द्वारा छोड़ दिये गये साक्षियों को न्यायालय द्वारा आहूत किया गया - अभिनिर्धारित - विचारण न्यायाधीश को अपने अवलोकन, कि प्रत्येक साक्षी जिन्हें कि अभियोजन द्वारा छोड़ दिया गया था उनकी प्रत्येक की भूमिका को बताते हुए कि वह प्रकरण में उचित निर्णय हेतु तात्त्विक है, को न्यायोचित ठहराये जाने के लिये तर्कपूर्ण कारण देना चाहिये था - साक्षियों को बुलाने हेतु पारित आदेश अपास्त - तथापि, विचारण न्यायालय सकारण आदेश पारित करने के बाद ही उन साक्षियों को आहूत कर सकती है।

Cases referred :

(2009) 6 SCC 260, (2004) 4 SCC 158, AIR 1991 SC 1346, AIR 1968 SC 178.

Mukesh Sahu, for the applicant.

Satish Chaturvedi, Standing Counsel, for the non-applicant/SPE (Lokayukta).

ORDER

The Order of the Court was delivered by R.C. MISHRA, J. :- Arguments heard.

This is a petition, under Section 482 of the Code of Criminal Procedure (for short "the Code"). The petitioner is aggrieved by the order-dated 22/9/2010 passed by Special Judge (under the Prevention of Corruption Act, 1988), Sagar in Special Case No.3/1998 whereby, in exercise of the powers conferred, under Section 311 of the Code, direction was given to summon the following as Court witnesses -

- (i) Swadesh Kumar Khare (ii) B.K. Gupta
- (iii) Omkareshwar Tiwari (iv) R.R. Singh
- (v) Kailash Surya (vi) P.K. Guru
- (vii) M.S. Parmar (though not named due to inadvertence in the operative part of the order)

2. Learned counsel has stated at bar that till date, none of these witnesses has been examined/re-examined.

3. Background facts may be summed as under :-

The petitioner is one amongst the public servants facing trial upon the charges of the offences punishable under Sections 467 read with 34, 468 read with 34 of the IPC, 471 and 120-B of the IPC as well as under Section 13(1)(d) read with Section 13(2) of the Act. Although, the above-named persons were cited as witnesses in the charge-sheet yet, the prosecution did not prefer to examine them. The prosecution evidence was declared closed on 19/5/2010. Thereafter, on 11/6/2010, the petitioner and the co-accused were examined under Section 313 of the Code. The defence then availed of the opportunity to adduce the evidence. Ultimately, final arguments were heard on 9/9/2010 and the case was fixed for delivery on judgment on 22/9/2010. However, instead of pronouncing the judgment, learned trial Judge, while observing that evidence of the aforesaid witnesses was essential to the just decision of the case, proceeded to pass the order in question.

4. Learned counsel for the petitioner has contended that the trial Judge has committed a serious illegality in calling the witnesses after a virtual conclusion of the trial. According to him, amongst the witnesses sought to be called -

- (i) B. K. Gupta, Omkareshwar Tiwari and R. R. Singh had already been given up by the prosecution on 12/7/2000, 8/9/2000 and 26/3/2010 respectively.
- (ii) Name of S. K. Khare did not figure in the revised trial program submitted by the prosecution on 23/9/2009.

5. He is further of the view that the order has resulted in great prejudice to the petitioner as well as the co-accused, who have been undergoing the ordeal of trial for the last 12 years particularly when the witnesses were given up by the prosecution after a conscious and careful assessment of total effect of their evidence on the merits of the case. Attention has also been invited to the fact that the impugned order contains reasons only for recalling P.K. Guru, the Investigating Officer.

6. In reply, learned Special Public Prosecutor has submitted that recording of reasons was not at all necessary for summoning the witnesses in exercise of the power conferred under Section 311 of the Code. To buttress the contention, he has placed reliance on the following observations made by the Apex Court in *Captain Amarinder Singh v. Parkash Singh Badal* (2009) 6 SCC 260 :-

"Ultimately, it is upon the Presiding Officer/Special Judge and not this Court to evaluate those witnesses and arrive at a conclusion one way or other depending on the charges leveled against the accused. It would not be fair on the part of this Court either to assess and arrive at an opinion about the same. Even after closing of the prosecution side by the Public Prosecutor, if the court wants to examine some more witnesses from the list furnished by the prosecution, it is for the Presiding Judge to take a decision in accordance with the law and issue appropriate direction"

7. However, the facts of the instant case are distinguishable, as prosecution has already expressed its intention not to examine S.K. Khare, M.S. Parmar, B.K. Gupta, Omkareshwar Tiwari, R.R. Singh and Kailash Surya.

