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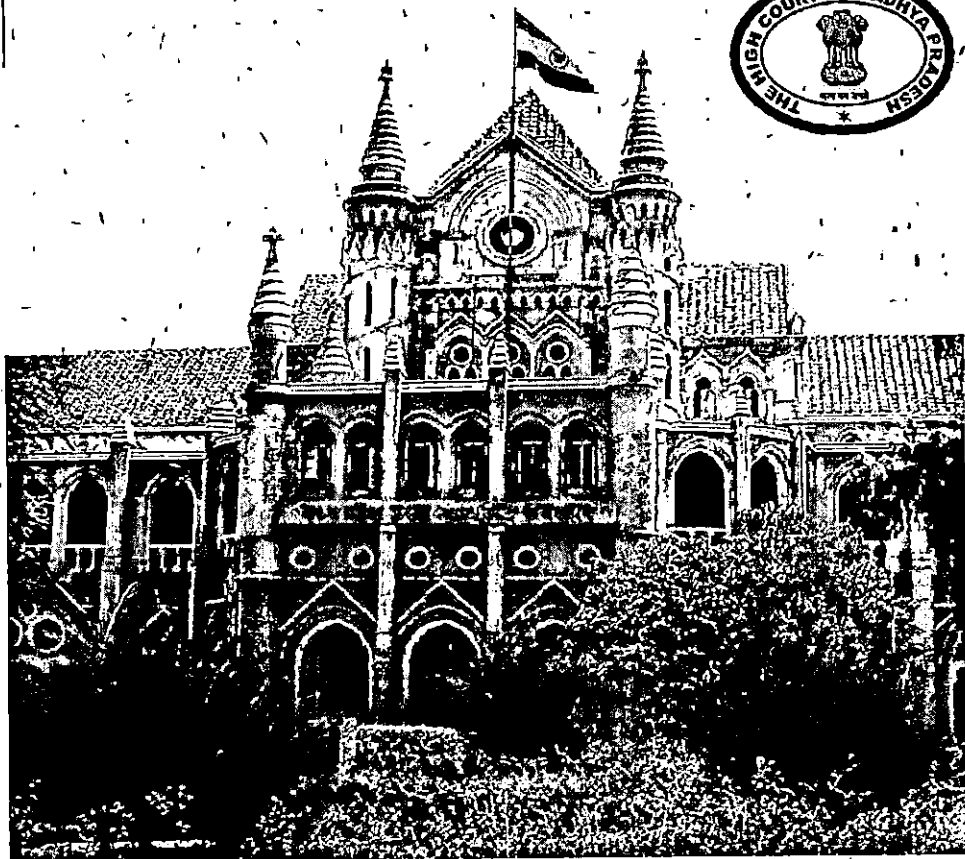
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विशेष सूचना

1. आई.एल.आर. के मार्च अंक में जनवरी से मार्च तक का इण्डैक्स प्रकाशित किया जा रहा है ।
 2. बाइण्डर्स बाइण्डिंग करते समय निम्न बिंदुओं पर ध्यान दें :—
 - (अ) जनवरी एवं फरवरी के मासिक इण्डैक्स को अलग करें।
 - (ब) फरवरी अंक से (नोट्स ऑफ केसेस) क्रमांक 11, 12 व 13 अलग करने के पश्चात मार्च में दिया गया पृष्ठ लगाकर बाइण्ड करें।
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NOTES OF CASES SECTION

Short Note

*(11)

Before Mr. Justice Sujoy Paul

W.P. No. 7169/2011 (Gwalior) decided on 2 December, 2011

ALOK GUPTA

...Petitioner

Vs.

M.P. PROFESSIONAL EXAMINATION BOARD & ors. ...Respondents

A. Constitution – Article 226 – Examination – Question and Answer – Judicial Review of incorrect questions and wrong answers – Held – Limited to the extent of seeing whether any reasonable body of men well-versed in the particular subject would regard it as correct.

क. संविधान – अनुच्छेद 226 – परीक्षा – प्रश्न और उत्तर – गलत प्रश्नों व गलत उत्तरों का न्यायिक पुनर्विलोकन – अभिनिर्धारित – का विस्तार यह देखने तक सीमित है कि क्या कोई व्यक्तियों का युक्तियुक्त समूह जो विशिष्ट विषय में निपुण है उसे सही माना जायेगा या नहीं।

B. Constitution – Article 226 – Questions – Discrepancy in framing of questions – Held – Writ Court, in absence of any malice against experts, can not sit as an Appellate Authority to examine the same unless the questions and answers selected by the experts are proved to be wrong.

ख. संविधान – अनुच्छेद 226 – प्रश्न – प्रश्न विरचित करने में विसंगति – अभिनिर्धारित – रिट न्यायालय विशेषज्ञों के विरुद्ध किसी विद्वेष की अनुपस्थिति में अपीलीय प्राधिकारी की तरह उसका परीक्षण करने के लिये नहीं बैठ सकता जब तक यह साबित नहीं हो जाता कि विशेषज्ञों द्वारा चयनित प्रश्न व उत्तर गलत थे।

C. Constitution – Article 226 – Impact of questions – Effect of discrepancy in framing questions and answers has similar impact on all the candidates, no interference is warranted.

ग. संविधान – अनुच्छेद 226 – प्रश्नों का प्रभाव – प्रश्न व उत्तर विरचित करने में विसंगति सभी छात्रों पर समान प्रभाव डालती है, हस्तक्षेप की आवश्यकता नहीं है।

Cases referred :

AIR1983 SC 1230, AIR 1990 MP 253, AIR 1994 MP 164, 2004(3) Kar LJ 218.

Anil Mishra, Prashant Sharma, N.K. Gupta, & D.S. Raghuvanshi for the petitioner.

B.K. Sharma, G.A. for the respondent/State.

Deepak Chandna, for the respondent/Board.

Short Note (DB)

*(12)

Before Mr. Justice Sanjay Yadav & Mr. Justice T.K. Kaushal

W.P. No. 13913/2006(S) (Jabalpur) decided on 12 December, 2011

D. SUBRAHMANYAM (Dr.)

...Petitioner

Vs.

DR. D.K. PANDEY & ors.

...Respondents

A. Words and Phrases – Weed Science – Weed is a plant that is objectionable and interfere with the activities and welfare of man – They are no separate group of plants.

क. शब्द और वाक्यांश – घासपात/कुतूष विज्ञान – घासपात आपत्तिजनक पौधा है और मनुष्य के कार्यकलाप एवं कल्याण में हस्तक्षेप करता है – वे पौधों का पृथक समूह नहीं है।

NOTES OF CASES SECTION

B. Service Law – Conditions of Service – Conditions of service are intended to be construed reasonably and too technical a view can defeat the essential spirit and intent embodied in them.

ख. सेवा विधि – सेवा की शर्तें – सेवा की शर्तों का युक्तियुक्त रूप से अर्थान्वयन आशयित है और अति तकनीकी दृष्टिकोण उनमें समाविष्ट सारभूत भावना एवं आशय को विफल कर सकता है।

C. Service Law - Essential Qualifications - It is the screening committee comprising of expert who are the best judge to ascertain whether a candidate fulfill the essential qualifications – When subject experts constitute the panel of selection committee, selection by them should not be lightly set aside.

ग. सेवा विधि – अनिवार्य अर्हता – वह छानबीन समिति है जिसमें विशेषज्ञ समाविष्ट हैं जो यह सुनिश्चित करने के लिए उत्तम निर्णय देता है कि क्या अभ्यर्थी अनिवार्य अर्हताओं की पूर्ति करता है – जब विषय विशेषज्ञ चयन समिति के पैनल को गठित करते हैं तब उनके द्वारा किये गये चयन को हल्केपन से अपास्त नहीं किया जाना चाहिए।

D. Service Law – Selection Committee – Assignment of reasons – Unless statutes provides for the selection committee, which is neither judicial nor adjudicatory but purely an administrative, is under no legal obligation to record reasons in support of its decision.

घ. सेवा विधि – चयन समिति – कारण देना – जब तक कि चयन समिति, जो न तो न्यायिक है ना ही अधिनिर्णायक है बल्कि शुद्ध रूप से प्रशासनिक है, के लिये कानून उपबंध नहीं करता, वह अपने निर्णय के समर्थन में कारण अभिलिखित करने के लिये विधिक बाध्यता के अधीन नहीं है।

The order of the Court was delivered by : SANJAY YADAV, J.

Cases referred :

AIR 1980 SC 1547, (1980) 3 SCC 202, AIR 1976 SC 1404, AIR 1980 SC 2141, AIR 2000 SC 3457, AIR 1975 SC 446, AIR 1990 SC 434, AIR 1992 SC 1806, AIR 1994 SC 579.

D.K. Dixit, for the petitioner.

Praveen Dubey, for the respondent No.1.

S.A. Dharmadhikari, for the respondents No. 2 to 4.

Short Note

*(13)

Before Mr. Justice Anil Sharma

M.Cr.C. No. 6332/2011 (Gwalior) decided on 9 December, 2011

MAHESH KUMAR DHAWAN

...Applicant

Vs.

STATE OF M.P. & anr.

...Non-applicants

A. Penal Code (45 of 1860), Sections 493 & 495, Criminal Procedure Code, 1973 (2 of 1974), Section 198 – Mandatory – Provisions of Section 198 are mandatory and the word complaint used in Section 198 does not include police report – Cognizance of offence under Section 493, 495 can not be taken by a Magistrate on the basis of Police Report.

क. दण्ड संहिता (1860 का 45), धाराएँ 493 व 495, दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 198. – आज्ञापक – धारा 198 के उपबंध आज्ञापक हैं और धारा 198 में प्रयुक्त शब्द 'शिकायत' पुलिस रिपोर्ट को शामिल नहीं करती – पुलिस रिपोर्ट के आधार पर मजिस्ट्रेट द्वारा धारा 493, 495 के अंतर्गत अपराध का संज्ञान नहीं लिया जा सकता।

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				•	•	233	=	•	•	*25
				•	•	240	=	•	•	416

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सिविल न्यायालय नियम (म.प्र.) 1961, नियम 105 — देखें — लोक प्रतिनिधित्व अधिनियम, 1951, धारा 100(1)(डी)(iii)(iv) (श्रीनिवास तिवारी वि. राजकुमार उरमलिया) ...464

सिविल प्रक्रिया संहिता (1908 का 5), धारा 9 — सिविल वाद — अधिसंभाव्यता की प्रबलता — सिविल प्रकरणों में, मामले के उचित निर्णय पर पहुंचने के लिये उस विशिष्ट प्रकरण के तथ्यों एवं परिस्थितियों में अधिसंभाव्यता की प्रबलता की अत्यावश्यक एवं महत्वपूर्ण भूमिका है। (शान्ता बाई वि. पुष्करलाल) ...*9

सिविल प्रक्रिया संहिता (1908 का 5), धारा 89 — देखें — न्यायालय फीस अधिनियम, 1870, धाराएँ 35, 16सी, (रमेश चन्द्र वि. म.प्र. राज्य) (DB)...320

सिविल प्रक्रिया संहिता (1908 का 5), धारा 100 — विधि का सारवान प्रश्न — उच्च न्यायालय तथ्यों के समवर्ती निष्कर्षों में हस्तक्षेप नहीं कर सकता जब तक कि वे अनुचित नहीं हैं या अभिलेख पर उपलब्ध सामग्री के विपरीत नहीं हैं। (देव प्रकाश गुलाटी वि. नन्द कुमार) ...495

सिविल प्रक्रिया संहिता (1908 का 5), धारा 100 — विधि का सारवान प्रश्न — विरचित किये गये विधि के प्रश्न को विधि का सारवान प्रश्न होना नहीं कहा जा सकता क्योंकि उक्त प्रश्न का उत्तर देने के लिये संपूर्ण वाद पत्र, लिखित कथन, साक्ष्य एवं दस्तावेजों पर पुनर्विचार करना अपेक्षित है — विधि के सारवान प्रश्न पर विचारोपरांत यह नहीं कहा जा सकता कि किसी महत्वपूर्ण साक्ष्य जो प्रश्न की जड़ तक जाती हो का विचार या मूल्यांकन नहीं किया गया — चूंकि विरचित प्रश्न, विधि का सारवान प्रश्न नहीं है और अपील में विधि का कोई अन्य सारवान प्रश्न उत्पन्न नहीं होता, इसलिए द्वितीय अपील खारिज की गई। (रूप लाल वि. रमेश प्रसाद) ...486

सिविल प्रक्रिया संहिता (1908 का 5), धारा 105 — आदेश की वैधता — विचारण न्यायालय के निर्णय से व्यथित व्यक्ति को विधान मंडल मामले के निर्णय को प्रभावित करने वाले किसी आदेश में किसी त्रुटि, भूल या अनियमितता को अपील में आक्षेप का आधार बनाने के लिये प्राधिकृत करता है और इसलिए, अपीली न्यायालय को उस आदेश की विधि मान्यता को विचार में लेना चाहिए था जिसके द्वारा विचारण न्यायालय ने संशोधन के लिये आवेदन को अस्वीकार किया था। (शान्ता बाई वि. पुष्करलाल) ...*9

सिविल प्रक्रिया संहिता (1908 का 5), आदेश 3 नियम 1 — देखें — साक्ष्य अधिनियम, 1872, धारा 120 (रजनी तिवारी (श्रीमति) वि. श्रीमति माग्यवती बाई) ...730

Civil Procedure Code (5 of 1908), Order 6 Rule 4 – Pleadings – Suit for cancellation of Sale deed – Where it is pleaded by the plaintiff that sale deed was executed by way of security for the loan and was nominal in nature and was not intended to be acted upon, the Courts below have not committed any error in decreeing the suit filed by the plaintiff. [Kulwant Kaur (Smt.) Vs. Sukhraje] ...146

Civil Procedure Code (5 of 1908), Order 9 Rule 13 – Setting aside ex-parte decree – Written statement was filed by defendant beyond the period of 90 days – Rent was deposited within time and defence was struck off – Adjournment was taken for cross examination of Plaintiff – Thereafter the defendant was proceeded ex-parte and decree was passed – Application for setting aside ex-parte decree was filed after 30 days – No application for condonation of delay was filed – Only reason assigned in the application was the time required for obtaining certified copy of decree – Provisions of Section 12 of Limitation Act does not apply to proceedings under Order 9 Rule 13 – Conduct of respondent in original suit in adopting the delaying tactics does not entitle him for condonation of delay – Order of appellate Court setting aside ex-parte decree set aside. [Shri Jagat Guru Shankrachariya Swami Swaroopanand Saraswati Vs. Siddhu Engineering Works] ...562

Civil Procedure Code (5 of 1908), Order 13 Rule 10 – See – Representation of the People Act, 1951, Section 100(1)(d)(iii)(iv) [Shriniwas Tiwari Vs. Rajkumar Urmalia] ...464

Civil Procedure Code (5 of 1908), Order XX Rule 12 – Mesne Profit – Plaintiff is bereft of any pleadings in respect of mesne profit – Appellants are not entitled to any mesne profit. [Sudha Verma (Smt.) Vs. Radhavallabh Sharma] ...519

Civil Procedure Code (5 of 1908), Order 22 – Legal Representatives – Original plaintiff died during the pendency of civil suit and his legal heirs were brought on record – Defendant filed appeal against decree but 'A' one of the L.R. was not made party – 'A' also filed appeal against part dismissal of suit – Held – As 'A' had also filed cross appeal and other legal representatives were on record, first appeal and second appeal filed by defendant was maintainable and had not abated. [Gajendra Rao Vs. Murti Shri Ganpati Ji Maharaj] ...*4

सिविल प्रक्रिया संहिता (1908 का 5), आदेश 6 नियम 4 - अभिवचन -
विक्रय विलेख के निरस्तीकरण के लिए वाद - जब वादी द्वारा अभिवाक् किया गया है कि विक्रय पत्र को ऋण के लिए प्रतिमूर्ति के रूप में निष्पादित किया गया और नाममात्र प्रकृति का था तथा उस पर कार्यवाही किये जाने के आशय से नहीं था, वादी द्वारा प्रस्तुत वाद डिक्रीत करने में निचले न्यायालयों ने कोई मूल कारित नहीं की है। (कुलवंत कौर (श्रीमति) वि. सुखराजे) ...146

सिविल प्रक्रिया संहिता (1908 का 5), आदेश 9 नियम 13 - एकपक्षीय डिक्री का अपास्त किया जाना - प्रतिवादी द्वारा 90 दिनों की अवधि के पश्चात् लिखित कथन प्रस्तुत किया गया - समय के भीतर माड़ा जमा किया गया और बचाव को निकाल दिया गया - वादी के प्रतिपरीक्षण हेतु समय लिया गया - तत्पश्चात् प्रतिवादी पर एकपक्षीय कार्यवाही की गई और डिक्री पारित की गई - एकपक्षीय डिक्री को अपास्त किये जाने हेतु आवेदन 30 दिनों के पश्चात् प्रस्तुत किया गया - विलंब के लिए माफी हेतु कोई आवेदन प्रस्तुत नहीं किया गया - आवेदन में डिक्री की प्रमाणित प्रति अभिप्राप्त करने के लिये लगे समय का एकमात्र कारण दिया गया - आदेश 9 नियम 13 के अंतर्गत कार्यवाही में परिसीमा अधिनियम की धारा 12 के उपबंध लागू नहीं होते - मूल वाद में विलंब के दांव पेंच अंगीकृत करने के प्रत्यर्थी के आचरण से वह विलंब के लिये माफी हेतु हकदार नहीं - अपील न्यायालय का एकपक्षीय डिक्री अपास्त करने का आदेश अपास्त। (श्री जगत गुरु शंकराचार्य स्वामी स्वरूपानंद सरस्वती वि. सिद्ध इंजीनियरिंग वर्क्स) ...562

सिविल प्रक्रिया संहिता (1908 का 5) आदेश 13 नियम 10 - देखें - लोक प्रतिनिधित्व अधिनियम, 1951, धारा 100(1)(डी)(iii)(iv) (श्रीनिवास तिवारी वि. राजकुमार उरमलिया) ...464

सिविल प्रक्रिया संहिता (1908 का 5), आदेश XX नियम 12 - अंतः कालीन लाम - वाद अंतः कालीन लाम के संबंध में बिना किसी अभिवचन के है - अपीलार्थीगण किसी अंतः कालीन लाम के हकदार नहीं। (सुधा वर्मा (श्रीमति) वि. राधावल्लभ शर्मा) ...519

सिविल प्रक्रिया संहिता (1908 का 5), आदेश 22 - विधिक प्रतिनिधिगण - सिविल वाद के लंबित रहने के दौरान मूल वादी की मृत्यु हो गई और उसके विधिक वारिसों को अभिलेख पर लाया गया - प्रतिवादी ने डिक्री के विरुद्ध अपील प्रस्तुत की परन्तु एल.आर. में से एक 'ए' को पक्षकार नहीं बनाया गया - 'ए' ने भी वाद के भागतः खारिजी के विरुद्ध अपील प्रस्तुत की - अभिनिर्धारित - चूंकि 'ए' ने भी प्रति अपील प्रस्तुत की थी और अन्य विधिक प्रतिनिधिगण अभिलेख पर थे, प्रतिवादी द्वारा प्रस्तुत प्रथम अपील एवं द्वितीय अपील पोषणीय थी और उपशमन नहीं हुआ था। (गजेन्द्र राव वि. मूर्ति श्री गनपति जी महाराज) ...*4

Civil Procedure Code (5 of 1908), – Order 22, Rule 9 – Limitation Act (36 of 1963), Section 5 – Condonation of Delay – First Appeal – Joint property sale deed executed on 15/02/69 – Setting aside the abatement – Delay of 12 years - Held – Death of respondents not brought on record in time – Condonation of delay and the application for setting aside the abatement are dismissed. [Misriya (Since dead) Through L.Rs. Vs. Kishandas (Since dead)]

...744

Civil Procedure Code (5 of 1908), Order 39 Rule 1 & 2 – Encashment of Bank Guarantee – Bank Guarantee was for mobilization of advance with a view to secure the said amount – Bank guarantee has been encashed for non-performance of contract – Trial Court rightly restrained defendants from invocation and encashment of Bank Guarantee – Trial Court was also right in directing the defendants to deposit the amount as the bank guarantee was encashed after receiving the notice of the suit. [Devi Shakuntala Thakral Vs. WIG Brother (India) Pvt. Ltd.]

...*3

Civil Procedure Code (5 of 1908), Order 39 Rule 1 & 2 – Encashment of Bank Guarantee – In case of unconditional bank guarantees, interference by the Court is warranted only when there is established fraud and irretrievable damage to the promise – Bank guarantee can not be encashed if it is conditional and for inconsistent purpose. [Devi Shakuntala Thakral Vs. WIG Brother (India) Pvt. Ltd.]

...*3

Civil Procedure Code (5 of 1908), Order 39 Rule 1 and 2 – See – Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006, Section 2(0) [Madhu Vs. State of M.P.]

...*5

Civil Procedure Code (5 of 1908) – Order 39 Rule 1 and 2 – Temporary Injunction – Temporary Injunction granted in a suit ceases its effect after the dismissal of the suit – Appellate Court is required to pass an order of injunction applying the same principle – After remand by Appellate Court, order of revival of injunction must be passed during the pendency of the suit otherwise, on dismissal of suit, the said order ceases its effect. [State of M.P. Vs. Dinesh Singh]

...136

Civil Procedure Code (5 of 1908) – Order 39 Rule 2A – Breach

सिविल प्रक्रिया संहिता (1908 का 5), - आदेश 22, नियम 9 - परिसीमा अधिनियम (1963 का 36), धारा 5 - विलम्ब के लिए माफी - प्रथम अपील - संयुक्त सम्पत्ति विक्रय विलेख दिनांक 15.02.1969 को निष्पादित किया गया - उपशमन को अपास्त किया जाना - 12 वर्षों का विलम्ब - अमिनिघारित - प्रत्यर्थागण की मृत्यु को यथा समय अभिलेख पर नहीं लाया गया - विलम्ब के लिए माफी तथा उपशमन को अपास्त किये जाने का आवेदन खारिज। (मिश्रीया (मृतक) द्वारा विधिक प्रतिनिधि वि. किशनदास (मृतक)) ...744

सिविल प्रक्रिया संहिता (1908 का 5), आदेश 39 नियम 1 व 2 - बैंक गारंटी को भुनाना - अग्रिम के संग्रह हेतु, उक्त रकम को प्रतिभूत करने के उद्देश्य से, बैंक गारंटी थी-संविदा के अपालन के कारण बैंक गारंटी भुनाई गयी है - विचारण न्यायालय ने प्रतिवादीगण को बैंक गारंटी का अवलंबन लेने से एवं भुनाने से उचित रूप से अवरुद्ध किया - प्रतिवादीगण को रकम जमा करने का निदेश देने में भी विचारण न्यायालय सही था क्योंकि वाद का नोटिस प्राप्त करने के पश्चात् बैंक गारंटी भुनाई गई। (देवी शकुन्तला ठकराल वि. बिग ब्रदर्स (इंडिया) प्रा.लि.) ...*3

सिविल प्रक्रिया संहिता (1908 का 5), आदेश 39 नियम 1 व 2 - बैंक गारंटी को भुनाना - बिना शर्त बैंक गारंटी के मामले में न्यायालय का हस्तक्षेप केवल तब आवश्यक है जब कपट स्थापित है और वचन को असाध्य क्षति हुई है - बैंक गारंटी को भुनाया नहीं जा सकता यदि वह सशर्त है और असंगत प्रयोजन हेतु है। (देवी शकुन्तला ठकराल वि. बिग ब्रदर्स (इंडिया) प्रा.लि.) ...*3

सिविल प्रक्रिया संहिता (1908 का 5) आदेश 39 नियम 1 और 2 - देखें - अनुसूचित जनजाति और अन्य परम्परागत वन निवासी (वन अधिकारों की मान्यता) अधिनियम, 2006, धारा 2(0) (मधु वि. म.प्र. राज्य) ...*5

सिविल प्रक्रिया संहिता (1908 का 5) - आदेश 39 नियम 1 व 2 - अस्थायी व्यादेश - वाद में प्रदत्त अस्थायी व्यादेश का प्रभाव वाद की खारिजी के पश्चात् समाप्त हो जाता है - इसी सिद्धांत को लागू करके व्यादेश का आदेश पारित करना अपीली न्यायालय से अपेक्षित है - अपीली न्यायालय द्वारा प्रतिप्रेषण के पश्चात्, व्यादेश के पुनः प्रवर्तन का आदेश वाद लंबित रहने के दौरान पारित किया जाना चाहिए अन्यथा वाद खारिज होने पर, उक्त आदेश का प्रभाव समाप्त हो जाता है। (म.प्र. राज्य वि. दिनेश सिंह) ...136

सिविल प्रक्रिया संहिता (1908 का 5) - आदेश 39 नियम 2 ए - व्यादेश का

of Injunction – Suit was dismissed by order dated 6-1-1992 refusing leave to entertain the suit for granting interim injunction under Section 80(2) – Revisional Court passed an interim order and subsequently disposed off revision with liberty to file regular suit with further observation that the interim order passed by revisional court shall continue to remain in force till application for temporary injunction is decided by Trial Court – Suit filed by plaintiff was dismissed by order dated 11-2-1992 – Appellate Court allowed the appeal and remanded the case back to decide the suit afresh by order dated 25-3-1992 – Appellate Court did not pass any order of revival of injunction which was ceased on dismissal of suit – Trial Court granted temporary injunction on 14-10-1998 whereas the wall was demolished on 10-6-1997 – As no injunction was on force on 10-6-1997 therefore, appellants no. 2 to 5 have not committed breach of injunction. [State of M.P. Vs. Dinesh Singh] ...136

Civil Procedure Code (5 of 1908), Order 40 – Appointment of Receiver – Respondent No.1 who is a party to the suit for rendition of accounts appointed as receiver – Property in possession of respondents – Court is well equipped with ample amount of jurisdiction to exercise its penal powers to make good the loss caused by the Receiver due to failure to discharge his duties or gross negligence – No allegation of negligence, misconduct or failure to discharge duties against respondent No.1 – Apprehension in the mind of plaintiffs about failure of new Receiver to discharge his duties is understandable but is not enough to compel the Court to direct for change of Receiver – Receiver has been appointed only for furnishing the necessary accounts to the Auditor to enable him to submit his report to the Court for passing the final decree – Interfering with the appointment of respondent No.1 as receiver at this stage will further delay the proceedings in civil suit which is pending since more than 35 years – Appeal dismissed. [Prithvi Raj Sarin Vs. Ramesh Kumar Sachdeva] ...*30

Civil Procedure Code (5 of 1908), Order 41, Rule 3-A, Limitation Act (36 of 1963), Section 5 – Condonation of delay in filing appeal – Application on ground that the appellants were rustic village people and were having no knowledge of the fate of the civil suit in which they were the defendants – It was contended in the application that the appellant could know about the passing of the judgment and decree in

मंग - धारा 80 (2) के अंतर्गत अंतरिम व्यादेश प्रदान करने हेतु वाद ग्रहण करने की अनुमति अस्वीकार करते हुए आदेश दि. 06.01.1992 द्वारा वाद खारिज किया गया - पुनरीक्षण न्यायालय ने अंतरिम आदेश पारित किया और बांद में इस अतिरिक्त संप्रेक्षण के साथ नियमित वाद प्रस्तुत करने की स्वतंत्रता के साथ पुनरीक्षण का निपटारा किया कि पुनरीक्षण न्यायालय द्वारा पारित अंतरिम आदेश तब तक प्रवर्तनीय रहेगा जब तक विचारण न्यायालय द्वारा अस्थायी व्यादेश के आवेदन को निर्णित नहीं किया जाता - वादी द्वारा प्रस्तुत वाद दि. 11.02.1992 के आदेश द्वारा खारिज किया गया - अपीली न्यायालय ने अपील मंजूर की और आदेश दि. 25.03.1992 द्वारा प्रकरण को पुनः निर्णित करने के लिए प्रतिप्रेषित किया - अपीली न्यायालय ने व्यादेश के पुनः प्रवर्तन का कोई आदेश पारित नहीं किया, जो वाद खारिज हो जाने पर समाप्त किया गया - विचारण न्यायालय ने 14.10.1998 को अस्थायी व्यादेश प्रदान किया जबकि दीवार 10.06.1997 को ढहाई गई थी - चूंकि दि. 10.06.1997 को कोई व्यादेश प्रभावी नहीं था इसलिए अपीलार्थी क्र. 2 से 5 ने व्यादेश का मंग नहीं किया है। (म.प्र. राज्य वि. दिनेश सिंह) ...136

सिविल प्रक्रिया संहिता (1908 का 5), आदेश 40 - रिसीवर की नियुक्ति - प्रत्यर्थी क्र. 1 जो लेखे दिये जाने के लिये वाद का पक्षकार है, को रिसीवर नियुक्त किया गया - सम्पत्ति प्रत्यर्थीगण के कब्जे में - न्यायालय रिसीवर द्वारा अपने कर्तव्यों के निर्वहन में असफल होने के कारण एवं घोर प्रमाद से कारित हानि को पूरा कराने के लिये अपनी दाण्डिक शक्तियों का प्रयोग करने के लिये पर्याप्त अधिकारिता के साथ मलीमांति सुसज्जित है - प्रत्यर्थी क्र. 1 के विरुद्ध प्रमाद, अवचार या कर्तव्यों के निर्वहन में विफलता के कोई अभिकथन नहीं - वादीगण के मन में नया रिसीवर अपने कर्तव्यों के निर्वहन में असफल होने के बारे में अशंकायें समझने योग्य हैं परंतु न्यायालय द्वारा रिसीवर बदलने के निदेश दिये जाने हेतु बाध्य करने के लिये पर्याप्त नहीं - रिसीवर की नियुक्ति केवल ऑडिटर को आवश्यक लेखे प्रस्तुत करने के लिये की गई है जिससे वह अपनी रिपोर्ट न्यायालय में अंतिम डिक्री पारित करने के लिये प्रस्तुत कर सके - प्रत्यर्थी क्र. 1 की रिसीवर के रूप में नियुक्ति के साथ इस प्रक्रम पर हस्तक्षेप से सिविल वाद जो 35 वर्षों से अधिक की अवधि से लम्बित है की कार्यवाहियों में और विलम्ब कारित करेगा - अपील खारिज। (पृथ्वी राज सरीन वि. रमेश कुमार सचदेवा) ...*30

सिविल प्रक्रिया संहिता (1908 का 5), आदेश 41 नियम 3-ए, परिसीमा अधिनियम (1963 का 36), धारा 5 - अपील प्रस्तुत करने में विलंब के लिए माफी - इस आधार पर आवेदन कि अपीलार्थीगण गांव के देहाती लोग थे और सिविल वाद जिसमें वे प्रतिवादी थे के अंतिम परिणाम से अनभिज्ञ थे - आवेदन में यह तर्क किया गया कि अपीलार्थी को सिविल वाद में निर्णय एवं डिक्री पारित किये जाने की जानकारी केवल तब हो पाई जब उनके विरुद्ध राजस्व न्यायालय में कार्यवाही आरंभ

the civil suit only when the proceedings were initiated against them in the Revenue Court – Appellate Court has not accepted such a plea of the appellants on the ground that they were being represented by the Counsel and if they have not verified the fact about the suit from their counsel, it could not be treated to be sufficient explanation of delay – Held – Appeal should not be dismissed merely on technical ground of delay – In a tribal District, a lenient view was possible. [Salikram Vs. Keshav] ...157

Civil Procedure Code (5 of 1908), Order 41 Rule 27 – Additional Evidence at appellate stage – Plea of Adverse Possession – Appellants purchased the suit property from a person whose name was recorded in revenue records – Revenue Entries were challenged by the respondents alleging that the property belongs to their predecessor and the name of seller and appellants were wrongly recorded – Correction of revenue record in favour of predecessor of respondents was affirmed by Board of Revenue and writ petition was withdrawn – Appellants pleaded that the seller had perfected his title by adverse possession – Held – Plea of adverse possession could be raised only by those, who were claiming such perfection of title – Those persons were also not made party nor have come forward claiming such rights – Plea was not raised in appropriate manner in plaint – Appellants were also required to demonstrate from which date it became hostile, within the meaning of bringing it in the notice of original owner – When the original owner came to know about the recording of names of predecessor-in-title of appellants, he filed the revenue case for correction of revenue entries – Application under O. 41 Rule 27 C.P.C. was rightly rejected by First Appellate Court. [Dev Prakash Gulati Vs. Nand Kumar] ...495

Civil Services (Pension) Rules, 1976 (M.P.), Rule 9 – Non-conclusion of departmental enquiry within 2 years of its initiation – If the disciplinary enquiry is initiated against an employee after his retirement, it would not automatically come to an end in case the enquiry is not concluded within two years of its inception. [State of M.P. Vs. Puran Lal Nahir] (FB)...691

Civil Services (Pension) Rules, 1976 (M.P.), Rule 9 – Powers of Governor – Governor is not precluded from passing final order in relation to payment of pension to a Govt. employee against whom

हुई — अपीली न्यायालय ने अपीलार्थीगण के उक्त अभिवाक् को इस आधार पर अस्वीकार किया कि अधिवक्ता द्वारा उनका प्रतिनिधित्व किया जा रहा था और यदि उन्होंने अपने अधिवक्ता से वाद के बारे में तथ्य सत्यापित नहीं किये, उसे विलंब का पर्याप्त स्पष्टीकरण नहीं माना जा सकता — अभिनिर्धारित — मात्र तकनीकी आधार पर अपील खारिज नहीं की जानी चाहिए — जनजातीय जिले में उदार दृष्टिकोण संभव था। (सालिकराम वि. केशव) ...157

सिविल प्रक्रिया संहिता (1908 का 5), आदेश 41 नियम 27 — अपीलीय प्रक्रम पर अतिरिक्त साक्ष्य — प्रतिकूल कब्जे का अभिवाक् — अपीलार्थीगण ने उस व्यक्ति से वाद सम्पत्ति क्रय की जिसका नाम राजस्व अभिलेखों में दर्ज था — प्रत्यर्थीगण द्वारा इस अभिवचन के साथ राजस्व प्रविष्टियों को चुनौती दी गई कि सम्पत्ति उनके पूर्वज की है और विक्रेता एवं अपीलार्थीगण का नाम अनुचित रूप से अभिलिखित किया गया — प्रत्यर्थीगण के पूर्वज के पक्ष में राजस्व अभिलेख में सुधार की राजस्व मंडल द्वारा पुष्टि की गई और रिट याचिका को वापिस लिया गया — अपीलार्थीगण ने अभिवाक् किया कि विक्रेता ने प्रतिकूल कब्जे द्वारा हक पूर्ण कर लिया — अभिनिर्धारित — प्रतिकूल कब्जे का अभिवाक् केवल उनके द्वारा उठाया जा सकता है जो ऐसा हक पूर्ण होने का दावा कर रहे थे — वे व्यक्ति पक्षकार भी नहीं बनाए गए न ही ऐसे अधिकारों का दावा करते हुए वे सामने आये हैं — वादपत्र में समुचित अंग से अभिवाक् नहीं किया गया — मूल स्वामी की जानकारी में लाये जाने के अर्थान्तर्गत वह किस तिथि से प्रतिकूल हो गया यह दर्शाना भी अपीलार्थीगण से अपेक्षित था — जब मूल स्वामी को अपीलार्थीगण के पूर्वज के नाम से हक अभिलिखित किये जाने के बारे में पता चला तो उसने राजस्व प्रविष्टि में सुधार हेतु रेवेन्यू केस प्रस्तुत किया — आदेश 41 नियम 27 सि.प्र.सं. के अंतर्गत आवेदन प्रथम अपीली न्यायालय द्वारा उचित रूप से अस्वीकार किया गया। (देव प्रकाश गुलाटी वि. नन्द कुमार) ...495

सिविल सेवा (पेंशन) नियम 1976 (म.प्र.), नियम 9 — विभागीय जांच आरंभ होने के 2 वर्षों के भीतर निराकृत न की जाना — यदि कर्मचारी के विरुद्ध अनुशासनिक जांच उसकी सेवानिवृत्ति के पश्चात आरंभ की जाती है तब वह अपने आप समाप्त नहीं होगी यदि जांच आरंभ होने के दो वर्षों के भीतर समाप्त नहीं की जाती। (म.प्र. राज्य वि. पूरन लाल नाहिर) (FB)...691

सिविल सेवा (पेंशन) नियम 1976 (म.प्र.), नियम 9 — राज्यपाल की शक्तियाँ — राज्यपाल ऐसे कर्मचारी की पेंशन के भुगतान के संबंध में अंतिम आदेश पारित करने से प्रवारित नहीं जिसके विरुद्ध अनुशासनिक कार्यवाहियाँ उसकी सेवा निवृत्ति

disciplinary proceeding is initiated after his retirement and is not concluded within two years from its inception. [State of M.P. Vs. Puran Lal Nahir] (FB)...691

Commercial Tax Act, M.P. 1994 (5 of 1995), Section 69(2) – Penalty – Penalty was imposed by Assessing officer on the ground that the assessee furnished incorrect return of the sales tax, evaded the tax – Held – No finding was recorded that there was deliberate concealment of sale or the assessee was guilty of contumacious or dishonest conduct, or acted in conscious disregard of its obligation – Order imposing penalty can not be sustained. [Shri Ram Traders (M/s.) Vs. The Divisional Dy. Commissioner] (DB)...104

Commercial Tax Act, M.P. 1994 (5 of 1995), Entry 11 of Part IV of Schedule II – Drugs and Medicines excluding those specified elsewhere – Dermicool Powder – Dermicool powder is described as prickly heat powder is commonly understood to be of used in treating prickly problem and not as an ordinary talcum powder – It must be held to be a medicine taxable under Entry 11 and not a medicinal preparation of a cosmetic. [Popular Sales (M/s.) Vs. State of M.P.] (DB)...733

Commercial Tax Act, M.P. 1994 (5 of 1995), Entry 41 of Part III of Schedule II – Toilet articles including medicinal preparation thereof – Borosoft natural and Borosoft Cream would be taxable under Entry 41. [Popular Sales (M/s.) Vs. State of M.P.] (DB)...733

Companies Act (1 of 1956), Sections 291, 292 – Vicarious liability of Directors & Managers – In view of complexity of facts it is not possible for complainant to know the role of each Director and Manager – As investigation is in progress, then the Director or Manager can prove his innocence before the Police. [Kewin B. Ajit Vs. State of M.P.] ...661

Constitution – Article 14 – Article 14 of the Constitution of India forbids class legislation but does not forbid reasonable classification – The 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. [Sai Kripa Gramin Prathmik Sahakri Upbhokta Bhandar Maryadit, Nainpur Vs. State of M.P.] (DB)...109

के पश्चात आरंभ की गई हैं तथा आरंभ होने के दो वर्षों के भीतर समाप्त नहीं की गई हैं। (म.प्र. राज्य वि. पूरन लाल नाहिर) (FB)...691

वाणिज्यिक कर अधिनियम, म.प्र. 1994 (1995 का 5), धारा 69(2) - अर्थदण्ड - निर्धारण अधिकारी द्वारा इस आधार पर अर्थदण्ड अधिरोपित किया गया कि निर्धारितो ने विक्रय कर की गलत विवरणी देकर कर बचाया - अभिनिर्धारित - कोई निष्कर्ष अभिलिखित नहीं किया गया कि विक्रय का जानबूझकर छिपाव किया गया था या निर्धारिती दृष्टतापूर्ण या बेईमानीपूर्ण आचरण के दोषी थे अथवा अपने दायित्व की मानपूर्वक अवहेलना में कार्य किया - अर्थदण्ड अधिरोपित करने का आदेश कायम नहीं रखा जा सकता। (श्रीराम ट्रेडर्स (मे.) वि. द डिवीजनल डिप्टी कमिश्नर) (DB)...104

वाणिज्यिक कर अधिनियम, म.प्र. 1994 (1995 का 5), अनुसूची II के भाग IV की प्रविष्टि 11 - दवाएँ और औषधियाँ, अन्यत्र विनिर्दिष्टित को छोड़कर - डर्मीकूल पाउडर - डर्मीकूल पाउडर की घमौरियों के पाउडर के रूप में व्याख्या है जिसे सामान्य रूप से घमौरियों की समस्या के उपचार में उपयोग किया जाना समझा जाता है और न कि साधारण टाल्कम पाउडर के रूप में - इसे औषधि माना जाना चाहिए जो प्रविष्टि 11 के अंतर्गत कर योग्य है और न कि सौंदर्यवर्धक की औषधीय निर्मिती। (पापुलर सेल्स (मे.) वि. म.प्र. राज्य) (DB)...733

वाणिज्यिक कर अधिनियम, म.प्र. 1994 (1995 का 5), अनुसूची II के भाग III की प्रविष्टि 41 - प्रसाधन वस्तुएँ जिसमें औषधीय निर्मितियाँ समाविष्ट हैं - बोरोसॉफ्ट नेचुरल व बोरोसॉफ्ट क्रीम प्रविष्टि 41 के अंतर्गत कर योग्य हैं। (पापुलर सेल्स (मे.) वि. म.प्र. राज्य) (DB)...733