8. Still, making extensive reference to the relevant guidelines laid down by the Supreme Court in *Zahira Habibulla H. Sheikh v. State of Gujarat* (2004) 4 SCC 158, learned Special Public Prosecutor has further contended that it was also the duty of the Court to ensure that there might not be miscarriage of justice due to non-production of the material evidence by the prosecutor in-charge of the case.

9. In response, learned counsel has submitted that the prosecution agency should not be permitted to take contradictory or inconsistent stand.

10. As explained in *Zahira's case* (supra), Section 311 of the Code consists of two parts. The first part is directory whereas the second one is mandatory. The order under challenge appears to have been passed under the second part. However, a bare perusal of the order would reveal that it merely cites the section and does not indicate the reasons for calling S.K. Khare, M.S. Parmar, B.K. Gupta, Omkareshwar Tiwari, R.R. Singh and Kailash Surya, who were expressly as well as impliedly given up by the prosecution.

11. It is true that the criminal Court has unrestricted power to recall or re-examine any witness at any stage for just decision of the case (*Mohanlal Shamji Soni v. Union of India* AIR 1991 SC 1346 referred to) but jurisdiction must obviously be dictated by exigency of the situation and must be guided by fair play and good sense. As emphasized in *Zahira's case*, the courts have to take a participatory role in a trial and second part of Section 311 of the Code compels the court to examine a witness if his evidence appears to be essential to the just decision of the court. Still, the following note of caution uttered by Hidayatullah, J. (as he then was), speaking for the Bench in *Jamatraj Kewalji Govani v. State of Maharashtra* AIR 1968 SC 178, wherein scope and ambit of Section 540 of the old Code that corresponds to Section 311 of the Code was explained, :-

"..... where the court exercises the power under the second part, the inquiry cannot be whether the accused has brought anything suddenly or unexpectedly but whether the court is right in thinking that the new evidence is needed by it for a just decision of the case. If the court has acted without the requirements of a just decision, the action is open to criticism but if the court's action is supportable as being in aid of a just decision the action cannot be regarded as exceeding the jurisdiction."

12. Answering the question as to whether the provision gives the court carte blanche drawing no underlying principle in the exercise of the extraordinary power and whether the said section is unguided, uncontrolled and uncanalised ? The Apex Court in *Mohanlal's case* (above) made the following illuminating observations -

"Though Section 540 (Section 311 of the new Code) is, in the widest possible terms and calls for no limitation, either with regard to the stage at which the powers of the court should be exercised, or with regard to the manner in which they should be exercised, that power is circumscribed by the principle that underlines Section 540, namely, evidence to be obtained should appear to the court essential to a just decision of the case by getting at the truth by all lawful means. Therefore, it should be borne in mind that the aid of the section should be invoked only with the object of discovering relevant facts or obtaining proper proof of such facts for a just decision of the case and it must be used judicially and not capriciously or arbitrarily

because any improper or capricious exercise of the power may lead to undesirable results. Further it is incumbent that due care should be taken by the court while exercising the power under this section and it should not be used for filling up the lacuna left by the prosecution or by the defence or to the disadvantage of the accused or to cause serious prejudice to the defence of the accused or to give an unfair advantage to the rival side and further the additional evidence should not be received as a disguise for a retrial or to change the nature of the case against either of the parties." (Emphasis supplied)

13. Accordingly, learned trial Judge ought to have assigned cogent reasons so as to justify his observation that evidence of each one of the above-named witnesses who were given up by the prosecution was material to the just decision of the case by highlighting the respective role.

14. Applying the guiding principle to the factual scenario as highlighted above, we are of the opinion that the order requires interference under the inherent powers.

15. The petition stands allowed in part and the impugned order, so far as it relates to S.K. Khare, M.S. Parmar, B.K. Gupta, Omkareshwar Tiwari, R.R. Singh and Kailash Surya is hereby set aside with the observation that learned trial Judge shall be at liberty to call these witnesses only after passing a speaking order reflecting as to how the evidence of each one of them would be essential for a just decision of the case.

Petition partly allowed.

I.L.R. [2011] M. P., 808

MISCELLANEOUS CRIMINAL CASE

Before Mrs. Justice Indrani Datta

M.Cr.C. No.8407/2010 (Gwalior) decided on 4 January, 2011

LAKHAN GIRI & ors.

... Applicants

Vs.

STATE OF M.P.

... Non-applicant

Criminal Procedure Code, 1973 (2 of 1974), Sections 482 & 154

- Two FIRs have got been registered arising out of one common incident by two different complainants - Prosecution story and place of occurrence is same - Witnesses are common in both cases - Held -

Second FIR and entire subsequent criminal proceeding pending before the Court quashed. (Paras 7 & 8)

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धाराएँ 482 व 154 – दो भिन्न शिकायतकर्ताओं द्वारा एक ही घटना से उद्भूत दो एफ.आई.आर. दर्ज करायीं गयीं – अभियोजन की कहानी और घटनास्थल वही है – दोनों मामलों में साक्षी समान हैं – अभिनिर्धारित – द्वितीय एफ.आई.आर. तथा न्यायालय के समक्ष लम्बित सम्पूर्ण दण्डिक कार्यवाही अभिखंडित।

Case referred :

2001 CrLJ 3329.

Sushil Goswami, for the applicants.