कम्पनी अधिनियम (1956 का 1), धाराएँ 291, 292-निदेशकों एवं प्रबंधकों का प्रतिनिधिक दायित्व - तथ्यों की जटिलता को दृष्टिगत रखते हुए शिकायतकर्ता के लिये यह संभव नहीं कि उसे प्रत्येक निदेशक एवं प्रबंधक के कार्य की जानकारी हो - चूंकि जांच चल रही है, तब निदेशक या प्रबंधक अपनी निर्दोषिता पुलिस के समक्ष साबित कर सकते हैं। (केविन बी. अजीत वि म.प्र. राज्य) ...661

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Constitution – Article 14, 32 – Allotment of retail outlet – Application of petitioner was not properly considered as the owners of the land had given their affidavits that they will put their land at the disposal of the petitioner if the retail outlet dealership is granted to him – Non-assessment of availability of land not proper – Respondents directed to reassess the availability of land offered by Petitioner for the purposes of establishing retail outlet and assign him marks under this head – If petitioner found eligible, the respondents will grant retail outlet. [Mithlesh Bais Vs. Indian Oil Corporation] ...*27

Constitution – Article 14, 39(d) – Equal Work for Equal Pay – **Guruji and Adhyapak** – Petitioners who were appointed as Guruji could not establish that their method of recruitment, nature of work, quantum of work, quality of work, nature of responsibility, place of work etc. identical to that of Adhyapak – Wholesome equality could not be established by Petitioners. [Gopal Chawala Vs. State of M.P.] ...424

Constitution – Article 19(1)(a) & (g) – Freedom of Speech and to Assembly – Bundh/Strike – There may be a voluntary call to support (Bundh/Strike) but since it has an element of force it would not fall under Article 19(1)(a) & (g). [Nagrik Upbhokta Margdharshan Manch Vs. State of M.P.] (DB)...446

Constitution – Article 21, 22, Criminal Procedure Code, 1973 (2 of 1974), Section 439 – Bail on the ground of delay – Delay in trial on failure of prosecution to produce prosecution witnesses despite passage of time about six months – Breaches the fundamental right of liberty who has to suffer prolonged incarceration – Delay in trial without any fault on the part of the applicant entitles him to bail. [Roopa @ Ramroop Vs. State of M.P.] ...657

Constitution – Article 23 – Beggar – Atleast minimum wages to an employee working in an establishment should be paid as a fundamental right of the employee and anything done to deprive an employee of this right would be nothing but an act amounting to beggar. [Home Guard Sainik Evam Parivar Kalyan Sangh Vs. State of M.P.] ...382

Constitution – Article 23, 43 – Honorarium – Honorarium is not Salary – However, whatever emoluments in the name of honorarium is being paid to Gurujis is used by them for the purpose of keeping

संविधान - अनुच्छेद 14, 32 - खुदरा बिक्री केन्द्र का आवंटन - याची का आवेदन उचित रूप से विचारित नहीं किया गया क्योंकि भूमि के स्वामियों द्वारा शपथ पत्र दिया गया था कि वे अपनी भूमि याची को दे देंगे यदि उसे खुदरा बिक्री केन्द्र की डीलरशिप मंजूर हो जाती है - भूमि की उपलब्धता का निर्धारण नहीं किया जाना उचित नहीं - प्रत्यर्थी गण को याची द्वारा प्रस्तुत की गई भूमि की उपलब्धता को पुनःनिर्धारित करने के लिये और इस मद के अंतर्गत उसे अंक देने के लिये निर्देशित किया गया - यदि याची योग्य पाया जाता है तो प्रत्यर्थीगण खुदरा बिक्री केन्द्र प्रदान करेंगे। (मिथलेश बेस वि. इंडियन ऑल कारपोरेशन) ...*27

संविधान - अनुच्छेद 14, 39(डी) - समान कार्य के लिये समान वेतन - गुरुजी और अध्यापक - याचीगण जिन्हें गुरुजी के रूप में नियुक्त किया गया था, स्थापित नहीं कर सके कि उनकी भर्ती की पद्धति, कार्य का स्वरूप, कार्य की मात्रा, कार्य का गुण, दायित्व का स्वरूप, कार्य का स्थान इत्यादि, अध्यापक के समान है - याचीगण द्वारा लाभप्रद समानता स्थापित नहीं की जा सकी। (गोपाल चावला वि. म.प्र. राज्य) ...424

संविधान - अनुच्छेद 19(1)(ए) व (जी) - वाक् स्वातंत्र्य और एकत्र होने की स्वतंत्रता - बंद/हड़ताल - समर्थन के लिए आवाहन स्वैच्छिक हो सकता है, परन्तु चूंकि इसमें बल का तत्व है इसलिये यह अनुच्छेद 19(1)(ए) व (जी) के अंतर्गत नहीं आयेगा। (नागरिक उपभोक्ता मार्गदर्शन मंच वि. म.प्र. राज्य) (DB)...446

संविधान - अनुच्छेद 21, 22, दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 439 - विलम्ब के आधार पर जमानत - लगभग छः माह का समय बीतने के बाद भी अभियोजन द्वारा अभियोजन साक्षियों को प्रस्तुत करने में असफल रहने के कारण विचारण में विलम्ब - स्वतंत्रता के मूलभूत अधिकार का उल्लंघन करता है, जिसे लंबे समय तक कारावास मुगतना पड़ता है - आवेदक की ओर से किसी त्रुटि के बिना विचारण में विलम्ब उसे जमानत का हकदार बनाती है। (रूपा चर्फ रामरूप वि. म.प्र. राज्य) ...657

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संविधान - अनुच्छेद 23, 43 - मानदेय - मानदेय वेतन नहीं है - किन्तु, गुरुजीयों के मानदेय के रूप में जो भी परिलब्धियां दी जा रही हैं उनके द्वारा इसका उपयोग अपने आपको (शरीर व आत्मा) को बनाये रखने हेतु किया जाता है -

their body and soul together – Various notifications show that wage payable to unskilled employee in private and Government employment is much higher than the honorarium paid to Guruji – Respondents directed to reconsider the amount of honorarium which is being paid to Guruji. [Gopal Chawala Vs. State of M.P.] ...424

Constitution, Article 28(1) – Religious Instruction – Geeta Sār – Religious instruction has a restricted meaning and conveys that teachings of customs, ways of worship, practice and rituals can not be allowed in educational institutions – Gita is a book on Indian Philosophy and not a book on Indian Religion – Petition dismissed. [Catholic Bishop's Council Vs. State of M.P.] (DB)...725

Constitution – Article 226 – Audi Alteram Partem – High Court merely held that the provisions of the Act and Regulation are mandatory and recognition to an institution can be granted only if the mandatory provisions are fulfilled – Distinction between grant, refusal and withdrawal of recognition also highlighted by High Court – Any person aggrieved by refusal or withdrawal of recognition has remedy of appeal – Directions given by High Court are of general application and do not target any particular institution – Principles of Natural Justice does not apply. [Adarsh Shiksha Mahavidyalaya Vs. Subhash Rahangdale] (SC)...*19

Constitution – Article 226 – Bundh/Strike – Compensation – State free to quantify the damage and call upon the callers to compensate in case it finds that public property has been damaged – Individuals also at liberty to recover compensation in accordance with law. [Nagrik Upbhokta Margdharshan Manch Vs. State of M.P.] (DB)...446

Constitution – Article 226 – Bundh/Strike – State directed to take steps to prevent the coercion or the force applied by callers. [Nagrik Upbhokta Margdharshan Manch Vs. State of M.P.] (DB)...446

Constitution – Article 226 – Examination – Question and Answer – Judicial Review of incorrect questions and wrong answers – Held – Limited to the extent of seeing whether any reasonable body of men well-versed in the particular subject would regard it as correct. [Alok Gupta Vs. M.P. Professional Examination Board] ...*11

विभिन्न अधिसूचनाएँ दर्शाती हैं कि प्राईवेट एवं शासकीय नियोजन में अकुशल कर्मचारी को देय वेतन गुरुजी को दिये जा रहे मानदेय से बहुत अधिक है — गुरुजी को दिये जा रहे मानदेय की रकम पर पुनर्विचार करने के लिये प्रत्यर्थागण को निदेशित किया गया। (गोपाल चावला वि. म.प्र. राज्य) ...424

संविधान, अनुच्छेद 28(1) — धार्मिक अनुदेश — गीता सार — धार्मिक अनुदेश का एक सीमित अर्थ है और प्रतिपादित करता है कि रीति रिवाजों, पूजा की विधि, आचरण और कर्मकाण्ड की शिक्षा शैक्षणिक संस्थानों में पढ़ाने की मंजूरी नहीं दी जा सकती — गीता भारतीय दर्शन पर एक किताब है और न कि भारतीय धर्म की किताब है — याचिका खारिज। (केथोलिक बिशप काउंसिल वि. म.प्र. राज्य) (DB)...725

संविधान — अनुच्छेद 226 — दूसरे पक्ष को भी सुनो — उच्च न्यायालय ने मात्र निर्धारित किया कि अधिनियम के उपबंध और विनियमन आज्ञापक हैं और किसी संस्थान को मान्यता केवल तभी दी जा सकती है जब वे आज्ञापक उपबंधों को पूरा करते हैं — उच्च न्यायालय द्वारा मंजूरी, इंकार और मान्यता वापस लेने के मध्य भिन्नता भी बताई है — इंकार या मान्यता वापस लेने से व्यथित किसी भी व्यक्ति के पास अपील का उपचार है — उच्च न्यायालय द्वारा दिये निदेश सामान्यतः लागू होते हैं और किसी संस्थान विशेष को लक्षित नहीं करते—नैसर्गिक न्याय का सिद्धांत लागू नहीं होता है। (आदर्श शिक्षा महाविद्यालय वि. सुभाष राहांगडाले) (SC)...*19

संविधान — अनुच्छेद 226 — बंद/हड़ताल — प्रतिकर — राज्य हानि की मात्रा का निर्धारण करने के लिये स्वतंत्र है और आवाहनकर्ताओं को प्रतिकर देने के लिये बुला सकता है, यदि वह पाता है कि लोक सम्पत्ति को हानि पहुंचाई गई है — व्यक्ति भी विधि के अनुसार प्रतिकर वसूलने के लिए स्वतंत्र है। (नागरिक उपभोक्ता मार्गदर्शन मंच वि. म.प्र. राज्य) (DB)...446

संविधान — अनुच्छेद 226 — बंद/हड़ताल — आवाहनकर्ताओं द्वारा प्रपीड़न या बल प्रयोग करने से रोकने के लिए राज्य को कदम उठाने के लिये निदेशित किया गया। (नागरिक उपभोक्ता मार्गदर्शन मंच वि. म.प्र. राज्य) (DB)...446

संविधान — अनुच्छेद 226 — परीक्षा — प्रश्न और उत्तर — गलत प्रश्नों व गलत उत्तरों का न्यायिक पुनर्विलोकन — अभिनिर्धारित — का विस्तार यह देखने तक सीमित है कि क्या कोई व्यक्तियों का युक्तियुक्त समूह जो विशिष्ट विषय में निपुण है उसे सही माना जायेगा या नहीं। (आलोक गुप्ता वि. एम.पी. प्रोफेशनल एग्जामिनेशन बोर्ड) ...*11

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Constitution, Article 226 – Habeas Corpus – Illegal detention of petitioner's husband – In the Inquiry report by State Government there is specific finding about her husband been kept forcibly under illegal detention – Held – More than 1 ½ year has elapsed no report has been submitted – Slow pace of investigation by the Special Task Force has started creating doubt on its credibility – Complete investigation fairly and submit report as early as possible but not later than three months from today – Petition allowed with costs of Rs.1,000/- payable to petitioner by the State Government. [Neetu Bai (Smt.) Vs. State of M.P.] (DB)...719

Constitution – Article 226 – Impact of questions – Effect of discrepancy in framing questions and answers has similar impact on all the candidates, no interference is warranted. [Alok Gupta Vs. M.P. Professional Examination Board] ...*11

Constitution – Article 226 – Maintainability of writ – Termination of Lease – Lease granted in favor of petitioners was cancelled on the ground of violation of terms of lease – Involves disputed questions of fact – Writ Petition challenging the order of cancellation of lease not maintainable as questions relate to the civil rights of the parties. [Sajni Bajaj (Smt.) (Dr.) Vs. Indore Development Authority] (DB)...*16

Constitution – Article 226 – Possession – Indore Development Authority can not dispossess the petitioners after canceling the lease deed without following due procedure of law – There is no question for IDA to resort to an extra judicial method of taking possession and possession has to be taken only in accordance with law. [Sajni Bajaj (Smt.) (Dr.) Vs. Indore Development Authority] (DB)...*16

Constitution – Article 226 – Public Interest Litigation – Courts before entertaining PIL must feel satisfied that the petitioner has genuinely come forward to espouse public cause and his litigious venture is not guided by any ulterior motive or is not a publicity gimmick – Respondent had highlighted the irregularities committed by Western Regional Committee of NCTE in granting recognition to private institutions – No allegation that Respondents had filed the writ petition to settle score with any institution or with some ulterior motive – High Court rightly entertained the petition as PIL. [Adarsh Shiksha Mahavidyalaya Vs. Subhash Rahangdale] (SC)...*19

संविधान, अनुच्छेद 226 - बंदी प्रत्यक्षीकरण - याची के पति का अविधिपूर्ण निरोध - राज्य सरकार की जांच रिपोर्ट में उसके पति को बलपूर्वक अवैध निरोध में रखने का विनिर्दिष्ट निष्कर्ष - अभिनिर्धारित - 1½ वर्ष से अधिक बीत गया है, कोई रिपोर्ट प्रस्तुत नहीं की गई - स्पेशल टॉस्क फोर्स द्वारा अन्वेषण की धीमी गति उसकी विश्वसनीयता पर संदेह उत्पन्न करती है - समुचित रूप से जांच पूर्ण करें और आज से तीन माह के भीतर यथाशीघ्र रिपोर्ट प्रस्तुत करें - राज्य सरकार द्वारा याची को देय खर्च रु. 1000/- के साथ याचिका मंजूर। (नीतू बाई (श्रीमति) वि. म.प्र. राज्य) (DB)...*719

संविधान - अनुच्छेद 226 - प्रश्नों का प्रभाव - प्रश्न व उत्तर विरचित करने में विसंगति सभी छात्रों पर समान प्रभाव डालती है, हस्तक्षेप की आवश्यकता नहीं है। (आलोक गुप्ता वि. एम.पी. प्रोफेशनल एग्जामिनेशन बोर्ड) ...*11

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Constitution – Article 226 – Recommendations of Human Rights Commission – Court can not issue *Mandamus* for implementing the recommendations of the State Human Rights Commission – However, the findings recorded by Human Rights Commission can be considered unless it is shown to be perverse or opposed to some principle of law or facts. [Home Guard Sainik Evam Parivar Kalyan Sangh Vs. State of M.P.] ...382

Constitution, Article 226, Urban Land (Ceiling and Regulation) Act, (33 of 1976), Sections 5(1)(3), 6, 9, 10(1)(3)(4) – Transfer of Land – Transfer of excess land through sale deed after draft statement and notification is void ab initio and does not create any right – Any such transfer shall be deemed to be null and void – Petition dismissed. [M.P. Samdariya Vs. State of M.P.] ...70

Constitution – Article 226 – Writ Petition – Alternative Remedy – Appellant asserted that no notice under Section 13(2) of Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest (SARFAESI) Act, 2002 was issued whereas counsel for the respondent-Bank has stated that notice under Section 13(2) of the Act was served by affixture and panchnama was prepared – The question whether under Section 13(2) of the Act was served on the appellant or not, is a disputed question of fact which can not be adjudicated in a writ petition – All the grounds with regard to procedural irregularity in taking the measures under Section 13(4) of the Act can very well be agitated and adjudicated in the appeal preferred under Section 17 of the Act – Writ petition on the ground of availability of alternative remedy, can be dismissed – Writ appeal dismissed. [Basant Kumar Jain Vs. State Bank of India] (DB)...25

Consumer Protection Act (68 of 1986), Section 2(b)(c)(d)(g)(o) – Consumer – Respondent approached Consumer Forum for execution of lease deed in respect of allotted land – Neither council is a service

संविधान - अनुच्छेद 226 - प्रश्न - प्रश्न विरचित करने में विसंगति - अभिनिर्धारित - रिट न्यायालय विशेषज्ञों के विरुद्ध किसी विद्वेष की अनुपस्थिति में अपीलीय प्राधिकारी की तरह उसका परीक्षण करने के लिये नहीं बैठ सकता जब तक यह साबित नहीं हो जाता कि विशेषज्ञों द्वारा चयनित प्रश्न व उत्तर गलत थे। (आलोक गुप्ता वि. एम.पी. प्रोफेशनल एग्जामिनेशन बोर्ड) ...*11

संविधान - अनुच्छेद 226 - मानव अधिकार आयोग की सिफारिशें - राज्य मानव अधिकार आयोग की सिफारिशों को लागू करने के लिये न्यायालय परमादेश जारी नहीं कर सकता - तथापि मानव अधिकार आयोग द्वारा अभिलिखित निष्कर्षों को विचार में लिया जा सकता है जब तक यह दर्शित नहीं होता कि वह विकृत या विधि के कुछ सिद्धांतों या तथ्यों के विपरीत है। (होम गार्ड सैनिक एवं परिवार कल्याण संघ वि. मं.प्र. राज्य) ...382

संविधान, अनुच्छेद 226, नगर भूमि (अधिकतम सीमा और विनियमन) अधिनियम, (1976 का 33), धाराएँ 5(1)(3), 6, 9, 10(1)(3)(4) - भूमि का अंतरण - प्रारूप कथन एवं अधिसूचना के पश्चात विक्रय पत्र द्वारा अतिरिक्त भूमि का अंतरण प्रारंभ में ही शून्य है और कोई अधिकार निर्मित नहीं करता - ऐसे किसी अंतरण को अकृत और शून्य माना जायेगा - याचिका खारिज। (एम.पी. समदड़िया वि. म. प्र. राज्य) ...70

संविधान - अनुच्छेद 226 - रिट याचिका - वैकल्पिक उपचार - अपीलार्थी ने प्राख्यान किया कि वित्तीय अस्तियों का प्रतिभूतिकरण और पुनर्गठन तथा प्रतिभूति हित का प्रवर्तन (SARFAESI) अधिनियम, 2002 की धारा 13(2) के अंतर्गत कोई नोटिस जारी नहीं किया गया जबकि प्रत्यर्थी बैंक के अधिवक्ता का कहना है कि अधिनियम की धारा 13(2) के अंतर्गत नोटिस चस्पा द्वारा तामील किया गया था और पंचनामा तैयार किया गया था - प्रश्न कि क्या अपीलार्थी को अधिनियम की धारा 13(2) के अंतर्गत नोटिस तामील किया गया था अथवा नहीं विवादित तथ्य का प्रश्न है जिसे रिट याचिका में न्यायनिर्णित नहीं किया जा सकता - अधिनियम की धारा 13(2) के अंतर्गत उपाय करने में प्रक्रिया के संबंध में अनियमितता से संबंधित सभी आधारों को अधिनियम की धारा 17 के अंतर्गत अपील में भलीभांति उठाया एवं न्यायनिर्णित किया जा सकता है - वैकल्पिक उपचार की उपलब्धता के आधार पर रिट याचिका खारिज की जा सकती है - रिट अपील खारिज। (बसंत कुमार जैन वि. स्टेट बैंक ऑफ इंडिया) (DB)...25

उपमोक्ता संरक्षण अधिनियम (1986 का 68), धारा 2(बी)(सी)(डी)(क्यू)(ओ) - उपमोक्ता - आवंटित भूमि के संबंध में पट्टा विलेख के निष्पादन हेतु प्रत्यर्थी उपमोक्ता फोरम के समक्ष गया - अधिनियम के अंतर्गत न तो परिषद सेवा

provider nor plot owner is a consumer under the Act – Complaint before Consumer Forum not maintainable – Petition allowed. [Nagar Palika Parishad Vs. Rajesh Kumar Saini] (DB)...*7

Contempt of Courts Act (70 of 1971), Section 2 (c) (ii) – Criminal Contempt – Advocate filed repeat application for grant of bail before High Court – Suppressing the fact of pendency of bail application before High Court, filed another application before Trial Court – Such act may come within the purview of criminal contempt. [Satish Lodhi Vs. State of M.P.] ...632

Contempt of Courts Act (70 of 1971), Section 2(c) (ii) – Criminal Contempt – Advocate suppressed the rejection of bail application by Hon'ble Court and mentioned that application before High Court has been fixed on 26.11.2010 – Said Advocate insisted the Judge to hear the case on the same day without applying for urgent hearing and filing an affidavit for verification to said facts – Bail granted by Trial Court on the ground which was factually incorrect – Such act of Advocate may come within the purview of Criminal Contempt. [Satish Lodhi Vs. State of M.P.] ...632

Contempt of Courts Act (70 of 1971), Section 2(c)(ii) – Criminal Contempt – False affidavit – Affidavit filed in support of the incorrect averments made in bail application – Application for grant of bail before Trial Court was filed by suppressing material facts with regard to the dismissal of earlier bail applications by High Court – Such act may fall within the purview of Criminal Contempt. [Satish Lodhi Vs. State of M.P.] ...632

Contempt of Courts Act (70 of 1971), Section 2(c) (ii) - Criminal Contempt – False Affidavit – False affidavit filed along with bail application – swearing of false affidavit in judicial proceedings not only has the tendency of causing obstruction in the due course of judicial proceedings but has also the tendency to impede, obstruct and interfere with the administration of justice – Any such attempt to impede or undermine or obstruct the free flow of the unsoiled stream of justice by resorting to filing of false affidavit amounts to criminal contempt of Court and liable to be dealt with in accordance with law. [Satish Lodhi Vs. State of M.P.] ...632

Cooperative Societies Act, M.P. 1960 (17 of 1961), Section 55(2)

प्रदायकर्ता है और न ही भूखंड स्वामी उपभोक्ता है - उपभोक्ता फोरम के समक्ष शिकायत पोषणीय नहीं - याचिका मंजूर। (नगर पालिका परिषद् वि. राजेश कुमार सैनी) (DB)...*7

न्यायालय अवमान अधिनियम (1971 का 70), धारा 2(सी)(ii) - आपराधिक अवमान - अधिवक्ता ने उच्च न्यायालय के समक्ष जमानत प्रदान किये जाने के लिए दुबारा आवेदन प्रस्तुत किया - उच्च न्यायालय के समक्ष जमानत आवेदन के लंबित होने के तथ्य का छिपाव करके, विचारण न्यायालय के समक्ष दुबारा आवेदन प्रस्तुत किया - ऐसा कृत्य आपराधिक अवमान की परिधि में आ सकता है। (सतीश लोधी वि. म.प्र. राज्य) ...632

न्यायालय अवमान अधिनियम (1971 का 70), धारा 2(सी)(ii) - आपराधिक अवमान - अधिवक्ता ने माननीय न्यायालय द्वारा जमानत आवेदन को नामंजूर किये जाने का छिपाव किया और उल्लेख किया कि उच्च न्यायालय के समक्ष आवेदन 28.11.2010 को नियत किया गया है - उक्त अधिवक्ता ने शीघ्र सुनवाई का आवेदन एवं उक्त तथ्यों के सत्यापन हेतु शपथ पत्र प्रस्तुत किये बिना न्यायाधीश से उसी दिन प्रकरण की सुनवाई का आग्रह किया - विचारण न्यायालय द्वारा उस आधार पर जमानत प्रदान की गई जो तथ्यात्मक रूप से गलत था - अधिवक्ता का ऐसा कृत्य आपराधिक अवमान की परिधि में आ सकता है। (सतीश लोधी वि. म.प्र. राज्य) ...632

न्यायालय अवमान अधिनियम (1971 का 70), धारा 2(सी)(ii) - आपराधिक अवमान - मिथ्या शपथ पत्र - जमानत अर्जी में दिये गये असत्य प्राक्कथनों के समर्थन में शपथ पत्र प्रस्तुत किया गया - विचारण न्यायालय के समक्ष जमानत प्रदान किये जाने का आवेदन, उच्च न्यायालय द्वारा पूर्ववर्ती जमानत आवेदनों की खारिजी के संबंध में तात्त्विक तथ्यों का छिपाव करके प्रस्तुत किया गया - ऐसा कृत्य आपराधिक अवमान की परिधि में आ सकता है। (सतीश लोधी वि. म. प्र. राज्य) ...632

न्यायालय अवमान अधिनियम (1971 का 70), धारा 2(सी)(ii) - आपराधिक अवमान - मिथ्या शपथ पत्र - जमानत अर्जी के साथ मिथ्या शपथ पत्र प्रस्तुत किया गया - न्यायिक कार्यवाहियों में मिथ्या शपथ पत्र देने की न केवल न्यायिक कार्यवाहियों के सम्यक् अनुक्रम में अवरोध कारित करने की प्रवृत्ति होती है बल्कि न्याय दान में अड़चन, अवरोध/बाधा एवं हस्तक्षेप करने की भी प्रवृत्ति होती है - मिथ्या शपथ पत्र प्रस्तुत करके न्याय की स्वच्छ धारा के मुक्त प्रवाह को अवरुद्ध या खंडित करने या बाधा डालने का ऐसा कोई प्रयत्न न्यायालय का आपराधिक अवमान की कोटि में आता है और विधिनुसार निपटायें जाने योग्य है। (सतीश लोधी वि. म. प्र. राज्य) ...632

सहकारी सोसाइटी अधिनियम, म.प्र. 1960 (1961 का 17), धारा 55(2) -

– See – *Penal Code, 1860, Sections 409, 467* [District Co-operative Central Bank Isagarh, District Guna, M.P. Vs. Leeladhan] ...593

Court Fees Act (7 of 1870), Sections 35, 16C, Civil Procedure Code (5 of 1908), Section 89, Legal Services Authorities Act (39 of 1987), Sections 21, 89 – First Appeal – Matter settled in Lok Adalat – Refund of Court fees ordered – Registry deducted 10% of Court fees under the notification dated 24.03.2003 issued by Law Department – Held – State is not empowered to deduct any amount from Court fee payable – No amendment was made by State legislature – Assent of president not obtained – Notification dated 24.03.2003 quashed – State is directed to refund full amount of the court fee for matters settled in Lok Adalat – Petition allowed. [Ramesh Chandra Vs. State of M.P.] (DB)...320

Criminal Procedure Code, 1973 (2 of 1974), Section 21 – Seizure of Smack – Smack of light yellow colour was seized whereas colour of powder was light grey as per F.S.L. report – Both the colours are different therefore, it is doubtful that powder which was seized was sent for analysis. [Raziya Vs. State of M.P.] ...173

*Criminal Procedure Code, 1973 (2 of 1974), Section 27 – Confessional statement - Admissibility – Confession of accused except regarding recovery of article from the stated concealed place, is not admissible in evidence. [Sumanlata Vs. State of M.P.] ...*36*

Criminal Procedure Code, 1973 (2 of 1974), Section 27 – Seizure Memo – Contraband was seized and appellant was arrested on spot and thereafter F.I.R. was lodged after coming back to Police Station – Seizure Memo and Arrest memo bears the crime number – Documents are tampered. [Raziya Vs. State of M.P.] ...173

Criminal Procedure Code, 1973 (2 of 1974), Section 27 – Seizure of Weapons – Independent witnesses turned hostile – I.O. did not specifically depose that weapon was seized by the seizure memo – Seized weapon not produced before the Court – Prosecution also did not prove that injuries could be caused by seized weapon - Seizure of weapon not proved. [Ramkumar Vs. State of M.P.] ...752

Criminal Procedure Code, 1973 (2 of 1974), Section 27 – Seizure of weapons – Weapons were seized after 2 months of incident – No

देखें - दण्ड संहिता, 1860, धाराएँ 409 व 467 (डिस्ट्रिक्ट को.ऑपरेटिव सेन्ट्रल बैंक, इशागढ़, डिस्ट्रिक्ट गुना (एम.पी.) वि. लीलाधन) ...593

न्यायालय फीस अधिनियम (1870 का 7), धाराएँ 35, 16सी, सिविल प्रक्रिया संहिता (1908 का 5), धारा 89, विधिक सेवा प्राधिकरण अधिनियम (1987 का 39), धाराएँ 21, 89 - प्रथम अपील - लोक अदालत में मामले को निपटाया गया - न्यायालय फीस वापसी का आदेश दिया गया - विधि विभाग द्वारा जारी अधिसूचना दिनांक 24.03.2003 के अंतर्गत रजिस्ट्री ने न्यायालय फीस में से 10 प्रतिशत की कटौती की - अभिनिर्धारित - देय न्यायालय फीस में से कोई भी राशि की कटौती करने की राज्य को शक्ति नहीं - राज्य विधानमंडल द्वारा कोई संशोधन नहीं किया गया - राष्ट्रपति की अनुमति प्राप्त नहीं की गई - अधिसूचना दिनांक 24.03.2003 अभिखण्डित - लोक अदालत में निपटाये गये प्रकरणों में पूरी न्यायालय फीस वापिस करने के लिये राज्य को निदेशित किया गया - याचिका मंजूर। (रमेश चन्द्र वि. म.प्र. राज्य) (DB)...320

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 21 - स्मैक की जब्ती - हल्के पीले रंग की स्मैक जब्त की गई जबकि एफ.एस.एल. रिपोर्ट के अनुसार पाउडर का रंग हल्का भूरा था - दोनों रंग भिन्न है अतएव यह संदेहास्पद है कि पाउडर जिसे जब्त किया गया वही परीक्षण के लिये भेजा गया था। (रजिया वि. म.प्र. राज्य) ...173

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 27 - संस्वीकृति कथन - ग्राह्यता - अभियुक्त की संस्वीकृति बताये गये गुप्त स्थान से वस्तु की बरामदगी से संबंधित के अलावा साक्ष्य में ग्राह्य नहीं है। (सुमनलता वि. म.प्र. राज्य) ...*36

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 27 - जब्ती मेमो - विनिर्दिष्ट पदार्थ जब्त किया और अपीलार्थी को घटनास्थल पर गिरफ्तार किया गया और तत्पश्चात पुलिस थाना लौटने पर एफ.आई.आर. दर्ज की गई - जब्ती मेमो और गिरफ्तारी मेमो पर अपराध क्रमांक मौजूद है - दस्तावेजों के साथ छेड़छाड़ की गई है। (रजिया वि. म.प्र. राज्य) ...173

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 27 - हथियारों की जब्ती - स्वतंत्र साक्षी पक्षविरोधी हो गये - अन्वेषण अधिकारी ने विनिर्दिष्ट रूप से यह कथन नहीं किया कि हथियार जब्ती मेमो द्वारा जब्त किये गये - जब्त हथियार न्यायालय के समक्ष प्रस्तुत नहीं किये गये - अभियोजन ने यह भी साबित नहीं किया कि चोटें जब्त हथियार से कारित हो सकती हैं - हथियार की जब्ती साबित नहीं। (रामकुमार वि. म.प्र. राज्य) ...752

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 27 - हथियारों की जब्ती - घटना के 2 माह बाद हथियार जब्त किये गये - कोई ज्ञापन अभिलिखित नहीं किया गया

memorandum was recorded – Independent witnesses not examined – FSL report not proved – No question put in statement under Section 313 of Cr.P.C., signature not proved. [Buddhu Pal Vs. State of M.P.] (DB)...774

Criminal Procedure Code, 1973 (2 of 1974), Section 125, Evidence Act (1 of 1872), Section 45 – Medical Examination – Applicant took a defence that wife is having character of Hermaphroditism (Ubhaylingata) and prayed for her karyotype medical test – Held – Person can not be insisted contrary to her wish to examine herself for any medical examination – Such direction would be violative of Article 21 of Constitution – Revision dismissed. [Pushpendra Singh Thakur Vs. Smt. Mamta Thakur] ...292

Criminal Procedure Code, 1973 (2 of 1974), Section 125 – Maintenance – Decree of divorce passed against wife on the ground that she is living in adulterous life – Wife is not entitled for maintenance allowance. [Rajkumar Dubey @ Raju Vs. Smt. Rekha Dubey @ Gothai Bai] ...794

Criminal Procedure Code, 1973 (2 of 1974), Section 125 – Reasonable sum of Maintenance – If the husband like the respondent is healthy and able bodied person then, on account of less income, he can not escape from his liability to pay the reasonable sum of maintenance to his wife and children – Maintenance awarded by the trial Court enhanced from Rs. 600/- per month to Rs. 1500/- per month for wife and from Rs. 200/- per month to 900/- per month for child. [Pushpa Thakur (Smt.) Vs. Bhagwandas Bhavedi] ...277

Criminal Procedure Code, 1973 (2 of 1974), Sections 125 & 127 – Payment of Maintenance amount – Petitioner was directed to pay interim maintenance – Application for alteration of interim maintenance amount on the ground of delay tactics being adopted by wife filed by husband is pending – Held – Unless the interim order of maintenance passed earlier is amended/altered or maintained same will be enforceable – Petitioner bound to pay interim maintenance amount – Revision is dismissed with direction to dispose of the petition of petitioner within two months from date of order. [Ajay Sharma Vs. Smt. Archana Sharma] ...272

Criminal Procedure Code, 1973 (2 of 1974), Section 145 – Possession of Supurdgidar - Possession of Supurdgidar in proceedings

— स्वतंत्र साक्षी परीक्षित नहीं किये गये — एफ.एस.एल. रिपोर्ट को साबित नहीं किया गया — दण्ड प्रक्रिया संहिता की धारा 313 के अंतर्गत कथन में कोई प्रश्न नहीं पूछा गया, हस्ताक्षर साबित नहीं। (बुद्धू पाल वि. म.प्र. राज्य) (DB)...774

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 125, साक्ष्य अधिनियम (1872 का 1), धारा 45 — चिकित्सीय परीक्षण — आवेदक ने बचाव लिया कि पत्नी में उभयलिंगता के लक्षण हैं और उसके कोरयोटाईप चिकित्सीय परीक्षण के लिये प्रार्थना की — अभिनिर्धारित — व्यक्ति को किसी चिकित्सीय परीक्षण हेतु स्वयं के परीक्षण की उसकी इच्छा के विरुद्ध आग्रह नहीं किया जा सकता — ऐसा निदेश संविधान के अनुच्छेद 21 का उल्लंघनकारी होगा — पुनरीक्षण खारिज। (पुष्पेंद्र सिंह ठाकुर वि. श्रीमति ममता ठाकुर) ...292

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 125 — भरणपोषण — पत्नी के विरुद्ध तलाक की डिक्री इस आधार पर पारित की गई कि वह व्यभिचारिणी का जीवन जी रही थी — पत्नी भरणपोषण भत्ते की हकदार नहीं। (राजकुमार दुबे उर्फ राजू वि. श्रीमति रेखा दुबे उर्फ गोठल बाई) ...794

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 125 — भरण पोषण की उचित राशि — यदि पति प्रत्यर्थी की तरह स्वस्थ और सक्षम व्यक्ति है, तो कम आय के आधार पर वह अपनी पत्नि और बच्चे को भरण पोषण की उचित राशि देने के उत्तरदायित्व से नहीं बच सकता — विचारण न्यायालय द्वारा पारित भरण पोषण की राशि में पत्नि के लिये रुपये 600/- प्रति माह से 1500/- रुपये प्रति माह और बच्चे के लिये रुपये 200/- प्रति माह से 900/- रुपये प्रतिमाह की वृद्धि की गई। (पुष्पा ठाकुर (श्रीमति) वि. भागवानदास भावेदी) ...277

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धाराएँ 125 व 127 — भरण पोषण की रकम का भुगतान — याची को अंतरिम भरण पोषण अदा करने के लिए निदेशित किया गया था — पत्नी द्वारा विलंब की युक्तियां अवलंबित किये जाने के आधार पर पति द्वारा अंतरिम भरण पोषण की रकम के परिवर्तन हेतु आवेदन लंबित है — अभिनिर्धारित — जब तक पूर्व में पारित भरण पोषण का आदेश संशोधित/परिवर्तित अथवा कायम नहीं रखा जाता, वह प्रवर्तनीय रहेगा — याची अंतरिम भरण पोषण अदा करने के लिए बाध्य — आदेश दिनांक से दो माह के भीतर याची की याचिका निर्णित करने के निदेश के साथ पुनरीक्षण खारिज। (अजय शर्मा वि. श्रीमति अर्चना शर्मा) ...272

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 145 — सुपुर्दगीदार का कब्जा — धारा 145 की कार्यवाही के अंतर्गत सुपुर्दगीदार का कब्जा, उस व्यक्ति का

under Section 145 shall be deemed to be of the person for whom he is possessing the attached property. [Indrakali (Smt.) Vs. Ravi Bhan Prasad] ...471

Criminal Procedure Code, 1973 (2 of 1974), Section 145 – See – Specific Relief Act, 1963, Sections 34 & 38 [Ganga Bai Vs. Devi Singh] ...490

Criminal Procedure Code, 1973 (2 of 1974), Section 154 – Delay – Police station situated at a distance of 11 Kms – FIR lodged after 2 hours & 45 minutes – F.I.R. can not be said to be delayed – However, complainant had opportunity to consult with other which is apparent from the evidence – It can not be said that true account of incident was mentioned in F.I.R. [Buddhu Pal Vs. State of M.P.] (DB)...774

Criminal Procedure Code, 1973 (2 of 1974), Section 154 – F.I.R. – F.I.R. can not be treated as a part of substantive evidence. [Chalaniya Dheemar Vs. State of M.P.] ...189

Criminal Procedure Code, 1973 (2 of 1974), Section 154 – F.I.R. – If any specific offence is made out from the documents annexed with F.I.R., then still Court can see that whether any prima facie offence is made out or not, although there may not be specified pleadings in that regards. [Kewin B. Ajit Vs. State of M.P.] ...661

Criminal Procedure Code, 1973 (2 of 1974), Sections 154, 156(3) – Defence Evidence – Where any crime is committed then the prosecution evidence is the preliminary evidence which can be looked into – However, documents submitted in defence may be considered up to the extent they are unimpeachable and relevant with FIR – However, Court should not adopt the approach to further investigate the matter to conclude as to whether any offence as alleged in FIR is made out or not. [Kewin B. Ajit Vs. State of M.P.] ...661

*Criminal Procedure Code, 1973 (2 of 1974), Section 157 – Copy to Magistrate – Object of sending copy to Magistrate is to check ante-dating and timing of F.I.R. – Concocted copy of Rojnamchasanha filed in Court as there is no such entry in original Rojnamchasanha – Dispatch register is also manipulated – No register of inward of counter of F.I.R. maintained by Court – Prosecution has failed to prove prompt sending of counter of F.I.R. to Magistrate – Appeal allowed. [Vikram Singh Vs. State of M.P.] (DB)...*40*

समझा जायेगा जिसके लिये वह कुर्क सम्पत्ति का कब्जाधारक है। (इन्द्रकली (श्रीमति) वि. रवि मान प्रसाद) ...471

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 145 - देखें - विनिर्दिष्ट अनुतोष अधिनियम, 1963, धाराएँ 34 व 38 (गंगा बाई वि. देवी सिंह) ...490

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 154 - विलम्ब - पुलिस स्टेशन 11 किमी की दूरी पर स्थित था - प्रथम सूचना रिपोर्ट 2 घंटे 45 मिनट के बाद दर्ज कराई गई - प्रथम सूचना रिपोर्ट विलम्ब से दर्ज करना नहीं कहा जा सकता - यद्यपि शिकायतकर्ता के पास दूसरों से सलाह करने का अवसर था जो कि साक्ष्य से प्रकट होता है - यह नहीं कहा जा सकता है कि प्रथम सूचना रिपोर्ट में घटना का सही वृत्तांत दिया गया है। (बुद्धू पाल वि. म.प्र. राज्य) (DB)...774

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 154 - प्रथम सूचना रिपोर्ट - प्रथम सूचना रिपोर्ट को सारभूत साक्ष्य के भाग के रूप में नहीं माना जा सकता। (छलनिया डीमर वि. म.प्र. राज्य) ...189

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 154 - प्रथम सूचना रिपोर्ट - यदि प्रथम सूचना रिपोर्ट के साथ संलग्न दस्तावेजों से कोई विनिर्दिष्ट अपराध गठित होता है तब भी न्यायालय यह देख सकता है कि क्या प्रथम दृष्ट्या अपराध गठित होता है अथवा नहीं यद्यपि, इस संबंध में कोई विनिर्दिष्ट अभिवाक् न हो। (केविन बी. अजीत वि. म.प्र. राज्य) ...661

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धाराएँ 154, 156(3) - प्रतिरक्षा साक्ष्य - जब कोई अपराध कारित होता है तब, अभियोजन साक्ष्य प्रारंभिक साक्ष्य है जिसका परीक्षण किया जा सकता है - किन्तु बचाव में प्रस्तुत दस्तावेजों को उनके अनाधिकेपनीय होने एवं प्रथम सूचना रिपोर्ट के साथ सुसंगत होने की सीमा तक विचार में लिया जा सकता है - परन्तु यह निष्कर्ष निकालने के लिये कि क्या कोई अपराध जैसा कि प्रथम सूचना रिपोर्ट में अभिकथित है, गठित होता है अथवा नहीं, न्यायालय को मामले की और जांच करने के मार्ग को अंगीकृत नहीं करना चाहिए। (केविन बी. अजीत वि. म.प्र. राज्य) ...661