Sangeeta Pachori, P.P., for the non-applicant/State.

ORDER

INDRANI DATTA, J. :—Matter is finally heard at motion stage.

Invoking the inherent powers of this Court enshrined under Section 482 Cr.P.C., petitioners have filed this petition either for quashing the FIR concerning Crime No.62/2009 registered at police station Chirula, District Datia against the petitioners for the offences punishable under Sections 307, 147, 148, 149 of IPC read with Sections 3 (2)(v) and 3(1)(x) of the SC & ST (Prevention of Atrocities) Act or for quashing the FIR concerning Crime No. 63/2009 registered at same police station against the petitioners for the offences punishable under Sections 307, 353, 147, 148, 149 of IPC read with Section 11/13 of MPDVPK Act as well as entire subsequent criminal proceedings of Special Case No.76/10 pending in the Court of Special Judge (Atrocities), Datia or entire subsequent criminal proceedings of Special Case No.16/10 pending in the Court of Special Judge (Dacoity), Datia.

2. Facts in nutshell giving rise to this petition are that complainant Suresh Ahirwar lodged a report on 29/12/2009 at police station Chirula District Datia against the petitioners that in the evening at about 4:45 he was returning from Datia after submitting forms of his mother and Bhabhi Manwati, concerning membership of Janpad. He was on the first motorcycle along with his brother Chandra Prakash and Dinesh Kumar. Guard of S.A.F. Anil Yadav, Ram Narayan Yadav and his bhabhi Manwati were on the second motorcycle. One Prem Narayan, Secretary was also coming behind by means of his motorcycle accompanied with S.A.F. Guard Yashbeer Singh. As soon as they reached at Kalapuram Dagrai Road, petitioners restrained them, who were

armed with 315 bore gun, 12 bore gun and they hurled abuses in respect of his caste and threatened that he would not be spared alive. Thereafter, they started firing towards them. On the report of the complainant, FIR concerning Crime No.62/2009 is lodged against the petitioners for the offences punishable under Sections 307, 147, 148, 149 of IPC read with Sections 3(2)(v) and 3(1)(x) of the SC & ST (Prevention of Atrocities), Act. Thereafter, another FIR concerning the same incident, was lodged by complainant Yashbeer Singh against the petitioners and Crime No.63/2009 for the offences punishable under Sections 307, 353, 147, 148, 149 of IPC read with Section 11/13 of the MPDVPK Act is registered against the petitioners, giving rise to this petition either for quashing the first FIR concerning Crime No.62/2009 or for quashing the second FIR concerning Crime No.63/2009 as well as entire subsequent criminal proceedings pending before the trial Court.

3. It is contended by learned counsel for the petitioners that FIRs in question have been got registered by two complainants separately arising out of common incident. Even date and time of the incident is same, witnesses are common in both cases. In both the FIRs, common story has been narrated. The first FIR concerning Crime No.62/2009 has been lodged by complainant Suresh Ahirwar while the second FIR concerning Crime No.63/2009 has been lodged by complainant Jashbeer Singh, who is security guard of first complainant Suresh Ahirwar. Due to registration of two FIRs, two separate charge sheets have been filed and the petitioners are facing two different trials arising out of one incident. Petitioners cannot be punished for the same offence twice. It is also contended by learned counsel for the petitioners that prima facie case under Section 11/13 of MPDVPK Act is not made out against the petitioners. Hence, either the first FIR concerning Crime No.62/2009 and entire subsequent criminal proceedings of Special Case No.76/10 pending before the Court of Special Judge (Atrocities), Datia or the second FIR concerning Crime No. 63/2009 and entire subsequent criminal proceedings of Special Case No. 16/10 pending before the Court of Special Judge (Dacoity), Datia is to be quashed.

4. Learned counsel for the petitioners has placed reliance in the case of *T. T. Antony Vs. State of Kerala and Others* 2001 Cri.L.J. 3329, in which the Hon'ble Supreme Court has held that there can be no second FIR in respect of same cognizable offence, same incident or occurrence.

Placing reliance on the above citation, it is urged by learned counsel for the petitioners that second FIR concerning Crime No.63/2009 and entire sub-

sequent criminal proceedings of Special Case No.16/10 pending before the Court of Special Judge (Dacoity) Datia, are to be quashed.

5. Learned Public Prosecutor for the respondent- State opposed the prayer of the petitioners and prayed for dismissal of this petition.

6. Heard rival contentions of the parties and perused the documents available on record.

7. It is apparent that two FIRs have been got registered arising out of one common incident by two different complainants. Prosecution story and place of occurrence is same. Witnesses are common in both cases.

8. Considering the legal aspect and the facts and circumstances of the case, the second FIR concerning Crime No.63/2009 and entire subsequent criminal proceeding concerning Special Case No. 16/10, pending before the Court of Special Judge (Dacoity), Datia are hereby quashed. However, it is directed to learned Special Judge (Atrocities), Datia where Special Case No.76/10 is pending concerning Crime No.62/2009, that he/she shall consider the material on record in order to make out that whether prima facie the offence under Section 353 of IPC as well as Section 11/13 of M. P. D.V.P.K. Act is made out against the petitioners. If the offence is made out against the petitioners, then proceed in accordance with law.

9. With the aforesaid direction, this petition stands disposed of. Copy of this order be sent to both the Courts concerned for necessary information and compliance.

Petition disposed of.

I.L.R. [2011] M. P., 811

MISCELLANEOUS CRIMINAL CASE

Before Mr. Justice I.S. Shrivastava

M.Cr.C. No.7746/2010 (Indore) decided on 13 January, 2011

PRABHULAL

... Applicant

Vs.

C.B.N. GAROTH

... Non-applicant

Narcotic Drugs and Psychotropic Substances Act (61 of 1985), Section 37(1)(b)(ii) & 67 - Satisfaction of Court - Admissibility of the statement made u/s 67 of the Act is not to be considered at the time of consideration of bail.

(Para 13)

स्वापक औषधि और मनःप्रभावी पदार्थ अधिनियम (1985 का 61), धारा 37(1)(बी)(ii) व 67 - न्यायालय का समाधान - जमानत पर विचार करते समय अधिनियम की धारा 67 के अन्तर्गत किये गये कथन की ग्राह्यता पर विचार नहीं किया जाना चाहिए।

Cases referred :

2009 CrLJ 2407, (2007) 3 SCC (Cri) 505, (2001) 7 SCC 673.

Nilesh Dave, for the applicant.

Manoj Soni, for the non-applicant/CBN.

J U D G M E N T

I.S. SHRIVASTAVA, J. :-This order is for the disposal of the first bail application filed under section 439 of Cr.P.C by the applicant Prabhulal. The applicant is involved in Crime no. 02/2010 of Police Station- CBN Garoth, District- Mandsaur registered under sections 8/18 (b) and 8/29 of the NDPS Act.

2. According to the prosecution story, on 31/03/2010, Shri D. S. Meena, Inspector received an information from the informer that Kaluram along with one companion who may be Chitarmal Dhakad R/o Muwada, Police- Station Ratangarh would transport opium by his motorcycle bearing registration no. M.P.-44-MB-5257 in between 15.00 to 16.00 at Gandhi Sagar Gate no. 3 near Hanuman Temple.; he would deliver it to some smuggler. Hence on this information, panchanama about the information of the informer was prepared and raid party was arranged which reached the spot along with independent witnesses.

3. On the arrival of motorcycle bearing registration no. MP.-44-MB-5257 on which two persons were riding, it was found that they waited for someone about 15-20 minutes. Thereafter, as soon as they started motorcycle and his companion was sitting with the bag on the motorcycle, they were intercepted by the police party. On interrogation, driver of the motorcycle gave his introduction as Kalu S/o Omkarlal and pillion rider gave his introduction as Chhitarmal S/o Mangilal and they told the bag of their ownership. They were apprised with the information and after obtaining their due consent, the bag was searched in which two transparent white polythene bags were found which contained blackish substance which was found as opium on test and accused Kalu and Chhitarmal also accepted it to be opium. On weightment, each polythene bag was containing 8 kg opium and in all 16 kg opium. Thereafter, after obtaining two samples each of 25 grams, samples were sealed and the

remaining quantity was also sealed on the spot and both the accused were arrested and after returning to police station, the above offence was registered.

4. On interrogation, accused Kalu informed that one week before, he went to Muwada in his relationship, where accused / applicant Prabhulal told him that he had to deliver 15 – 20 kg opium to some party and Prabhulal asked him to supply 3-4 kg opium. Hence on 30/03/2010, Kalu received Rs. 90,000/- as an advance and delivered 3 kg opium at the house of Prabhulal. At the same time, Prabhulal also purchased 10 kg opium from Chhitarmal. In this opium, Prabhulal also added his 3 kg opium. Thereafter, from this 16 kg opium, Prabhulal prepared two polythene bags each of 8 kg opium. Thereafter, on 31/03/2010, he sent the said opium with Kalu and Chhitarmal to Gandhi Sagar Gate no. 3 and on the other motorcycle, he proceeded for Ghandi Sagar on 31/03/2010. Prabhulal was to receive the possession of the said opium from Kalu and Chhitarmal and thereafter, he was to deliver it to some other party, but Prabhulal could not meet Kalu and Chhitarmal at the given time and Kalu and Chhitarmal were arrested. Applicant Prabhulal also confirmed this fact by his statement recorded under section 67 of the NDPS Act before his arrest. The same fact was also confirmed by the statement of Kalu and Chhitarmal recorded under section 67 of the NDPS Act, hence the applicant Prabhulal has been arrested.