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 157 - मजिस्ट्रेट की प्रतिलिपि - मजिस्ट्रेट की प्रतिलिपि भेजी जाने का उद्देश्य प्रथम सूचना रिपोर्ट के पूर्व दिनांकित एवं समयातीत होने की पड़ताल करना है - रोजनामचासन्हा की कूटरचित प्रतिलिपि न्यायालय में पेश की गई जबकि वास्तविक रोजनामचासन्हा में ऐसी कोई प्रविष्टि नहीं है - जावक रजिस्टर में भी हेराफेरी की गयी - न्यायालय द्वारा एफ.आई. आर. की प्रति का कोई आवक रजिस्टर अनुरक्षित नहीं किया गया - अभियोजन यह साबित करने में असफल रहा कि एफ.आई.आर. की प्रति त्वरित रूप से मजिस्ट्रेट को भेजी गयी - अपील मंजूर। (विक्रम सिंह वि. म.प्र. राज्य) (DB)...*40

Criminal Procedure Code, 1973 (2 of 1974), Section 157 – See – Penal Code 1860, Section 302 [Mangu Singh Vs. State of M.P.] (DB)...*6

Criminal Procedure Code, 1973 (2 of 1974), Section 164 – Statement of a witness cannot be discarded simply because their statements were recorded by the Magistrate under Section 164. [Ramdas Kachhi Vs. State of M.P.] (DB)...207

Criminal Procedure Code, 1973 (2 of 1974), Section 167(2), Dakaiti Aur Vyapharan Prabhavit Ksheshtra Adhiniyam, M.P. (36 of 1981), Section 11/13 – Bail – Challan not filed within 90 days of arrest of applicant – Proviso to Section 5 of Act, would apply only to those accused who has been in judicial custody for a specified offence as defined in Act – Merely by arresting the applicant under Section 11/13 of Act, the rights of the applicant as provided under Section 167(2) of Code can not be curtailed – Applicant granted bail. [Sunil Vs. State of M.P.] ...610

Criminal Procedure Code, 1973 (2 of 1974), Section 173(8) – Further investigation – Police filed Khatma report for third time after conducting further investigations thrice under the orders of the Special Judge – Special Judge refused to accept the report and directed for further investigation and for obtaining sanction for prosecution – Held – Special Judge could not have directed for further investigation for third time – It amounts to sheer abuse of process of law resulting into vexatious proceedings and harassment of appellant – Appeal allowed. [Vasanti Dubey Vs. State of M.P.] (SC)...*38

Criminal Procedure Code, 1973 (2 of 1974), Sections 173(8), 190 & 200 – Final Report – On filing of Khatma Report, Magistrate can either take cognizance of the matter, or enquire himself under Section 200 or accept the report, or direct for further investigation – Magistrate can not direct the police to file charge sheet. [Vasanti Dubey Vs. State of M.P.] (SC)...*38

Criminal Procedure Code, 1973 (2 of 1974), Section 188 – Offence committed outside of India – Offences alleged to have been committed outside India – Can not be inquired into or tried in India except with previous sanction of Central Government. [Mahesh Kumar Dhawan Vs. State of M.P.] ...*13

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 157 — देखें — दण्ड संहिता, 1860, धारा 302, (मंगू सिंह वि. म.प्र. राज्य) (DB)...*6

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 164 — साक्षी का कथन अस्वीकार नहीं किया जा सकता मात्र इसलिए कि उनके कथन मजिस्ट्रेट द्वारा धारा 164 के अंतर्गत अभिलिखित किये गये थे। (रामदास काछी वि. म.प्र. राज्य) (DB)...207

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 167(2), डकैती और व्यपहरण प्रभावित क्षेत्र अधिनियम, म.प्र. (1981 का 36), धारा 11/13 — जमानत — आवेदक की गिरफ्तारी के 90 दिन के भीतर चालान प्रस्तुत नहीं किया गया — अधिनियम की धारा 5 का परंतुक केवल उस अभियुक्त पर लागू होगा जिसे अधिनियम में परिभाषित विनिर्दिष्ट अपराध के लिये न्यायिक अभिरक्षा में रखा गया है — अधिनियम की धारा 11/13 के अंतर्गत अभियुक्त की मात्र गिरफ्तारी से संहिता की धारा 167(2) के अंतर्गत अभियुक्त को प्रदत्त अधिकारों को कम नहीं किया जा सकता — आवेदक को जमानत दी गई। (सुनील वि. म.प्र. राज्य)...610

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 173(8) — अतिरिक्त अन्वेषण — विशेष न्यायाधीश के आदेशों के अंतर्गत पुलिस ने तीन बार अतिरिक्त अन्वेषण संपादित करने के बाद तीसरी बार खात्मा रिपोर्ट प्रस्तुत की — विशेष न्यायाधीश ने रिपोर्ट स्वीकार करने से इंकार किया और अतिरिक्त अन्वेषण के लिये एवं अभियोजन के लिये मंजूरी अभिप्राप्त करने के लिए निदेश दिये — अभिनिर्धारित — विशेष न्यायाधीश तीसरी बार अतिरिक्त अन्वेषण के लिये निदेशित नहीं कर सकता था — यह विधि की प्रक्रिया का केवल दुरुपयोग की कोटि में आता है जिसके फलस्वरूप अपीलार्थी पर दूषित कार्यवाहियां एवं उत्पीड़न कारित होगा — अपील मंजूर। (वासंती दुबे वि. म.प्र. राज्य) (SC)...*38

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धाराएँ 173(8), 190 व 200 — अंतिम रिपोर्ट — खात्मा रिपोर्ट प्रस्तुत करने पर मजिस्ट्रेट या तो मामले का संज्ञान ले सकता है या धारा 200 के अंतर्गत स्वयं जांच कर सकता है या रिपोर्ट स्वीकार कर सकता है या अतिरिक्त अन्वेषण के लिये निदेशित कर सकता है — मजिस्ट्रेट पुलिस को आरोप पत्र प्रस्तुत करने के लिये निदेशित नहीं कर सकता। (वासंती दुबे वि. म.प्र. राज्य) (SC)...*38

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 188 — भारत के बाहर कारित अपराध — अपराध भारत के बाहर कारित होना अभिकथित किया गया — केन्द्र सरकार की पूर्वानुमति के बिना भारत में इसकी जांच या विचारण नहीं किया जा सकता। (महेश कुमार धवन वि. म.प्र. राज्य) ...*13

Criminal Procedure Code, 1973 (2 of 1974), Section 195 – Complaint filed by Dy. Director of IT (Investigation) Bhopal – Statement taken by ITO's – Held – Statement taken by ITO's shall be deemed to be a civil Court under Section 136 of IT Act – No case for interference under Section 482 is made out – Petition dismissed. [Babita Lila Vs. Union of India] ...649

Criminal Procedure Code, 1973 (2 of 1974), Section 200 – Defence Evidence before framing of Charge in complaint case – In case instituted otherwise than on police report, the accused persons can not be permitted to lead evidence before framing of charge. [Mahesh Mishra Vs. Munish Gupta] ...833

Criminal Procedure Code, 1973 (2 of 1974), Section 216 – Alteration of Charge – Trial Judge on the basis of medical as well as oral evidence altered the charge from 325/149 to 326/149 – Trial Judge can alter the charge at any stage – Alteration of charge at the end of trial proper – Revision dismissed. [Harveer Singh Vs. State of M.P.] ...604

Criminal Procedure Code, 1973 (2 of 1974), Section 217 – Amendment of Charges – Further Evidence – Accused persons were being tried for offence punishable under Section 376 of I.P.C. – Prosecutrix was examined and thereafter the charge was amended to Section 376(2)(g) of I.P.C. – Held- It was obligatory on the part of the Trial Court to gave an opportunity to the prosecution and also to the defence to lead such further evidence as they deem proper on the amended charge – Non-grant of such opportunity to the prosecution by the trial Court amounted to manifest error of law and procedure – Matter remanded back to the Trial Court permitting the prosecution to lead such further evidence as it may consider necessary with an equal opportunity to the accused person to further cross examine the witnesses. [Anita Kushwah Vs State of M.P.] (DB)...268

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Criminal Procedure Code, 1973 (2 of 1974), Sections 227 & 228 – Framing of Charge – Two accused persons stated that the applicant was accompanying them when they had killed the deceased

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Criminal Procedure Code, 1973 (2 of 1974), Section 482 – Interim Custody – High Court in exercise of power under Section 482 can not direct for interim release of a seized vehicle /property under the M.P. Amendment Act. [Ramniwas Vs. Game Range Chambal Sanctuary, Morena] ...811

Criminal Procedure Code, 1973 (2 of 1974), Section 482 – See
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Registration of Charitable Trust – While deciding the application for registration, the authority has to examine whether the application has been made in accordance with the provisions of Section 12A, Rule 17-A and form No. 10A – Commissioner is not required to examine whether the income derived by the trust is being spent for charitable purposes or the trust is earning profit – Activities of the trust must be genuine which should be in consonance with object of the trust – Commissioner is not required to examine the application of income – He has to examine whether the object of the trust are charitable or not. [Commissioner of Income Tax Vs. M/s. D.P.R. Charitable Trust, Satna] (DB)...296

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Industrial Disputes Act (14 of 1947), Section 33A – Scope – Petitioner, initially appointed as a Clerk (workman) was promoted to Junior Manager in 2002 – In 2005, he was charge sheeted and ultimately punished with punishment by compulsory retirement – Held – The petitioner was not a workman, thus, the Tribunal (C.G.I.T.) was not justified in entertaining the application under Section 33A at the instance of the employee who was not a workman. [S.K. Gaur Vs. Dena Bank, Bhopal] (DB)...59

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औद्योगिक विवाद अधिनियम (1947 का 14), धारा 33(सी)2 श्रमजीवी पत्रकार और अन्य समाचार-पत्र कर्मचारी (सेवा की शर्त) और प्रकीर्ण उपबंध अधिनियम, (1955 का 45), धारा 17 - वसूली की अन्य कोई विधि प्रतिकूल प्रभाव के बिना - अधिनियम 1947 की धारा 33(सी)2 के अंतर्गत आवेदन की पोषणीयता को अधिनियम 1955 की धारा 17 के अंतर्गत फार्मी की उपलब्धता के आधार पर चुनौती दी गई - अमिनिधायित्व - अन्य उपबंधों पर प्रतिकूल प्रभाव के बिना अधिनियमित उपबंध अन्य उपबंध के प्रवर्तन को संभावित करने में कोई प्रभाव नहीं डालता है और इसके अंतर्गत की गई कोई कार्यवाही ऐसे अन्य उपबंध से असंगत नहीं होती चाहिये पोषणीयता के संबंध में आक्षेप-विता गुण-दोष को है। (पत्रकार प्रकाशन, (प्रा.) (मे.) वि. श्रीमति वन्दना अवस्थी) (DB)...15

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Land Acquisition Act (1 of 1894), Sections 4(1), 6(2), 17(1), 17(4) – Construction of check post barrier – Public purpose for acquiring the land in question is satisfied as the collection of tax has not been proved by the petitioner to be in private interest – Therefore, the contention that there is no urgency as would call for invoking of Section 17 having no foundation, is negated – Held – Non compliance of provision under Section 4(1), 6(2), 17(1) & 17(4) of the Act, no interference caused – Petition dismissed. [Santosh Inderchand Taori Vs. State of M.P.] ...*32

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Maxim – Falsus in uno, falsus in omnibus – Neither a sound rule of law nor a rule of practice. [Ramdas Kachhi Vs. State of M.P.] (DB)...207.

परिसीमा अधिनियम (1963 का 36), धारा 5 - देखें - सिविल प्रक्रिया संहिता, 1908, आदेश 41 नियम 3-ए (सालिकराम वि. केशव) ...157

परिसीमा अधिनियम (1963 का 36) - अनुच्छेद 65 - कब्जे के लिए वाद - कब परिसीमा से परे पाया जा सकता है - वादी साबित करने में असफल रही कि वाद सम्पत्ति उसके द्वारा प्रतिवादी के पास बंधक दी गयी थी और प्रथम अपीली न्यायालय में उसके द्वारा विचारण न्यायालय के निष्कर्ष को चुनौती नहीं दी गई - वादी यह नहीं दर्शा पाई कि प्रतिवादी द्वारा वाद भूमि का कब्जा किस दिनांक से लिया गया - प्रतिवादी ने दावा किया कि अरजिस्ट्रीकृत विक्रय पत्र (प्र.डी.4) के आधार पर सन् 1961-62 से वाद भूमि उसके कब्जे में है - अभिनिर्धारित - प्रथम अपीली न्यायालय का निष्कर्ष कि वाद परिसीमा से वर्जित था और कब्जे की कोई डिक्री प्रदान नहीं की जा सकती, में कोई त्रुटि नहीं पाई जाती - अपील खारिज। (लीलावती (मृतक) द्वारा विधिक प्रतिनिधि वि. विश्राम) ...151

लोक सेवा (अनुसूचित जातियों, अनुसूचित जनजातियों और अन्य पिछड़े वर्गों के लिये आरक्षण) अधिनियम, एम.पी. (1994 का 21), धाराएँ 2(बी), 4 - पदों का आरक्षण - आँगनवाड़ी कार्यकर्ता - आँगनवाड़ी कार्यकर्ता और सहायक के पद कानूनी पद नहीं हैं और योजना की शर्तों से सृजित किये गये हैं - चूंकि आँगनवाड़ी कार्यकर्ता और सहायक किसी पद को धारण नहीं करते हैं, इसलिए अधिनियम 1994 के उपबंध लागू नहीं होते - याचिका खारिज। (पिछड़ा एवं दलित वर्ग संघ वि. म.प्र. राज्य) (DB)...458

माखनलाल चतुर्वेदी राष्ट्रीय पत्रकारिता एवं संचार विश्वविद्यालय अधिनियम, म.प्र. (1990 का 15), धाराएँ 5 (xxxi) व 51 - एशोसियेशन ऑफ स्टडी इंस्टीट्यूट विनियमन 2008, खंड 11.1 - धारा 5(xxxi) के अंतर्गत विनियमन बनाने की विश्वविद्यालय की शक्ति असीमित है जबकि सामान्य परिषद केवल उस मामले के संबंध में विनियमन बना सकती है जिसके लिये अधिनियम के अंतर्गत विनियमन द्वारा उपबंध बनाया जाना अपेक्षित है - निरीक्षण टीम द्वारा निरीक्षण के आधार पर एशोसियेशन के लिये खंड 11.1 का संशोधन विश्वविद्यालय के निदेशक के अधिकार क्षेत्र में है - याचिका खारिज। (माखनलाल चतुर्वेदी विश्वविद्यालय अध्ययन केन्द्र संघ वि. म.प्र. राज्य) (DB)...716

सूत्र - एक बात में मिथ्या तो सब में मिथ्या - एक बात में मिथ्या तो सब में मिथ्या का भारत में कोई उपयोजन नहीं। (संताष राय वि. म.प्र. राज्य) (DB)...*8

सूत्र - एक बात में मिथ्या तो सब में मिथ्या - न तो विधि का ठोस नियम है न ही पद्धति का नियम। (रामदास काछी वि. म.प्र. राज्य) (DB)...207

Medical Education (Gazetted) Services Recruitment Rules (M.P.) 1987 Schedule I – See – *Shashkiya Sewak (Adhiwarshik Aayu) Adhiniyam (M.P.) 1967, Section 2* [Sikandar Sabana (Ku.) Vs. State of M.P.] ...*17

Minimum wages – Home Guards – Home Guards discharging all duties which are being performed by a regular police personnel except actual investigation into a crime and anti-dacoity operations – State directed to take note of recommendations of State Human Rights Commission – Till then, employees working in Home Guards department be granted salary at the minimum/basic of pay prescribed for Constable in police department. [Home Guard Sainik Evam Parivar Kalyan Sangh Vs. State of M.P.] ...382

Motor Vehicles Act (59 of 1988), Section 166 – Accident – Arising out of use of Motor Vehicle – Bomb was planted under the bridge over which the truck passed at the time when the said bomb blew up – Bomb was planted under the bridge could not have possibly come to the knowledge of the owner/driver despite exercise of due care and diligence by them – Accident which occasioned the death of the deceased was not caused due to the use of the motor vehicle. Claimants can very well seek the remedy available to them before the Civil Court by filing a civil suit or by seeking their claim under the Workman Compensation Act if the provisions of the said enactment applies to them. [Union of India Vs. Bhagri] ...503

Municipal Corporation Act, M.P. (23 of 1956), Section 441 – Election Petition – Nirvachan Niyam, Rule 9A – Name of appellant was deleted from the voter list – Appellant contested the election of Mayor of Municipal Corporation and was elected under the interim order of High Court – Election Petition also filed against her also on the ground of deletion of her name from voter list – Election Petition pending before Tribunal involves the question of correction and deletion of her name in the voter list – The Election Tribunal has to record findings and such findings would supersede the orders passed by Registration Officer – Any order passed in W.A. would adversely effect the proceedings pending before the Election Tribunal – Writ Appeal disposed off with direction that matter be finally adjudicated by Election Tribunal and till that date the order of Registration Officer deleting the name of the Petitioner shall not be given effect and shall be subject to the final decision by the Election Tribunal. [Nirmala Pathak (Smt.) Vs. State of M.P.]

चिकित्सीय शिक्षा (राजपत्रित) सेवा मर्ती, नियम (म.प्र.), 1987, अनुसूची I - देखें। शासकीय सेवक (अधिवाषिक आयु) अधिनियम (म.प्र.), 1967, धारा 2 (सिकंदर खान (कुमारी) वि. म.प्र. राज्य) ...*17
न्यूनतम वेतन - होम गार्ड्स - होम गार्ड्स द्वारा उन सभी कर्तव्यों का निर्वहन किया जाता है जो नियमित पुलिस कर्मिक द्वारा किये जाते हैं सिवाय कि अपराध का वास्तविक अन्वेषण और डकैती विरोधी कार्यवाहियाँ - राज्य को राज्य मंत्रिव. अधिकार आयोग की सिफारिशों से टिप्पणी लेने के लिये निर्देशित किया गया - तब तक होम गार्ड्स विभाग में कार्यरत कर्मचारियों को पुलिस विभाग के आरक्षक के लिये विहित न्यूनतम/मूल वेतन प्रदान किया जाए। (होम गार्ड सैनिक एवं परिवार कल्याण संघ वि. म.प्र. राज्य) ...382

मोटर यान अधिनियम (1988 का 59), धारा 166 - दुर्घटना - मोटर यान के उपयोग से उत्पन्न हुई - पुल के नीचे बम लगाया गया जिसके ऊपर से टुक उस समय गुजरा जब उक्त बम फटा - बम को पुल के नीचे लगाया गया था जो मालिक/ड्रायवर के ज्ञान में आना संभव नहीं हो सका उनके द्वारा सावधानी व सतर्कता बरतने के बावजूद - दुर्घटना जिससे मृतक की मृत्यु हुई, वह मोटरयान के उपयोग के कारण कारित नहीं हुई। आवेदकगण उनके पास उपलब्ध उपचार का उपयोग करके सिविल न्यायालय में वाद प्रस्तुत कर सकते हैं या कर्मकार प्रतिकर अधिनियम के अंतर्गत दावा कर सकते हैं यदि उक्त अधिनियम के उपबंध उन पर लागू होते हैं। (यूनियन ऑफ इंडिया वि. मंगेसी) ...503

नगरपालिका निगम अधिनियम (म.प्र.) (1956 का 23), धारा 44 - निर्वाचन याचिका - निर्वाचन नियम, नियम-9ए - अपीलार्थी का नाम मतदाता सूची से हटाया गया - उच्च न्यायालय के अंतरिम आदेश के अंतर्गत अपीलार्थी ने नगरपालिका के महापौर का चुनाव लड़ा और निर्वाचित हुई - मतदाता सूची से उसका नाम हटाया जाने के आधार पर उसके विरुद्ध निर्वाचन याचिका भी प्रस्तुत की गई - अधिकरण के समक्ष लंबित निर्वाचन याचिका में उसके नाम का मतदाता सूची में सुधार एवं हटाया जाने का प्रश्न अंतर्गुह्य है - निर्वाचन अधिकरण को निष्कर्ष अभिलिखित करने होते हैं और ऐसे निष्कर्ष पंजीयन अधिकारी द्वारा पारित आदेशों को अधिक्रांत करेंगे - डब्लू.ए. में पारित किया गया कोई आदेश निर्वाचन अधिकरण के समक्ष लंबित कार्यवाही को प्रतिकूल रूप से प्रभावित करेगा - इस निर्देश के साथ रिट अपील का निपटारा किया गया कि निर्वाचन अधिकरण द्वारा सामला अतिमती न्यायनिर्णित किया जाये तथा उस दिनांक तक याची का नाम हटाने के पंजीयन अधिकारी के आदेश को प्रभावी नहीं किया जायेगा और निर्वाचन अधिकरण के अंतिम निर्णय के अध्याधीन होगा (निर्मला पाठक (श्रीमति) वि. म.प्र. राज्य) (DB)...10

Muslim Law – Alienation of undivided property – There is no prohibition not to alienate any specific item of undivided share – Normally, any specific item should not be alienated as it may cause anomaly to the other co-owners – However, the alienation can not be said to be illegal or not recognized by law if a co-owner alienates any specific property without the consent of co-owners – However, the co-owners may sue for partial partition of the property so alienated. [Akbar Khan Vs. Farida Bai] ...737

Narcotic Drugs and Psychotropic Substances Act (61 of 1985), Section 8(c)/18 – Possession of opium – 260 gms. of opium is alleged to have been seized but only 240 gms of opium was deposited in malkhana after separating a sample of 10 gms – Arrest memo, seizure memo and panchnama of sample appears to be tampered documents as they bear F.I.R. number whereas F.I.R. was lodged much thereafter – F.S.L. not readable hence no opinion can be drawn – Appellant liable to be acquitted – Appeal allowed. [Atik Vs. State of M.P.] ...532

Narcotic Drugs and Psychotropic Substances Act (61 of 1985), Section 20(B)(1) – Cultivation – One plant was found in the house – It is not proved that house was in possession of the appellant – From seizure of one plant it can not be presumed that cannabis plant was being cultivated – It must be established that he deliberately prepared the land or soil for growing such plants, cultivated, developed and maintained the plants by using agricultural techniques – Mere seizure of one plant will not amount to cultivation – Appeal allowed. [Vishwanath Patel Vs. State of M.P.] ...*41

Narcotic Drugs and Psychotropic Substances Act (61 of 1985), Section 50 – Mandatory – Consent letter written by appellant does not show that he was informed about his right to be searched before a Gazetted Officer or a Magistrate – Provisions of Section 50 not complied with. [Vishwanath Patel Vs. State of M.P.] ...*41

Narcotic Drugs and Psychotropic Substances Act (61 of 1985), Section 50 – Search and Seizure – Appellant took out a packet from her kurti and was in her hand when it was seized – Compliance of Section 50 was mandatory – A separate notice should have been given apprising her constitutional rights to be searched before Magistrate or Gazetted Officer or by police. [Raziya Vs. State of M.P.] ...173

मुस्लिम विधि - अविभक्त सम्पत्ति का अन्य संक्रामण - अविभक्त हिस्से के किसी विनिर्दिष्ट भाग को अन्य संक्रामित नहीं किये जाने के लिये कोई प्रतिशोध नहीं - सामान्यतः किसी विनिर्दिष्ट भाग को अन्य संक्रामित नहीं करना चाहिए क्योंकि इससे अन्य सह स्वामियों को विषमता कारित हो सकती है - तथापि अन्य संक्रामण को अवैध या अविधिमन्य नहीं कहा जा सकता यदि सह स्वामी किसी विनिर्दिष्ट सम्पत्ति को सह स्वामियों की सहमति के बिना अन्य संक्रामित करता है - किन्तु सह स्वामी ऐसी अन्य संक्रामित सम्पत्ति के भागतः विभाजन के लिए मुकदमा कर सकते हैं। (अकबर खान वि. फरीदा बाई) ...737

स्वापक औषधि और मनःप्रभावी पदार्थ अधिनियम (1985 का 61), धारा 8(सी)/18 - अफीम का कब्जा - 260 ग्रा. अफीम जब्त होना अभिकथित किया गया लेकिन 10 ग्रा. सेम्पल अलग करने के बाद केवल 240 ग्रा. अफीम ही मालखाने में जमा की गई - गिरफ्तारी पत्रक, जब्ती पत्रक और नमूने का पंचनामा छेड़छाड़ किये गये दस्तावेज प्रतीत होते हैं, क्योंकि उनमें एफ.आई.आर. नम्बर दिया गया है, जबकि एफ.आई.आर. इसके बहुत बाद में दर्ज कराई गई - एफ.एस.एल. प्रतिवेदन पठनीय नहीं है, अतः कोई राय नहीं बनायी जा सकती - अपीलार्थी दोषमुक्त किये जाने योग्य - अपील मंजूर। (अतीक वि. म.प्र. राज्य) ...532

स्वापक औषधि और मनःप्रभावी पदार्थ अधिनियम (1985 का 61), धारा 20(बी)(1) - खेती - मकान में एक पौधा पाया गया - यह साबित नहीं किया गया कि मकान अपीलार्थी के कब्जे में था - एक पौधे की जब्ती से यह उपधारणा नहीं की जा सकती कि गांजे के पौधों की खेती की जा रही थी - यह स्थापित किया जाना चाहिए कि उसने जानबूझकर ऐसे पौधों को उगाने के लिये भूमि या मिट्टी तैयार की या कृषि तकनीकों के उपयोग द्वारा पौधों की खेती का विकास किया एवं संधारण किया - मात्र एक पौधे की जब्ती, खेती करने की कोटि में नहीं आयेगा - अपील मंजूर। (विश्वनाथ पटेल वि. म.प्र. राज्य) ...*41

स्वापक औषधि और मनःप्रभावी पदार्थ अधिनियम (1985 का 61), धारा 50 - आज्ञापक - अपीलार्थी द्वारा लिखा गया सम्पत्ति पत्र नहीं दर्शाता कि उसे राजपत्रित अधिकारी या मजिस्ट्रेट के समक्ष उसकी तलाशी लिये जाने के उसके अधिकार के बारे में जानकारी दी गई थी - धारा 50 के उपबन्धों का अनुपालन नहीं किया गया। (विश्वनाथ पटेल वि. म.प्र. राज्य) ...*41

स्वापक औषधि और मनःप्रभावी पदार्थ अधिनियम (1985 का 61), धारा 50 - तलाशी एवं जब्ती - अपीलार्थी ने अपनी कुर्ती से एक पैकेट निकाला और वह उसके हाथ में था जब उसे जब्त किया गया - धारा 50 का अनुपालन आज्ञापक था - मजिस्ट्रेट या राजपत्रित अधिकारी के समक्ष या पुलिस द्वारा तलाशी के लिये उसे संवैधानिक अधिकारों से अवगत कराते हुये पृथक् नोटिस दिया जाना चाहिए था। (रजिया वि. म.प्र. राज्य) ...173

Narcotic Drugs and Psychotropic Substances Act (61 of 1985), Section 55 – Custody of seized articles – No paging on malkhana register – No time of deposit of sealed packet in malkhana register – No mention that impression seal was deposited with articles – No mention that impression seal was sent along with articles to F.S.L. – Provisions of Section 55 not complied. [Raziya Vs. State of M.P.]

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*National Council for Teacher Education Act (73 of 1993), Sections 14(3),15(3),16 National Council for Teacher Education (Recognition Norms and Procedure) Regulations, 2005 – Sections 7(2)(3)(4)(5)(9) – Recognition – Guidelines issued. [Adarsh Shiksha Mahavidyalaya Vs. Subhash Rahangdale] (SC)...*19*

*National Council for Teacher Education Act, (73 of 1993), Sections 14(3), 15(3),16, National Council for Teacher Education (Recognition Norms and Procedure) Regulations, 2005, Sections 7(2)(3)(4)(5)(9) – Recognition – The provisions are mandatory in nature – Examining Body can not grant affiliation to any institution or hold examination unless the institution has obtained recognition under Section 14 or permission for a course or training under Section 15. [Adarsh Shiksha Mahavidyalaya Vs. Subhash Rahangdale] (SC)...*19*

*National Council for Teacher Education (Recognition Norms and Procedure) Regulations, 2005, Sections 7(2),(3) – Say of State Govt. – State Govt is entitled to make recommendations on the application made for grant of recognition - Regional Committee is duty bound to consider the recommendations of the State Govt before taking final decision. [Adarsh Shiksha Mahavidyalaya Vs. Subhash Rahangdale] (SC)...*19*

*National Council for Teacher Education (Recognition Norms and Procedure) Regulations, 2005, Sections 7(2)(3)(4)(5)(9) – See – National Council for Teacher Education Act, 1993, Sections 14(3), 15(3),16, [Adarsh Shiksha Mahavidyalaya Vs. Subhash Rahangdale] (SC)...*19*

National Highways Act (48 of 1956), Sections 3(G)5, 3E – Possession – Quantum of compensation determined by authority challenged by appellant before arbitrator on the ground of inadequacy – Section 3 empowers to take over possession on determination and deposit of

स्वापक औषधि और मनःप्रभावी पदार्थ अधिनियम (1985 का 61), धारा 55 — जबाशुदा वस्तुओं की अभिरक्षा — मालखाना रजिस्टर में पृष्ठांकन नहीं — मालखाना रजिस्टर में मुहरबंद पैकेट के जमा करने का समय नहीं — कोई उल्लेख नहीं कि वस्तुओं के साथ छाप मुहर जमा की गई थी — कोई उल्लेख नहीं कि वस्तुओं के साथ छाप मुहर एफ.एस.एल. को भेजी गई थी — धारा 55 के प्रावधानों का अनुपालन नहीं किया गया। (रजिया वि. म.प्र. राज्य) ...173

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राष्ट्रीय अध्यापक शिक्षा परिषद अधिनियम (1993 का 73), धाराएँ 14(3), 15(3), 16, राष्ट्रीय अध्यापक शिक्षा परिषद (मान्यता मानदंड और प्रक्रिया) विनियमन, 2005, धाराएँ 7(2)(3)(4)(5)(9) — मान्यता — उपबंध आज्ञापक प्रकृति के हैं — परीक्षण निकाय किसी संस्थान की मान्यता को मंजूरी नहीं दे सकता या परीक्षा नहीं ले सकता जब तक कि संस्थान धारा 14 के अंतर्गत मान्यता प्राप्त नहीं कर लेता या पाठ्यक्रम या प्रशिक्षण के लिये धारा 15 के अंतर्गत अनुमति प्राप्त नहीं कर लेता। (आदर्श शिक्षा महाविद्यालय वि. सुभाष राहांगडाले) (SC)...*19

राष्ट्रीय अध्यापक शिक्षा परिषद (मान्यता मानदंड और प्रक्रिया) विनियमन, 2005, धाराएँ 7(2), (3) — राज्य शासन का अधिकार — मान्यता मंजूर करने के आवेदन पर राज्य शासन सिफारिश करने के लिए हकदार — संभागीय समिति अंतिम निर्णय लेने के पहले राज्य शासन की सिफारिशों को विचार में लेने के लिए कर्तव्यबाध्य है। (आदर्श शिक्षा महाविद्यालय वि. सुभाष राहांगडाले) (SC)...*19

राष्ट्रीय अध्यापक शिक्षा परिषद (मान्यता मानदंड और प्रक्रिया) विनियमन, 2005, धाराएँ 7(2)(3)(4)(5)(9) — देखें — राष्ट्रीय अध्यापक शिक्षा परिषद अधिनियम, 1993, धाराएँ 14(3), 15(3), 16 (आदर्श शिक्षा महाविद्यालय वि. सुभाष राहांगडाले) (SC)...*19

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compensation amount by competent authority – Taking over of possession can not wait till decision is given by arbitrator – Appeal dismissed. [Pratap Sambhaji Rao Khutal Vs. State of M.P.] (DB)...308

Negotiable Instruments Act (26 of 1881), Section 138, Criminal Procedure Code, 1973 (2 of 1974), Section 482 – Pendency of Civil Suit – Proceedings under Section 138 of Act, 1881 can not be quashed merely because of pendency of civil suit – Disputed questions of fact can not be gone into in proceedings under Section 482 of Cr.P.C. [Monotech Systems Ltd. Vs. Jai Badri Vishal Graphics] ...*28

Negotiable Instruments Act (26 of 1881), Section 141 – Officers Liable – Averments in Complaint – Managing Director or a Joint Managing Director, Director or an officer who has signed the cheque, Director, Secretary or Manager who are in charge of and responsible to the Company for the conduct of the business can be made liable. [Monotech Systems Ltd. Vs. Jai Badri Vishal Graphics] ...*28

Negotiable Instruments Act (26 of 1881), Section 145 – Affidavit – Offence under Section 138 of the Act – Complainant submitted affidavit in support of his complaint which contain entire factual position – Held – Proper compliance of Section 200, Cr.P.C. in light of provision of Section 145 of the Act – Registration of complaint on basis of affidavit is legal – Petition dismissed. [Dinesh Vaishnav (Bairagi) Vs. Kishor Kumar Gupta] ...654

Negotiable Instruments Act (26 of 1881), Section 147 – Compounding of Offence – Stage – Offence under Section 138 is not only an offence qua property but it is also of the nature of an economic offence – Thus parties are liberty to compound the offence even after the dismissal of their revision – Convict may pray for his release on by compounding the offence by filing application under Section 482 – Application for compromise allowed. [O.T.G. Global Finance Ltd. Vs. Mohan Mandelia] ...*29

Negotiable Instruments Act (26 of 1881), Section 147, Criminal Procedure Code, 1973 (2 of 1974), Section 320(2) – Compromise – Permission of Court – Provisions of Section 147 of Act, 1881 override the provisions of Section 320(2) of Cr.P.C. – Section 147 of Act, 1881 does not confer any obligation to obtain permission for entering into a compromise or to compound the offence. [O.T.G. Global Finance Ltd. Vs. Mohan Mandelia] ...*29

— कब्जा लेने के लिये माध्यस्थ द्वारा निर्णय देने तक इंतजार नहीं किया जा सकता
— अपील खारिज। (प्रताप सम्माजी राव खूतल वि. म.प्र. राज्य) (DB)...308

परक्राम्य लिखत अधिनियम (1881 का 26), धारा 138, दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 482, — सिविल वाद का लम्बित रहना — अधिनियम 1881 की धारा 138 के अंतर्गत कार्यवाहियां अभिखंडित नहीं की जा सकती मात्र इसलिए कि वाद लंबित है — द.प्र.सं. की धारा 482 के अंतर्गत कार्यवाहियों में तथ्य के विवादित प्रश्नों का परीक्षण नहीं किया जा सकता। (मोनोटेक सिस्टम लि. वि. जय बंदी विशाल ग्राफिक्स) ...*28

परक्राम्य लिखत अधिनियम (1881 का 26), धारा 141 — दायित्वाधीन अधिकारी — शिकायत में प्राक्कथन — प्रबंध निदेशक या संयुक्त प्रबंध निदेशक, निदेशक या अधिकारी जिसने चैक पर हस्ताक्षर किये, निदेशक, सचिव या प्रबंधक जो कारोबार के संचालन हेतु कम्पनी के प्रभारी हैं एवं कम्पनी को जबाबदेह है को दायी बनाया जा सकता है। (मोनोटेक सिस्टम लि. वि. जय बंदी विशाल ग्राफिक्स) ...*28

परक्राम्य लिखत अधिनियम (1881 का 26), धारा 145 — शपथपत्र — अधिनियम की धारा 138 के अंतर्गत अपराध — शिकायतकर्ता ने अपनी शिकायत के समर्थन में शपथपत्र प्रस्तुत किया जिसमें संपूर्ण तथ्यात्मक स्थिति अंतर्विष्ट है — अभिनिर्धारित — अधिनियम की धारा 145 के उपबंध के आलोक में दण्ड प्रक्रिया संहिता की धारा 200 का समुचित अनुपालन — शपथपत्र के आधार पर शिकायत को पंजीबद्ध किया जाना विधि संगत है — याचिका खारिज। (दिनेश वैष्णव (वैरागी) वि. किशोर कुमार गुप्ता) ...654

परक्राम्य लिखत अधिनियम (1881 का 26), धारा 147 — अपराध का शमनीय होना — प्रक्रम — धारा 138 के अंतर्गत अपराध न केवल सम्पत्ति का अपराध है बल्कि यह एक आर्थिक अपराध की प्रकृति का भी है — अतः पक्षकार उनकी पुनरीक्षण के खारिज होने के बाद भी अपराध का प्रशमन कर सकने के लिये स्वतंत्र हैं — अपराधी/बंदी धारा 482 के अंतर्गत आवेदन प्रस्तुत करके अपराध का प्रशमन करने के लिये/समझौते के द्वारा अपनी रिहाई के लिये प्रार्थना कर सकता है — समझौते के लिये आवेदन मंजूर। (ओ.टी.जी. ग्लोबल फाइनेन्स लि. वि. मोहन मन्डेलिया) ...*29

परक्राम्य लिखत अधिनियम (1881 का 26), धारा 147, दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 320 (2) — समझौता — न्यायालय की अनुमति — अधिनियम 1881 की धारा 147 के उपबंध द.प्र.सं. की धारा 320 (2) के उपबंधों को अधिभावी करता है — अधिनियम 1881 की धारा 147 कोई समझौता करने के लिये या अपराध को शमनीय करने के लिये अनुमति लेने को बाध्य नहीं करती। (ओ.टी.जी. ग्लोबल फाइनेन्स लि. वि. मोहन मन्डेलिया) ...*29

Panchayat Raj Evam Gram Swaraj Adhiniyam, M.P. 1993 (1 of 1994), Section 17 – Reservation of Seats – Reservation of seat of Sarpanch for Scheduled Tribe challenged on the ground that there are only two persons i.e., husband and wife and therefore, population of S.T. ought to have been declared as no population – Held- No Population do not cover a case where husband and wife belonging to S.T. live in same Gram Panchayat – Voters have choice either to elect husband or wife – Reservation of seat can not be held to be farce – Petition dismissed. [Sukhiya Lodhi Vs. State of M.P.] (DB)...462

Panchayat Raj Evam Gram Swaraj Adhiniyam, M.P. 1993 (1 of 1994), Section 85 – Appointment of Panchayat Karmi – Appointment of appellant was made on the basis of majority of votes – Scheme in vogue provided for appointment on merit basis – Appointment of appellant was rightly quashed by Writ Court. [Suresh Vs. Chief Executive Officer] (DB)...698

Panchayat Raj Evam Gram Swaraj Adhiniyam, M.P. 1993 (1 of 1994), Section 91 – Appeal – Appellant, in memo of appeal had stated reasons for filing appeal belatedly – No objection with regard to the limitation was taken by appellant before S.D.O. – S.D.O. decided the appeal on merits – It would be assumed that S.D.O. had condoned the delay – Writ Court rightly declined to accept the plea of limitation – Appeal dismissed. [Suresh Vs. Chief Executive Officer] (DB)...698

Payment of Gratuity Act (39 of 1972), Section 4(6) – Forfeiture of gratuity – Right to gratuity is a statutory right of respondent who had taken voluntary retirement – Petitioner/Employer permitted respondent No.1 to take voluntary retirement – Services of respondent No.1 were not terminated on the ground of any misconduct – Therefore, his gratuity can not be forfeited to recover loss caused to Petitioner/Bank – Forfeiture of gratuity was illegal. [Zila Sahkari Kendriya Bank Maryadit Vs. Rajju Khan] (DB)...443

Penal Code (45 of 1860), Section 34 – Common Intention – A/3 alongwith other accused persons was digging embankment when dispute arose – A/3 did not cause any injury to complainant party nor did any overt act – Nothing on record that he shared common intention to cause death of deceased – A/3 acquitted. [Hari Ram Vs. State of M.P.]

पंचायत राज एवं ग्राम स्वराज अधिनियम, म.प्र. 1993 (1994 का 1), धारा 17 — पदों का आरक्षण — अनुसूचित जनजाति के लिए आरक्षित सरपंच के पद को इस आधार पर चुनौती दी गई कि केवल दो व्यक्ति अर्थात् पति और पत्नि हैं इसलिए, अनुसूचित जनजाति की जनसंख्या को कोई जनसंख्या नहीं घोषित की जाना चाहिये थी — अभिनिर्धारित — जनसंख्या नहीं होने का मामला ऐसे मामले को आच्छादित नहीं करता जहाँ अनुसूचित जनजाति के पति और पत्नि एक ही ग्राम पंचायत में निवासरत हों — मतदाताओं के पास पति या पत्नि में से किसी एक को निर्वाचित करने का विकल्प है — पद के आरक्षण को प्रहसन होना निर्धारित नहीं किया जा सकता — याचिका खारिज। (सुखिया लोधी वि. म.प्र. राज्य) (DB)...462

पंचायत राज एवं ग्राम स्वराज अधिनियम, म.प्र. 1993 (1994 का 1), धारा 85 — पंचायत कर्मियों की नियुक्ति — अपीलार्थी की नियुक्ति मत की बहुलता के आधार पर की गई — गुणावगुण के आधार पर नियुक्ति की योजना प्रचलन में है — रिट न्यायालय द्वारा अपीलार्थी की नियुक्ति उचित रूप से अभिखंडित की गई। (सुरेश वि. चीफ एग्जीक्यूटिव ऑफीसर) (DB)...698

पंचायत राज एवं ग्राम स्वराज अधिनियम, म.प्र. 1993 (1994 का 1), धारा 91 — अपील — अपीलार्थी ने अपील मेमो में अपील विलम्ब से प्रस्तुत किये जाने के कारण बताये — अपीलार्थी द्वारा परिसीमा के संबंध में अनुविभागीय अधिकारी के समक्ष कोई आक्षेप नहीं लिया गया — अनुविभागीय अधिकारी ने गुणदोष के आधार पर अपील निर्णित की — यह समझा जावेगा कि अनुविभागीय अधिकारी ने विलम्ब क्षमा किया — रिट न्यायालय ने उचित रूप से परिसीमा के संबंध में अभिवचन ग्रहण करने से मना किया — अपील खारिज। (सुरेश वि. चीफ एग्जीक्यूटिव ऑफीसर) (DB)...698

उपदान संदाय अधिनियम (1972 का 39), धारा 4(6) — उपदान का समपहरण — उपदान का अधिकार प्रत्यर्थी का कानूनी अधिकार है, जिसने स्वैच्छिक सेवानिवृत्ति ली थी — याची/नियोक्ता ने प्रत्यर्थी क्रं. 1 को स्वैच्छिक सेवानिवृत्ति लेने की अनुमति दी — प्रत्यर्थी क्रं. 1 की सेवा किसी दुराचरण के आधार पर समाप्त नहीं की गयी थी — इसलिये, याची/बैंक को हुई हानि को वसूलने के लिये उसके उपदान का समपहरण नहीं किया जा सकता — उपदान का समपहरण अवैध। (जिला सहकारी केन्द्रीय बैंक मर्यादित वि. रज्जू खान) (DB)...443

दण्ड संहिता (1860 का 45), धारा 34 — समान आशय — ए/3 अन्य अभियुक्तगण के साथ बाँध खोद रहे थे, जब विवाद उत्पन्न हुआ — ए/3 ने शिकायतकर्ता पक्षकार को कोई चोट नहीं पहुंचाई और न ही कोई प्रत्यक्ष कार्य किया — अभिलेख पर यह दर्शाने के लिये कुछ नहीं है कि मृतक की मृत्यु कारित करने में उसका भी समान आशय था — ए/3 दोषमुक्त। (हरि राम वि. म.प्र. राज्य) ...*23

Penal Code (45 of 1860)– Section 34 – Common Intention – Nothing on record that acquitted accused persons had prior knowledge that 'A' was having knife in his pant – Moreover, single blow was inflicted by 'A' – Difficult to hold that his companions were sharing a common intention to kill deceased. [Santosh Rai Vs. State of M.P.] (DB)...*8

Penal Code (45 of 1860), Sections 97 & 99 – Right of Private Defence – Defence taken by appellant that deceased entered in the room of his wife and tried to commit a mischief with her is unnatural, improbable and false as the deceased would not have dared to commit such an act in the presence of his wife and child – Otherwise also, appellant had no reason to cause 10 injuries to A and 5 injuries to A's wife and 4 injuries to A's minor son – Number and nature of injuries caused to deceased persons clearly indicate that these injuries could not have been caused in protecting his wife – Adverse inference deserves to be drawn against him for putting false explanation. [In Reference Vs. Gudda @ Dwarikendra] (DB)...613

Penal Code (45 of 1860), Sections 107 & 306 – Abetment to commit suicide – Harassment should be of such a nature, which amounts to instigation to any person to commit suicide or conspiracy accompanied by an act or illegal omission for commission of suicide. [State of M.P. Vs. Dulichandra] ...*34

Penal Code (45 of 1860), Section 120B – Conspiracy – Respondent/wife of appellant alleged to have invited the deceased and his family in the house for lunch – Held – There is no evidence that respondent/wife knew the design or the plan conceived by appellant – It can not be held that respondent conspired with her husband/appellant in commission of offence – Acquittal of respondent by Trial Court proper. [In Reference Vs. Gudda @ Dwarikendra] (DB)...613

Penal Code (45 of 1860), Sections 300, 307 & 323, Criminal Procedure Code, 1973 (2 of 1974), Sections 227 & 228 – Framing of Charges – Attempt to commit murder – M.L.C. report shows that the injuries sustained by victim does not come under purview of earlier part of Section 300 of I.P.C. – In order to examine the ingredients of offence under Section 307 of I.P.C., the criteria stated in earlier part of Section 300 of I.P.C. has to be taken into consideration – As the

दण्ड संहिता (1860 का 45), धारा 34 — सामान्य आशय — अभिलेख पर कुछ नहीं कि दोषमुक्त अभियुक्त व्यक्तियों को पूर्व ज्ञान था कि 'A' अपनी पैंट में चाकू लिये था — इसके सिवाय 'A' द्वारा एकल वार किया गया था — यह धारणा करना कठिन है कि उसके सहयोगी मृतक को मारने के सामान्य आशय में भागी थे। (संतोष राय वि. म.प्र. राज्य) (DB)...*8

दण्ड संहिता (1860 का 45), धाराएँ 97 व 99 — निजी प्रतिरक्षा का अधिकार — अपीलार्थी द्वारा लिया गया बचाव कि मृतक उसकी पत्नि के कमरे में दाखिल हुआ और उसके साथ दुर्व्यहार किया अप्राकृतिक, असंभाव्य व मिथ्या है क्योंकि मृतक अपनी पत्नि और बच्चों की उपस्थिति में ऐसा कृत्य करने का साहस नहीं कर सकता था — अन्यथा भी अपीलार्थी के पास 'ए' को 10 चोटें, 'ए' की पत्नि को 5 चोटें और 'ए' के अवयस्क पुत्र को 4 चोटें कारित करने का कोई कारण नहीं था — मृतक व्यक्तियों को कारित चोटों की संख्या व प्रकृति स्पष्ट रूप से दर्शाती है कि ये चोटें उसकी पत्नि की प्रतिरक्षा करने में कारित नहीं हो सकती थी — मिथ्या स्पष्टीकरण देने के कारण उसके विरुद्ध प्रतिकूल निष्कर्ष निकाला जाना चाहिए। (इन रेफेन्स वि. गुड्डा उर्फ द्वारिकेन्द्र) (DB)...613

दण्ड संहिता (1860 का 45), धाराएँ 107 व 306 — आत्महत्या करने का दुष्परण — उत्पीड़न इस प्रकृति का होना चाहिये जो किसी व्यक्ति को आत्महत्या कारित करने के लिये उकसाना या आत्महत्या कारित करने के लिये कोई कृत्य या अवैध लोप सहित षडयंत्र की कोटि में आता हो। (म.प्र. राज्य वि. दुलीचन्द्र) ...*34

दण्ड संहिता (1860 का 45), धारा 120बी — भाडयंत्र — अपीलार्थी की पत्नि /प्रत्यर्थी द्वारा मृतक व उसके परिवार को घर में दोपहर के भोजन के लिये आमंत्रित किया जाना अभिकथित किया गया — अभिनिर्धारित — इस बात की कोई साक्ष्य नहीं कि प्रत्यर्थी/पत्नि अपीलार्थी द्वारा कल्पित रूपांकन या योजना को जानती थी — यह निर्धारित नहीं किया जा सकता कि अपराध के कारित किये जाने में प्रत्यर्थी ने पति/अपीलार्थी के साथ भाडयंत्र रचा — विचारण न्यायालय द्वारा प्रत्यर्थी की दोषमुक्ति उचित। (इन रेफेन्स वि. गुड्डा उर्फ द्वारिकेन्द्र) (DB)...613

दण्ड संहिता (1860 का 45), धाराएँ 300, 307 व 323, दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धाराएँ 227 व 228 — आरोप विरचित किये जाना — हत्या करने का प्रयत्न करना — एम.एल.सी. रिपोर्ट दर्शाती है कि पीड़ित को कारित क्षतियां भा. द.सं. की धारा 300 के पूर्व के भाग की परिधि में नहीं आती — भा.द.सं. की धारा 307 के अंतर्गत अपराध के घटकों का परीक्षण किये जाने के लिये भा.द.सं. की धारा 300 के पूर्व भाग में कथित मानदंड को विचार में लिया जाना होता है — चूंकि पीड़ित को गंभीर चोट नहीं आयी अथवा प्रकृति के सामान्य क्रम में मृत्यु कारित

victim did not sustain grievous injury or sufficient to cause death in ordinary course of nature, the case fall only under Section 323 of I.P.C. – Revision allowed. [Chhote Lal Vs. State of M.P.] ... 581

*Penal Code (45 of 1860), Section 302, Criminal Procedure Code, 1973 (2 of 1974), Section 157 – Murder – Postmortem report states that time of death was 136 hours from the date of postmortem – Postmortem was done after 60 hours of incident – There is delay of 24 hours in lodging the F.I.R. – Delay of seven days in sending copy of F.I.R. to Magistrate – Head was chopped from body by causing single blow – Weapon used must have been heavy and such injury could not have been caused by sword which was seized – Sword was also not produced before Court – Recovery of head and body also not reliable – Appellants not guilty – Appeal allowed. [Mangu Singh Vs. State of M.P.] (DB)...*6*

Penal Code (45 of 1860), Section 302 – Death Sentence – Rarest of rare case – Appellant killed three persons including a pregnant lady and a minor child – Appellant was under no duress or provocation – Conduct of stabbing three persons was so brutal, cruel, grotesque and diabolical and offence was committed in such dastardly manner that he deserves no sympathy, especially in view of the number of injuries to different persons – Reference accepted – Death Sentence affirmed. [In Reference Vs. Gudda @ Dwarikendra] (DB)...613

*Penal Code (45 of 1860), Section 302 – Deceased lying on the passage in front of his house and assaulted by an Axe on head – Held – Appellant dealt a forceful blow on the head of deceased with a sharp edged weapon like an Axe resulting in fracture of the skull bone and rupture of brain, itself indicate that appellant intended to cause death of deceased making him liable to be punished under section 302 of I.P.C. – Appeal Dismissed. [Ram Kushal Gautam Vs. State of M.P.] (DB)...*31*

Penal Code (45 of 1860), Section 302, Evidence Act (1 of 1872), Section 3 – Related eye witness – Deceased and eye witness 'A' were on same road – There was no obstruction in between them – As accused were well known to 'A' therefore discrepancy with regard to distance becomes irrelevant – 'A' immediately lodged F.I.R. mentioning the names and overt acts of accused persons which gives assurance

करने के लिये पर्याप्त नहीं थी, प्रकरण केवल भा.द.सं. की धारा 323 के अंतर्गत आता है - पुनरीक्षण मंजूर। (छोटे लाल वि. म.प्र. राज्य) ...581

दण्ड संहिता (1860 का 45), धारा 302, दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 157 - हत्या - शव परीक्षण प्रतिवेदन प्रकट करता है कि मृत्यु का समय शव परीक्षण के दिनांक से 136 घंटे का था - शव परीक्षण घटना के 60 घंटों के पश्चात किया गया - एफ.आई.आर. दर्ज करने में 24 घंटों का विलंब है - एफ. आई.आर. की प्रति मजिस्ट्रेट को भेजने में सात दिनों का विलंब - एक ही आघात द्वारा सिर से घड़ काट दिया गया था - उपयोग किया गया शस्त्र भारी रहा होगा और ऐसी चोट तलवार से कारित नहीं की जा सकती, जिसे जप्त किया गया था - तलवार भी न्यायालय के समक्ष प्रस्तुत नहीं की गई - सिर और शरीर की बरामदगी भी विश्वसनीय नहीं - अपीलार्थी दोषी नहीं - अपील मंजूर। (मंगू सिंह वि. म.प्र. राज्य) (DB)...*6

दण्ड संहिता (1860 का 45), धारा 302 - मृत्युदण्ड - विरल से विरलतम मामला - अपीलार्थी ने तीन व्यक्तियों को मारा जिसमें एक गर्भवती स्त्री और एक अवयस्क बच्चा शामिल - अपीलार्थी किसी दबाव या प्रकोपन में नहीं था - तीन व्यक्तियों को छुरा भोंकने का कृत्य नृशंस, क्रूर, धिनौना और पैशाचिक है और अपराध इतने कायरतापूर्ण तरीके से किया गया है कि वह किसी सहानुभूति का पात्र नहीं है विशेषतः विभिन्न व्यक्तियों को पुहंवाई गई चोटों की संख्या को दृष्टिगत रखते हुए - निर्देश स्वीकृत - मृत्यु दण्डादेश की पुष्टि की गई। (इन रेफेन्स वि. गुड्डा उर्फ द्वारिकेन्द्र) (DB)...613

दण्ड संहिता (1860 का 45), धारा 302 - मृतक अपने घर के सामने गलियारे में पड़ा था और उसके सिर पर कुल्हाड़ी से हमला किया गया था - अभिनिर्धारित - अपीलार्थी ने मृतक के सिर पर कुल्हाड़ी जैसे धारदार हथियार से जबरदस्त आघात पहुंचाया जिसके परिणामस्वरूप खोपड़ी में अस्थिमंग हुआ तथा मस्तिष्क फट गया, स्वमेव दर्शाता है कि अपीलार्थी का आशय मृतक की मृत्यु कारित करना था जो उसे भा.द.सं. की धारा 302 के अंतर्गत दण्डित किये जाने योग्य बनाता है - अपील खारिज। (राम कुशल गौतम वि. म.प्र. राज्य) (DB)...*31

दण्ड संहिता (1860 का 45), धारा 302, साक्ष्य अधिनियम (1872 का 1), धारा 3 - नातेदार प्रत्यक्षदर्शी साक्षी - मृतक व प्रत्यक्षदर्शी साक्षी 'ए' एक ही रोड पर थे - उनके बीच कोई अवरोध नहीं था - चूंकि अभियुक्त 'ए' से अच्छी तरह से परिचित था इसलिए दूरी के संबंध में विसंगति अप्रासंगिक हो जाती है - 'ए' ने तुरंत अभियुक्त व्यक्तियों के नाम व प्रत्यक्ष कृत्यों का उल्लेख करते हुए एफ.आई.आर. दर्ज करायी जो उसके कथन की सत्यता के संबंध में आश्वासन देती है -

regarding truth of its version – Witness trustworthy – Appeal dismissed.
[Rakesh Vs. State of M.P.] (SC)...1

Penal Code (45 of 1860), Section 302, Evidence Act (1 of 1872), Section 6 – Relevancy of Facts – Hearsay Evidence – Section 6 is exception to general rule where hearsay evidence becomes admissible – It should be contemporaneous with act and there should not be an interval which allow fabrication. [Barjiya Vs. State of M.P.] (DB)...182

*Penal Code (45 of 1860), Section 302, Evidence Act (1 of 1872), Section 32 – Dying Declaration – F.I.R. lodged by deceased – Deceased was fully conscious at the time of lodging F.I.R. – Deceased was alleged to have been assaulted at Osara then taken to fields near about 500 fts. and thereafter to a well – F.I.R. did not contain the facts of dragging to field or thereafter to a well where he was assaulted again – Creates doubt about genuineness of F.I.R. [Vikram Singh Vs. State of M.P.] (DB)...*40*

Penal Code (45 of 1860), Section 302 – Murder – Accused Shakil was not identified by complainant in Test Identification Parade – Role of firing and driving motor cycle was attributed to other accused persons in T. I. Parade – Evidence that accused Shakil had fired and his identification in Court not reliable – Appeal allowed. [Yasin Vs. State of M.P.] (DB)...543

Penal Code (45 of 1860), Section 302 – Murder – Circumstantial Evidence – Wife left her husband/appellant and 3 years old daughter in house – Deceased daughter was found in company of the appellant at about 12 P.M. – Explanation given by appellant that he left house at 7 am not plausible – Conduct of appellant after incident was suspicious – He was not available after incident but was arrested after 7 days of incident – Deceased was found lying on the bed covered with blanket in the room with 22 injuries on her body and cause of death was asphyxia as a result of smothering – Motive for killing 3 years old daughter also established – Chain of circumstances lead to only conclusion that appellant had killed his 3 years old daughter – Appeal dismissed. [Keshu Lal Vs. State of M.P.] (DB)...537

Penal Code (45 of 1860), Section 302 – Murder – Deceased was sitting in his ration shop – Appellant came armed with a knife and

साक्षी विश्वसनीय — अपील खारिज। (राकेश वि. म.प्र. राज्य) (SC)...1

दण्ड संहिता (1860 का 45), धारा 302, साक्ष्य अधिनियम (1872 का 1), धारा 6 — तथ्यों की सुसंगति — अनुश्रुत साक्ष्य — धारा 6 सामान्य नियम का अपवाद है जहां अनुश्रुत साक्ष्य ग्राह्य हो जाती है — वह कृत्य के समकालीन होनी चाहिए और कोई अंतराल नहीं होना चाहिए जो मिथ्या रचना होने दे। (बरजिया वि. म.प्र. राज्य) (DB)...182

दण्ड संहिता (1860 का 45), धारा 302, साक्ष्य अधिनियम (1872 का 1), धारा 32 — मृत्युकालिक कथन — एफ.आई.आर. मृतक द्वारा दर्ज कराई गई — एफ.आई.आर. दर्ज कराते समय मृतक पूर्ण रूप से होश-हवास में था — मृतक पर हमला ओसरा पर करना अभिकथित किया गया, उसके बाद खेतों में लगभग 500 फीट दूर तक ले जाया गया और तत्पश्चात कुएँ पर — एफ.आई.आर. में खेत तक घसीटने के या तत्पश्चात कुएँ पर ले जाने के तथ्य अंतर्विष्ट नहीं हैं, जहां पर उस पर दुबारा हमला किया गया — एफ.आई.आर. की सत्यता के बारे में संदेह उत्पन्न करता है। (विक्रम सिंह वि. म.प्र. राज्य) (DB)...*40

दण्ड संहिता (1860 का 45), धारा 302 — हत्या — अभियुक्त शाकिल को शिकायतकर्ता द्वारा शिनाख्त परेड में पहचाना नहीं गया — शिनाख्त परेड में, फायरिंग व मोटर साइकिल ड्राइविंग की भूमिका अन्य अभियुक्तगण पर उपारोपित की गई — साक्ष्य कि अभियुक्त शाकिल ने फायर किया और उसकी न्यायालय में शिनाख्त, विश्वसनीय नहीं — अपील मंजूर। (यासीन वि. म.प्र. राज्य) (DB)...543

दण्ड संहिता (1860 का 45), धारा 302 — हत्या — परिस्थितिजन्य साक्ष्य — पत्नी अपने पति/अपीलार्थी तथा 3 वर्षीय पुत्री को घर में छोड़कर गई — करीब 12 बजे दोपहर में मृतक पुत्री अपीलार्थी के साथ पाई गई थी — अपीलार्थी द्वारा दिया गया स्पष्टीकरण कि उसने सुबह 7 बजे घर छोड़ा, विश्वसनीय नहीं — घटना के बाद अपीलार्थी का आचरण संदेहास्पद था — वह घटना के पश्चात उपलब्ध नहीं था बल्कि उसे घटना के 7 दिन पश्चात गिरफ्तार किया गया — मृतिका कंबल से ढकी हुई कमरे में बिस्तर पर पाई गई उसके शरीर पर 22 क्षतियाँ थीं और मृत्यु का कारण गला घोटने के परिणाम स्वरूप र्वांसावरोध था — 3 वर्षीय पुत्री को जान से मारने का हेतु भी स्थापित किया गया — परिस्थितियों की श्रृंखला केवल इस निष्कर्ष की ओर ले जाती है कि अपीलार्थी ने अपनी 3 वर्षीय पुत्री की हत्या की — अपील खारिज। (केशु लाल वि. म.प्र. राज्य) (DB)...537

दण्ड संहिता (1860 का 45), धारा 302 — हत्या — मृतक अपनी राशन की दुकान पर बैठा था — अपीलार्थी चाकू से सुसज्जित होकर आया और उसके उदर,

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dealt blow on his abdomen, back, hand and leg – Four injuries found on body by sharp edged weapon – Held – From dying declarations and the medical evidence establish that deceased repeatedly caused injuries to deceased by knife – Injuries caused on the lumbar region and on the abdomen were deep up to abdominal cavity – Intention of appellant to cause death of deceased established – Appeal dismissed. [Sushil Kumar Vs. State of M.P.] (DB)...230

Penal Code (45 of 1860), Section 302 – Murder – New Story – Introduction of new story during trial adversely affects the prosecution case – It creates doubt with regard to the part of the prosecution version, and also occasions doubt about the motive, entitling the accused to the benefit of doubt. [Prakash Vs. State of M.P.] (DB)...525

Penal Code (45 of 1860), Section 302 – Murder – Ocular Evidence and Medical Evidence – Ocular evidence would have preference over medical evidence unless it is established that ocular evidence is totally irreconcilable with medical evidence. [Rakesh Vs. State of M.P.] (SC)...1

Penal Code (45 of 1860), Section 302 – See – Evidence Act, 1872, Section 3 [Buddhu Pal Vs. State of M.P.] (DB)...774

Penal Code (45 of 1860), Sections 302 & 201 – Appellant lodged missing report of his wife – Parents of deceased suspected that appellant might have killed the wife and son by strangulation – Held – Appellant last seen with deceased persons – Recovery of dead bodies on the memorandum of appellant – Appeal dismissed. [Thakur Singh Vs. State of M.P.] (DB)...765

Penal Code (45 of 1860), Section 302/304 Part-I – Murder or Culpable homicide not amounting to murder – Deceased went to a shop to eat eggs where appellant was present – Altercation ensued between them – While deceased was going back appellants caused injuries by means of Gupti and Ballam – Held – Incident erupted from a sudden altercation or quarrel – Cause of such altercation also not disclosed by witnesses – Incident of assault took place just in continuation of quarrel and not after a long time – Case fall within the ambit of exception 4 of Section 300 of IPC, but since appellant wielded deadly weapon and caused injuries which cut the lung and heart of the deceased, was sufficient in ordinary course of nature to cause his death

पीठ, हाथ व पैर पर प्रहार किया — धारदार हथियार की चार चोटें उसके शरीर में पाई गई — अभिनिर्धारित — मृत्युकालिक कथन और चिकित्सीय साक्ष्य से यह स्थापित होता है कि मृतक को चाकू से बार-बार चोटें पहुंचाई गई — कमर के हिस्से में और उदर में कारित चोटें उदर गुहा तक गहरी थीं — अपीलार्थी का उद्देश्य मृतक की मृत्यु कारित करना स्थापित — अपील खारिज। (सुशील कुमार वि. म.प्र. राज्य) (DB)...230

दण्ड संहिता (1860 का 45), धारा 302 — हत्या — नई कहानी — विचारण के दौरान नई कहानी का प्रस्तुतीकरण अभियोजन प्रकरण में विपरीत प्रभाव डालता है — यह अभियोजन की कहानी के भाग के संबंध में संदेह पैदा करता है, और हेतु के बारे में भी संदेह का कारण बनता है जिससे अभियुक्त संदेह का लाभ पाने का हकदार। (प्रकाश वि. म.प्र. राज्य) (DB)...525

दण्ड संहिता (1860 का 45), धारा 302 — हत्या — प्रत्यक्ष साक्ष्य व चिकित्सीय साक्ष्य — प्रत्यक्ष साक्ष्य को चिकित्सीय साक्ष्य के ऊपर प्राथमिकता देनी होगी जब तक कि यह साबित नहीं हो जाता कि प्रत्यक्ष साक्ष्य पूरी तरह से चिकित्सीय साक्ष्य से असंगत है। (राकेश वि. म.प्र. राज्य) (SC)...1

दण्ड संहिता (1860 का 45), धारा 302 — देखें — साक्ष्य अधिनियम, 1872, धारा 3 (बुद्धू पाल वि. म.प्र. राज्य) (DB)...774

दण्ड संहिता (1860 का 45), धाराएँ 302 व 201 — अपीलार्थी ने पत्नी के लापता होने की रिपोर्ट दर्ज करायी — मृतिका के माता-पिता को संदेह था कि अपीलार्थी ने पत्नी व बच्चे को गला घोटकर मार दिया — अभिनिर्धारित — अपीलार्थी को अंतिम बार मृतक व्यक्तियों के साथ देखा गया — अपीलार्थी की निशानदेही पर शव बरामद किये गये — अपील खारिज। (ठाकुर सिंह वि. म.प्र. राज्य) (DB)...765

दण्ड संहिता (1860 का 45), धारा 302/304 भाग-I — हत्या या हत्या की कोशिश में न आने वाला आपराधिक मानव वध — मृतक अण्डे खाने के लिये दुकान पर गया जहां अपीलार्थी मौजूद था — दोनों के मध्य कहा-सुनी हुई — जब मृतक वापस जा रहा था, अपीलार्थीगण ने गुप्ती और बल्लम से चोटें पहुंचाई — अभिनिर्धारित — घटना अचानक कहा-सुनी या झगड़े से विस्फोटक हो गई — उक्त कहा-सुनी का कारण भी साक्षियों द्वारा प्रकट नहीं किया गया — हमले की घटना तुरंत झगड़े के क्रम में हुई और न कि लंबे समय बाद — प्रकरण भा.द.सं. की धारा 300 के अपवाद-4 की परिधि में आता है, परंतु चूंकि अपीलार्थी घातक हथियारों से सुसज्जित थे तथा क्षतियां कारित की, जिससे मृतक के फेफड़े एवं हृदय फट गये, प्रकृति के सामान्य क्रम में उसकी मृत्यु कारित करने के लिये पर्याप्त थे — भा.द.सं.

– Liable to punished under Section 304-I of the IPC – Appeal partly allowed. [Bharat Singh Vs. State of M.P.] (DB)...237

Penal Code (45 of 1860), Sections 302, 326/34 – Appellant was sitting in bakery shop and deceased demanded Rs.500/- and altercation took place and assaulted by Gupti and hockey – Held – Sentence of imprisonment is reduced to the period of sentence already undergone – Appeal partly allowed. [Sanjay Kumar Vs. State of M.P.] (DB)...759

Penal Code (45 of 1860), Section 304-I – Culpable Homicide not amounting to Murder – Deceased and his sons were removing stones kept adjacent to the wall of their house and were making embankment – Accused party asked them not to do so – Appellant took out knife and stabbed him on left side of chest – Incident occurred on the spur of moment without any premeditation – Appellant did not repeat assault – Appellant assaulted deceased with knife with the knowledge that it was likely to cause death or to cause such bodily injury as was likely to cause his death – Conviction of appellant under Section 304-I of IPC is modified under Section 304-II of the IPC – Appeal partly allowed. [Pandit @ Sampooranand Vs. State of M.P.] ...557

Penal Code (45 of 1860), Section 304 Part-I – Culpable homicide not amounting to murder – Deceased died within 12 hours – Blow on head was struck with great force – Appellant themselves admitted animosity with complainant party – Rightly considered under Section 304 Part-I. [Hari Ram Vs. State of M.P.] ...*23

Penal Code (45 of 1860), Section 304 Part-I – Sentence – Incident took place 18 years ago – Interest of justice would serve if custodial sentence is reduced to 7 years from 10 years – Sentence reduced accordingly. [Hari Ram Vs. State of M.P.] ...*23

Penal Code (45 of 1860), Section 304 Part II – Appellant caused single knife injury in abdomen of deceased near umbilicus – None of Doctors opined that injury was sufficient in the ordinary course of nature to cause death – Death occurred nearly 19 days after the incident and was a result of cardio-respiratory failure due to abdominal injury – Medical evidence was silent as to depth of injury – Appellant was rightly held guilty of offence of culpable homicide not amounting to

की धारा 304-I के अंतर्गत दंडित किये जाने योग्य - अपील अंशतः मंजूर। (भारत सिंह वि. म.प्र. राज्य) (DB)...237

दण्ड संहिता (1860 का 45), धाराएँ 302, 326/34 - अपीलार्थी बेकरी शॉप में बैठा था और मृतक ने रुपये 500/- की मांग की और कहा सुनी हुई तथा गुप्ती व हाकी से हमला किया गया - अभिनिर्धारित - भुगतार्ई गई अवधि के कारावास तक दण्डादेश घटाया गया - अपील अंशतः मंजूर। (संजय कुमार वि. म.प्र. राज्य) (DB)...759

दण्ड संहिता (1860 का 45), धारा 304-I - हत्या की कोटि में न आने वाला आपराधिक मानव वध - मृतक और उसके पुत्र अपने घर की दीवाल के पास से पत्थर हटा रहे थे और बाँध बना रहे थे - अभियुक्त पक्षकार ने उनसे ऐसा नहीं करने को कहा - अपीलार्थी ने चाकू निकाला और उसकी छाती के बायें भाग में भोंक दिया - घटना उत्तेजक क्षण में बिना कोई पूर्व चंतन के घटित हुई - अपीलार्थी ने दुबारा हमला नहीं किया - अपीलार्थी ने मृतक पर चाकू से हमला इस ज्ञान के साथ किया कि उससे उसकी मृत्यु कारित हो सकने की संभावना थी या इस तरह की शारीरिक क्षति उसकी संभावित मृत्यु कारित कर सकती थी - अभियुक्त की दोषसिद्धि भा.द.सं. की धारा 304-I से भा.द.सं. की धारा 304-II में परिवर्तित - अपील अंशतः मंजूर। (पंडित उर्फ संपूर्णानन्द वि. म.प्र. राज्य) ...557

दण्ड संहिता (1860 का 45), धारा 304 भाग I - हत्या की कोटि में न आने वाला आपराधिक मानव वध - मृतक की 12 घंटों के भीतर मृत्यु हुई - सिर पर वार बहुत बल के साथ किया गया था - अपीलार्थी ने खुद शिकायतकर्ता पक्षकार के साथ शत्रुता स्वीकार की - धारा 304 भाग-I के अंतर्गत उचित रूप से विचार किया गया। (हरि राम वि. म.प्र. राज्य) ...*23

दण्ड संहिता (1860 का 45), धारा 304 भाग I - दण्डादेश - घटना 18 वर्ष पूर्व घटी - न्याय हित में होगा यदि अभिरक्षा दण्डादेश 10 वर्ष से घटाकर 7 वर्ष कर दिया जाये - तदनुसार दण्डादेश घटाया गया। (हरि राम वि. म.प्र. राज्य) ...*23

दण्ड संहिता (1860 का 45), धारा 304 भाग II - अपीलार्थी ने मृतक को नाभि के पास पेट में एक चाकू की चोट कारित की - किसी चिकित्सक का अभिमत नहीं कि चोट, प्रकृति के सामान्य कम में मृत्यु कारित करने के लिए पर्याप्त थी - घटना से करीब 19 दिनों के पश्चात् मृत्यु हुई और पेट की चोट के कारण हृदयाघात के फलस्वरूप हुई थी - चोट की गहराई के बारे में चिकित्सीय साक्ष्य मौन है - अपीलार्थी को उचित रूप से हत्या की कोटी में न आने वाले आपराधिक

murder. [Santosh Rai Vs. State of M.P.] (DB)...*8

Penal Code (45 of 1860), Sections 304 Part II, 394 – Circumstantial Evidence – Recovery of Dead body – Absence of evidence as to motive – Mere recovery of dead body on information given by accused not a conclusive circumstance – It merely raises strong suspicion – Only concealment of the dead body is proved – No conclusive proof that murder was committed by him – Held – Conviction under Section 304 Part II converted into Section 201 of IPC, sentence of 5 years RI reduced to 3 years RI. [Ramesh @ Guddu Sopera Vs. State of M.P.] ...550

Penal Code (45 of 1860), Section 306 – Abetment of Suicide – Report of Chemical Examiner indicating that on examination at the F.S.L., no chemical poison was detected in the viscera of the deceased – Commission of the suicide was not established with reasonable certainty – Conviction under Section 306 of the IPC could not be recorded – Conviction set aside. [Radhelal Vs. State of M.P.] ...220

Penal Code (45 of 1860), Section 306 – Abetment to commit suicide – Applicant and co-accused used to demand money from deceased Sarpanch by making criminal intimation and complaints – Secretary of Gram Panchayat also withdrew some money by playing fraud with deceased – Held – Prima facie offence punishable under Section 306 IPC made out – Charge rightly framed. [Raghuraj Singh Vs. State of M.P.] ...287

*Penal Code (45 of 1860), Section 306 & 498A – Appeal against acquittal – Respondent had made allegation that deceased had illicit relationship with his elder brother – Deceased committed suicide by consuming poison – Held – Sweeping allegations would not amount to abetment of offence of commission of suicide, and something more is required under section 107 I.P.C hence 306 IPC not made out – Conviction under section 498A IPC – Appeal Partly allowed. [State of M.P. Vs. Shrideen] ...*35*

Penal Code (45 of 1860), Section 307 – Compromise/ Compounding – Non-compoundable offences can not be compounded – However, settlement/ compromise between the parties can be taken into consideration for the purposes of determining the quantum of sentence – Sentence reduced to period already undergone. [Gulab Das Vs. State of M.P.] (SC)...305

मानवध के अपराध के लिए दोषी अभिनिर्धारित किया गया। (संतोष राय वि. म.प्र. राज्य) (DB)...*8

दण्ड संहिता (1860 का 45), धाराएँ 304 भाग II, 394 - परिस्थितिजन्य साक्ष्य - लाश की बरामदगी - हेतु के बारे में साक्ष्य की अनुपस्थिति - अभियुक्त द्वारा दी गई सूचना के आधार मात्र पर लाश की बरामदगी निश्चयात्मक परिस्थिति नहीं - यह मात्र प्रबल संदेह उत्पन्न करता है - केवल लाश का छिपाव साबित किया गया - कोई निश्चयात्मक सबूत नहीं कि उसके द्वारा हत्या कारित की गई - अभिनिर्धारित - दोषसिद्धि भा.द.सं. की धारा 304 भाग II से धारा 201 में परिवर्तित की गई, 5 वर्ष के सश्रम कारावास को घटाकर 3 वर्ष सश्रम कारावास किया गया। (रमेश उर्फ गुड्डू सपेरा वि. म.प्र. राज्य) ...550

दण्ड संहिता (1860 का 45), धारा 306 - आत्महत्या का दुष्प्रेरण - रसायन परीक्षक का प्रतिवेदन उपदर्शित करता है कि विधि विज्ञान प्रयोगशाला में परीक्षण करने पर मृतक के अम्यन्तर अंग/आंतों में कोई रसायनिक विष का पता नहीं चला - आत्महत्या कारित की जाना युक्तियुक्त निश्चितता के साथ स्थापित नहीं किया गया - भा.द.सं. की धारा 306 के अंतर्गत दोषसिद्धि अभिलिखित नहीं की जा सकती - दोषसिद्धि अपास्त। (राधेलाल वि. म.प्र. राज्य) ...220

3दण्ड संहिता (1860 का 45), धारा 306 - आत्महत्या के लिये दुष्प्रेरण - आपराधिक अभिन्नास और शिकायतों द्वारा मृतक सर्पंच से आवेदक तथा सह-अभियुक्त रुपयों की मांग करते थे - ग्राम पंचायत के सचिव ने भी मृतक से कपट करके कुछ रुपये निकाले - अभिनिर्धारित - भा.द.सं. की धारा 306 के अंतर्गत प्रथम दृष्ट्या दण्डनीय अपराध गठित होता है - आरोप उचित रूप से विरचित। (राघुराज सिंह वि. म.प्र. राज्य) ...287

दण्ड संहिता (1860 का 45), धारा 306 व 498ए - दोषमुक्ति के विरुद्ध अपील - प्रत्यर्थी का अभिकथन कि मृतिका के उसके बड़े भाई के साथ अनैतिक संबंध थे - मृतिका ने विष प्राशन कर आत्महत्या की - अभिनिर्धारित - अतिरंजित अभिकथन आत्महत्या कारित किये जाने का अपराध दुष्प्रेरण की कोटि में नहीं आयेगा और भा.द.सं. की धारा 107 के अंतर्गत कुछ और अधिक अपेक्षित है, अतएव 306 भा.द.सं. गठित नहीं होता - भा.द.सं. की धारा 498-ए के अंतर्गत दोषसिद्ध - अपील अंशतः मंजूर। (म.प्र. राज्य वि. श्रीदीन) ...*35

दण्ड संहिता (1860 का 45), धारा 307 - समझौता/शमन - अशमनीय अपराध शमनीय नहीं हो सकते - फिर भी पक्षकारों के मध्य समझौता/समाधान को दण्डादेश की मात्रा का निर्धारण करने के लिये विचार में लिया जा सकता है - दण्डादेश पूर्व में भुगतायी जा चुकी अवधि तक घटाया गया। (गुलाब दास वि. म.प्र. राज्य) (SC)...305

Penal Code (45 of 1860), Section 307 or 323 – See – Criminal Procedure Code, 1973, Sections 227, 228 [Ramnath @ Rammu Gond Vs. State of M.P.] ...587

*Penal Code (45 of 1860), Sections 307, 325, Criminal Procedure Code, 1973 (2 of 1974), Section 222 – Framing of Charges – Victim has suffered fracture of Ulna Bone which is not sufficient to cause death of a person in ordinary course of nature – A person can not die due to fracture of Ulna Bone – Charge under Section 307 set aside – Trial Court directed to frame charge under Section 325 of I.P.C. [Achhelal Lal Choudhary Vs. State of M.P.] ...*18*

Penal Code (45 of 1860), Section 354-A – Assault or use criminal force to woman with intent to disrobe her – Attempt to outrage the modesty of prosecutrix was committed inside the residential house and not at any public place – Trial Court directed to frame charge under Section 354 instead of 354-A of I.P.C. [Pradeep Kunbi Vs. State of M.P.] ...575

Penal Code (45 of 1860), Sections 363 & 366-A – Kidnapping – Prosecutrix aged about 16 years and 6 months – Where the minor leaves her father's protection knowing and having capacity to know what she is doing voluntarily joins the accused person, no offence under Section 366-A is made out – As prosecutrix was consenting party therefore, no offence under Section 363 is made out. [Indal Singh Vs. State of M.P.] ...246

Penal Code (45 of 1860), Section 376 – Rape – Appellant alleged to have taken away the prosecutrix on the false pretext of illness of her mother and committed rape – Held – Prosecutrix travelled with appellant to various places and stayed at Bhopal for 10 days without making any sort of complaint – Prosecutrix had written letters to appellant to take her away from her parents or else she would end her life – Prosecutrix was consenting party – No offence made out. [Indal Singh Vs. State of M.P.] ...246

Penal Code (45 of 1860), Section 376 – Rape – Consent under promise to marry – It is not clear whether offer of Nikah was made by the appellant first and then committed intercourse or intercourse committed by first and then as a consolation offer of Nikah was made – It is difficult to understand that intercourse has been committed under promise of the Nikah. [Shafat Vs. State of M.P.] ...201

दण्ड संहिता (1860 का 45), धारा 307 या 323 — देखें — दण्ड प्रक्रिया संहिता, 1973, धाराएँ 227, 228 (रामनाथ उर्फ रम्पू गोंड वि. म.प्र. राज्य)...587

दण्ड संहिता (1860 का 45), धाराएँ 307, 325, दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 222 — आरोप विरचित किये जाना — पीड़ित अल्ना अस्थि भंग से आहत है, जो प्रकृति के सामान्य अनुक्रम में किसी व्यक्ति की मृत्यु कारित होने के लिये पर्याप्त नहीं है — कोई व्यक्ति अल्ना अस्थि में अस्थि भंग के कारण नहीं मर सकता — धारा 307 के अंतर्गत आरोप अपास्त — विचारण न्यायालय को भा.द.सं. की धारा 325 के अंतर्गत आरोप विरचित करने के लिये निदेशित किया गया। (अच्छेलाल चौधरी वि. म.प्र. राज्य) ...*18

दण्ड संहिता (1860 का 45), धारा 354-ए — स्त्री को निर्वस्त्र करने के आशय से उस पर हमला या आपराधिक बल का प्रयोग — अभियोक्त्री की लज्जा भंग करने का प्रयत्न रहवासी मकान के भीतर किया गया और न कि किसी लोक स्थान पर — विचारण न्यायालय को भा.द.सं. की धारा 354-ए के स्थान पर धारा 354 के अंतर्गत आरोप विरचित करने के लिये निदेशित किया गया। (प्रदीप कुनबी वि. म.प्र. राज्य) ...575

दण्ड संहिता (1860 का 45), धाराएँ 363 व 366-ए — व्यपहरण — अभियोक्त्र की आयु करीब 16 वर्ष और 6 माह — जब कोई अवयवप्राप्त लड़की अपने पिता के संरक्षण से जानते हुए और जानने की क्षमता रखते हुए कि वह क्या कर रही है स्वेच्छापूर्वक अभियुक्त से मिलती है, धारा 366-A के अंतर्गत कोई अपराध गठित नहीं होता — चूंकि अभियोक्त्र सहमत पक्षकार थी इसलिए धारा 363 के अंतर्गत अपराध गठित नहीं होता। (इंदल सिंह वि. म.प्र. राज्य) ...246