5. It has been argued on behalf of the applicant that the quantity of the seized opium is below the commercial quantity. Nothing has been seized from the possession of the applicant and he has been falsely implicated. His statement under section 67 of the NDPS Act is not admissible, as it was recorded in custody of police. Hence he be released on bail.

6. Respondent's counsel opposed this bail application and it has been argued that the applicant is a smuggler of the opium and seized 16 kg opium was managed by him and supplied to Kalu and Chhitarmal for transportation which was to be delivered to some smuggler. His confessional statement is supported by the statement of co-accused persons. The seized op. um is in commercial quantity, hence bar under section 37 of the NDPS Act is applicable. There is possibility of abscontion of the applicant, hence this bail application be dismissed.

7. Considered the circumstances and the case diary perused.

8. It reveals that the seized 16 kg opium was of the ownership of the

applicant Prabhulal and it was supplied by him to Kalu and Chhitarmal for delivery to some smuggler. The statement of Prabhulal has been recorded before his arrest and is admissible under section 67 of the NDPS Act.

9. Though it has been argued by the applicant's counsel that in the case of *Union of India Vs. Balmukund and others* [2009 Cri.L.J. 2407], it has been held that:

"Exhibits 20 and 21 categorically show that they were interrogated. If they were interrogated while they were in custody, it cannot be said that they had made a voluntary statement which satisfies the conditions precedent laid down under Section 67 of the Act. We in the backdrop of the aforementioned events, find it difficult to accept that such statements had been made by them although they had not been put under arrest. As the authorities under the Act can always show that they had not formally been arrested before such statements were recorded, a holistic approach for the aforementioned purpose is necessary to be taken.

The Court while weighing the evidentiary value of such a statement cannot lose sight of ground realities. Circumstances attendant to making of such statements should, in our considered opinion, be taken into consideration "

10. In reply, it has been argued by the respondent's counsel that at this stage, the acceptability of the statement under section 67 of the NDPS Act of the accused could not be considered, but it is a matter of trial.

11. Considered the arguments on this point. The point for consideration is that whether the admissibility of statement made under section 67 of the NDPS Act is to be considered at the time of consideration of bail. In the case of *Union of India Vs. Shiv Shankar Kesari* [(2007) 3 SCC (Cri) 505], it has been held that acceptability of statement recorded under section 67 of the NDPS Act is a matter of trial. This case was for the grant of bail to the accused while in the case of *Union of India Vs. Balmukund and others* (supra) the appellant was acquitted by the High Court. Therefore, both these cases are distinguishable. From the facts of this case, it reveals that the statement of Prabhulal was recorded when he was not under arrest and prima facie, it

reveals that he was a master mind of supply of 16 kg opium to smuggler and he arranged for 16 kg through Kalu and Chhitarmal, therefore, for the consideration of this bail application, the prima facie case is to be seen.

12. The seized opium is in commercial quantity, therefore, bar under section 37 of the NDPS Act also affects. In the case of *State of M.P Vs. Kajad* [(2001) 7 SCC.673], the Apex Court held that :

"Section 37 of the NDPS Act enjoins that a person accused of an offence punishable for a term of imprisonment of five years or more, shall generally be not released on bail. Negation of bail is the rule and its grant an exception under sub-clause (ii) of Clause (b) of Section 37 (1). For granting the bail the court must, on the basis of the record produced before it, be satisfied that there are reasonable grounds for believing that the accused is not guilty of the offences with which he is charged and further that he is not likely to commit any offence while on bail. It has further to be noticed that the conditions for granting the bail, specified in clause (b) of sub section (1) of section 37 are in addition to the limitations provided under the Code of Criminal Procedure or any other law for the time being in force regulating the grant of bail. Liberal approach in the matter of bail under the NDPS Act is uncalled for."

Similarly, in the case of *Union of India Vs. Shiv Shankar Kesari* [(2007) 3 SCC (Cri) 505], it has been held that :

"As section 37(1)(b)(ii) of the NDPS Act, 1985 itself provides that no person shall be granted bail unless the two conditions are satisfied. They are: the satisfaction of the Court that there are reasonable grounds for believing that the accused is not guilty and that he is not likely to commit any offence while on bail. Both the conditions have to be satisfied. If either of these two conditions is not satisfied, the bar operates and the accused cannot be released on bail"

13. On the basis of the above discussions, I am of the view that the admissibility of the statement made under section 67 of the NDPS Act is not to be considered at the time of consideration of bail. Therefore, there are no grounds

for the satisfaction of the Court under section 37 (1) (b) (ii) of the NDPS Act. Hence, the appellant Prabhulal cannot be enlarged on bail. Accordingly, this bail application is dismissed.

C c as per rules.

Application dismissed.

I.L.R. [2011] M. P., 816

MISCELLANEOUS CRIMINAL CASE

Before Mr. Justice U.C. Maheshwari

M.Cr.C. No.9047/2009 (Jabalpur) decided on 15 January, 2010

SUNIL SAXENA

... Applicant

Vs.

STATE OF M.P.

... Non-applicant

Criminal Procedure Code, 1973 (2 of 1974), Section 437(6) - Bail.-
Seven bail applications of the applicant already rejected - Trial not concluded within sixty days - Held - Applicant not entitled for bail in view of later part of Section 437(6) as on earlier occasions looking to the seriousness of offence and availability of sufficient prima facie circumstances, his bail applications were rejected - Prima facie circumstances available showing that by practicing fraud and fabricating documents applicant has misappropriated huge amount of Rs.25,05,793 - Bail application rejected as benefit of provision of Section 437(6) cannot be granted. (Para 8).

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 437(6) - जमानत - पूर्व में आवेदक के सात जमानत आवेदन नामंजूर - 60 दिनों के भीतर विचारण पूर्ण नहीं - अभिनिर्धारित - धारा 437(6) के बाद के भाग को दृष्टिगत रखते हुये आवेदक जमानत का हकदार नहीं क्योंकि पूर्व अवसरों पर अपराध की गंभीरता तथा पर्याप्त प्रथम दृष्ट्या परिस्थितियों की उपलब्धता को देखते हुए, उसके जमानत आवेदन नामंजूर किये गये - उपलब्ध प्रथम दृष्ट्या परिस्थितियाँ दर्शाती हैं कि कपट एवं दस्तावेजों की कूटरचना करके आवेदक ने एक बड़ी रकम 25,05,739 रुपये का दुर्विनियोजन किया है - जमानत आवेदन नामंजूर क्योंकि धारा 437(6) के उपबंध का लाभ नहीं दिया जा सकता।

Cases referred :

2000(1) MPHT 661, 2004(4) MPHT 5, 2008(2) JLJ 237, 1987 CrLJ 55, 2006 CrLJ 1594.

Jaideep Sirpurkar, for the applicant.

R.N. Yadav, P.L., for the non-applicant/State.

ORDER

U.C. MAHESHWARI, J. :- Heard.

1. This 7th repeated petition under Section 439 of Cr.P.C. is preferred for grant of bail to the applicant as he is in custody since 15.12.2007 in connection of Crime No.58/07, registered at P. S. Chourai District Chhindwara for the offence under Section 420, 467, 409 and 468/34 of IPC.
2. As alleged the applicant being cashier in a Co-operative Bank by practicing fraud and fabricating the documents misappropriated the sum of Rs.25,05,793/-.
3. It is noted that on earlier occasions before filing the charge sheet and thereafter as many as six applications of the applicant have been dismissed either on merits or otherwise and in continuation of the same after framing the charges this 7th application is preferred.
4. The applicant's counsel initially by making his submissions on merits of the matter said that taking in to the period of judicial custody suffered by him he be released on bail. In addition, by referring the provision of Section 437 (6) of Cr. P. C. it was argued that even after framing the charges on 30.5.2009 the trial has not been concluded within sixty days or subsequent to such period till today. In continuation he said that in view of the mandatory provision of aforesaid Section 437 (6) of Cr. P. C. the applicant deserves to be released on bail. In support of this argument he placed his reliance on decided case of this Court in the matter of *Ram Kumar Vs. State of Madhya Pradesh* reported in 2000 (1) MPHT 661 and also on a case of Chhattisgarh High Court in the matter of *Godavari Bai Vs. State of Chhattisgarh* reported in 2004 (4) MPHT 5 and prayed for bail on this count also.
5. On the other hand while opposing the aforesaid prayer learned P.L. said that in view of earlier dismissal of the applicant's applications in this regard on merits, according to the case, applicant being cashier of alleged Co-operative Bank by practicing fraud and fabricating the documents committed the offence of misappropriation of the sum of Rs.25,05,793/- for which sufficient evidence is available in the case diary as well as in the charge-sheet, therefore, the applicant does not deserve for extending the benefit of bail even under the provision of Section 437 (6) of Cr. P. C., he further said that by virtue of later part of such sub-section after recording the reasons the Court is em-

powered to dismiss such application, in such premises the prayer for dismissal of the bail petition is made.