दण्ड संहिता (1860 का 45), धारा 376 — बलात्कार — अभिकथित रूप से अपीलार्थी ने अभियोक्त्र को उसकी माता की बीमारी का झूठा बहाना बनाकर उसे ले गया और बलात्कार कारित किया — अभिनिर्धारित — अभियोक्त्र ने अपीलार्थी के साथ बिना किसी शिकायत के विभिन्न स्थानों पर प्रवास किया और 10 दिनों तक भोपाल में रुकी — अभियोक्त्र ने अपीलार्थी को पत्र लिखे कि वह उसे उसके माता पिता से दूर ले जाये अन्यथा वह अपना जीवन समाप्त कर देगी — अभियोक्त्र सहमत पक्षकार थी — कोई अपराध गठित नहीं होता। (इंदल सिंह वि. म.प्र. राज्य) ...246

दण्ड संहिता (1860 का 45), धारा 376 — बलात्कार — विवाह के वचन के अंतर्गत सहमति — यह स्पष्ट नहीं कि क्या अपीलार्थी द्वारा पहले निकाह का प्रस्ताव रखा गया और फिर संभोग कारित किया या पहले संभोग कारित किया गया और फिर सात्वना के रूप में निकाह का प्रस्ताव रखा गया — यह समझना कठिन है कि निकाह के वचन के अंतर्गत संभोग कारित किया गया है। (शफत वि. म.प्र. राज्य) ...201

Penal Code (45 of 1860), Section 376 – Rape – Proof – Previous seven statements of prosecutrix, at different point of time make the story of prosecution less reliable – Statement of the prosecutrix does not inspire the confidence and she is not a witness worthy of credence – No conviction can be based on her such testimony – Conviction set aside. [Shafat Vs. State of M.P.] ...201

Penal Code (45 of 1860), Sections 409, 467, Cooperative Societies Act, M.P. 1960 (17 of 1961), Section 55(2) – Guilt to be proved by prosecution – With the help of evidence – Circumstances must conclude wrongful gain to himself and wrongful loss to another to prove misappropriation – Appellate Court does not normally reappreciate the evidence, unless finding of Court below vitiated by an error of law of procedure, misreading of evidence or is perverse – Held – Prosecution did not prove guilt – Acquitted after appreciation of evidence – Revisional Court should not interfere with sub-ordinate court findings unless gross violation of procedure or perversity in reasoning, resulting miscarriage or total failure of justice – Revision dismissed. [District Co-operative Central Bank Isagarh, District Guna, M.P. Vs. Leeladhan] ...593

Penal Code (45 of 1860), Section 420 – Cheating – Applicant Bank was to enter into negotiation with lending Bank to resort to one time settlement on behalf of defaulter respondents No. 3 & 4 – Applicant Bank was entitled to succession fees – The OTS amount was payable either by respondents No. 3 & 4 or by applicant Bank on behalf of respondents No. 3 & 4 and NPA account was to be closed – Position of applicant Bank was of agent – Applicant Bank did not secure the interest of respondents No. 3 & 4 even after changing succession fees and got the entire debts transferred to applicant Bank – It can not be said that no offence is made out. [Kewin B. Ajit Vs. State of M.P.] ...661

Penal Code (45 of 1860), Section 420 – Cheating – Post dated cheques were given for periodical repayment – It is expected from borrower that he will keep amount of installments available in Bank – Applicant instead of submitting post dated cheques periodically, retained the same and presented the bundle of post dated cheques in one day – Borrower is not expected to have huge amount in his account which is 5-10 times larger than his installments – Such act of applicant Bank

दण्ड संहिता (1860 का 45), धारा 376 - बलात्कार - सबूत - भिन्न समय पर दिये गये अभियोक्ति के पूर्ववर्ती सात कथन अभियोजन की कहानी को कम विश्वसनीय बनाते हैं - अभियोक्ति का कथन विश्वास उत्पन्न नहीं करता और वह विश्वसनीय साक्षी नहीं है - उसकी ऐसी परिसाक्ष्य पर दोषसिद्धि को आधारित नहीं किया जा सकता - दोषसिद्धि अपास्त। (शफ़त वि. म.प्र. राज्य) ...201

दण्ड संहिता (1860 का 45), धाराएँ 409 व 467, सहकारी सोसाइटी अधिनियम, म.प्र. 1960 (1961 का 17), धारा 55(2) - अभियोजन द्वारा अपराध साबित किया जाना चाहिए - साक्ष्य की सहायता से - दुर्विनियोग साबित करने के लिए परिस्थितियों से स्वयं को सदोष अभिलाम एवं अन्य को सदोष हानि का निष्कर्ष निकलना चाहिए - अपीली न्यायालय सामान्यतः साक्ष्य का पुनः मूल्यांकन नहीं करती जब तक कि निचले न्यायालय का निष्कर्ष विधि की प्रक्रिया में त्रुटि, साक्ष्य को गलत पढ़े जाने से दूषित या विकृत न हो - अभिनिर्धारित - अभियोजन ने अपराध साबित नहीं किया - साक्ष्य के मूल्यांकन पश्चात दोषमुक्त किया गया - पुनरीक्षण न्यायालय को अधिनस्थ न्यायालय के निष्कर्षों में हस्तक्षेप नहीं करना चाहिए जब तक कि प्रक्रिया का घोर उल्लंघन या तर्क में विकृति न हो जिसके परिणामस्वरूप न्याय को हानि या पूर्ण असफलता कारित होगी - पुनरीक्षण खारिज। (डिस्ट्रिक्ट को.ऑपरेटिव सेन्ट्रल बैंक, इशागढ़, डिस्ट्रिक्ट गुना (एम.पी.) वि. लीलाधन) ...593

दण्ड संहिता (1860 का 45), धारा 420 - छल - व्यतिक्रमी प्रत्यर्थी क्रं. 3 व 4 की ओर से आवेदक बैंक पूर्ण समझौता करने के लिये ऋणदाता बैंक के साथ बातचीत आरंभ करने वाली थी - आवेदक बैंक उत्तराधिकार शुल्क की हकदार थी - ओटीएस रकम या तो प्रत्यर्थी क्रं. 3 व 4 द्वारा अथवा प्रत्यर्थी क्रं. 3 व 4 की ओर से आवेदक बैंक द्वारा देय थी और एनपीए खाता बंद किया जाना था - आवेदक बैंक की स्थिति अभिकर्ता की थी - उत्तराधिकार शुल्क बदलने के पश्चात भी आवेदक बैंक ने प्रत्यर्थी क्रं. 3 व 4 का ब्याज प्रतिभूत नहीं किया और सम्पूर्ण ऋण आवेदक बैंक को अंतरित किया गया - यह नहीं कहा जा सकता कि कोई अपराध गठित नहीं होता। (केविन बी. अजीत वि म.प्र. राज्य) ...661

दण्ड संहिता (1860 का 45), धारा 420 - छल - (नियमित) सामयिक पुनर्मुग्तान हेतु उत्तरतारीख चेक दिये गये थे - ऋणी से अपेक्षित है कि वह बैंक में किशतों की रकम उपलब्ध रखे - आवेदक ने उत्तरतारीख चेक नियमित रूप से पेश करने की बजाये, रखे रहा और उत्तरतारीख चेक का बंडल एक ही दिन प्रस्तुत किया - ऋणी को अपनी किशतों से 5-10 गुना से अधिक की बड़ी रकम अपने खाते में रखना अपेक्षित नहीं - आवेदक बैंक की ऐसी कार्यवाही ऐसी स्थिति निर्मित करती जहां ऋणी व्यतिक्रमी हो जाता है और इससे उसकी अस्तियों की नीलामी की

was to create a situation where a borrower becomes a defaulter and thereby his assets can be auctioned – It can not be said that no prima facie offence is made out. [Kewin B. Ajit Vs. State of M.P.] ...661

*Penal Code (45 of 1860), Sections 493 & 495, Criminal Procedure Code, 1973 (2 of 1974), Section 198 – Mandatory – Provisions of Section 198 are mandatory and the word complaint used in Section 198 does not include police report – Cognizance of offence under Section 493,495 can not be taken by a Magistrate on the basis of Police Report. [Mahesh Kumar Dhawan Vs. State of M.P.] ...*13*

*Penal Code (45 of 1860), Sections 493, 495, 375 - Concealment of former marriage – Bodily relationship or sexual intercourse by a husband with his second wife falls under Sections 493,495 and can not be treated as rape as defined under Section 375 of I.P.C. [Mahesh Kumar Dhawan Vs. State of M.P.] ...*13*

*Penal Code (45 of 1860), Section 498-A – Cruelty – Deceased was a literate lady and was writing letters to her relatives but she had never complained about unlawful demand and harassment in her letters – Witnesses also never made any complaint to any one in this regard – Respondents were rightly acquitted. [State of M.P. Vs. Dulichandra] ...*34*

Penal Code (45 of 1860), Section 498-A – Cruelty – Marriage was declared a nullity on the ground that wife had suppressed her age deliberately – Whether the husband demanded Rs. 5 lacs or not is a question which is to be decided in trial – Delay in lodging F.I.R. may also be explained – However, allegations against the relatives are exaggerated and seems to be not well founded – Continuance of trial against relatives of husbands will certainly be the abuse of process of Court of law – Truthfulness of F.I.R. can not be seen by the Court at this stage – Continuance of trial against relatives of husband quashed – However, proceedings shall continue against husband. [V.K. Jain Vs. State of M.P.] ...800

*Penal Code (45 of 1860), Section 498-A – Void Marriage – Applicant alleged to have contracted second marriage during the subsistence of first marriage – Second marriage is null and void – Any allegation of misbehavior or harassment made by second wife would not fall under the provisions of Section 498-A of I.P.C. [Mahesh Kumar Dhawan Vs. State of M.P.] ...*13*

जा सकती है — यह नहीं कहा जा सकता कि प्रथम दृष्ट्या कोई अपराध गठित नहीं होता। (केविन बी. अजीत वि. म.प्र. राज्य) ...661

दण्ड संहिता (1860 का 45), धाराएँ 493 व 495, दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 198 — आज्ञापक — धारा 198 के उपबंध आज्ञापक हैं और धारा 198 में प्रयुक्त शब्द 'शिकायत' पुलिस रिपोर्ट को शामिल नहीं करती — पुलिस रिपोर्ट के आधार पर मजिस्ट्रेट द्वारा धारा 493, 495 के अंतर्गत अपराध का संज्ञान नहीं लिया जा सकता। (महेश कुमार धवन वि. म.प्र. राज्य) ...*13

दण्ड संहिता (1860 का 45), धाराएँ 493, 495, 375 — पूर्ववर्ती विवाह का छिपाव — पति और उसकी दूसरी पत्नी के बीच शारीरिक संबंध या लैंगिक संभोग धारा 493, 495 के अंतर्गत आते हैं और भा.द.सं. की धारा 375 के अंतर्गत परिभाषित बलात्कार की तरह नहीं समझा जा सकता। (महेश कुमार धवन वि. म.प्र. राज्य) ...*13

दण्ड संहिता (1860 का 45), धारा 498-ए — क्रूरता — मृतिका शिक्षित महिला थी और अपने रिश्तेदारों को पत्र लिखती थी परंतु उसने कभी अवैध मांग एवं उत्पीड़न के बारे में पत्रों में शिकायत नहीं की — साक्षीगण ने भी इस संबंध में किसी से कभी कोई शिकायत नहीं की — प्रत्यर्चीगण उचित रूप से दोषमुक्त किये गये। (म.प्र. राज्य वि. दुलीचन्द्र) ...*34

दण्ड संहिता (1860 का 45), धारा 498-ए — क्रूरता — विवाह को इस आधार पर अकृत घोषित किया गया कि पत्नी ने जानबूझकर अपनी उम्र का छिपाव किया — क्या पति ने रुपये 5 लाख की मांग की अथवा नहीं एक ऐसा प्रश्न है जिसका विनिश्चय विचारण में किया जाना है — एफ.आई.आर. दर्ज करने में विलम्ब को भी स्पष्ट किया जा सकता है — किन्तु, रिश्तेदारों के विरुद्ध अभिकथन अतिशयोक्त है और आधारहीन प्रतीत होते हैं — पति के रिश्तेदारों के विरुद्ध विचारण जारी रखना निश्चित रूप से न्यायालय की प्रक्रिया का दुरुपयोग होगा — एफ.आई.आर. की सत्यता इस प्रक्रम पर न्यायालय द्वारा नहीं देखी जा सकती — पति के रिश्तेदारों के विरुद्ध जारी विचारण अभिखंडित — तथापि पति के विरुद्ध कार्यवाहियां जारी रहेंगी। (व्ही.के. जेन वि. म.प्र. राज्य) ...800

दण्ड संहिता (1860 का 45), धारा 498-ए— शून्य विवाह — आवेदक द्वारा प्रथम विवाह के जारी रहने के दौरान द्वितीय विवाह के लिये संविदा करना अभिकथित किया गया — द्वितीय विवाह बातिल/अकृत और शून्य है — दुर्व्यवहार या तंग करने का द्वितीय पत्नी द्वारा किया गया कोई अभिवचन भा.द.सं. की धारा 498-ए के उपबंधों के अंतर्गत नहीं आयेगा। (महेश कुमार धवन वि. म.प्र. राज्य) ...*13

Penal Code (45 of 1860), Section 500 – Defamation – Respondent filed complaint against applicant before State Bar Council alleging professional misconduct which was dismissed – Applicant filed complaint alleging that respondent has criticized the applicant thereby adversely affecting his practice – Trial Court took cognizance on the ground that respondent had stated that “he will get his black coat off” – Such allegation did not find place in complaint but was stated in evidence – Revisional Court rightly dismissed the complaint on the ground that allegation of taking off the black coat was not alleged in complaint – Application dismissed. [Suresh Chandra Vs. N.C. Jain] ...282

Police Regulations, M.P., Regulation 70-A – Out of Turn Promotion – Such promotion is not a matter of legal right – It is within the discretion of the competent authority to grant or not to grant out of turn promotion. [Suresh Pal Singh Vs. State of M.P.] (DB)...30

Powers of Attorney Act (7 of 1882), Section 1A – See – Evidence Act, 1872, Section 120 [Rajni Tiwari (Smt.) Vs. Bhagyawati Bai] ...730

Prevention of Corruption Act (49 of 1988), Sections 7, 13(1-d), 13(2) – Illegal gratification – Appellant as Head Constable demanded bribe for release of seized tractor – Currency notes given in bribe were not treated with Phenolphthalein powder – Appellant alleged to have taken out money from the back pocket of pant – Pant which was seized and produced before Court did not have back pocket – Giving and recovery of money not reliable – Evidence shows that spot map was prepared on the spot and FIR was lodged after returning to Police Station, however both the documents bear same time – Evidence also disclosed that documents were tampered by I.O. – Appellant acquitted – Appeal allowed. [Shivram Vs. State of M.P.] (DB)...166

Prosecution documents – Not proved – Prosecution documents which were not proved can not be read against the accused however if any portion is favouring the accused, the same can be read. [Buddhu Pal Vs. State of M.P.] (DB)...774

Public Distribution System (Control Order), M.P. 2009 – Clause (4) of the Annexure-II – It has a reasonable nexus with the object sought to be achieved i.e. timely distribution of essential commodities to the card holders – Clause (4) can not be said to be either arbitrary or discriminatory – It appears to have been enacted in the interest of

दण्ड संहिता (1860 का 45), धारा 500 - मानहानि - प्रत्यर्थी ने आवेदक के विरुद्ध स्टेट बार काउंसिल में व्यवसायिक अवचार अभिकथित करते हुये शिकायत प्रस्तुत की, जो खारिज की गई - आवेदक ने यह अभिकथित करते हुये शिकायत प्रस्तुत की कि प्रत्यर्थी ने आवेदक की आलोचना की है, एतद् द्वारा उसकी प्रेक्टिस पर प्रतिकूल प्रभाव पड़ रहा है - विचारण न्यायालय ने इस आधार पर संज्ञान लिया कि प्रत्यर्थी ने कहा था कि "वह उसका काला कोट उतरवा देगा" - उक्त अभिकथन शिकायत में नहीं है, किन्तु साक्ष्य में कथन किया गया - पुनरीक्षण न्यायालय ने शिकायत उचित रूप से इस आधार पर खारिज की कि काला कोट उतरवा देना शिकायत में अभिकथित नहीं किया गया - आवेदन खारिज। (सुरेश चन्द्रा वि. एन. सी. जैन) ...282

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मुख्तयारनामा अधिनियम (1882 का 7), धारा 1ए - देखें - साक्ष्य अधिनियम, 1872, धारा 120 (रजनी तिवारी (श्रीमति) वि. श्रीमति भाग्यवती बाई) ...730

घृष्टाचार निवारण अधिनियम (1988 का 49), धाराएँ 7, 13(1डी), 13(2) - अवैध परितोषण - प्रधान आरक्षक के रूप में अपीलार्थी ने जब्जशुदा ट्रेक्टर को छोड़ने के लिए रिश्वत की मांग की - रिश्वत में दिये गये करेंसी नोट पर फिनॉल्फथलीन पाउडर नहीं लगाया गया था - अपीलार्थी ने अभिकथित रूप से पेंट की पिछली जेब से रुपये निकाले - पेंट जिसे जब्ज किया गया और न्यायालय के समक्ष प्रस्तुत किया गया उसमें पीछे की जेब नहीं है - रुपये देना और उसकी बरामदगी विश्वसनीय नहीं - साक्ष्य दर्शाता है कि घटना स्थल नक्शा, घटना स्थल पर तैयार किया गया और पुलिस थाना लौटने के पश्चात् एफ.आई.आर. दर्ज की गई, किन्तु दोनों दस्तावेज में एक ही समय दर्शाया गया है - साक्ष्य यह भी प्रकट करता है कि आई.ओ. द्वारा दस्तावेजों के साथ छेड़छाड़ की गई थी - अपीलार्थी दोषमुक्त - अपील मंजूर। (शिवराम वि. म.प्र. राज्य) (DB)...166

अभियोजन दस्तावेज - साबित नहीं किया जाना - अभियोजन दस्तावेज जिन्हें साबित नहीं किया गया अभियुक्त के खिलाफ नहीं पढ़े जा सकते किन्तु यदि कोई भाग अभियुक्त के पक्ष में है तो पढ़ा जा सकता है। (बुद्ध पाल वि. म.प्र. राज्य) (DB)...774

लोक वितरण प्रणाली (नियंत्रण आदेश), म.प्र. 2009 - परिशिष्ट-II का खंड 4 - इसका चाहे गये उद्देश्य की पूर्ति के साथ युक्तियुक्त संबंध है अर्थात् कार्ड धारकों को आवश्यक वस्तुओं का समय पर वितरण - खंड (4) को मनमाना या विभेदकारी नहीं कहा जा सकता - यह सामान्य जनता के हित में अधिनियमित किया जाना प्रतीत होता है। (साई कृपा ग्रामीण प्राथमिक सहकारी उपभोक्ता मंडार

public in general. [Sai Kripa Gramin Prathmik Sahakri Upbhokta Bhandar Maryadit, Nainpur Vs. State of M.P.] (DB)...109

Public Distribution System (Control Order), M.P. 2009 – Clause 5(3) and clause 2(j) – Considering the nature of work to be performed by the lead society – Clause 5(3) provides that in rural area, marketing societies or primary agricultural cooperative societies shall be appointed as lead societies – The constitution and functioning of Primary Agricultural Credit Facilities Societies is different from other societies – Therefore, challenge to clause 5(3) must fail. [Sai Kripa Gramin Prathmik Sahakri Upbhokta Bhandar Maryadit, Nainpur Vs. State of M.P.] (DB)...109

Public Distribution System (Control Order), M.P. 2009 – Clause 6 of Annexure-II – Whether arbitrary or discriminatory – Classification of the cooperative societies for the purpose of running fair price shops in rural areas is based on intelligible differentia and has a reasonable nexus with the object i.e. availability of essential commodities at controlled prices to public in general – Thus, the provisions of clause (6) can neither be said to be arbitrary nor discriminatory. [Sai Kripa Gramin Prathmik Sahakri Upbhokta Bhandar Maryadit, Nainpur Vs. State of M.P.] (DB)...109

Public Health and Family Welfare (Gazetted) Service Recruitment (M.P.) Rules 2007 – See – Shashkiya Sewak (Adhiwarshik Aayu) Adhiniyam (M.P.) 1967, Section 2 [Sikandar Sabana (Ku.) Vs. State of M.P.] ...*17

Registered sale deed – Presumption as to – Registered sale deed has been executed by defendant No. 2 in favour of defendant No. 1, which is prima-facie valid and, therefore, a presumption arises with regard to its genuineness – Even assuming that the sale deed was executed without payment of any consideration and the defendant No. 2 was not in a fit physical and mental condition at the time of execution of the sale deed, the same would be binding on defendant No. 2 and would be voidable document – Since defendant No. 2 has not challenged the same, it would bind her and it would be invalid only to the extent of the share of the plaintiff. [Shakuntala Tiwari (Smt.) Vs. Mohammad Ramjan] ...160

मर्यादित, नैनपुर वि. म.प्र. राज्य)

(DB)...109

लोक वितरण प्रणाली (नियंत्रण आदेश), म.प्र. 2009 — खंड 5(3) व खंड 2 (जे) — लीड सोसायटी द्वारा संपादन किये जाने वाले कार्य के स्वरूप को विचार में लेते हुए — खंड 5(3) उपबंध करता है कि ग्रामीण क्षेत्रों में, विपणन सोसायटी या प्राथमिक कृषि सहकारिता सोसायटी लीड सोसायटी के रूप में नियुक्त की जायेगी — प्राथमिक कृषि ऋण सुविधा सोसायटीयों का गठन एवं कार्य अन्य सोसायटीयों से भिन्न है — इसलिए, खंड 5(3) को चुनौती असफल होगी। (साईं कृपा ग्रामीण प्राथमिक सहकारी उपभोक्ता भंडार मर्यादित, नैनपुर वि. म.प्र. राज्य)(DB)...109

लोक वितरण प्रणाली (नियंत्रण आदेश), म.प्र. 2009 — परिशिष्ट-II का खंड 6 — क्या मनमाना अथवा विभेदकारी है — ग्रामीण क्षेत्रों में उचित मूल्य की दुकानें चलाने के प्रयोजन हेतु सहकारी सोसायटी का वर्गीकरण बोधगम्य असमानता पर आधारित है और उद्देश्य अर्थात् सामान्य जन को नियंत्रित मूल्य पर आवश्यक वस्तुओं की उपलब्धता के साथ इसका युक्तियुक्त संबंध है — अतः खंड (6) के उपबंधों को न तो मनमाना और न ही विभेदकारी माना जा सकता है। (साईं कृपा ग्रामीण प्राथमिक सहकारी उपभोक्ता भंडार मर्यादित, नैनपुर वि. म.प्र. राज्य) (DB)...109

लोक स्वास्थ्य और पारिवार कल्याण (राजपत्रित) सेवा भर्ती म.प्र. नियम 2007 — देखें — शासकीय सेवक (अधिवार्षिक आयु) अधिनियम (म.प्र.) 1967 धारा 2 (सिकंदर सबाना (कुमारी) वि. म.प्र. राज्य) ...*17

रजिस्ट्रीकृत विक्रय विलेख — के होने की उपधारणा — प्रतिवादी क्र. 2 द्वारा प्रतिवादी क्र.1 के पक्ष में रजिस्ट्रीकृत विक्रय पत्र निष्पादित किया गया है, जो प्रथम दृष्ट्या वैध है और इसलिए उसकी विशुद्धता के संबंध में उपधारणा उत्पन्न होती है — यदि यह अवधारणा भी की जाए कि विक्रय पत्र को किसी प्रतिफल के भुगतान के बिना निष्पादित किया गया था और विक्रय पत्र के निष्पादन के समय प्रतिवादी क्र. 2 स्वस्थ शारीरिक एवं मानसिक स्थिति में नहीं थी, वह प्रतिवादी क्र. 2 पर बाध्यकारी होगा और शून्यकरणीय दस्तावेज होगा — चूंकि प्रतिवादी क्र. 2 ने उसे चुनौती नहीं दी है, वह उससे बाध्य रहेगी और वह केवल वादी के अंश की सीमा तक अवैध होगा। (शकुन्तला तिवारी (श्रीमति) वि. मोहम्मद रमजान) ...160

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Registration Act (16 of 1908), Section 49 – Non-Registration – Effect – A document which is compulsorily registerable, if not registered, could be used for proving collateral purposes – Nature of possession can be looked upon and for the purpose of admission of plaintiff that entire money was paid by appellant can be taken into consideration to prove his admission. [Shanta Bai Vs. Pushkar Lal] ...*9

Registration Act (16 of 1908), Section 49 – Unregistered sale deed – Unregistered document not relied for settlement of a claim, of the defendant/respondent by the lower appellate Court – There was no question of making application of the bar of Section 49. [Lilawati (Deceased) Through LRs Vs. Vishram] ...151

Registration Act (16 of 1908), Section 49 – See – Transfer of Property Act, 1882, Sections 122, 123 [Jayant Kumar (Smt.) Vs. Smt. Vasanti Devi] ...702

Representation of the People Act (43 of 1951), Section 100(1)(d)(iii)(iv), Civil Procedure Code (5 of 1908), Order 13 Rule 10, Civil Court Rules (M.P.) 1961, Rule 105 – Inspection/production of Ballot Papers – Inspection of ballot papers can not be granted to support vague pleas – Mere allegation of suspicion or belief that there has been improper reception, refusal or rejection of votes will not be sufficient – No pleading of material facts such as serial number of postal ballot papers alleged not to have been opened and objection if any raised by agent – Not a fit case for ordering production or inspection of postal ballot papers. [Shriniwas Tiwari Vs. Rajkumar Urmalia] ...464

Representation of the People Act (43 of 1951), Section 123 – Corrupt Practice – Appeal to vote on the ground of religion – Poster merely depicts panoramic view of Rajghat – Evidence on record shows that feelings of muslim voters were not hurt – Mere reference to prophets or religions or to deities venerated in a religion or to their qualities and deeds does not necessarily amount to an appeal to the religious sentiments of electorate – Election Petition dismissed. [Manoj Kumar Agrawal Vs. Smt. Archana Chitnis] ...*14

Representation of the People Act (43 of 1951), Section 123 – Corrupt Practice – Poster containing the photograph of Lal Deval Temple – Held – If picture of Respondent and election symbol is

रजिस्ट्रीकरण अधिनियम (1908 का 16), धारा 49 - अपंजीयन - प्रभाव - दस्तावेज जो अनिवार्य रूप से रजिस्ट्रीकृत किया जाना होता है, यदि रजिस्ट्रीकृत नहीं किया जाता, तब सांप्रतिवक प्रयोजनों को साबित करने हेतु उपयोग किया जा सकता है - कब्जे का स्वरूप देखा जा सकता है और वादी की इस स्वीकृति के प्रयोजन हेतु कि अपीलार्थी द्वारा संपूर्ण रुपये अदा किये गये, को उसकी स्वीकृति साबित करने के लिए विचार में लिया जा सकता है। (शान्ता बाई वि. पुष्करलाल) ...*9

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लोक प्रतिनिधित्व अधिनियम (1951 का 43), धारा 100(1)(डी)(iii)(iv), सिविल प्रक्रिया संहिता (1908 का 5) आदेश 13 नियम 10, सिविल न्यायालय नियम (म.प्र.) 1961, नियम 105 - मतपत्रों का निरीक्षण/पेश करना - अस्पष्ट अभिवचन के समर्थन के लिए मत पत्रों के निरीक्षण की अनुमति प्रदान नहीं की जा सकती - मात्र संदेह का अभिवचन या यह विश्वास करना कि मत पत्रों को अनुचित रूप से ग्रहण या अस्वीकार किया गया पर्याप्त नहीं होगा - तात्त्विक तथ्यों के संबंध में कोई अभिवचन नहीं जैसे कि डाक मतपत्रों की क्रम संख्या जिसे नहीं खोला जाना अभिकथित किया गया है और आक्षेप यदि कोई हो, जिसे एजेन्ट द्वारा उठाया गया - डाक मतपत्रों के निरीक्षण या पेश करने के लिये आदेश देने के लिये उपयुक्त प्रकरण नहीं। (श्रीनिवास तिवारी वि. राजकुमार उरमलिया) ...464

लोक प्रतिनिधित्व अधिनियम (1951 का 43), धारा 123 - भ्रष्ट आचरण - धार्मिक आधार पर मतदान करने की अपील - पोस्टर मात्र राजघाट का सर्वांगी दृश्य दर्शित करता है - अभिलेख पर साक्ष्य दर्शाती है कि मुस्लिम मतदाताओं की भावनाएँ चोटिल नहीं होती - मात्र पैगम्बर या धर्म का संदर्भ या किसी धर्म के आदरणीय देवताओं का संदर्भ देना या उनके गुणों एवं कृत्यों का संदर्भ मतदाताओं की धार्मिक भावनाओं की अनुनय करने की कोटि में आवश्यक रूप से नहीं आता - निर्वाचन यांचिका खारिज। (मनोज कुमार अग्रवाल वि. श्रीमति अर्चना चिटनिस) ...*14

लोक प्रतिनिधित्व अधिनियम (1951 का 43), धारा 123 - भ्रष्ट आचरण - पोस्टर में लाल देवाल मंदिर के चित्र अंतर्विष्ट हैं - अभिनिर्धारित - यदि प्रत्यर्थी

removed, the poster would only present a panoramic view of Rajghat situated on the bank of river Tapti – Rajghat has other structures which are used for assessing water level – All temples shown in poster contain broken or abandoned idols considered as unworthy of worship – Structures visible in poster include a dilapidated mosques at Rajghat – It is difficult to hold that poster depicts any religious symbol within the meaning of Section 123. [Manoj Kumar Agrawal Vs. Smt. Archana Chitnis] ...*14

Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act (33 of 1989), Section 3(1)(xi) – Assault to a woman – Where the accused being a stranger knows and has reason to believe that the victim of the offence is a member of such a caste or tribe, the offence would squarely fall under Section 3(1)(xi) of the Act and it would not be necessary to establish further that the offence was committed on the ground that she belongs to such a Caste or Tribe. [Baja alias Bajasingh Vs. State of M.P.] ...224

Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act (33 of 1989), Section 3(i)(xi) – Proof of Caste – Neither complainant nor any other witness deposed in the Court that complainant belonged to Scheduled Caste – No Certificate of any competent authority to that effect was produced or proved before the Court – Merely from the fact that in F.I.R., the name of complainant has been mentioned with her caste, it can not be held that she belonged to Scheduled Caste in the absence of legal evidence in Court. [Chalaniya Dheemar Vs. State of M.P.] ...189

Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act (33 of 1989), Section 3(2)(v) – Offence of atrocities – Provisions of Section 3(2)(v) can be invoked only when the offence committed is punishable under I.P.C. with imprisonment of ten years or more – As offence punishable under Section 452 and 354 are punishable with 7 years and 2 years respectively therefore, charge under Section 3(2)(v) of Act, 1988 is set aside – Trial Court directed to frame charge under Section 3(1)(iii) and 3(1)(xi) of Act, 1988. [Pradeep Kunbi Vs. State of M.P.] ...575

Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (2 of 2007), Sections 2(c), 6 –

का चित्र व चुनाव चिन्ह हटा दिया जावे, तो पोस्टर केवल ताप्ती नदी के किनारे स्थित राजघाट का सर्वांगी दृश्य प्रस्तुत करेगा — राजघाट का अलग संरचनात्मक ढांचा है, जिसका उपयोग जल स्तर का निर्धारण करने के लिये किया जाता है — पोस्टर में जो मंदिर दर्शाये गये हैं, उनमें सभी में टूटी या परित्यक्त मूर्तियां हैं, जिन्हें पूजा के लिये अयोग्य माना गया है — पोस्टर में दर्शित संरचना में राजघाट पर जीर्ण अवस्था में मस्जिद शामिल हैं — यह निर्धारित करना कठिन है कि पोस्टर धारा 123 के अर्थों में किसी धार्मिक चिन्हों/प्रतीक का चित्रण करता है। (मनोज कुमार अग्रवाल वि. श्रीमति अर्चना चिटनिस)

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अनुसूचित जाति और अनुसूचित जनजाति (अत्याचार निवारण) अधिनियम (1989 का 33), धारा 3(1)(xi) — महिला पर हमला — जब अभियुक्त को अंजान व्यक्ति होते हुए यह ज्ञात हो और विश्वास करने का कारण हो कि अपराध का पीड़ित ऐसी जाति या जनजाति का सदस्य है तब अपराध पूर्णतः अधिनियम की धारा 3(1)(xi) के अंतर्गत आया और आगे यह स्थापित करने की आवश्यकता नहीं कि अपराध इस आधार पर कारित किया गया कि वह ऐसी जाति या जनजाति की थी। (बाजा उर्फ बाजासिंह वि. म.प्र. राज्य)

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अनुसूचित जाति और अनुसूचित जनजाति (अत्याचार निवारण) अधिनियम (1989 का 33), धारा 3(i)(xi) — जाति का प्रमाण — न तो शिकायतकर्ता ने और न ही किसी अन्य साक्षी ने न्यायालय में कथन किया है कि शिकायतकर्ता अनुसूचित जाति की थी — इस आशय का संक्षम अधिकारी का कोई प्रमाण पत्र न्यायालय में प्रस्तुत अथवा प्रमाणित नहीं किया गया — मात्र इस तथ्य से कि प्रथम सूचना रिपोर्ट में शिकायतकर्ता का नाम उसकी जाति के साथ दर्शाया गया है, न्यायालय में वैध साक्ष्य की अनुपस्थिति में यह धारणा नहीं की जा सकती कि वह अनुसूचित जाति की थी। (छलनिया दीमर वि. म.प्र. राज्य)

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अनुसूचित जाति और अनुसूचित जनजाति (अत्याचार निवारण) अधिनियम (1989 का 33), धारा 3(2)(v) — अत्याचार का अपराध — धारा 3(2)(v) के उपबंध का अवलम्ब सभी लिया जा सकता है जब कारित किया गया अपराध भा.द.सं. के अंतर्गत 10 वर्ष या अधिक के कारावास से दण्डनीय हो — चूंकि धारा 452 और 354 के अंतर्गत दण्डनीय अपराध क्रमशः 7 वर्ष और 2 वर्ष से दण्डनीय है इसलिये, अधिनियम 1988 की धारा 3(2)(v) के अंतर्गत विरचित आरोप अपास्त किये गये — विचारण न्यायालय को अधिनियम 1988 की धारा 3(1)(iii) व 3(1)(xi) के अंतर्गत आरोप विरचित करने के लिये निदेशित किया गया। (प्रदीप कुनबी वि. म.प्र. राज्य)

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अनुसूचित जनजाति और अन्य परम्परागत वन निवासी (वन अधिकारों की मान्यता) अधिनियम, 2006 (2007 का 2), धाराएँ 2(c), 6 — वन निवासी अनुसूचित

Forest Dwelling Scheduled Tribes – Circulars – Govt. is required to act as per the object and spirit of the provisions of Act, 2006 – Circulars issued do not disclose the manner and procedure for determination of rights of forest dwelling Scheduled Tribes and other traditional forest dwellers – Application of circulars must be refrained unless and until a person falls within the definition of forest dwelling Scheduled Tribes, other traditional forest dwellers or critical wildlife habitat after following procedure as specified under Section 6. [Madhu Vs. State of M.P.] ...*5

Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (2 of 2007), Section 2(0), Civil Procedure Code (5 of 1908), Order 39 Rule 1 and 2 – Other traditional forest dweller – To show that a person belongs to forest dwelling Scheduled Tribe, it is not enough that he should belong to Scheduled Tribe Community – Three generations not less than 25 years of period, who were pastoral living in non-urban area likely to be portraying or expressive of the life of shepherds or country people especially in an idealized and conventionalized manner living or in nomadic having no fixed resident and wandering here and there, may fall within purview of Forest dwelling scheduled tribes – Plaintiffs not entitled for temporary injunction as pleadings do not contain the necessary contents as required under the Act. [Madhu Vs. State of M.P.] ...*5

Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest (SARFAESI) Act, (54 of 2002), Sections 2(i)(za), 3, 29 – Registration and Penalty – Purchase of financial assets by one financial Company from another financial Company is a process of Securitization – If purchasing Company is not registered with respondent, then such act is punishable – As applicant Bank is not registered with RBI therefore purchase of financial assets from lending Bank is punishable under section 29 of Act. [Kewin B. Ajit Vs. State of M.P.] ...661

Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act (54 of 2002), Section 13(8), – Phrase – Before the date fixed for sale or transfer – The words have definite meaning and connotation – Intention of legislature while using the said language is regarding date fixed for sale and not the actual

जन जाति - परिपत्र - सरकार से अधिनियम 2006 के उपबंधों के उद्देश्य एवं मावना के अनुसार कार्यवाही करना अपेक्षित है - जारी किये गये परिपत्र अनुसूचित जनजाति तथा अन्य परम्परागत वन निवासियों के अधिकारों का निर्धारण करने हेतु पद्धति एवं प्रक्रिया प्रकट नहीं करते - परिपत्रों की प्रयोज्यता से बचना चाहिए जब तक कि व्यक्ति धारा 6 के अंतर्गत विनिर्दिष्ट प्रक्रिया का पालन करने के पश्चात्, वन निवासी अनुसूचित जनजाति, अन्य परम्परागत वन निवासी या संकटपूर्ण वन्य जीव निवास की परिभाषा के भीतर नहीं आता। (मधु वि. म.प्र. राज्य) ...*5

अनुसूचित जनजाति और अन्य परम्परागत वन निवासी (वन अधिकारों की मान्यता) अधिनियम, 2006 (2007 का 2), धारा 2(0), सिविल प्रक्रिया संहिता (1908 का 5) आदेश 39 नियम 1 और 2 - अन्य परम्परागत वन निवासी - यह दर्शाने के लिए कि व्यक्ति वन निवासी अनुसूचित जनजाति का है यह पर्याप्त नहीं है कि उसे अनुसूचित जनजाति समाज का होना चाहिए - तीन पीढ़ियाँ जो कम से कम 25 वर्ष की अवधि से ऐसे गैर नगरीय क्षेत्र में निवास करने वाले चरवाहा थे, जो चरवाहों के जीवन का चित्रण या वर्णन कर सकता हो अथवा अस्थिरवास में या विशिष्ट रूप से कल्पनाविहीन एवं रुढ़िवादी प्रकार से जीवन जीने वाले ग्रामीण लोग जिनका कोई निश्चित निवास स्थान नहीं और इधर उधर भटक रहे हैं, वन निवासी अनुसूचित जनजाति की परिधि में आ सकते हैं - वादीगण अस्थाई व्यादेश के हकदार नहीं क्योंकि अभिवचनों में अधिनियम के अंतर्गत अपेक्षित आवश्यक विषय वस्तु अंतर्विष्ट नहीं। (मधु वि. म.प्र. राज्य) ...*5

वित्तीय अस्तियों का प्रतिभूतिकरण और पुनर्गठन तथा प्रतिभूति हित का प्रवर्तन (SARFAESI) अधिनियम, (2002 का 54), धाराएँ 2(i)(2a), 3, 29 - पंजीयन और शास्ति - एक वित्तीय कम्पनी द्वारा दूसरी वित्तीय कम्पनी से वित्तीय अस्तियों का क्रय प्रतिभूतिकरण की प्रक्रिया है - यदि क्रयकर्ता कम्पनी प्रत्यर्थी के साथ पंजीकृत नहीं तब ऐसा कृत्य दण्डनीय है - चूंकि आवेदक बैंक आरबीआई के साथ पंजीकृत नहीं है, इसलिए ऋणदाता बैंक से वित्तीय अस्तियों का क्रय अधिनियम की धारा 29 के अंतर्गत दण्डनीय है। (केविन बी. अजीत वि म.प्र. राज्य) ...661

वित्तीय अस्तियों का प्रतिभूतिकरण और पुनर्गठन तथा प्रतिभूति हित का प्रवर्तन अधिनियम (2002 का 54), धारा 13 (8), - वाक्यांश - विक्रय अथवा अंतरण हेतु नियत तिथि से पूर्व - इन शब्दों का निश्चित अर्थ एवं बोध है - उक्त भाषा का उपयोग करते समय विधायिका का आशय विक्रय हेतु नियत तिथि के संबंध में है और न कि वास्तविक विक्रय अथवा अंतरण के संबंध में - एक बार जब क्रेंता को विक्रय प्रमाण पत्र जारी किया जाता है तब विक्रय पूर्ण हो जाता है - विक्रय प्रमाण

sale or transfer – Once a sale certificate is issued to the purchaser, sale becomes absolute – Sale certificate is the evidence of title – Bank can not accept the amount from the borrower after the sale is confirmed nor can return auction amount to the auction purchaser – Section 60 of Transfer of Property Act has no application. [Gaurav Enterprises (M/s.) Vs. State Bank of India] ...49