6. Having heard perused the case diary and the papers placed on the record. It is not in dispute that earlier six applications of the applicant in this regard have been dismissed on merits or otherwise as the case was not found fit for grant of bail. It appears from the earlier order-sheets of the trial Court that the trial of the case has been delayed because of the conduct of the applicant himself. It is true that earlier part of Section 437 (6) of Cr. P. C. speaks that if the trial of non-bailable offence is not concluded within sixty days from the first date fixed for taking the evidence in the case then such person or accused shall, if he is in custody during the whole of the said period, be released on bail to the satisfaction of the Magistrate, but later part of this sub-section empowered the Magistrate to dismiss such application after recording the reasons in the available circumstances of the case.

7. The case laws cited by the applicant's counsel were decided taking into consideration the available circumstance of such case in which the later part of sub-section (6) of Section 437 of Cr. P. C. was not found to be invoked. So far the principles laid down in the aforesaid cited cases are concerned this Court does not have any dispute but in view of the distinguishable feature of the case the same is not applicable to the case at hand. Earlier on arising the occasion while deciding the case of *Arjun Sahu Vs. State of Madhya Pradesh* reported in 2008 (2) J.L.J. 237. after taking into consideration the "*Ram Kumar's case*" (Supra) in view of the law laid down by the Division Bench of Delhi High Court in the matter of *Robert Lendi Vs. The Collector of Customs and another* reported in 1987 Cr.L.J. 55 and the decision of Jharkhand High Court in the matter of *Didar Singh Vs. State of Jharkhand* reported in 2006 Cr. L. J. 1594, it was held that in the available facts and circumstance of the case after recording the reasons the bail application of the accused which is filed even after sixty days from the first date fixed for recording the evidence can be dismissed in the later part of Section 437 (6) of Cr. P.C. and consequently, the bail application of the applicant Arjun Sahu was dismissed in the above mentioned case.

8. In the present matter on earlier occasions looking to the seriousness of the offence and availability of the sufficient prima-facie circumstance against the applicant the case was not found fit for grant of bail and such applications were dismissed. Even after framing the charges such situation has not been

changed only on efflux of time the applicant could not be released on bail. Still prima-facie circumstances are available against the applicant showing that by practicing the alleged fraud and fabricating the documents he committed the offence of misappropriation of the huge amount of Rs.25,05,793/-. I am also informed by the State counsel that all the material prosecution witnesses are yet to be examined in the trial in near future and on releasing the applicant on bail he may influence them. The order sheets of the trial Court also showing that the trial has been delayed due to conduct of the applicant himself and not any act of the State. In such circumstances the applicant cannot be benefited by granting the bail under the provision of Section 437 (6) of Cr. P. C. consequently, this seventh repeated bail petition is hereby dismissed.

Petition dismissed:

I.L.R. [2011] M. P., 819

MISCELLANEOUS CRIMINAL CASE

Before Mr. Justice N.K. Gupta

M.Cr.C. No.13007/2010 (Jabalpur) decided on 17 January, 2011

HARSHITA @ HARSHLATA

... Applicant

Vs.

STATE OF M.P.

... Non-applicant

Criminal Procedure Code, 1973 (2 of 1974), Section 438 - No straitjacket formula can be fixed for not granting of anticipatory bail - Provisions of S. 438 are to be applied by balancing between the rights of the applicant and investigation of the police.

Since the deceased was a working woman and there is nothing alleged about the dowry demand in the first two dying declarations, police cannot be permitted to make harassment to the applicant. ... In the present case, most of the investigation is over. Police has not to seize anything from the applicant. Witnesses inclusive of parents and relatives of the deceased may be examined by the police and therefore, if the applicant is enlarged on anticipatory bail, there will be no adverse effect on the investigation.

(Para 8)

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 438 - अग्रिम जमानत न दिये जाने के लिए कोई स्ट्रेटजेकेट फार्मूला तय नहीं किया जा सकता - धारा 438 के उपबंधों को आवेदक के अधिकारों तथा पुलिस के अन्वेषण के मध्य संतुलन कर लागू किया जाना चाहिए।

Cases referred :

AIR 1987 SC 737, *Sidharam Satlingappa Mhetre Vs. State of M.P.* (Cr.A. No.2271/2010 decided on 02.12.2010 by Apex Court).

Pramod Thakre, for the applicant.

Smt. Sushila Paliwal, P.P., for the non-applicant/State.

ORDER

N.K. GUPTA, J. :- Heard the learned counsel for the parties.

2. The applicant has an apprehension of her arrest in the crime No. 237/2010 registered at Police Station Athaner, District Betul for offence punishable under Sections 498-A, 304-B read with section 34 of I.P.C. and section 3/4 of Dowry Prohibition Act.

3. Learned counsel for the applicant submits that applicant no.1 is the married sister of husband of the deceased. Deceased, wife of the brother of the applicant no.1 has allegedly committed suicide. She was a teacher and therefore, an earning member of the family. Applicant is living away from Athaner and therefore, there is no role of the applicant in the life of the deceased or her husband.