Service Law – Advertisement – Mistake therein – Correction – Four posts of welder in Group “C” Highly skilled to be filled only by deputation/re-employment were released – Respondents were appointed however after assumption of charge they were served with amended appointment order by which they were posted Welder Skilled, a post lower than on which recruitment was made – Held – Post of Welder (Skilled) is earmarked to be filled in by re-employment for ex-servicemen whereas there is no such reservation for recruitment of Welder (Highly Skilled) – Amendment of recruitment order in absence of any malafide does not suffer from vice of violation of Principle of Natural Justice. [Union of India Vs. Shri Dev Raj Bais] (DB)...311

Service Law – Advertisement – Mistake therein – Correction – Recruitment is an administrative function – There exist possibility of committing of administrative mistake – If there is a mistake the same has to be corrected. [Union of India Vs. Shri Dev Raj Bais] (DB)...311

Service Law – Bias of Enquiry Officer – Bias has to be specifically pleaded and proved – Mere allegation of involvement of I.O. in some other criminal case does not show any bias – Procedural irregularity in departmental enquiry does not always lead to presumption of bias. [Vikram Sharma Vs. State Bank of Indore] ...*10

Service Law – Circulars of State Govt. issued prior to judgment passed in Uma Devi's case – Question whether circulars issued in the matter of grant of pay-scale and regularization prior to the delivery of judgment in Uma Devi's case referred to Full Bench – Entitlement of pay scale already decided in favor of petitioner in previous writ petition – Questions referred in writ petition are not involving in the proceeding pending before Single Judge – Questions need not to be answered only for academic purposes. [Nanadram Kushwah Vs. State of M.P.] (FB)...685

Service Law – Compulsory Retirement – Only for three annual confidential reports of the year 1976, 1977 and 1983 as also a punishment

पत्र स्वत्व का सबूत है — विक्रय की पुष्टि के पश्चात बैंक, उधार लेने वाले से रकम स्वीकार नहीं कर सकती न ही नीलामी राशि नीलाम क्रेता को वापस कर सकती है —सम्पत्ति अंतरण अधिनियम की धारा 60 लागू नहीं होती।(गौरव इंटरप्राइजेस(मे.) वि. स्टेट बैंक ऑफ इंडिया) ...49

सेवा विधि — विज्ञापन — में त्रुटि — सुधार — ग्रुप 'सी' में अति कुशल वेल्डर के चार पद केवल प्रतिनिधित्व/पुनः नियोजन द्वारा मरने के लिये प्रकाशित किये गये — प्रत्यर्थीगण को नियुक्त किया गया किन्तु पद ग्रहण करने के पश्चात उन्हें संशोधित नियुक्ति आदेश तामील किया गया जिसके द्वारा उन्हें वेल्डर कुशल पदस्थ किया गया, जो उस पद से कनिष्ठ था जिस पर भर्ती की गई थी — अभिनिर्धारित — वेल्डर (कुशल) का पद भूतपूर्व सैनिक हेतु पुनः नियोजन द्वारा भरा जाना चिन्हित है जबकि वेल्डर (अति कुशल) की भर्ती हेतु ऐसा कोई आरक्षण नहीं है — भर्ती आदेश का संशोधन किसी असदभाव की अनुपस्थिति में नैसर्गिक न्याय के सिद्धांत के अतिलंघन के दोष से ग्रसित नहीं। (यूनियन ऑफ इंडिया वि. श्री देव राज बैस) (DB)...311

सेवा विधि — विज्ञापन — में त्रुटि — सुधार — भर्ती एक प्रशासनिक कार्य है — प्रशासनिक त्रुटि कारित हो सकने की संभावना अस्तित्वमान है — यदि कोई त्रुटि है उसे सुधारा जाना चाहिए। (यूनियन ऑफ इंडिया वि. श्री देव राज बैस) (DB)...311

सेवा विधि — जाँचकर्ता अधिकारी का पक्षपात — पक्षपात का विनिर्दिष्ट अभिवचन कर साबित किया जाना होता है — किसी अन्य आपराधिक प्रकरण में जाँच अधिकारी के अंतर्ग्रस्त होने मात्र का अभिकथन, कोई पक्षपात नहीं दर्शाता — विभागीय जाँच में प्रक्रिया संबंधी अनियमितता, सदैव पक्षपात की उपधारणा की ओर नहीं ले जाती। (विक्रम शर्मा वि. स्टेट बैंक ऑफ इंदौर) ...*10

सेवा विधि — राज्य सरकार के परिपत्र उमा देवी मामले में निर्णय पारित होने से पूर्व जारी किये गये — प्रश्न कि क्या वेतनमान एवं नियमितीकरण प्रदान करने के मामले में उमा देवी के मामले में निर्णय दिये जाने से पूर्व जारी परिपत्र पूर्ण न्याय पीठ को निदेशित किये गये — पूर्ववर्ती रिट याचिका में पहले ही याची के पक्ष में वेतनमान की हकदारी निर्णित की गई — रिट याचिका में निर्दिष्टित प्रश्न एकल न्यायमूर्ति के समक्ष लंबित कार्यवाही में अंतर्ग्रस्त नहीं — केवल शैक्षिक प्रयोजन के लिये प्रश्नों का उत्तर देने की आवश्यकता नहीं। (नानदराम कुशवाह वि. म.प्र. राज्य) (FB)...685

सेवा विधि — अनिवार्य सेवानिवृत्ति — केवल वर्ष 1976, 1977 व 1983 की तीन वार्षिक गोपनीय प्रतिवेदन एवं विभागीय जाँच में पारित शास्ति के आधार पर,

awarded in a departmental enquiry, the petitioner was said to be found fit for compulsory retirement in the year 1998 – Recent record of the service of the petitioner was not examined – Held – Order (of compulsory retirement) quashed. [G.R. Dhupar Vs. State of M.P.] ...42

Service Law – Conditions of Service – Conditions of service are intended to be construed reasonably and too technical a view can defeat the essential spirit and intent embodied in them. [D. Subrahmanyam (Dr.) Vs. Dr. D.K. Pandey] (DB)...*12

Service Law – Criminal Case – Stay of Departmental Enquiry – Departmental Enquiry based on same charge – Merely because both the proceedings are founded upon same facts departmental enquiry is not required to be kept in abeyance unless charges are complex in nature involving complicated questions of facts and law. [Vikram Sharma Vs. State Bank of Indore] ...*10

Service Law – Departmental Enquiry – Exparte Proceedings – Petitioner initially attended the departmental enquiry but subsequently was proceeded exparte – Inquiry Officer in his wisdom again issued notices to the petitioner and receipt of the same was denied by him – Held – Earlier notices were sent by Registered Post but subsequently notices were alleged to have been sent by hand without any dispatch number – Process server also not examined to depose that the notices were refused either by the Petitioner or his wife – Exparte proceedings not proper. [Devashish Dutta Vs. Nepa Ltd., Nepanagar] ...*20

Service Law – Departmental Enquiry – Findings – No Evidence – Petitioner was posted as Civil Judge Class I – Petitioner had registered a complaint against CMO – Water supply to the house of Petitioner was stopped – Petitioner issued contempt notice to C.M.O. – Held – Petitioner in bonafide belief that in a pending criminal case, the CMO/accused is acting in a manner so as to hinder the cause of administration of justice and if the Petitioner is shown to have acted bonafidely and when no malafides or improper motives are made out, High Court should not have interfered in the matter. [Iqbal Khan Ghauri Vs. State of M.P.] (DB)...*24

Service Law – Departmental Enquiry – Inquiry Officer – Lawyer – Rule provides for appointment of a public servant or any other person

वर्ष 1998 में याची को अनिवार्य सेवानिवृत्ति के लिये उपयुक्त पाया गया — याची का वर्तमान सेवा अभिलेख परीक्षित नहीं किया गया — अभिनिर्धारित — आदेश (अनिवार्य सेवानिवृत्ति का) अभिखंडित। (जी.आर. घूपर वि. म.प्र. राज्य) 42

सेवा विधि — सेवा की शर्तें — सेवा की शर्तों का युक्तियुक्त रूप से अर्थान्वयन आशयित है और अति तकनीकी दृष्टिकोण उनमें समाविष्ट सारभूत मानना एवं आशय को विफल कर सकता है। (डी. सुब्रामण्यम (डॉ.) वि. डॉ. डी.के. पाण्डे) (DB)...*12

सेवा विधि — आपराधिक प्रकरण — विभागीय जाँच पर रोक — विभागीय जाँच उसी आरोप पर आधारित — मात्र इसलिए कि दोनों कार्यवाहियाँ समान तथ्यों पर आधारित हैं, विभागीय जाँच को प्रास्थागित रखना अपेक्षित नहीं जब तक कि आरोप जटिल प्रकृति के न हों, जिसमें तथ्यों एवं विधि के जटिल प्रश्न अंतर्गुह्य हैं। (विक्रम शर्मा वि. स्टेट बैंक ऑफ़ इंदौर)*10

सेवा विधि — विभागीय जाँच — एकपक्षीय कार्यवाही — याची प्रारंभ में विभागीय जाँच में उपस्थित हुआ लेकिन तत्पश्चात् एकपक्षीय कार्यवाही की गई — जाँचकर्ता अधिकारी ने अपने विवेकानुसार याची को पुनः नोटिस जारी किये और उक्त को उसके द्वारा अस्वीकार किया गया — अभिनिर्धारित — पूर्व में नोटिस पंजीकृत डाक से भेजे गये लेकिन तत्पश्चात् बिना जावक नम्बर के हाथों से भेजा जाना अभिकथित किया गया — आदेशिका वाहक को यह बताने के लिये परीक्षित नहीं किया गया कि नोटिस याची द्वारा या उसकी पत्नि द्वारा नहीं लिये गये — एकपक्षीय कार्यवाही उचित नहीं। (देवाशीष दत्ता वि. नेपा लि., नेपानगर)*20

सेवा विधि — विभागीय जाँच — निष्कर्ष — साक्ष्य नहीं — याची व्यवहार न्यायाधीश वर्ग-एक के पद पर पदस्थ था — याची ने सी.एम.ओ. के विरुद्ध एक शिकायत दर्ज की — याची के घर पर जल का प्रदाय रोक दिया गया — याची ने सी.एम.ओ. को अवमान नोटिस जारी किया — अभिनिर्धारित — याची इस सदमाविक विश्वास में कि लंबित दाण्डिक प्रकरण में सी.एम.ओ./अभियुक्त इस प्रकार की कार्यवाही न्याय प्रशासन के हेतुक में बाधा डालने के उद्देश्य से कर रहा है और यदि याची द्वारा सदमाविक रूप से कार्यवाही करना दर्शाया जाता है और जब कोई असदमाव एवं अनुचित हेतु प्रकट नहीं होते, उच्च न्यायालय को मामले में हस्तक्षेप नहीं करना चाहिए था। (इकबाल खान गौरी वि. म.प्र. राज्य) (DB)...*24

सेवा विधि — विभागीय जाँच — जाँचकर्ता अधिकारी — वकील — किसी लोक सेवक या अन्य किसी व्यक्ति की जाँचकर्ता अधिकारी के रूप में नियुक्ति के लिये

as inquiry officer – Appointment of a Lawyer as Inquiry Officer though he happened to be a lawyer appearing in some cases on behalf of Company proper – In absence of any personal bias or prejudice shown due to appointment of a Lawyer as Inquiry Officer, no interference into the matter is called for. [Devashish Dutta Vs. Nepa Ltd., Nepanagar] ...*20

Service Law – Departmental Enquiry – No Evidence – Petitioner who was working as A.D.J. was terminated from service on the ground that he had hatched conspiracy with 'A' to cause injuries to another A.D.J. so that bail application of father of 'A' will come to his board – Complainant did not disclose the source of such information – During departmental enquiry, complainant disclosed that he was informed by 'B' who in his turn was informed by two students about conspiracy – Neither 'B' nor students examined – 'C' and 'D' who had given affidavits in support of complainant also did not support in departmental enquiry and alleged that affidavits were obtained by getting their signatures on blank paper – Complainant did not disclose the source of his information for near about 4 years – Reliance of inquiry officer on the affidavits of 'C' and 'D' not proper – Findings given by enquiry officer are perverse – Order of termination quashed – As Petitioner has already attained the age of superannuation, he should be treated to be in service till the attainment of age of superannuation and will be entitled for all benefits of service – Petition allowed. [G.S. Thakur Vs. State of M.P.] (DB)...74

Service Law – Departmental Enquiry – Non-supply of documents – Non supply of documents will not vitiate the enquiry unless and until the relevance and thereafter the prejudice which is caused is proved. [Vikram Sharma Vs. State Bank of Indore] ...*10

Service Law – Departmental Enquiry – Non-supply of documents – Prejudice – Petitioner admitted the charge of issuing the Rin Pustikas – Non-supply of documents loses significance – Plea taken in writ petition regarding compulsion, force or threat for taking his signature not raised before the Enquiry Officer – No infirmity in the order of disciplinary and appellate authority – Petition dismissed. [Ram Prakash Verma Vs. State of M.P.] ...416

Service Law – Departmental Enquiry – Status of Enquiry Officer

नियम उपबंधित करता है — वकील की जाँच अधिकारी के रूप में नियुक्ति उचित, यद्यपि वह कुछ प्रकरणों में वकील के रूप में कंपनी की ओर से उपस्थित हुआ था — वकील की जांचकर्ता अधिकारी के रूप में नियुक्ती से कोई व्यक्तिगत पक्षपात या प्रतिकूल प्रभाव नहीं दर्शाया गया है, मामले में हस्तक्षेप की कोई आवश्यकता नहीं। (देवाशीष दत्ता वि. नेपा लि., नेपानगर) ...*20

सेवा विधि — विभागीय जाँच — कोई साक्ष्य नहीं — याची जो ए.डी.जे. के रूप में पदस्थ था, की सेवा इस आधार पर समाप्त की गई कि उसने अन्य ए.डी.जे. को क्षतियाँ कारित करने के लिए 'ए' के साथ षड्यंत्र रचा ताकि 'ए' के पिता की जमानत अर्जी उसके बोर्ड पर आ जाएगी — शिकायतकर्ता ने ऐसी जानकारी का स्रोत प्रकट नहीं किया — विभागीय जांच के दौरान शिकायतकर्ता ने प्रगट किया कि उसे षड्यंत्र के बारे में सूचना 'बी' द्वारा दी गई जिसे यह सूचना दो विद्यार्थियों से प्राप्त हुई थी — न तो 'बी' और न ही विद्यार्थियों का परीक्षण किया गया — 'सी' व 'डी' जिन्होंने शिकायतकर्ता के समर्थन में शपथपत्र दिया था, ने भी विभागीय जांच में समर्थन नहीं किया और अभिकथन किया कि कोरे कागज पर उनके हस्ताक्षर लेकर शपथपत्र अभिप्राप्त किये गये — शिकायतकर्ता ने करीब 4 वर्षों तक उसकी जानकारी का स्रोत प्रकट नहीं किया — 'सी' व 'डी' के शपथपत्रों पर जांचकर्ता अधिकारी द्वारा विश्वास किया जाना उचित नहीं — जांचकर्ता अधिकारी द्वारा दिये गये निष्कर्ष अनुचित — सेवा समाप्ति का आदेश अमिखंडित — चूंकि याची ने पहले ही सेवा निवृत्ति का वय प्राप्त कर लिया है, उसे सेवा निवृत्ति का वय प्राप्त करने तक सेवा में माना जाना चाहिए और सेवा के सभी लाभों के लिए हकदार होगा — याचिका मंजूर। (जी.एस. ठाकुर वि. म.प्र. राज्य) (DB)...74

सेवा विधि — विभागीय जाँच — दस्तावेजों का प्रदाय नहीं किया जाना — दस्तावेजों का प्रदाय नहीं किया जाना जांच को दूषित नहीं करेगा जब तक कि सुसंगतता और तत्पश्चात प्रतिकूल प्रभाव जो कारित हुआ है साबित नहीं किया जाता। (विक्रम शर्मा वि. स्टेट बैंक ऑफ इंदौर) ...*10

सेवा विधि — विभागीय जाँच — दस्तावेजों का प्रदाय न किया जाना — प्रतिकूल प्रभाव — याची ने ऋण पुस्तिकाएँ जारी करने का आरोप स्वीकार किया — दस्तावेजों का प्रदाय नहीं किया जाना महत्वहीन हो जाता है — उसके हस्ताक्षर लेने के लिये बाध्यता, बल या भय के संबंध में अभिवाक् रिट याचिका में लिया है, जिसे जांचकर्ता अधिकारी के समक्ष नहीं उठाया गया—अनुशासनिक और अपीली प्राधिकारी के आदेश में कोई दोष नहीं — याचिका खारिज। (राम प्रकाश वर्मा वि. म.प्र. राज्य) ...416

सेवा विधि — विभागीय जाँच — जांचकर्ता अधिकारी की हैसियत — प्रारंभिक

– Preliminary Enquiry was conducted by an officer who is superior than main Enquiry Officer – This will not vitiate the enquiry unless it is shown that main enquiry report is either influenced by preliminary enquiry report or is based on mechanical reliance on the preliminary enquiry report. [Vikram Sharma Vs. State Bank of Indore] ...*10

Service Law – Departmental Enquiry – Subsistence Allowance
– Non-Payment thereof – Subsistence Allowance not paid to the petitioner inspite of directions by the High Court – Reasonable Opportunity to participate and defend in inquiry was denied to the petitioner – Inquiry vitiated. [Devashish Dutta Vs. Nepa Ltd., Nepanagar] ...*20

Service Law – Disciplinary Enquiry – Disciplinary Authority
– Dy. General Manager was conferred the powers of General Manager
– Order merely confers the powers to discharge the duties of General Manager and to exercise all the powers of that post – Order does not designate him nor does it empowers him to discharge the functioning of a Appointing Authority or Disciplinary Authority – Issuance of Charge sheet and punishment by Dy. G.M. without jurisdiction – Enquiry vitiated. [Devashish Dutta Vs. Nepa Ltd., Nepanagar]...*20

Service Law – Disciplinary Proceedings – Discharge of Judicial or Quasi Judicial Functions - Grounds on which disciplinary action can be taken – Law discussed. [Iqbal Khan Ghauri Vs. State of M.P.]
(DB)...*24

Service Law – Disciplinary Proceedings – Instigating strike by lawyer – Lawyers went on strike due to discontinuance of water supply by CMO – Non-intimation of strike by lawyers to District Judge by itself would not mean that petitioner had instigated – Merely because Petitioner adjourned the cases would not mean that he had instigated the lawyers – Mere suspicion or presumption can not be permitted to take place of proof for holding the petitioner guilty of this charge – Petition allowed – Petitioner directed to be reinstated with all consequential benefits. [Iqbal Khan Ghauri Vs. State of M.P.]
(DB)...*24

Service Law – Disciplinary Proceedings – Judicial Officer – No disciplinary action could have been taken against a judicial officer when there is no material with regard to the reputation, integrity or

जाँच उस अधिकारी द्वारा की गई जो मुख्य जाँचकर्ता अधिकारी से वरिष्ठ है — यह जाँच को दूषित नहीं करेगा जब तक कि यह दर्शाया नहीं जाता कि मुख्य जाँच प्रतिवेदन या तो प्रारंभिक जाँच प्रतिवेदन से प्रभावित है अथवा प्रारंभिक जाँच प्रतिवेदन पर यांत्रिक रूप से विश्वास पर आधारित। (विक्रम शर्मा वि. स्टेट बैंक ऑफ इंदौर) ...*10

सेवा विधि — विभागीय जाँच — निर्वाह भत्ता — उसका भुगतान नहीं — उच्च न्यायालय के निर्देशों के बावजूद भी याची को निर्वाह भत्ता प्रदाय नहीं किया गया — जाँच में उपस्थित होने का और बचाव का युक्तियुक्त अवसर याची को नहीं दिया गया — जाँच दूषित। (देवाशीष दत्ता वि. नेपा लि., नेपानगर) ...*20

सेवा विधि — अनुशासनिक जाँच — अनुशासनिक प्राधिकारी — उप महाप्रबंधक को महाप्रबंधक की शक्तियाँ प्रदत्त की गई — आदेश मात्र महाप्रबंधक के कर्तव्यों के निर्वहन की शक्तियाँ और उस पद की समस्त शक्तियाँ उपयोग करने की शक्ति प्रदत्त करता है — आदेश उसे पदनामित नहीं करता और न ही उसे नियुक्ति प्राधिकारी या अनुशासनिक प्राधिकारी की तरह कर्तव्यों के निर्वहन के लिये सशक्त करता है — उप महाप्रबंधक द्वारा चार्ज शीट जारी करना और दण्डित करना बिना क्षेत्राधिकारिता के है — जाँच दूषित। (देवाशीष दत्ता वि. नेपा लि., नेपानगर) ...*20

सेवा विधि — अनुशासनिक कार्यवाहियाँ — न्यायिक या अर्धन्यायिक कार्यों का निर्वहन — आधार जिन पर अनुशासनिक कार्यवाही की जा सकती है — विधि विवेचित। (इकबाल खान गौरी वि. म.प्र. राज्य) (DB)...*24

सेवा विधि — अनुशासनिक कार्यवाहियाँ — अधिवक्ताओं को हड़ताल के लिए उकसाना — सी.एम.ओ. द्वारा जल प्रदाय रोके जाने के कारण अधिवक्ता हड़ताल पर चले गये — अधिवक्ताओं द्वारा हड़ताल की सूचना जिला न्यायधीश को नहीं दिये जाने से यह अर्थ नहीं निकलेगा कि याची ने उकसाया था — मात्र इसलिए कि याची ने प्रकरणों को स्थगित किया इसका अर्थ यह नहीं होगा कि उसने अधिवक्ताओं को उकसाया था — याची को इस आरोप का दोषी मानने के लिए मात्र संदेह या उपद्रव आरोपण को सबूत का स्थान लेने की अनुमति नहीं दी जा सकती — याचिका मंजूर — याची को संपूर्ण परिणामिक लाभों के साथ बहाल करने के लिये निदेशित किया गया। (इकबाल खान गौरी वि. म.प्र. राज्य) (DB)...*24

सेवा विधि — अनुशासनिक कार्यवाहियाँ — न्यायिक अधिकारी — न्यायिक अधिकारी के विरुद्ध कोई अनुशासनिक कार्यवाही नहीं की जा सकती थी जब न तो ख्याति, ईमानदारी या कर्तव्यनिष्ठा के संबंध में कोई सामग्री है और न ही कोई भ्रष्ट हेतु स्थापित

devotion to duty nor is any corrupt motive established – Merely on the basis of vague or incomplete information or on the grounds of suspicious or on error of law which does not constitute grave charge of misconduct disciplinary action can not be taken. [Iqbal Khan Ghauri Vs. State of M.P.] (DB)...*24

Service Law - Essential Qualifications - It is the screening committee comprising of expert who are the best judge to ascertain whether a candidate fulfill the essential qualifications – When subject experts constitute the panel of selection committee, selection by them should not be lightly set aside. [D. Subrahmanyam (Dr.) Vs. Dr. D.K. Pandey] (DB)...*12

Service Law – Examination-in-chief of witnesses without any cross examination – One witness should be examined and then put to cross examination and then only others will enter the witness box – Enquiry stands vitiated on this ground. [Vikram Sharma Vs. State Bank of Indore] ...*10

Service Law – Examination of handwriting – Not necessary and in absence of any enabling provisions, enquiry is not vitiated. [Vikram Sharma Vs. State Bank of Indore] ...*10

Service Law – Punishment and Appellate Orders – Non-speaking – Against I.O.'s report a detailed representation and appeal were preferred – Both were decided by non-speaking order – Orders quashed because of non-application of mind. [Vikram Sharma Vs. State Bank of Indore] ...*10

Service Law – Reason and sufficient opportunity of defence – Enquiry officer did not give opportunity to defence to lead evidence despite cooperation of defence. [Vikram Sharma Vs. State Bank of Indore] ...*10

Service Law – Recruitment – Mistake – Correction thereof – Mistakes can be corrected by affording an opportunity of hearing to the incumbents. [Union of India Vs. Shri Dev Raj Bais] (DB)...311

Service Law – Recruitment – Mistake – Vested Right – If due to mistake some benefit is extended in favour of person(s) not eligible for such benefit, there is no accrual of right. [Union of India Vs. Shri Dev Raj Bais] (DB)...311

किया गया है — मात्र अस्पष्ट एवं अपूर्ण जानकारी के आधार पर या संदेह एवं विधि की त्रुटि जो अवचार का गंभीर आरोप गठित नहीं करते, के आधारों पर अनुशासनिक कार्यवाही नहीं की जा सकती। (इकबाल खान गौरी वि. म.प्र. राज्य) (DB)...*24

सेवा विधि — अनिवार्य अर्हता — वह छानबीन समिति है जिसमें विशेषज्ञ समाविष्ट हैं जो यह सुनिश्चित करने के लिए उत्तम निर्णेत हैं कि क्या अभ्यर्थी अनिवार्य अर्हताओं की पूर्ति करता है — जब विषय विशेषज्ञ चयन समिति के पैनल को गठित करते हैं तब उनके द्वारा किये गये चयन को हल्केपन से अपास्त नहीं किया जाना चाहिए। (डी. सुब्रामण्यम (डॉ.) वि. डॉ. डी.के. पाण्डे) (DB)...*12

सेवा विधि — बिना किसी प्रति परीक्षण के साक्षियों का मुख्य परीक्षण — एक साक्षी का परीक्षण कर उसका प्रतिपरीक्षण किया जाना चाहिए और केवल तब अन्य साक्षी कठघरे में प्रवेश करेंगे — इस आधार पर जाँच दूषित हो जाती है। (विक्रम शर्मा वि. स्टेट बैंक ऑफ इंदौर) ...*10

सेवा विधि — हस्तलेख का परीक्षण — आवश्यक नहीं और किसी सामर्थ्यकारी उपबंधों की अनुपस्थिति में जाँच दूषित नहीं होती। (विक्रम शर्मा वि. स्टेट बैंक ऑफ इंदौर) ...*10

सेवा विधि — शास्ति और अपील आदेश — कारण न देते हुए — जाँचकर्ता अधिकारी के प्रतिवेदन के विरुद्ध विस्तृत अभ्यावेदन और अपील प्रस्तुत की गई — कारण न देते हुए आदेश द्वारा दोनों को निर्णित किया गया — मस्तिष्क का प्रयोग नहीं किये जाने के कारण आदेश अभिखंडित। (विक्रम शर्मा वि. स्टेट बैंक ऑफ इंदौर) ...*10

सेवा विधि — कारण एवं बचाव का पर्याप्त अवसर — बचाव पक्ष के सहयोग के बावजूद जाँचकर्ता अधिकारी ने साक्ष्य प्रस्तुत करने हेतु बचाव पक्ष को अवसर नहीं दिया। (विक्रम शर्मा वि. स्टेट बैंक ऑफ इंदौर) ...*10

सेवा विधि — मर्ती — त्रुटि — का सुधार — पदधारियों को सुनवाई का अवसर देकर त्रुटि को सुधारा जा सकता है। (यूनियन ऑफ इंडिया वि. श्री देव राज बैस) (DB)...311

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Service Law – Seniority – Is a civil right and not a fundamental right – Employee has no right to a particular number in gradation list – He has only a right of seniority to be counted from the date of his appointment – If he is transferred to another seniority unit on administrative ground, he has a right to enjoy seniority from the same date of appointment. [Awadesh Kumar Shrivastava Vs. State of M.P.] ...420

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Service Law – Transfer – Beyond the seniority unit – Permissible in absence of any prohibition in rules. [Awadesh Kumar Shrivastava Vs. State of M.P.] ...420

Settlement before Court – Settlement is binding between the parties inter se – Settlement arrived at between the bank and the borrower will not bind the auction purchaser – Auction purchaser is free to assail the action of the bank in a separate proceedings. [Gaurav Enterprises (M/s.) Vs. State Bank of India]...49

Shashkiya Sewak (Adhiwarshik Aayu) Adhiniyam (M.P.) 1967, Section 2, Shashkiya Sewak (Adhiwarshik Aayu) Adhiniyam (M.P.) 2011, Public Health and Family Welfare (Gazetted) Service Recruitment (M.P.) Rules 2007, Public Health and Family Welfare Department (Directorate of Health Services) M.P. Class III, Nursing Services Recruitment Rules 1989, Medical Education (Gazetted) Services Recruitment Rules (M.P.) 1987 Schedule I – The petitioners

कार्रवाई में कोई दोष नहीं पाया जा सकता — हटायें जाने का आपेक्षित आदेश केवल सेवा समाप्ति की कोटी में आता है और न तो शास्ति है और न ही याची पर कोई कलंक लगाता है। (नीतेश सिंह पवार वि. सैनिक स्कूल सोसायटी) ...94

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सेवा विधि — स्थानांतरण — वरिष्ठता इकाई से परे — नियम में किसी प्रतिशोध की अनुपस्थिति में अनुज्ञेय। (अवधेश कुमार श्रीवास्तव वि. म.प्र. राज्य) ...420

न्यायालय के समक्ष समझौता — समझौता पक्षकारों पर पारस्परिक बंधनकारी है — बैंक और उधारकर्ता के बीच का समझौता, नीलाम क्रेता पर बंधनकारी नहीं होगा — नीलाम क्रेता, बैंक की कार्यवाही का पृथक कार्यवाही में विरोध करने के लिये स्वतंत्र है। (गौरव इंटरप्राइजेस (मे.) वि. स्टेट बैंक ऑफ इंडिया) ...49

शासकीय सेवक (अधिवार्षिक आयु) अधिनियम (म.प्र.) 1967 धारा 2, शासकीय सेवक (अधिवार्षिक आयु) अधिनियम (म.प्र.) 2011, लोक स्वास्थ्य और पारिवार कल्याण (राजपत्रित) सेवा भर्ती म.प्र. नियम 2007, लोक स्वास्थ्य और परिवार कल्याण विभाग (स्वास्थ्य सेवाओं का निदेशालय), म.प्र. वर्ग III, नर्सिंग सेवा भर्ती नियम 1989, चिकित्सीय शिक्षा (राजपत्रित) सेवा भर्ती नियम (म.प्र.), 1987 अनुसूची I — याचीगण शाला अध्यापक है और म.प्र. शैक्षणिक सेवा (महाविद्यालयीन शाखा) भर्ती नियम 1990 या म.प्र. तकनीकी शिक्षण अभियांत्रिकी महाविद्यालय (अध्यापन

are school teachers and have not been appointed under the provisions of M.P. Educational Service (Collegiate Branch) Recruitment Rules 1990, or M.P. Technical Education Engineering College (Teaching Cadre) Service (Recruitment) Rules, 2004 or M.P. Technical Education Polytechnic College (Teaching Cadre) Service (Recruitment) Rules 2004 and therefore enhanced age of superannuation as prescribed by Rule 56(1-g), (1-h) and (1-i) of Fundamental Rules is not applicable to them as they are governed by the provisions of Rule 56(1-A) – Superannuation age continues to be 62 years – Rule 56(1-c) does not deal with the age of superannuation of teachers – Order of State Government confirmed – Few petitioners granted liberty to withdraw and challenge the vires of amended provisions – Rest petitions dismissed. [Sikandar Sabana (Ku.) Vs. State of M.P.] ...*17

Specific Relief Act, (47 of 1963), Section 16 – Specific Performance of Contract – Ready and Willingness – Unless and until there is a finding that the plaintiff is not ready and willing to purchase suit property, decree of specific performance of Contract normally should not be denied. [Babu Lal Vs. Hira Lal] ...480

Specific Relief Act (47 of 1963), Sections 16 & 20, Land Revenue Code, M.P. (20 of 1959), Section 165(6) – Specific Performance of Contract – No pleading by the Defendant that he belongs to aboriginal tribe – Bar as contained under Section 165(6) of Code, 1959 does not apply – Appellate Court can not make out a case which was not pleaded in written statement – Appellant entitled for decree of specific performance of Contract. [Babu Lal Vs. Hira Lal] ...480

Specific Relief Act (47 of 1963), Sections 34 & 38, Criminal Procedure Code, 1973 (2 of 1974), Section 145 – Possession of Receiver – Permanent Injunction – Possession of property taken from plaintiff and given to Supurdgidar under Section 145 of Code – It shall be deemed that plaintiff was in possession of suit property because supurdgidar holds possession for the person who is actually entitled to obtain the possession – Plaintiff not required to seek the relief of possession. [Ganga Bai Vs. Devi Singh] ...490

Specific Relief Act (47 of 1963), Section 41 – Injunction – No injunction can be granted against any coparcener – Each coparcener is having equal right in the property. [Gajendra Rao Vs. Murti Shri Ganapati Ji Maharaj] ...*4

संवर्ग) सेवा (भर्ती) नियम, 2004 या म.प्र. तकनीकी शिक्षण पॉलीटेक्निक महाविद्यालय (अध्यापन संवर्ग) सेवा (भर्ती) नियम 2004 के उपबंधों के अंतर्गत नियुक्त नहीं किये गये हैं और इसलिए उन्हें बढ़ायी गई अधिवर्षिता आयु, जैसा कि मूलभूत नियम के नियम 56 (1-जी), (1-एच) व (1-आई) द्वारा विहित हैं लागू नहीं होती क्योंकि वे नियम 56(1-ए) के उपबंधों द्वारा शासित होते हैं - अधिवर्षिता आयु 62 वर्ष बनी रहेगी - नियम 56(1-सी) शिक्षकों की अधिवर्षिता की आयु से संबंधित नहीं - राज्य सरकार का आदेश अभिपुष्ट - कुछ याचीगण को (याचिका) वापिस लेने और संशोधित उपबंधों की शक्तिमत्ता को चुनौती देने की स्वतंत्रता प्रदान की गई - शेष याचिकायें खारिज। (सिकंदर सबाना (कुमारी) वि. म.प्र. राज्य) ...*17

विनिर्दिष्ट अनुतोष अधिनियम (1963 का 47), धारा 16 - संविदा का विनिर्दिष्ट अनुपालन - तैयार व रजामंदी - जब तक यह निष्कर्ष नहीं होता कि वादी वाद सम्पत्ति को खरीदने के लिये तैयार व रजामंद नहीं है, संविदा के विनिर्दिष्ट अनुपालन की डिक्री सामान्यतः अस्वीकृत नहीं की जानी चाहिये। (बाबू लाल वि. हीरा लाल) ...480

विनिर्दिष्ट अनुतोष अधिनियम (1963 का 47), धाराएँ 16 व 20; मू राजस्व संहिता, म.प्र. (1959 का 20), धारा 165(6) - संविदा का विनिर्दिष्ट अनुपालन - प्रतिवादी द्वारा कोई अभिवचन नहीं किया गया कि वह आदिवासी जनजाति का है - संहिता 1959 की धारा 165(6) में अन्तर्विष्ट वर्जन लागू नहीं होता - अपीलीय न्यायालय ऐसा प्रकरण नहीं बना सकती, जो लिखित कथन में अभिकथित नहीं किया गया - अपीलार्थी संविदा की विनिर्दिष्ट अनुपालन की डिक्री पाने का हकदार। (बाबू लाल वि. हीरा लाल) ...480

विनिर्दिष्ट अनुतोष अधिनियम (1963 का 47), धाराएँ 34 व 38, दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 145 - प्रापक का कब्जा - स्थाई व्यादेश - वादी से संहिता की धारा 145 के अंतर्गत सम्पत्ति का कब्जा लिया गया व सुपुर्दगीदार को दिया गया - यह समझा जावेगा कि वाद सम्पत्ति वादी के कब्जे में थी, क्योंकि सुपुर्दगीदार उस व्यक्ति के लिये कब्जा रखता है, जो वास्तव में कब्जा अभिप्राप्त करने का हकदार है - वादी को कब्जे का अनुतोष चाहने की आवश्यकता नहीं। (गंगा बाई वि. देवी सिंह) ...490

*विनिर्दिष्ट अनुतोष अधिनियम (1963 का 47), धारा 41 - व्यादेश - किसी भी सहदायिक के विरुद्ध कोई व्यादेश प्रदान नहीं किया जा सकता - प्रत्येक सहदायिक सम्पत्ति में समान अधिकार रखते हैं। (गजेन्द्र राव वि. मूर्ति श्री गनपति जी महाराज) ...*4*

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Torts – Suit for damages – Plaintiffs have proved that accident occurred on account of negligent act of the defendants and deceased died due to electrocution, burden of prove is on defendants that preventive measures were taken to stop accidents – No evidence on record that accident occurred even after due care and caution by respondents – Appeal allowed. [Lalita Tripathi (Smt.) Vs. M.P.E.B.] ...*25

383 के अंतर्गत आवेदन में की गई अतिरिक्त प्रार्थना के आधार पर जारी नहीं किया जा सकता — उत्तराधिकार प्रमाण पत्र प्रतिसंहस्त करने के आदेश की पुष्टि की गई जबकि प्रत्यर्थी के पक्ष में उत्तराधिकार प्रमाण पत्र जारी करने का निदेश अपास्त — प्रत्यर्थी द्वारा नया आवेदन प्रस्तुत करने पर, न्यायालय मृतक के संबंध में उसके पक्ष में उत्तराधिकार प्रमाण पत्र यथा शीघ्र जारी करेगा। (संतोष सुल्लेरे वि. श्रीमति सरोज सुल्लेरे) ...785

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Transfer of Property Act (4 of 1882), Section 123 – Gift – Receiver should also prove that donor was the absolute owner of the property – Donor died prior to coming into force of Act, 1956, therefore she was having limited interest in the suit property and was not competent to give the suit property to plaintiffs in gift even though registered gift deed has been executed by her in their favour. [Ramu Singh Vs. Smt. Bandi Bai] ...121

Urban Land (Ceiling and Regulation) Act, (33 of 1976), Sections 5(1)(3), 6, 9, 10(1)(3)(4) – See – Constitution, Article 226 [M.P. Samdariya Vs. State of M.P.] ...70

सम्पत्ति अन्तरण अधिनियम (1882 का 4), धाराएँ 3, 123 — वसीयत का रजिस्ट्रेशन — अचल सम्पत्ति के वैध दान के लिए अंतरण को दाता द्वारा अथवा उसकी ओर से हस्ताक्षरित तथा कम से कम दो साक्षियों द्वारा अनुप्रमाणित रजिस्ट्रीकृत लिखत द्वारा प्रभावी किया जाना चाहिए। (रामू सिंह वि. श्रीमति बंदीबाई) ...121

सम्पत्ति अन्तरण अधिनियम (1882 का 4), धारा 54 — विक्रय — प्रतिफल के अभाव का अभिवाक् — रजिस्ट्रीकृत विक्रय पत्र दि. 02.03.1987 में अंतर्विष्ट कथन, प्रतिफल की प्राप्ति के साथ ही कब्जे का परिदान भी दर्शाता है — विक्रय पत्र दर्शाता है कि विक्रय पूर्ण है — मात्र इसलिए कि विक्रय मूल्य अदा नहीं किया गया विक्रय पत्र अवैध होने की धारणा नहीं की जा सकती — ज्यादा से ज्यादा, यदि विक्रेता जिसने सम्पत्ति का विक्रय किया है और विक्रय प्रतिफल प्राप्त नहीं किया है, वह विक्रय प्रतिफल की वसूली हेतु मुकदमा कर सकता है। (शकुन्तला तिवारी (श्रीमति) वि. मोहम्मद रमजान) ...160

सम्पत्ति अन्तरण अधिनियम (1882 का 4), धाराएँ 54 व 55 — विक्रय — हक — विक्रय विलेख के आधार पर क्रेता को कोई हक अंतरित नहीं होता यदि विक्रेता के पास भूमि अंतरित करने का कोई हक नहीं है। (देव प्रकाश गुलाटी वि. नन्द कुमार) ...495

सम्पत्ति अन्तरण अधिनियम (1882 का 4), धाराएँ 122, 123 — रजिस्ट्रीकरण अधिनियम (1908 का 16), धारा 49 — अपंजीकृत और अमुद्रांकित दानविलेख — विचारण न्यायालय जब अपंजीकृत दान विलेख को साक्ष्य में सांपाश्विक प्रयोजन हेतु ग्राह्य करने के लिये अनुमति देता है, तो विधि की स्पष्टतः मूल करता है और इसप्रकार इसमें निहित क्षेत्राधिकार के प्रयोग की मूल करता है — प्रतिवादित आदेश अभिखंडित — याचिका मंजूर। (जयन्त कुमार (श्रीमति) वि. श्रीमति वासंती देवी) ...702

सम्पत्ति अन्तरण अधिनियम (1882 का 4), धारा 123 — दान — प्रापक को यह भी साबित करना चाहिए कि दाता सम्पत्ति का आत्यांतिक स्वामी था — अधिनियम 1956 के प्रवर्तन से पूर्व दाता की मृत्यु हो गई, इसलिए वाद सम्पत्ति में उसका सीमित हित था और वाद सम्पत्ति वादीगण को दान करने के लिए वह सक्षम नहीं थी, यद्यपि उसके द्वारा उनके पक्ष में रजिस्ट्रीकृत दान पत्र निष्पादित किया गया है। (रामू सिंह वि. श्रीमति बंदीबाई) ...121