4. Learned counsel for the applicant further submits that the deceased gave one dying declaration before Inspector of the concerned police station in the presence of Block Medical Officer, in which she has stated that due to an accident, she was burnt. Again she had given a dying declaration at Nagpur before the Executive Magistrate, in which she had stated that some quarrel took place with the mother-in-law of the deceased and the mother-in-law of the deceased said that when she was taking bigger steps without her consultation, then why she was consulting for a small thing and therefore, under provocation deceased had committed suicide. Two days after this second dying declaration, one relative of the deceased, who was in police had prepared one more dying declaration inclusive of allegations of dowry demand etc. Actually the deceased was a working woman and she was earning. Therefore, the deceased did not say anything about the dowry demand in her first two dying declarations. It is alleged that due to control of the parents-in-laws, she did not have any talking terms with her parental relatives and therefore, such relatives had no knowledge of relations between the deceased and the applicant. However, one of the relatives of the deceased, who is in police has prepared dying declaration by his own but at the time of third

dying declaration the deceased was in coma. This dying declaration was prepared on computer, which was not possible to be prepared by the deceased. Police has not registered the case for offence punishable under section 306 of I.P.C, whereas no offence under section 304-B of I.P.C. is made Out. The applicant is a reputed citizen of the locality who has no criminal past alleged against her. She is living at Betul. She has a small child and there is nobody except the applicant to look after the child. Under these circumstances, she prays for anticipatory bail.

5. Learned Public Prosecutor for the State opposes the application.

6. Learned counsel for the objector submits that offence is grave and therefore, on the basis of ratio laid in the judgment of Hon'ble the Apex Court in the case of "*Samundra Singh Vs. State of Rajasthan*" AIR 1987 SC 737, this Court cannot give any anticipatory bail in such cases.

7. After considering the submissions made by the learned counsel for the parties, it would be proper to refer the following dictum laid by Hon'ble the Apex Court in the case of "*Sidharam Satlingappa Mhetre Vs. State of Maharashtra and others*" (Criminal Appeal No.2271/2010 decided on 2/12/2010) :-

"121. No inflexible guidelines or straitjacket formula, can be provided for grant or refusal of anticipatory bail. We are clearly of the view that no attempt should be made to provide rigid and inflexible guidelines in this respect because all circumstances and situations of future cannot be clearly visualized for the grant or refusal, of anticipatory bail. In consonance with the legislative intention the grant or refusal of anticipatory bail should necessarily depend on facts and circumstances of each case. As aptly observed in the Constitution Bench decision in Sibbia's case (supra) that the High Court or the Court of Sessions to exercise their" jurisdiction under section 438 Cr.P.C. by a wise and careful use of their discretion which by their long training and experience they are ideally suited to do. In any event, this is the legislative mandate which we are bound to respect and honour."

8. Present view of Hon'ble the Apex Court is very much clear in the case of "*Sidhram Satlingappa Mhetre*" (Supra) and therefore, no straitjacket

formula can be fixed for not granting of anticipatory bail. Therefore, dictum laid in the case of "*Samundra Singh*" (Supra) cannot be followed. In the present case, there is no allegation against the applicant of dowry demand in first two dying declarations, whereas third dying declaration appears to be prepared by some relative of the deceased, who is in police, which does not bear any medical certificate etc. and which is prepared by computer print. Since the deceased was a working woman and there is nothing alleged about the dowry demand in the first two dying declarations, police cannot be permitted to make harassment to the applicant. Provisions of section 438 of Cr.P.C. are to be applied by balancing between the rights of the applicant and investigation of the police. In the present case, most of the investigation is over. Police has not to seize anything from the applicant. Witnesses inclusive of parents and relatives of the deceased may be examined by the police and therefore, if the applicant is enlarged on anticipatory bail, there will be no adverse effect on the investigation.

9. After hearing the learned counsel for the parties and keeping in view the submissions made by learned counsel for the applicants and looking to the facts and circumstances of the case, I am of the view that this is a fit case for grant of anticipatory bail to the applicant. Consequently this application of applicant under Section 438, Cr.P.C. is hereby allowed.

10. It is directed that in the event of arrest, present applicant **Harshita @ Harshlata**, shall be released on bail on her furnishing a personal bond in the sum of **Rs 35,000/- (Rupees thirty five thousand only)** with a solvent surety of the like amount to the satisfaction of Arresting Authority.

11. The applicant shall make herself available for interrogation by a police officer as and when required. She shall further abide by the other conditions enumerated in sub-Section (2) of Section 438 of Cr.P.C.

12. This order shall remain in force for a period of 30 days and in the meanwhile, if the applicant so desires, may move an application for regular bail before the competent Court. Certified copy as per rules.

Order accordingly.