नगर भूमि (अधिकतम सीमा और विनियमन) अधिनियम, (1976 का 33), धाराएँ 5(1)(3), 6, 9, 10(1)(3)(4) — देखें — संविधान, अनुच्छेद 226 (एम.पी. समदड़िया वि. म.प्र. राज्य) ...70

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Value Added Tax Act, M.P. (20 of 2002), Section 7, Schedule I – Interpretation of entries – Commercial Tax Officer while holding that Salt Cake would not fall in Entry No. 35 (Salt) did not make any effort to find out whether salt cake would be covered under various other entries – Held – If there is a conflict between two entries, one leading to an opinion that it comes within the purview of a specific entry and another the residuary entry, the former should be preferred – Recourse to residuary entry should be made as a last resort – Order not in consonance with the requirement of Section 70 – matter remitted back for deciding it afresh. [Mega Enterprises (M/s) Vs. State of M.P.] (DB)...375

Value Added Tax Act, M.P. (20 of 2002), Section 55 – Illegal search – Effect – Respondents had seized documents during search – Although Entire Search and seizure was illegal but respondents may proceed on the basis of documents seized by them to find out whether there was any evasion of tax by Petitioner – Authority shall evaluate the evidence with great caution. [SVIL Mines Ltd. Vs. State of M.P.] (DB)...334

Value Added Tax Act, M.P. (20 of 2002), Section 55 – Search – Letter of Authorization not shown to the officers of Petitioner – Independent witnesses not called during search – Documents seized without recording of reasons by Commissioner and receipt of seizure not issued – Entire Search and seizure vitiated. [SVIL Mines Ltd. Vs. State of M.P.] (DB)...334

Wakf Act (43 of 1995), Section 3(i) – Mutawalli – After the death of Mutawalli, petitioner was discharging the functions of Mutawalli and was managing the affairs and property of Masjid for the last 13 years – Also paying annual contribution to the Board – Petitioner can be treated as Mutawalli. [Haji Abdul Aziz Ansari Vs. M.P. Wakf Board, Bhopal] ...252

Wakf Act (43 of 1995), Section 64 – Removal of Mutawalli – Opportunity of Hearing – Inquiry under Section 64 of the Act ought to have been conducted – Petitioner can be said to be aggrieved person. [Haji Abdul Aziz Ansari Vs. M.P. Wakf Board, Bhopal] ...252

Wakf Act (43 of 1995), Sections 64 & 67 – Appointment of Committee – Committee can be appointed for the Supervision or management of Board – Power can be exercised for suppression of Committee – As removal of petitioner as Mutawalli was in violation of

मूल्य वर्धित कर अधिनियम, म.प्र. (2002 का 20), धारा 7, अनुसूची I – प्रविष्टियों का निर्वचन – वाणिज्यक कर अधिकारी ने यह निर्धारित करते हुए कि साल्ट केक प्रविष्टि क्रं. 35 (साल्ट) के अंतर्गत नहीं आती, यह जानने का कोई प्रयत्न नहीं किया गया कि क्या साल्ट केक विभिन्न/अन्य प्रविष्टियों के अंतर्गत आयेगी – अभिनिर्धारित – यदि दो प्रविष्टियों के मध्य विरोध है, एक इस मत की ओर ले जाती है कि यह विनिर्दिष्ट प्रविष्टि के अंतर्गत आती है और अन्य अवशिष्ट प्रविष्टि के अंतर्गत, तब पूर्ववर्ती को प्राथमिकता दी जानी चाहिये – अवशिष्ट प्रविष्टि का अवलम्ब अंतिम उपाय के रूप में करना चाहिए – आदेश धारा 70 की अपेक्षा के अनुरूप नहीं – पुनः निर्णित किये जाने हेतु मामला प्रतिप्रेषित किया गया। (मेगा इंटरप्राइजेस वि. म.प्र. राज्य) (DB)...375

मूल्य वर्धित कर अधिनियम, म.प्र. (2002 का 20), धारा 55 – अवैध तलाशी – प्रभाव – प्रत्यर्थागण द्वारा तलाशी के दौरान दस्तावेज जब्त किये गये – यद्यपि पूरी तलाशी व जब्ती अवैध थी, लेकिन प्रत्यर्थागण उनके द्वारा जब्त किये गये दस्तावेजों के आधार पर यह जानने के लिये कार्यवाही कर सकते हैं कि क्या याची द्वारा किसी कर का छिपाव किया गया – प्राधिकारी को साक्ष्य का मूल्यांकन बहुत ज्यादा सावधानी से करना होगा। (एस.व्ही.आई.एल. माइन्स लि. वि. म.प्र. राज्य) (DB)...334

मूल्य वर्धित कर अधिनियम, म.प्र. (2002 का 20), धारा 55 – तलाशी – याची के अधिकारियों को प्राधिकार पत्र नहीं दिखाया गया – तलाशी के दौरान स्वतंत्र साक्षी नहीं बुलाये गये – संभागायुक्त द्वारा बिना कारण उल्लेखित किये दस्तावेज जब्त किये गये और जब्ती की पावती जारी नहीं की गई – पूरी तलाशी व जब्ती दूषित। (एस.व्ही.आई.एल. माइन्स लि. वि. म.प्र. राज्य) (DB)...334

वक्फ अधिनियम (1995 का 43), धारा 3(i) – मुतावली – मुतावली की मृत्यु के बाद याची मुतावली के कार्यों का निर्वहन कर रहा था और पिछले 13 वर्षों से मस्जिद की सम्पत्ति एवं कार्यकलापों की देखभाल कर रहा था – बोर्ड को वार्षिक अंशदान भी अदा कर रहा था – याची को मुतावली माना जा सकता है। (हाजी अब्दुल अजीज अंसारी वि. एम.पी. वक्फ बोर्ड, भोपाल) ...252

वक्फ अधिनियम (1995 का 43), धारा 64 – मुतावली का निष्कासन – सुनवाई का अवसर – अधिनियम की धारा 64 के अंतर्गत जांच की जानी चाहिए थी – याची को व्यथित व्यक्ति कहा जा सकता है। (हाजी अब्दुल अजीज अंसारी वि. एम.पी. वक्फ बोर्ड, भोपाल) ...252

वक्फ अधिनियम (1995 का 43), धाराएँ 64 व 67 – समिति की नियुक्ति – समिति की नियुक्ति बोर्ड के पर्यवेक्षण एवं प्रबंधन हेतु की जा सकती है – समिति के दमन हेतु शक्ति का प्रयोग किया जा सकता है – चूंकि धारा 64(5) के उल्लंघन में मुतावली के रूप में याची को हटाया गया, इसलिए समिति की नियुक्ति भी विधि के

Section 64(5), therefore appointment of Committee also not in accordance with law. [Haji Abdul Aziz Ansari Vs. M.P. Wakf Board, Bhopal] ...252

WORDS AND PHRASES

– *Date of Knowledge* – It has a definite meaning and connotation – Information, representation or complaint only gives reason which creates doubt – When finding comes after investigation, only then it can be said that the authority gathered knowledge – *Doubt, Reason to believe, and knowledge* have different meaning – *Reason to believe* is a higher level of state of mind – *Knowledge* will be slightly on a higher plane than *reason to believe* – *Reason to believe* is on a higher plane than *doubt or suspicion*. [Savina Park Resorts & Tours Pvt. Ltd. Vs. State of M.P.] ...365

– *Legal Malice* – State is under obligation to act fairly without ill will or malice, in fact or in law – It means something done without lawful excuse – It is an act done wrongfully and willfully without reasonable or probable cause, and not necessarily an act done from ill feeling and spite – It is a deliberate act in disregard to the rights of others. [Arun Kumar Gupta Vs. State of M.P.] (DB)...*1

– *Res Gestae* – Eye-witness informed ‘B’ about the incident – Information conveyed by eye-witness to ‘B’ is admissible as part of res-gestae. [Ramdas Kachhi Vs. State of M.P.] (DB)...207

– *Weed Science* – Weed is a plant that is objectionable and interfere with the activities and welfare of man – They are no separate group of plants. [D. Subrahmanyam (Dr.) Vs. Dr. D.K. Pandey] (DB)...*12

Working Journalists and Other Newspaper Employees (Conditions of Service) and Miscellaneous Provisions Act, (45 of 1955), Section 17 – See – Industrial Disputes Act, 1947, Section 33 C(2) [Patrakar Prakashan (P) (M/s.) Vs. Smt. Vanadana Awasthy] (DB)...*15

अनुसार नहीं। (हाजी अब्दुल अजीज अंसारी वि. एम.पी. वक्फ बोर्ड, भोपाल) ...252

शब्द और वाक्यांश

— **ज्ञान होने की तारीख** — इसका निश्चित अर्थ और बोध है — सूचना, प्रतिवेदन या शिकायत केवल कारण देता है, जो संदेह उत्पन्न करता है — अन्वेषण के बाद जब निष्कर्ष आते हैं, केवल तब यह कहा जा सकता है कि प्राधिकारी ने ज्ञान एकत्रित कर लिया है — संदेह, विश्वास करने का कारण और ज्ञान के पृथक अर्थ हैं — विश्वास करने का कारण दिमाग की उच्चतर अवस्था है — ज्ञान, विश्वास करने के कारण से थोड़ा उच्चतर स्तर पर है — विश्वास करने का कारण संदेह या संशय से उच्चतर स्तर पर है। (सवीना पार्क रिसोर्ट्स एण्ड टूरस प्रा.लि. वि. म.प्र. राज्य) ...365

— **विधिक दुर्भाव** — राज्य बिना वैमनस्य या दुर्भाव के तथ्य में या विधि में समुचित कार्यवाही करने के लिए बाध्य है — इसका अर्थ है, विधिपूर्ण प्रतिहेतु के बिना कुछ करना — यह एक दोषपूर्वक एवं जानबूझकर युक्तियुक्त एवं अधिसंभाव्य कारण के बिना की गई कार्यवाही है और आवश्यक रूप से दुर्भावना एवं द्वेष से की गई कार्यवाही नहीं — यह अन्य के अधिकारों की अवहेलना में जानबूझकर की गई कार्यवाही है। (अरुण कुमार गुप्ता वि. म.प्र. राज्य) (DB)...*1

— **संबंधित तथ्य और कार्य** — प्रत्यक्षदर्शी साक्षी ने 'B' को घटना के बारे में सूचित किया — प्रत्यक्षदर्शी साक्षी द्वारा 'B' को दी गई सूचना संबंधित तथ्य और कार्य के भाग के रूप में ग्राह्य है। (रामदास काछी वि. म.प्र. राज्य) (DB)...207

— **घासपात/कुतष्ण विज्ञान** — घासपात आपत्तिजनक पौधा है और मनुष्य के कार्यकलाप एवं कल्याण में हस्तक्षेप करता है — वे पौधों का पृथक समूह नहीं है। (डी. सुब्रामण्यम (डॉ.) वि. डॉ. डी.के. पाण्डे) (DB)...*12

श्रमजीवी पत्रकार और अन्य समाचार-पत्र कर्मचारी (सेवा की शर्तें) और प्रकीर्ण उपबंध अधिनियम, (1955 का 45), धारा 17 — देखें — औद्योगिक विवाद अधिनियम, 1947, धारा 33 सी(2) (पत्रकार प्रकाशन (प्रा.)(मे.) वि. श्रीमति वन्दना अवस्थी) (DB)...*15

NOTES OF CASES SECTION

Short Note

*(18)

Before Mr. Justice U.C. Maheshwari

Cr. Rev. No. 271/2011(Jabalpur) decided on 7 December, 2011

ACHHELAL CHOUDHARY & ors.

...Applicants

Vs.

STATE OF M.P.

...Non-applicant

Penal Code (45 of 1860), Sections 307, 325, Criminal Procedure Code, 1973 (2 of 1974), Section 222 - Framing of Charges - Victim has suffered fracture of Ulna Bone which is not sufficient to cause death of a person in ordinary course of nature - A person can not die due to fracture of Ulna Bone - Charge under Section 307 set aside - Trial Court directed to frame charge under Section 325 of I.P.C.

दण्ड संहिता (1860 का 45), धाराएँ 307, 325, दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 222 - आरोप विरचित किये जाना - पीड़ित अल्ना अस्थि भंग से आहत है, जो प्रकृति के सामान्य अनुक्रम में किसी व्यक्ति की मृत्यु कारित होने के लिये पर्याप्त नहीं है - कोई व्यक्ति अल्ना अस्थि में अस्थि भंग के कारण नहीं मर सकता - धारा 307 के अंतर्गत आरोप अपास्त - विचारण न्यायालय को मा.द. सं. की धारा 325 के अंतर्गत आरोप विरचित करने के लिये निदेशित किया गया।

Case referred :

AIR (29) 1942 PESHAWAR 21(2).

Devendra Singh Baghel, for the applicants.

Yogesh Dhande, Dy. G.A. for the non-applicant.

Short Note (SC)

*(19)

Before Mr. Justice G.S. Singhvi & Mr. Justice Ashok Kumar Ganguly

Civil Appeal No. 104/2012 decided on 6 January, 2012

ADARSH SHIKSHA MAHAVIDYALAYA & ors.

...Appellants

Vs.

SUBHASH RAHANGDALE & ors.

...Respondents

A. Constitution - Article 226 - Public Interest Litigation - Courts before entertaining PIL must feel satisfied that the petitioner has genuinely come forward to espouse public cause and his litigious venture is not guided by any ulterior motive or is not a publicity gimmick.

NOTES OF CASES SECTION

– Respondent had highlighted the irregularities committed by Western Regional Committee of NCTE in granting recognition to private institutions – No allegation that Respondents had filed the writ petition to settle score with any institution or with some ulterior motive – High Court rightly entertained the petition as PIL.

क. संविधान – अनुच्छेद 226 – लोक हित वाद – न्यायालय को लोक हित वाद को ग्रहण करने के पहले यह संतुष्टि अवश्य करना चाहिये कि याची वास्तव में लोक वाद को समर्थन देता है और उसका वाद किसी गूढ़ प्रयोजन से या प्रचार आकर्षण के लिये तो नहीं है – प्रत्यर्थी ने एनसीटीई की पश्चिमी संभागीय समिति द्वारा निजी संस्थाओं को मान्यता प्रदान करने में कारित अनियमितताओं को उजागर किया था – कोई अभिवचन नहीं कि प्रत्यर्थीगण ने रिट याचिका को किसी संस्थान के साथ बदला लेने के लिये या किसी गूढ़ प्रयोजन के लिये प्रस्तुत किया – उच्च न्यायालय ने याचिका को लोक हित वाद के रूप में उचित रूप से ग्रहण किया।

B. *Constitution – Article 226 – Audi Alteram Partem* – High Court merely held that the provisions of the Act and Regulation are mandatory and recognition to an institution can be granted only if the mandatory provisions are fulfilled – Distinction between grant, refusal and withdrawal of recognition also highlighted by High Court – Any person aggrieved by refusal or withdrawal of recognition has remedy of appeal – Directions given by High Court are of general application and do not target any particular institution – Principles of Natural Justice does not apply.

ख. संविधान – अनुच्छेद 226 – दूसरे पक्ष को भी सुनो – उच्च न्यायालय ने मात्र निर्धारित किया कि अधिनियम के उपबंध और विनियमन आज्ञापक हैं और किसी संस्थान को मान्यता केवल तभी दी जा सकती है जब वे आज्ञापक उपबंधों को पूरा करते हैं – उच्च न्यायालय द्वारा मंजूरी, इंकार और मान्यता वापस लेने के मध्य भिन्नता भी बताई है – इंकार या मान्यता वापस लेने से व्यथित किसी भी व्यक्ति के पास अपील का उपचार है – उच्च न्यायालय द्वारा दिये निदेश सामान्यतः लागू होते हैं और किसी संस्थान विशेष को लक्षित नहीं करते – नैसर्गिक न्याय का सिद्धांत लागू नहीं होता है।

C. *National Council for Teacher Education (Recognition Norms and Procedure) Regulations, 2005, Sections 7(2),(3) – Say of State Govt.* – State Govt is entitled to make recommendations on the application made for grant of recognition – Regional Committee is duty bound to consider the recommendations of the State Govt before taking final decision.

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ग. राष्ट्रीय अध्यापक शिक्षा परिषद (मान्यता मानदंड और प्रक्रिया) विनियमन, 2005, धाराएँ 7(2)(3) – राज्य शासन का अधिकार – मान्यता मंजूर करने के आवेदन पर राज्य शासन सिफारिश करने के लिए हकदार – संभागीय समिति अंतिम निर्णय लेने के पहले राज्य शासन की सिफारिशों को विचार में लेने के लिए कर्तव्यबाध्य है।

घ. *D. National Council for Teacher Education Act, (73 of 1993), Sections 14(3), 15(3), 16, National Council for Teacher Education (Recognition Norms and Procedure) Regulations, 2005, Sections 7(2)(3)(4)(5)(9)–Recognition–The provisions are mandatory in nature–Examining Body can not grant affiliation to any institution or hold examination unless the institution has obtained recognition under Section 14 or permission for a course or training under Section 15.*

घ. राष्ट्रीय अध्यापक शिक्षा परिषद अधिनियम (1993 का 73), धाराएँ 14(3), 15(3), 16, राष्ट्रीय अध्यापक शिक्षा परिषद (मान्यता मानदंड और प्रक्रिया) विनियमन, 2005, धाराएँ 7(2)(3)(4)(5)(9) – मान्यता – उपबंध आज्ञापक प्रकृति के हैं – परीक्षण निकाय किसी संस्थान की मान्यता को मंजूरी नहीं दे सकता या परीक्षा नहीं ले सकता जब तक कि संस्थान धारा 14 के अंतर्गत मान्यता प्राप्त नहीं कर लेता या पाठ्यक्रम या प्रशिक्षण के लिये धारा 15 के अंतर्गत अनुमति प्राप्त नहीं कर लेता।

ए. *Admission to B.Ed. Classes – Private Institutions – Private institutions can not give admission de hors the list prepared on the basis of entrance examination conducted under the directions of the State Government.*

ड. बीएड कक्षाओं में प्रवेश – निजी संस्थान – निजी संस्थान राज्य सरकार के निदेशों के अंतर्गत आयोजित प्रवेश परीक्षा के आधार पर निर्मित सूची से बाहर प्रवेश नहीं दे सकते।

फ. *F. National Council for Teacher Education Act (73 of 1993), Sections 14(3), 15(3), 16 National Council for Teacher Education (Recognition Norms and Procedure) Regulations, 2005 – Sections 7(2)(3)(4)(5)(9) – Recognition – Guidelines issued.*

च. राष्ट्रीय अध्यापक शिक्षा परिषद अधिनियम (1993 का 73), धाराएँ 14(3), 15(3), 16, राष्ट्रीय अध्यापक शिक्षा परिषद (मान्यता मानदंड और प्रक्रिया) विनियमन, 2005, धाराएँ 7(2)(3)(4)(5)(9) – मान्यता – मार्गदर्शक सिद्धांत जारी किये गये।

ग. *Admission to B.Ed. Classes – Declaration of result –*

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Result of students admitted by unrecognized institutions shall not be declared – Result of students who were admitted without qualifying the entrance examination shall not be declared – If the institution has not complied the requirements of completing the prescribed training, the result shall not be declared.

छ. बीएड कक्षाओं में प्रवेश – परिणाम की घोषणा – अमान्यताप्राप्त संस्थानों द्वारा प्रवेश दिये गये छात्रों का परिणाम घोषित नहीं किया जायेगा – वे छात्र जिन्होंने प्रवेश परीक्षा की अर्हता पूर्ण किये बिना प्रवेश लिया है, उनका परिणाम घोषित नहीं किया जायेगा – यदि संस्थान विहित प्रशिक्षण को पूर्ण करने की आवश्यकताओं को पूरा नहीं करता है तो परिणाम घोषित नहीं किया जायेगा।

The judgment of the Court was delivered by : **G.S. SINGHVI, J.**

Cases referred:

(1974) 1 SCC 717, (1989) 1 SCC 392, (1992) 4 SCC 435, (1993) 3 SCC 595, 1986 (Supp) SCC 166, (2005) 3 SCC 618, (2006) 9 SCC 1, (2010) 3 SCC 402, (1998) 1 SCC 226, (2003) 7 SCC 532, (2006) 6 SCC 613, (2007) 1 SCC 110, (2008) 1 SCC 407, (1987) 1 SCC 227, (2003) 3 SCC 321, (2005) 3 SCC 212, (2011) 3 SCC 238, (1986) 2 SCC 667, (1986) Supp SCC 166.

Short Note

*(20)

Before Mr. Justice Rajendra Menon

W.P. No. 2240/1998 (Jabalpur) decided on 13 January, 2012

DEVASHISH DUTTA

...Petitioner

Vs.

NEPA LIMITED, NEPANAGAR

...Respondents

A. Service Law – Disciplinary Enquiry – Disciplinary Authority – Dy. General Manager was conferred the powers of General Manager – Order merely confers the powers to discharge the duties of General Manager and to exercise all the powers of that post – Order does not designate him nor does it empowers him to discharge the functioning of a Appointing Authority or Disciplinary Authority – Issuance of Charge sheet and punishment by Dy. G.M. without jurisdiction – Enquiry vitiated.

क. सेवा विधि – अनुशासनिक जॉब – अनुशासनिक प्राधिकारी – उप

NOTES OF CASES SECTION

महाप्रबंधक को महाप्रबंधक की शक्तियां प्रदत्त की गई — आदेश मात्र महाप्रबंधक के कर्तव्यों के निर्वहन की शक्तियां और उस पद की समस्त शक्तियां उपयोग करने की शक्ति प्रदत्त करता है — आदेश उसे पदनामित नहीं करता और न ही उसे नियुक्ति प्राधिकारी या अनुशासनिक प्राधिकारी की तरह कर्तव्यों के निर्वहन के लिये सशक्त करता है — उप महाप्रबंधक द्वारा चार्ज शीट जारी करना और दण्डित करना बिना क्षेत्राधिकारिता के है — जाँच दूषित।

B: Service Law – Departmental Enquiry – Inquiry Officer – Lawyer – Rule provides for appointment of a public servant or any other person as inquiry officer – Appointment of a Lawyer as Inquiry Officer though he happened to be a lawyer appearing in some cases on behalf of Company proper – In absence of any personal bias or prejudice shown due to appointment of a Lawyer as Inquiry Officer, no interference into the matter is called for.

ख. सेवा विधि – विभागीय जाँच – जाँचकर्ता अधिकारी – वकील – किसी लोक सेवक या अन्य किसी व्यक्ति की जाँचकर्ता अधिकारी के रूप में नियुक्ति के लिये नियम उपबंधित करता है — वकील की जाँच अधिकारी के रूप में नियुक्ति उचित, यद्यपि वह कुछ प्रकरणों में वकील के रूप में कंपनी की ओर से उपस्थित हुआ था — वकील की जाँचकर्ता अधिकारी के रूप में नियुक्ति से कोई व्यक्तिगत पक्षपात या प्रतिकूल प्रभाव नहीं दर्शाया गया है, मामले में हस्तक्षेप की कोई आवश्यकता नहीं।

C. Service Law – Departmental Enquiry – Exparte Proceedings – Petitioner initially attended the departmental enquiry but subsequently was proceeded exparte – Inquiry Officer in his wisdom again issued notices to the petitioner and receipt of the same was denied by him – Held – Earlier notices were sent by Registered Post but subsequently notices were alleged to have been sent by hand without any dispatch number – Process server also not examined to depose that the notices were refused either by the Petitioner or his wife – Exparte proceedings not proper.

ग. सेवा विधि – विभागीय जाँच – एकपक्षीय कार्यवाही – याची प्रारंभ में विभागीय जाँच में उपस्थित हुआ लेकिन तत्पश्चात् एकपक्षीय कार्यवाही की गई — जाँचकर्ता अधिकारी ने अपने विवेकानुसार याची को पुनः नोटिस जारी किये और उक्त को उसके द्वारा अस्वीकार किया गया — अभिनिर्धारित — पूर्व में नोटिस पंजीकृत डाक से भेजे गये लेकिन तत्पश्चात् बिना जावक नम्बर के हाथों से भेजा जाना अभिकथित किया गया — आदेशिका वाहक को यह बताने के लिये परीक्षित नहीं किया गया कि नोटिस याची द्वारा या उसकी पत्नि द्वारा नहीं लिये गये — एकपक्षीय कार्यवाही उचित नहीं।

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D. Service Law – Departmental Enquiry – Subsistence Allowance – Non-Payment thereof – Subsistence Allowance not paid to the petitioner inspite of directions by the High Court – Reasonable Opportunity to participate and defend in inquiry was denied to the petitioner – Inquiry vitiated.

घ. सेवा विधि – विभागीय जाँच – निर्वाह भत्ता – उसका भुगतान नहीं – उच्च न्यायालय के निर्देशों के बावजूद भी याची को निर्वाह भत्ता प्रदाय नहीं किया गया – जाँच में उपस्थित होने का और बचाव का युक्तियुक्त अवसर याची को नहीं दिया गया – जाँच दूषित।

Cases referred :

(1980) 3 SCC 734, (2000) 7 SCC 90, (1999) 3 SCC 679, (1986) SCC 103, (1993) 4 SCC 727, (1974) 3 SCC 459, (2001) 2 SCC 330, (1983) 2 SCC 442, (1989) 3 SCC 132, AIR 1966 MP 193, 2001 LLR 132, 2000(1) LLJ 531, (1999) 3 SCC 679, (2000) 7 SCC 90, (2002) 9 SCC 474, (1973) 1 SCC 656.

R.N. Singh with Sanjay K. Agrawal & Arpan Pawar, for the petitioner.

Rajneesh Gupta, for the respondent.

Short Note (DB)

***(21)**

Before Mr. Justice Shantanu Kemkar & Mr. Justice Prakash Shrivastava

F.A. No. 272/2006 (Indore) decided on 20 October, 2011

DINESH NAGDA

...Appellant

Vs.

SHANTIBAI

...Respondent

A. Hindu Marriage Act (25 of 1955), Section 13(1)(ia)–Cruelty–Husband was prosecuted by wife for offences punishable under Sections 498A, 494, 497, 109 and 201/34 of I.P.C.–Appellant was acquitted–False prosecution amounts to mental cruelty–False allegation of illicit relationship or bigamy also amounts to cruelty–Appellant entitled for divorce.

क. हिन्दू विवाह अधिनियम (1955 का 25), धारा 13(1)(ia) – क्रूरता – पत्नी द्वारा पति को भा.द.सं. की धारा 498ए, 494, 497, 109 व 201/34 के अंतर्गत दण्डनीय अपराधों के लिये अभियोजित किया गया – अपीलार्थी को दोषमुक्त किया

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गया — मिथ्या अभियोजन मानसिक प्रताड़ना की कोटि में आता है — अवैध संबंध या द्विविवाह का मिथ्या अभिकथन भी क्रूरता की कोटि में आता है — अपीलार्थी विवाह विच्छेद का हकदार।

B. Hindu Marriage Act (25 of 1955), Section 13(1)(ib) — Desertion — Respondent admitted that she is living separately for the last 9-10 years — Respondent failed to establish any reasonable ground for living separately — Respondent has deserted the appellant — Appellant entitled for decree on the ground of desertion.

ख. हिन्दू विवाह अधिनियम (1955 का 25), धारा 13(1)(ib) — अभित्यजन — प्रत्यर्थी ने स्वीकार किया कि वह पिछले 9-10 वर्षों से अलग निवास कर रही है — प्रत्यर्थी अलग रहने का कोई युक्तियुक्त आधार स्थापित करने में विफल रही — अपीलार्थी अभित्यजन के आधार पर डिक्री का हकदार।

The judgment of the Court was delivered by : PRAKASH SHRIVASTAVA, J.

Cases referred :

(1981) 4 SCC 250, (1988) 1 SCC 105, (1994) 1 SCC 337, (2002) 2 SCC 73, (2002) 2 SCC 619, (2002) 5 SCC 706, 2007(4) MPLJ 123, AIR 2007 (NOC) 1340 (MP), 2004(II) MPJR SN 27, II (2002) DMC 457, AIR 2006 Allahabad 7, (1994) 2 SCC 588, (1993) 2 SCC 6, (1996) 8 SCC 90, (2004) 1 SCC 123, (1995) (4) SCC 642, (2006) 4 SCC 558, (2007) 4 SCC 411, (2006) 3 SCC 778, (2010) 4 SCC 393, (2009) 6 SCC 379.

Mangesh Bhachawat, for the appellant.

A.K. Sethi with *Harish Joshi*, for the respondent.

Short Note

*(22)

Before Mr. Justice K.K. Trivedi

W.P. No. 5073/2006 (Jabalpur) decided on 18 January, 2012

ELECTRICITY BOARD, RAMPUR, JABALPUR(M.P.) ...Petitioner
Vs.

COLLECTOR OF STAMPS CUM DISTRICT
REGISTRAR JABALPUR & anr. ...Respondents

Stamp Act (2 of 1899), Section 31 — Mortgage Deed — Stamp Duty — Instrument of mortgage executed between LIC and petitioner contained two contingencies — First part of mortgage was extended for the fresh loan and second part with regard to the mortgage of the

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properties for the purposes of securing the outstanding loan – Held – Collector rightly imposed the stamp duty for freshly granted loan as per Article 32(c) of Schedule 1A and for mortgage of the assets of the petitioner security the outstanding loan the stamp duty as per Article 40(c) – Petition dismissed.

स्टाम्प अधिनियम (1899 का 2), धारा 31 – बंधक विलेख – स्टाम्प शुल्क – बंधक के दस्तावेज एल.आई.सी. और याची के मध्य निष्पादित हुये, जिसमें दो आकस्मिकताएँ शामिल – बंधक का प्रथम भाग नये ऋण के लिये विस्तारित किया गया और दूसरा भाग संपत्ति के बंधक के संबंध में बकाया लोन की प्रतिभूति के प्रयोजन के लिये – अभिनिर्धारित – कलेक्टर ने उचित रूप से अनुसूची 1ए के अनुच्छेद 32(सी) के अनुसार नवीन स्वीकृत ऋण के लिये स्टाम्प शुल्क अधिरोपित की और याची की बंधक अस्तियों के लिये बकाया ऋण की प्रतिभूति के लिये अनुच्छेद 40(सी) के अनुसार स्टाम्प शुल्क – याचिका खारिज।

Cases referred :

AIR 1928 LAHORE 370, AIR 1933 ALLAHABD 321, AIR 1970 MADRAS 2, AIR 1970 MADRAS 10, AIR 1936 ALLAHABAD 481, AIR 1979 ALLAHABAD 301, AIR 1977 SC 500, AIR 1956 SC 35, AIR 1961 MADRAS 504.

M.L. Jaiswal with K.K. Gautam, for the petitioner.

R.D. Jain, A.G. with Rahul Jain, G.A. for the respondents.

Short Note

*(23)

Before Mr. Justice R.C. Mishra

Cr. A. No. 227/1996 (Jabalpur) decided on 12 December, 2011

HARIRAM & ors.

...Appellants

Vs.

STATE OF M.P.

...Respondent

A. Penal Code (45 of 1860), Section 34 – Common Intention – A/3 alongwith other accused persons was digging embankment when dispute arose – A/3 did not cause any injury to complainant party nor did any overt act – Nothing on record that he shared common intention to cause death of deceased – A/3 acquitted.

क. दण्ड संहिता (1860 का 45), धारा 34 – समान आशय – ए/3 अन्य अभियुक्तगण के साथ बाँध खोद रहे थे, जब विवाद उत्पन्न हुआ – ए/3 ने शिकायतकर्ता पक्षकार को कोई चोट नहीं पहुंचाई और न ही कोई प्रत्यक्ष कार्य

NOTES OF CASES SECTION

किया – अभिलेख पर यह दर्शाने के लिये कुछ नहीं है कि मृतक की मृत्यु कारित करने में उसका भी समान आशय था – ए/3 दोषमुक्त।

B. Penal Code (45 of 1860), Section 304 Part-I – Culpable homicide not amounting to murder – Deceased died within 12 hours – Blow on head was struck with great force – Appellant themselves admitted animosity with complainant party – Rightly considered under Section 304 Part-I.

ख. दण्ड संहिता (1860 का 45), धारा 304 भाग I – हत्या की कोटि में न आने वाला आपराधिक मानव वध – मृतक की 12 घंटों के भीतर मृत्यु हुई – सिर पर वार बहुत बल के साथ किया गया था – अपीलार्थी ने खुद शिकायतकर्ता पक्षकार के साथ शत्रुता स्वीकार की – धारा 304 भाग-I के अंतर्गत उचित रूप से विचार किया गया।

C. Penal Code (45 of 1860), Section 304 Part-I – Sentence – Incident took place 18 years ago – Interest of justice would serve if custodial sentence is reduced to 7 years from 10 years – Sentence reduced accordingly.

ग. दण्ड संहिता (1860 का 45), धारा 304 भाग I – दण्डादेश – घटना 18 वर्ष पूर्व घटी – न्याय हित में होगा यदि अभिरक्षा दण्डादेश 10 वर्ष से घटाकर 7 वर्ष कर दिया जाये – तदनुसार दण्डादेश घटाया गया।

Cases referred :

AIR 2008 SC 1747, AIR 1983 SC 66, AIR 1993 SC 1899, (2001) 3 SCC 673, AIR 1978 SC 1492, AIR 1976 SC 1519, AIR 2009 SC 426.

S.C. Datt with G.P. Patel, for the appellants.

Sudesh Verma, G.A. for the respondent/State.

Short Note (DB)

***(24)**

Before Mr. Justice Rajendra Menon & Mr. Justice Alok Aradhe

W.P. No. 16356/2005 (S) (Jabalpur) decided on 20 January, 2012

IQBAL KHAN GHOURI

...Petitioner.

Vs.

STATE OF M.P. & anr.

...Respondents.

A. Service Law – Departmental Enquiry – Findings – No Evidence – Petitioner was posted as Civil Judge Class I – Petitioner

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had registered a complaint against CMO – Water supply to the house of Petitioner was stopped – Petitioner issued contempt notice to C.M.O. – Held – Petitioner in bonafide belief that in a pending criminal case, the CMO/accused is acting in a manner so as to hinder the cause of administration of justice and if the Petitioner is shown to have acted bonafidely and when no malafides or improper motives are made out, High Court should not have interfered in the matter.

क. सेवा विधि – विभागीय जाँच – निष्कर्ष – साक्ष्य नहीं – याची व्यवहार न्यायाधीश वर्ग-एक के पद पर पदस्थ था – याची ने सी.एम.ओ. के विरुद्ध एक शिकायत दर्ज की – याची के घर पर जल का प्रदाय रोक दिया गया – याची ने सी.एम.ओ. को अवमान नोटिस जारी किया – अभिनिर्धारित – याची इस सद्भाविक विश्वास में कि लंबित दाखिलदारी प्रकरण में सी.एम.ओ./अभियुक्त इस प्रकार की कार्यवाही न्याय प्रशासन के हेतु में बाधा डालने के उद्देश्य से कर रहा है और यदि याची द्वारा सद्भाविक रूप से कार्यवाही करना दर्शाया जाता है और जब कोई असद्भाव एवं अनुचित हेतु प्रकट नहीं होते, उच्च न्यायालय को मामले में हस्तक्षेप नहीं करना चाहिए था।

B. Service Law – Disciplinary Proceedings – Discharge of Judicial or Quasi Judicial Functions – Grounds on which disciplinary action can be taken – Law discussed.

ख. सेवा विधि – अनुशासनिक कार्यवाहियाँ – न्यायिक या अर्धन्यायिक कार्यों का निर्वहन – आधार जिन पर अनुशासनिक कार्यवाही की जा सकती है – विधि विवेचित।

C. Service Law – Disciplinary Proceedings – Judicial Officer – No disciplinary action could have been taken against a judicial officer when there is no material with regard to the reputation, integrity or devotion to duty nor is any corrupt motive established – Merely on the basis of vague or incomplete information or on the grounds of suspicious or on error of law which does not constitute grave charge of misconduct disciplinary action can not be taken.

ग. सेवा विधि – अनुशासनिक कार्यवाहियाँ – न्यायिक अधिकारी – न्यायिक अधिकारी के विरुद्ध कोई अनुशासनिक कार्यवाही नहीं की जा सकती थी जब न तो ख्याति, ईमानदारी या कर्तव्यनिष्ठा के संबंध में कोई सामग्री है और न ही कोई स्पष्ट हेतु स्थापित किया गया है – मात्र अस्पष्ट एवं अपूर्ण जानकारी के आधार पर या संदेह एवं विधि की त्रुटि जो अवचार का गंभीर आरोप गठित नहीं करते, के आधार पर अनुशासनिक कार्यवाही नहीं की जा सकती।

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D. Service Law – Disciplinary Proceedings – Instigating strike by lawyer – Lawyers went on strike due to discontinuance of water supply by CMO – Non-intimation of strike by lawyers to District Judge by itself would not mean that petitioner had instigated – Merely because Petitioner adjourned the cases would not mean that he had instigated the lawyers – Mere suspicion or presumption can not be permitted to take place of proof for holding the petitioner guilty of this charge – Petition allowed – Petitioner directed to be reinstated with all consequential benefits.

घ. सेवा विधि – अनुशासनिक कार्यवाहियाँ – अधिवक्ताओं को हड़ताल के लिए उकसाना – सी.एम.ओ. द्वारा जल प्रदाय रोके जाने के कारण अधिवक्ता हड़ताल पर चले गये – अधिवक्ताओं द्वारा हड़ताल की सूचना जिला न्यायाधीश को नहीं दिये जाने से यह अर्थ नहीं निकलेगा कि याची ने उकसाया था – मात्र इसलिए कि याची ने प्रकरणों को स्थगित किया इसका अर्थ यह नहीं होगा कि उसने अधिवक्ताओं को उकसाया था – याची को इस आरोप का दोषी मानने के लिए मात्र संदेह या उपधारणा को सबूत का स्थान लेने की अनुमति नहीं दी जा सकती – याचिका मंजूर – याची को संपूर्ण परिणामिक लाभों के साथ बहाल करने के लिये निर्देशित किया गया।

The order of the Court was delivered by : **RAJENDRA MENON, J.**

Cases referred :

AIR 1988 SC 1395, AIR 1993 SC 1478, AIR 1999 SC 2881, AIR 2001 SC 2788, AIR 1995 SC 1121.

R.P. Agrawal, with *Sanjay Agrawal*, for the petitioner.

Rajesh Tiwari, G.A. for the respondent/State.

P.R. Bhawe, with *Bhanu Pratap Yadav*, for the respondent No.2.

Short Note

*(25)

Before Mr. Justice A.K. Shrivastava

F.A. No. 59/2002 (Jabalpur) decided on 19 December, 2011

LALITA TRIPATHI (SMT.) & ors.

...Appellants

Vs.

M.P.E.B. & anr.

....Respondents

A. Torts – Suit for damages – Plaintiffs have proved that accident occurred on account of negligent act of the defendants and deceased died due to electrocution, burden of prove is on defendants

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that preventive measures were taken to stop accidents – No evidence on record that accident occurred even after due care and caution by respondents – Appeal allowed.

क. अपकृत्य – हानि के लिये वाद – वादीगण ने साबित किया कि दुर्घटना प्रत्यर्थागण के उपेक्षापूर्वक कार्य से घटित हुई और मृतक की मृत्यु बिजली के कारण हुई, यह साबित करने का भार प्रत्यर्थागण पर है कि दुर्घटना रोकने के लिए निवारक उपाय अपनाये गये थे – अभिलेख पर कोई साक्ष्य नहीं कि प्रत्यर्थागण द्वारा सम्यक् सावधानी व सतर्कता बरतने के बावजूद दुर्घटना घटी – अपील मंजूर।

B. Torts – Compensation – Quantum – Age of deceased 24 years – Income 1500/- per month proved through evidence – Having wife and two innocent son – Dependency comes to Rs. 15000/- per year – Multiplier of 18 applied – Compensation of Rs. 2,70,000/- with interest at the rate of Rs. 9% p.a. (from the date of incident) to be paid – If not deposited on or before 31.03.12, interest at the rate of 12% p.a. shall be liable.

ख. अपकृत्य – प्रतिकर – मात्रा – मृतक की उम्र 24 वर्ष – साक्ष्य द्वारा प्रतिमाह आय 1500/- साबित – पत्नि और दो अबोध बालक हैं – आश्रितता रुपये 15000/- प्रतिवर्ष आती है – 18 का गुणक लागू – प्रतिकर रुपये 2,70,000/- – 9 प्रतिशत वार्षिक ब्याज के साथ (दुर्घटना के दिनांक से) भुगतान किया जाए – यदि 31.03.12 तक या उसके पहले जमा नहीं किया गया तो ब्याज 12 प्रतिशत प्रति वर्ष की दर से देय होगा।

Cases referred :

1999(1) MPLJ 587, 2002(1) MPLJ 531, (2005) 6 SCC 1, (2007) 4 SCC 579, AIR 1927 PC 230, 1975 J LJ 333, 2007(2) MPLJ 513, 2004(2) J LJ 384.

V.K. Shukla, for the appellants.

M.L. Jaiswal with K.K. Gautam, for the respondents.

Short Note

***(26)**

Before Mr. Justice A.K. Shrivastava

S.A.No. 235/1996 (Indore) decided on 12 October, 2011

MANGILAL & ors.

...Appellants

Vs.

MANGILAL & anr.

...Respondents

Easement Act, (5of 1882), Section 7 – Restriction on easement

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– *Well* - Plaintiffs are taking water from the well of the first defendant for the last 43 years from the date of filing of the suit – However, they have not acquired any easementary right – Owner is having all right to collect and disposed within his own limits of all water under the land and on its surface which does not pass in defined channel – Water in a well is beneath the surface and no defined channels are beneath the surface – However, plaintiffs entitled for decree of injunction to the extent that till defendant obtain necessary order under the law, he shall not obstruct the plaintiffs from taking water from his well.

सुखाचार अधिनियम, (1882 का 5), धारा 7 – सुखाचार पर अवरोध – कुआँ – वादीगण वाद प्रस्तुत करने के दिनांक से पिछले 43 वर्षों से प्रथम प्रतिवादी के कुएँ से पानी ले रहे हैं – यद्यपि, उन्होंने कोई सुखाचार अधिकार अर्जित नहीं किया है – स्वामी के पास उसकी अपनी सीमा में भूमि के अंदर व उसकी सतह पर स्थित सारे जल को एकत्र करने और व्ययन करने के सारे अधिकार हैं, जो निश्चित प्रणाली में प्रवाहित नहीं होता-कुएँ में जो जल है वह सतह के नीचे है और सतह के नीचे कोई निश्चित प्रणाली नहीं है – अपितु वादीगण व्यादेश की डिक्री इस सीमा तक पाने के हकदार हैं कि जब तक प्रतिवादी विधि के अंतर्गत आवश्यक आदेश प्राप्त नहीं कर लेता वह वादीगण को अपने कुएँ से पानी लेने से नहीं रोकेंगा।

Cases referred :

AIR. 1954 Mysore 184, AIR 1963 SC 361, (1895) A.C. 587, 7 H.L.C. 349.

Sandeep Kochatta, for the appellants.

P.C. Vaya & B.L. Tripathi, for the respondent No.1.

Pramod Mitha, G.A. for the respondent No.2.

Short Note

*(27)

Before Mr. Justice K.K. Trivedi

W.P. No. 9021/2010 (Jabalpur) decided on 11 January, 2012

MITHLESH BAIS

Vs.

INDIAN OIL CORPORATION & ors.

...Petitioner

...Respondents

Constitution – Article 14, 32 – Allotment of retail outlet – Application of petitioner was not properly considered as the owners of the land had given their affidavits that they will put their land at the disposal of the petitioner if the retail outlet dealership is granted to

NOTES OF CASES SECTION

him – Non-assessment of availability of land not proper – Respondents directed to reassess the availability of land offered by Petitioner for the purposes of establishing retail outlet and assign him marks under this head – If petitioner found eligible, the respondents will grant retail outlet.

संविधान – अनुच्छेद 14, 32 – खुदरा बिक्री केन्द्र का आवंटन – याची का आवेदन उचित रूप से विचारित नहीं किया गया क्योंकि भूमि के स्वामियों द्वारा शपथ पत्र दिया गया था कि वे अपनी भूमि याची को दे देंगे यदि उसे खुदरा बिक्री केन्द्र की डीलरशिप मंजूर हो जाती है – भूमि की उपलब्धता का निर्धारण नहीं किया जाना उचित नहीं – प्रत्यर्थी गण को याची द्वारा प्रस्तुत की गई भूमि की उपलब्धता को पुनःनिर्धारित करने के लिये और इस मद के अंतर्गत उसे अंक देने के लिये निदेशित किया गया – यदि याची योग्य पाया जाता है तो प्रत्यर्थीगण खुदरा बिक्री केन्द्र प्रदान करेंगे।

R.K. Samaiya, for the petitioner.

Aditya Adhikari, for the respondents.

Short Note

*(28)

Before Mr. Justice Sujoy Paul

M.Cr.C. No. 7113/2011 (Gwalior) decided on 2 February, 2012

MONOTECH SYSTEMS LTD. & ors.

...Applicants

Vs.

JAI BADRI VISHAL GRAPHICS

...Non-applicant

A. Negotiable Instruments Act (26 of 1881), Section 141 – Officers Liable – Averments in Complaint – Managing Director or a Joint Managing Director, Director or an officer who has signed the cheque, Director, Secretary or Manager who are in charge of and responsible to the Company for the conduct of the business can be made liable.

क. परक्राम्य लिखत अधिनियम (1881 का 26), धारा 141 – दायित्वाधीन अधिकारी – शिकायत में प्राक्कथन – प्रबंध निदेशक या संयुक्त प्रबंध निदेशक, निदेशक या अधिकारी जिसने चैक पर हस्ताक्षर किये, निदेशक, सचिव या प्रबंधक जो कारोबार के संचालन हेतु कम्पनी के प्रभारी हैं एवं कम्पनी को जबावदेह है को दायी बनाया जा सकता है।

B. Negotiable Instruments Act (26 of 1881), Section 138, Criminal Procedure Code, 1973 (2 of 1974), Section 482 – Pendency

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of Civil Suit – Proceedings under Section 138 of Act, 1881 can not be quashed merely because of pendency of civil suit – Disputed questions of fact can not be gone into in proceedings under Section 482 of Cr.P.C.

ख. परक्राम्य लिखत अधिनियम (1881 का 26), धारा 138, दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 482, – सिविल वाद का लम्बित रहना – अधिनियम 1881 की धारा 138 के अंतर्गत कार्यवाहियां अभिखंडित नहीं की जा सकती मात्र इसलिए कि वाद लंबित है – द.प्र.सं. की धारा 482 के अंतर्गत कार्यवाहियों में तथ्य के विवादित प्रश्नों का परीक्षण नहीं किया जा सकता।

C. **Criminal Procedure Code, 1973 (2 of 1974), Section 482 – Documents of Defence** – Normally these documents can not be examined unless the same are of unimpeachable character.

ग. दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 482 – प्रतिरक्षा के दस्तावेज – सामान्यतः इन दस्तावेजों का परीक्षण नहीं किया जा सकता जब तक कि वह अनधिकृत स्वरूप के नहीं हैं।

Cases referred :

(2005) 6 SCC 442, (2009) 10 SCC 48, (2010) 3 SCC 330, 2011 SCC (Cri) 167, (2011) 2 Supreme 811, AIR 1988 SC 709, (2011) 7 SCC 59, 2011 (4) MPLJ 707, (2007) 12 SCC 93, (2007) 12 SCC 369, (2008) 10 SCC 109, (2009) 1 SCC 69, (2009) 1 SCC 516, (2010) 8 SCC 442, (2009) 4 SCC 439, (2008) 13 SCC 678

V.K. Saxena, with Yogesh Singhal, for the applicants.

Amit Lahoti, for the non-applicant.

Short Note

*(29)

Before Mr. Justice G.D. Saxena

M.Cr.C. No. 7348/2011 (Gwalior) decided on 6 January, 2012

O.T.G. GLOBAL FINANCE LTD: & ors. Applicants
Vs.

MOHAN MANDELIA & ors. Non-applicants

A. **Criminal Procedure Code, 1973 (2 of 1974), Sections 397, 401 & 482 – Inherent Powers – Maintainability** – Revision filed against judgment of conviction under Section 138 of Negotiable Instruments Act dismissed – Subsequently application under Section 482 of Cr.P.C. contending compromise between the parties – Held – In

NOTES OF CASES SECTION

all cases where petitioners are able to satisfy the Court that there are special circumstances, subsequent application invoking inherent powers can not be thrown away on the technical arguments as to its sustainability.

क. दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धाराएँ 397, 401 व 482 – अंतर्निहित शक्ति – पोषणीयता – परक्राम्य लिखत अधिनियम की धारा 138 के अंतर्गत दोषसिद्धि के आदेश के विरुद्ध प्रस्तुत की गई पुनरीक्षण खारिज – तत्पश्चात् द.प्र.सं. की धारा 482 के अंतर्गत आवेदन दोनों पक्षों के मध्य समझौता के तर्क पर प्रस्तुत किया गया – अभिनिर्धारित – सभी प्रकरणों में जहाँ पर याचीरण न्यायालय को संतुष्ट करने में सक्षम हैं कि कुछ विशेष परिस्थितियाँ हैं अन्तर्निहित शक्तियों का अवलम्ब लेने के लिये, आवेदन को उसकी पोषणीयता के संबंध में तकनीकी तर्कों के आधार पर अलग नहीं किया जा सकता।

B. *Negotiable Instruments Act (26 of 1881), Section 147, Criminal Procedure Code, 1973 (2 of 1974), Section 320(2) – Compromise – Permission of Court – Provisions of Section 147 of Act, 1881 override the provisions of Section 320(2) of Cr.P.C. – Section 147 of Act, 1881 does not confer any obligation to obtain permission for entering into a compromise or to compound the offence.*

ख. परक्राम्य लिखत अधिनियम (1881 का 26), धारा 147, दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 320 (2) – समझौता – न्यायालय की अनुमति – अधिनियम 1881 की धारा 147 के उपबंध द.प्र.सं. की धारा 320 (2) के उपबंधों को अधिमावी करता है – अधिनियम 1881 की धारा 147 कोई समझौता करने के लिये या अपराध को शमनीय करने के लिये अनुमति लेने को बाध्य नहीं करती।

C. *Negotiable Instruments Act (26 of 1881), Section 147 – Compounding of Offence – Stage – Offence under Section 138 is not only an offence qua property but it is also of the nature of an economic offence – Thus parties are liberty to compound the offence even after the dismissal of their revision – Convict may pray for his release on by compounding the offence by filing application under Section 482 – Application for compromise allowed.*

ग. परक्राम्य लिखत अधिनियम (1881 का 26), धारा 147 – अपराध का शमनीय होना – प्रक्रम – धारा 138 के अंतर्गत अपराध न केवल सम्पत्ति का अपराध है बल्कि यह एक आर्थिक अपराध की प्रकृति का भी है – अतः पक्षकार उनकी पुनरीक्षण के खारिज होने के बाद भी अपराध का प्रशमन कर सकने के लिये स्वतंत्र हैं – अपराधी/बंदी धारा 482 के अंतर्गत आवेदन प्रस्तुत करके अपराध का प्रशमन करने के लिये/समझौते के द्वारा अपनी रिहाई के लिये प्रार्थना कर सकता है – समझौते के लिये आवेदन मंजूर।

NOTES OF CASES SECTION

Cases referred :

(2010) 1 SCC 798, 1990 (Supp) SCC 63, AIR 2001 SC 3524;
(1997) 4 SCC 241, AIR 1977 SC 308.

S.K. Shrivastava, for the applicants.

M.K. Choudhary, for the non-applicant No.1.

Mukund Bhardwaj, P.P. for the non-applicant No.2.

Short Note.

*(30)

Before Mr. Justice Sheel Nagu

M.A. No. 636/2010 (Gwalior) decided on 23 January, 2012

PRITHVI RAJ SARIN & ors.

...Appellants

Vs.

RAMESH KUMAR SACHDEVA & ors.

...Respondents

Civil Procedure Code (5 of 1908), Order 40 – Appointment of Receiver – Respondent No.1 who is a party to the suit for rendition of accounts appointed as receiver – Property in possession of respondents – Court is well equipped with ample amount of jurisdiction to exercise its penal powers to make good the loss caused by the Receiver due to failure to discharge his duties or gross negligence – No allegation of negligence, misconduct or failure to discharge duties against respondent No.1 – Apprehension in the mind of plaintiffs about failure of new Receiver to discharge his duties is understandable but is not enough to compel the Court to direct for change of Receiver – Receiver has been appointed only for furnishing the necessary accounts to the Auditor to enable him to submit his report to the Court for passing the final decree – Interfering with the appointment of respondent No.1 as receiver at this stage will further delay the proceedings in civil suit which is pending since more than 35 years – Appeal dismissed.

सिविल प्रक्रिया संहिता (1908 का 5), आदेश 40 – रिसीवर की नियुक्ति – प्रत्यर्थी क्र. 1 जो लेखे दिये जाने के लिये वाद का पक्षकार है, को रिसीवर नियुक्त किया गया – सम्पत्ति प्रत्यर्थीगण के कब्जे में – न्यायालय रिसीवर द्वारा अपने कर्तव्यों के निर्वहन में असफल होने के कारण एवं घोर प्रमाद से कारित हानि को पूरा कराने के लिये अपनी दाण्डिक शक्तियों का प्रयोग करने के लिये पर्याप्त अधिकारिता के साथ मलीमांति सुसज्जित है – प्रत्यर्थी क्र. 1 के विरुद्ध

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प्रमाद, अवचार या कर्तव्यों के निर्वहन में विफलता के कोई अभिकथन नहीं — वादीगण के मन में नया रिसीवर अपने कर्तव्यों के निर्वहन में असफल होने के बारे में अशंकाएँ समझने योग्य हैं परंतु न्यायालय द्वारा रिसीवर बदलने के निदेश दिये जाने हेतु बाध्य करने के लिये पर्याप्त नहीं — रिसीवर की नियुक्ति केवल ऑडिटर को आवश्यक लेखे प्रस्तुत करने के लिये की गई है जिससे वह अपनी रिपोर्ट न्यायालय में अंतिम डिक्री पारित करने के लिये प्रस्तुत कर सके — प्रत्यर्थी क्रं. 1 की रिसीवर के रूप में नियुक्ति के साथ इस प्रक्रम पर हस्तक्षेप से सिविल वाद जो 35 वर्षों से अधिक की अवधि से लम्बित है की कार्यवाहियों में और विलम्ब कारित करेगा — अपील खारिज।

Cases referred :

AIR 1934 Cal 444, AIR 2000 Mad 62.

K.S. Tomar, with *J.S. Kaurav*, for the appellants.

N.K. Gupta, for the respondents No.1.

Short Note (DB)

*(31)

Before Mr. Justice Rakesh Saxena & Mr. Justice M.A. Siddiqui

Cr.A. No. 1959/2000 (Jabalpur) decided on 19 January, 2012

RAM KUSHAL GAUTAM

...Appellant

Vs.

STATE OF M.P.

...Respondent

Penal Code (45 of 1860), Section 302 – Deceased lying on the passage in front of his house and assaulted by an Axe on head – Held – Appellant dealt a forceful blow on the head of deceased with a sharp edged weapon like an Axe resulting in fracture of the skull bone and rupture of brain, itself indicate that appellant intended to cause death of deceased making him liable to be punished under section 302 of I.P.C. – Appeal Dismissed.

दण्ड संहिता (1860 का 45), धारा 302 – मृतक अपने घर के सामने गलियारे में पड़ा था और उसके सिर पर कुल्हाड़ी से हमला किया गया था – अभिनिर्धारित – अपीलार्थी ने मृतक के सिर पर कुल्हाड़ी जैसे धारदार हथियार से जबरदस्त आघात पहुंचाया जिसके परिणामस्वरूप खोपड़ी में अस्थिभंग हुआ तथा मस्तिष्क फट गया, स्वमेव दर्शाता है कि अपीलार्थी का आशय मृतक की मृत्यु कारित करना था जो उसे भा.द.सं. की धारा 302 के अंतर्गत दण्डित किये जाने योग्य बनाता है – अपील खारिज।

NOTES OF CASES SECTION

The judgment of the Court was delivered by : RAKESH SAKSENA, J.

Cases referred :

AIR 2009 SC 1835, 1977 SC 701, AIR 2004 SC 1264.

Amit Dubey, for the appellant.

Pranod Chaurasiya, P.L. for the respondent.

Short Note

*(32)

Before Mr. Justice Sanjay Yadav

W.P. No. 17302/2010 (Jabalpur) decided on 4 January, 2012

SANTOSH INDERCHAND TAORI & ors.

...Petitioners

Vs.

STATE OF M.P. & ors.

....Respondents

Land Acquisition Act (1 of 1894), Sections 4(1), 6(2), 17(1), 17(4) – Construction of check post barrier – Public purpose for acquiring the land in question is satisfied as the collection of tax has not been proved by the petitioner to be in private interest – Therefore, the contention that there is no urgency as would call for invoking of Section 17 having no foundation, is negatived – Held – Non compliance of provision under Section 4(1), 6(2), 17(1) & 17(4) of the Act, no interference caused – Petition dismissed.

भूमि अर्जन अधिनियम (1894 का 1), धाराएँ 4(1), 6(2), 17(1), 17(4) – जाँच चौकी नाका का निर्माण – लोक-प्रयोजन हेतु प्रशंगत भूमि का अर्जन किये जाने की संतुष्टि की गई क्योंकि कर की वसूली व्यक्तिगत हित में होना याची द्वारा साबित नहीं किया गया – इसलिए यह तर्क कि धारा 17 का अवलम्ब लेने की कोई आवश्यकता नहीं, का कोई आधार न होते हुए अस्वीकार्य/निरर्थक हो जाता है – अभिनिर्धारित – अधिनियम की धारा 4(1), 6(2), 17(1), 17(4) के उपबंधों का अननुपालन, कोई हस्तक्षेप कारित नहीं होता – याचिका खारिज।

Cases referred :

(2007) 13 SCC 186, (2007) 15 SCC 791, (2007) 1 SCC 641, (2008) 9 SCC 552, (2002) 4 SCC 160, 2009(3) MPHT 374, AIR 2000 SC 671, (2008) 4 SCC 695.

Jaideep Sirpurkar, for the petitioners.

Naman Nagrath, Addl. A.G. for the respondents No. 1 & 2.

NOTES OF CASES SECTION

Short Note

***(33)**

Before Mr. Justice K.K. Trivedi

W.P. No. 5143/2011 (Jabalpur) decided on 13 January, 2012

ST. ALOYSIUS SENIOR SECONDARY SCHOOL

JABALPUR & anr.

....Petitioners

Vs.

THE CANTONMENT BOARD, JABALPUR

...Respondent

A. Cantonments Act (41 of 2006), Sections 70 & 76 – Special Resolution – Rental Value – Respondent issued notice to enhance rental value of the building – Petitioners filed objections – Objections have to be decided by the Board by passing orders thereon by Special Resolution – Recommendation of the Committee of the Board can not be treated as a special resolution of the Board – Proceedings for recovery of property tax bad.

क. छावनी अधिनियम (2006 का 41), धाराएँ 70 व 76 – विशेष संकल्प – किराया मूल्य – प्रत्यर्थी ने भवन का किराया मूल्य बढ़ाये जाने के लिये नोटिस जारी किया – याचीगण ने आक्षेप प्रस्तुत किये – बोर्ड द्वारा आक्षेपों पर विशेष संकल्प द्वारा आदेश पारित कर निर्णित किया जाना चाहिए – बोर्ड की समिति की सिफारिशों को बोर्ड के विशेष संकल्प के रूप में नहीं माना जा सकता – सम्पत्ति कर की वसूली की कार्यवाही अयोग्य है।

B. Cantonments Act (41 of 2006), Section 111(2)(b) – Exemptions – Petitioner sought exemption from payment of property tax on the ground that the building is being used for educational purposes – Contention that petitioner is charging heavy fees can not be accepted as there was no assessment as to how the fees is being charged and for what purposes – Board can not be said to have acted fairly and properly in a reasonable manner.

ख. छावनी अधिनियम (2006 का 41), धारा 111(2)(बी) – छूट – याची द्वारा सम्पत्ति कर में छूट इस आधार पर माँगी गयी कि इमारत का उपयोग शैक्षणिक प्रयोजन के लिये किया जा रहा है – यह तर्क कि याची भारी शुल्क ले रहा है, स्वीकार नहीं किया जा सकता क्योंकि कोई निर्धारण नहीं किया गया कि शुल्क कैसे और किस प्रयोजन के लिये लगाया जा रहा है – यह नहीं कहा जा सकता कि बोर्ड ने निष्पक्ष और उचितरूप से तर्कसंगत रीति से कार्य किया।

C. Cantonments Act (41 of 2006), Section 93 – Appeal –

NOTES OF CASES SECTION

Appeal can be filed only if any reasons are recorded in the register of assessment because reasons and findings alone constitute the grounds for challenge – Non-filing of appeal would not make petition not maintainable.

ग. छावनी अधिनियम (2006 का 41), धारा 93 – अपील – अपील केवल तब प्रस्तुत की जा सकती है यदि निर्धारण रजिस्टर में कोई कारण अभिलिखित किये गये हैं क्योंकि कारण और निष्कर्ष अकेले चुनौती का आधार बन सकते हैं – अपील प्रस्तुत न करना याचिका को अपोषणीय नहीं बनायेगा।

Anshuman Singh, for the petitioners.

J.P. Pandey, for the respondent.

Short Note

*(34)

Before Mrs. Justice Vimla Jain

Cr. A. No. 1602/1997 (Jabalpur) decided on 1 February, 2012

STATE OF M.P.

....Appellant

Vs.

DULICHANDRA & anr.

....Respondents

Penal Code (45 of 1860), Sections 107 & 306 – Abetment to commit suicide – Harassment should be of such a nature, which amounts to instigation to any person to commit suicide or conspiracy accompanied by an act or illegal omission for commission of suicide.

क. दण्ड संहिता (1860 का 45), धाराएँ 107 व 306 – आत्महत्या करने का दुष्चरण – उत्पीड़न इस प्रकृति का होना चाहिये जो किसी व्यक्ति को आत्महत्या कारित करने के लिये उकसाना या आत्महत्या कारित करने के लिये कोई कृत्य या अवैध लोप सहित षडयंत्र की कोटि में आता हो।

B. Penal Code (45 of 1860), Section 498-A – Cruelty – Deceased was a literate lady and was writing letters to her relatives but she had never complained about unlawful demand and harassment in her letters – Witnesses also never made any complaint to any one in this regard – Respondents were rightly acquitted.

ख. दण्ड संहिता (1860 का 45), धारा 498-ए – क्रूरता – मृतिका शिक्षित महिला थी और अपने रिश्तेदारों को पत्र लिखती थी परंतु उसने कभी अवैध

NOTES OF CASES SECTION

मांग एवं उत्पीड़न के बारे में पत्रों में शिकायत नहीं की – साक्षीगण ने भी इस संबंध में किसी से कभी कोई शिकायत नहीं की – प्रत्यर्थीगण उचित रूप से दोषमुक्त किये गये।

Cases referred :

(2010) 1 SCC 750, (2009) SCC 605, AIR 2001 SC 3837.

R.S. Shukla, P.L. for the appellant/State.

S.K. Dixit, for the respondents.

Short Note

*(35)

Before Mrs. Justice Vimla Jain

Cr. A. No. 460/1997 (Jabalpur) decided on 19 January, 2012

STATE OF M.P.

...Appellant

Vs.

SHRIDEEN

...Respondent

Penal Code (45 of 1860), Section 306 & 498A – Appeal against acquittal – Respondent had made allegation that deceased had illicit relationship with his elder brother – Deceased committed suicide by consuming poison – Held – Sweeping allegations would not amount to abetment of offence of commission of suicide, and something more is required under section 107 I.P.C hence 306 IPC not made out – Conviction under section 498A IPC – Appeal Partly allowed.

दण्ड संहिता (1860 का 45), धारा 306 व 498ए – दोषमुक्ति के विरुद्ध अपील – प्रत्यर्थी का अभिकथन कि मृतिका के उसके बड़े भाई के साथ अनैतिक संबंध थे – मृतिका ने विष प्राशन कर आत्महत्या की – अभिनिर्धारित – अतिरंजित अभिकथन आत्महत्या कारित किये जाने का अपराध दुष्प्रेरण की कोटि में नहीं आयेगा और भा.द.सं. की धारा 107 के अंतर्गत कुछ और अधिक अपेक्षित है, अतएव 306 भा.द.सं. गठित नहीं होता – भा.द.सं. की धारा 498-ए के अंतर्गत दोषसिद्ध – अपील अंशतः मंजूर।

Cases referred :

2009 SCC PAGE 605, AIR 2001 SCC PAGE 3837(1), (2010) 1 SCC PAGE 750.

Savita Choudhary, P.L. for the appellant/State.

S.K. Dixit, for the respondent.

NOTES OF CASES SECTION

Short Note

***(36)**

Before Mr. Justice U.C. Maheshwari

Cr. Rev. No. 1493/2011 (Jabalpur) decided on 2 November, 2011

SUMANLATA

...Appellant

Vs.

STATE OF M.P.

...Respondent

A. Criminal Procedure Code, 1973 (2 of 1974), Section 27 – Confessional statement – Admissibility – Confession of accused except regarding recovery of article from the stated concealed place, is not admissible in evidence.

क. दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 27 – संस्वीकृति कथन – ग्राह्यता – अभियुक्त की संस्वीकृति बताये गये गुप्त स्थान से वस्तु की बरामदगी से संबंधित के अलावा साक्ष्य में ग्राह्य नहीं है।

B. Criminal Procedure Code, 1973 (2 of 1974), Sections 227 & 228 – Framing of Charge – Two accused persons stated that the applicant was accompanying them when they had killed the deceased – No active role attributed to the applicant – Nothing recovered at her behest – No prima facie case made out – Applicant entitled for discharge.

ख. दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धाराएँ 227 व 228 – आरोप विरचित किये जाना – दो अभियुक्त व्यक्तियों ने कथन किया कि आवेदक उनके साथ था, जब उन्होंने मृतक को मारा था – आवेदक की कोई सक्रिय भूमिका उपारोपित नहीं की गई – उसकी निशानदेही पर कुछ भी बरामद नहीं हुआ – कोई प्रथम दृष्ट्या प्रकरण नहीं बनता – अपीलार्थी आरोप मुक्त किये जाने का हकदार।

Manish Datt, for the appellant.

Prakash Gupta, P.L. for the respondent/State.

T.S. Ruprah with U.S. Tiwari, for the complainant-objector-Rajendra Tiwari.

NOTES OF CASES SECTION

Short Note

***(37)**

Before Mr. Justice R.S. Jha

W.P. No. 7373/2009 (Jabalpur) decided on 7 February, 2012

SURIJIBAL SONI

...Petitioner

Vs.

STATE OF M.P. & ors.

...Respondents

Financial Code (M.P.), Rule 84 – Date of Birth – Correction –
Date of birth recorded in the service record at the time of entry in service is final and conclusive except in the case of a clerical error, which may be corrected at a later stage – Petitioner approached the authorities for correction of his date of birth after putting 24 years of service on the strength of the certificates issued after his entry in service – Not permissible in view of Rule 84 – Petition dismissed.

वित्त संहिता (म.प्र.), नियम 84 – जन्मतिथि – सुधार – सेवा में प्रवेश के समय सेवा अभिलेख में अभिलिखित जन्मतिथि अंतिम और निर्णायक है, लिपिकीय भूल/त्रुटि के मामले छोड़कर जिसे बाद के प्रक्रम पर सुधारा जा सकता है – याची सेवा में आने के पश्चात जारी किये गये प्रमाणपत्रों के आधार पर 24 वर्षों की सेवा देने के पश्चात अपनी जन्मतिथि में सुधार हेतु प्राधिकारियों के पास आया – नियम 84 को दृष्टिगत रखते हुए अनुज्ञेय नहीं – याचिका खारिज।

Cases referred :

2012 (1) MPLJ 153, (2011) 9 SCC 664.

Sanjay Verma, for the petitioner.

Piyush Dharmadhikari, G.A. for the respondents.

Short Note (SC)

***(38)**

Before Mr. Justice A. K. Ganguly & Mrs. Justice Gyan Sudha Misra

Criminal Appeal No. 166/2012 decided on 17 January, 2012.

VASANTI DUBEY

...Appellant

Vs.

STATE OF MADHYA PRADESH

...Respondent

A. Criminal Procedure Code, 1973 (2 of 1974), Sections 173(8), 190 & 200 – Final Report – On filing of Khatma Report,

NOTES OF CASES SECTION

Magistrate can either take cognizance of the matter, or enquire himself under Section 200 or accept the report, or direct for further investigation – Magistrate can not direct the police to file charge sheet.

क. दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धाराएँ 173(8), 190 व 200 – अंतिम रिपोर्ट – खात्मा रिपोर्ट प्रस्तुत करने पर मजिस्ट्रेट या तो मामले का संज्ञान ले सकता है या धारा 200 के अंतर्गत स्वयं जांच कर सकता है या रिपोर्ट स्वीकार कर सकता है या अतिरिक्त अन्वेषण के लिये निदेशित कर सकता है – मजिस्ट्रेट पुलिस को आरोप पत्र प्रस्तुत करने के लिये निदेशित नहीं कर सकता।

B. Criminal Procedure Code, 1973 (2 of 1974), Section 173(8) – Further investigation – Police filed Khatma report for third time after conducting further investigations thrice under the orders of the Special Judge – Special Judge refused to accept the report and directed for further investigation and for obtaining sanction for prosecution – Held – Special Judge could not have directed for further investigation for third time – It amounts to sheer abuse of process of law resulting into vexatious proceedings and harassment of appellant – Appeal allowed.

ख. दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 173(8) – अतिरिक्त अन्वेषण – विशेष न्यायाधीश के आदेशों के अंतर्गत पुलिस ने तीन बार अतिरिक्त अन्वेषण संपादित करने के बाद तीसरी बार खात्मा रिपोर्ट प्रस्तुत की – विशेष न्यायाधीश ने रिपोर्ट स्वीकार करने से इंकार किया और अतिरिक्त अन्वेषण के लिये एवं अभियोजन के लिये मंजूरी अमिप्राप्त करने के लिए निदेश दिये – अभिनिर्धारित – विशेष न्यायाधीश तीसरी बार अतिरिक्त अन्वेषण के लिये निदेशित नहीं कर सकता था – यह विधि की प्रक्रिया का केवल दुरुपयोग की कोटि में आता है जिसके फलस्वरूप अपीलार्थी पर दूषित कार्यवाहियां एवं उत्पीड़न कारित होगा – अपील मंजूर।

The judgment of the Court was delivered by : GYAN SUDHA MISRA, J.

Cases referred :

AIR 1968 SC 117, (2009) 11 SCC 299, AIR 1980 SC 1883.

NOTES OF CASES SECTION

Short Note (DB)

***(39)**

**Before Mr. Justice Shantanu Kemkar & Mr. Justice Prakash
Shrivastava**

W. A. No. 299/2010 (Indore) decided on 19 September, 2011

VIJAY AGRAWAL

...Appellant

Vs.

POWER GRID CORPORATION OF INDIA LTD. & anr. ...Respondents

Electricity Act (36 of 2003), Section 164, Telegraph Act (13 of 1885), Section 10, Electricity Rules 2006, Rule 3 – Erection of Transmission Line – Compensation – Consent of Owner – As Respondent No. 1 authorized to exercise all powers vested in telegraph authority under Part III of Act, 1885 – No consent of owner of land is required for erecting transmission lines – Owner is merely entitled for compensation – As Rule 3(4) excludes application of sub-rules (1) to (3) of Rule 3 when the powers of telegraph authority under the Act, 1885 are conferred, therefore, there is no conflict between the Act, 2003 and Rules 2006.

विद्युत अधिनियम (2003 का 36), धारा 164, तार अधिनियम, (1885 का 13), धारा 10, विद्युत नियम 2006, नियम 3 – पारेषण लाईन खड़ी करना – प्रतिकर – स्वामी की सहमति – चूंकि प्रत्यर्थी क्र. 1 को अधिनियम 1885 के भाग-III के अंतर्गत टेलीग्राफ प्राधिकारी में निहित समस्त शक्तियों का प्रयोग करने के लिये प्राधिकृत किया गया – पारेषण लाईन खड़ी करने के लिये भूमि स्वामी की सहमति की आवश्यकता नहीं – स्वामी मात्र प्रतिकर का हकदार – चूंकि नियम 3(4), नियम 3 के उपनियम 1 से 3 को अपवर्जित करता है जब अधिनियम 1885 के अंतर्गत टेलीग्राफ प्राधिकारी की शक्तियां विहित की गई हैं, इसलिए अधिनियम 2003 और नियम 2006 के मध्य कोई विरोध नहीं।

The judgment of the Court was delivered by : **PRAKASH SHRIVASTAVA, J.**

Cases referred :

AIR 1958 SC 255, AIR 1992 SC 1789, AIR 2009 AP 158, AIR 2007 GUJARAT 32, AIR 2008 JHARKHAND 34.

Shekhar Bhargava with Romesh Dave, for the appellant.

Shailendra Mukati, for the respondent No.1.

M.S. Dwivedi, P.L. for the respondent No.2.

NOTES OF CASES SECTION

Short Note (DB)

*(40)

Before Mr. Justice P.K. Jaiswal & Mr. Justice I.S. Shrivastava

Cr.A. No. 462/2001 (Indore) decided on 21 October, 2011

VIKRAM SINGH & anr.

...Appellants

Vs.

STATE OF M.P.

...Respondent

A. Penal Code (45 of 1860), Section 302, Evidence Act (1 of 1872), Section 32 – Dying Declaration – F.I.R. lodged by deceased – Deceased was fully conscious at the time of lodging F.I.R. – Deceased was alleged to have been assaulted at Osara then taken to fields near about 500 fts. and thereafter to a well – F.I.R. did not contain the facts of dragging to field or thereafter to a well where he was assaulted again – Creates doubt about genuineness of F.I.R.

क. - दण्ड संहिता (1860 का 45), धारा 302, साक्ष्य अधिनियम (1872 का 1), धारा 32 – मृत्युकालिक कथन – एफ.आई.आर. मृतक द्वारा दर्ज कराई गई – एफ.आई.आर. दर्ज कराते समय मृतक पूर्ण रूप से होश-हवास में था – मृतक पर हमला ओसरा पर करना अभिकथित किया गया, उसके बाद खेतों में लगभग 500 फीट दूर तक ले जाया गया और तत्पश्चात कुएँ पर – एफ.आई.आर. में खेत तक घसीटने के या तत्पश्चात कुएँ पर ले जाने के तथ्य अंतर्विष्ट नहीं हैं, जहाँ पर उस पर दुबारा हमला किया गया – एफ.आई.आर. की सत्यता के बारे में संदेह उत्पन्न करता है।

B. Criminal Procedure Code, 1973 (2 of 1974), Section 157 – Copy to Magistrate – Object of sending copy to Magistrate is to check ante-dating and timing of F.I.R. – Concocted copy of Rojnamchasanha filed in Court as there is no such entry in original Rojnamchasanha – Dispatch register is also manipulated – No register of inward of counter of F.I.R. maintained by Court – Prosecution has failed to prove prompt sending of counter of F.I.R. to Magistrate – Appeal allowed.

ख. दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 157 – मजिस्ट्रेट को प्रतिलिपि – मजिस्ट्रेट को प्रतिलिपि भेजी जाने का उद्देश्य प्रथम सूचना रिपोर्ट के पूर्व दिनांकित एवं समयातीत होने की पड़ताल करना है – रोजनामचासान्हा की कूटरचित प्रतिलिपि न्यायालय में पेश की गई जबकि वास्तविक रोजनामचासान्हा में ऐसी कोई प्रविष्टि नहीं है – जावक रजिस्टर में भी हेराफेरी की गयी – न्यायालय द्वारा एफ.आई.आर. की प्रति का कोई आवक रजिस्टर अनुरक्षित नहीं किया गया – अभियोजन यह साबित करने में असफल रहा कि एफ.आई.आर. की प्रति त्वरित रूप से मजिस्ट्रेट को भेजी गयी – अपील मंजूर।

The judgment of the Court was delivered by : I.S. SHRIVASTAVA, J.

NOTES OF CASES SECTION

Cases referred :

2004 (4) MPLJ 520, 2007(4) Crimes 140 SC, AIR 2002 SC 1949, 2002 CRLJ 2623.

P.K. Shukla, for the appellants.

Deepak Rawal, G.A. for the respondent/State.

Short Note

*(41)

Before Mrs. Justice Vimla Jain

Cr. A.No. 670/1997 (Jabalpur) decided on 31 January, 2012

VISHWANATH PATEL

Vs.

STATE OF M.P.

Appellant

Respondent

A. *Narcotic Drugs and Psychotropic Substances Act (61 of 1985), Section 50—Mandatory—*Consent letter written by appellant does not show that he was informed about his right to be searched before a Gazetted Officer or a Magistrate—Provisions of Section 50 not complied with.

क. *स्वापक औषधि और मनःप्रभावी पदार्थ अधिनियम (1985 का 61), धारा 50 —आज्ञापक —*अपीलार्थी द्वारा लिखा गया सम्मति पत्र नहीं दर्शाता कि उसे राजपत्रित अधिकारी या मजिस्ट्रेट के समक्ष उसकी तलाशी लिये जाने के उसके अधिकार के बारे में जानकारी दी गई थी — धारा 50 के उपबंधों का अनुपालन नहीं किया गया।

B. *Narcotic Drugs and Psychotropic Substances Act (61 of 1985), Section 20(B)(1) — Cultivation —*One plant was found in the house — It is not proved that house was in possession of the appellant — From seizure of one plant it can not be presumed that cannabis plant was being cultivated — It must be established that he deliberately prepared the land or soil for growing such plants, cultivated, developed and maintained the plants by using agricultural techniques — Mere seizure of one plant will not amount to cultivation — Appeal allowed.

ख. *स्वापक औषधि और मनःप्रभावी पदार्थ अधिनियम (1985 का 61), धारा 20(बी)(1) — खेती —*मकान में एक पौधा पाया गया — यह साबित नहीं किया गया कि मकान अपीलार्थी के कब्जे में था — एक पौधे की जब्ती से यह उपधारणा नहीं की जा सकती कि गांजे के पौधों की खेती की जा रही थी — यह स्थापित किया जाना चाहिए कि उसने जानबूझकर ऐसे पौधों को उगाने के लिये भूमि या मिट्टी तैयार की या कृषि तकनीकों के उपयोग द्वारा पौधों की खेती का विकास किया एवं संधारण किया — मात्र एक पौधे की जब्ती खेती करने की कोटि में नहीं आयेगा — अपील मंजूर।

Case referred :

2011 CR.L.J. 680.

K.B. Vishwakarma, for the appellant.

R.S. Shukla, P.L. for the respondent/State.

I.L.R. [2012] M.P., 685

FULL BENCH

*Before Mr. Justice Shantanu Kemkar, Mr. Justice Prakash
Shrivastava & Mr. Justice M.C. Garg*

W.P. No. 3744/2010(S) (Indore) decided on 16 December, 2011

NANADRAM KUSHWAH

...Petitioner

Vs.

STATE OF M.P. & ors.

...Respondents

Service Law - Circulars of State Govt. issued prior to judgment passed in *Uma Devi's* case - Question whether circulars issued in the matter of grant of pay-scale and regularization prior to the delivery of judgment in *Uma Devi's* case referred to Full Bench - Entitlement of pay scale already decided in favor of petitioner in previous writ petition - Questions referred in writ petition are not involving in the proceeding pending before Single Judge - Questions need not to be answered only for academic purposes. (Para 10)

सेवा विधि - राज्य सरकार के परिपत्र उमा देवी मामले में निर्णय पारित होने से पूर्व जारी किये गये - प्रश्न कि क्या वेतनमान एवं नियमितीकरण प्रदान करने के मामले में उमा देवी के मामले में निर्णय दिये जाने से पूर्व जारी परिपत्र पूर्ण न्याय पीठ को निदेशित किये गये - पूर्ववर्ती रिट याचिका में पहले ही याचिका के पक्ष में वेतनमान की हकदारी निर्णित की गई - रिट याचिका में निर्दिष्ट प्रश्न एकल न्यायमूर्ति के समक्ष लंबित कार्यवाही में अंतर्ग्रस्त नहीं - केवल शैक्षिक प्रयोजन के लिये प्रश्नों का उत्तर देने की आवश्यकता नहीं।

A.K. Sethi with Rahul Sethi, for the petitioner.

Vinita Phaye, G.A. for the respondents.

ORDER

The order of the court was delivered by :
SHANTANU KEMKAR, J :- This Full Bench has been constituted by Hon'ble the Chief Justice on a reference under Chapter 4 Rule 8 (1) of the M.P. High Court Rules, 2008 being made by the learned Single Judge of this Court, for answering the following issues :-

“1. Whether the earlier circulars issued by the State Government in the matter of grant of pay-scale and regularisation, prior to the delivery of the judgment in the case

of *Umadevi & others Vs. State of Karnataka*, 2006 (4), Pg. 4 are still in existent or not and the benefit can be granted to an employee on the basis of earlier circulars in the matter of grant of regular pay-scale on completion of 5 years of service.

2. Whether an employee can still be granted regular pay-scale in the light of the circulars issued by the State Government dated 16.05.2007 and 08.02.2008 issued pursuant to the judgment delivered by the Apex Court in the case of *Umadevi & others Vs. State of Karnataka*, 2006 (4) Pg. 4.

3. Whether the judgment delivered by the learned Single Judge in the case of *Baliram Baghel*, affirmed by the Division Bench is still holding the field in the matter of grant of regular pay scale, even after the delivery of the judgment of the Apex Court in the case of *Umadevi & others Vs. State of Karnataka*, 2006 (4) Pg. 4.”

2. It has been contended by the learned Senior counsel for the petitioner that the questions which have been referred for decision by this Full Bench are not arising out of the matter in view of the fact that before the learned Single Judge the question was not regarding the regularisation of the petitioner but was regarding non-payment of monetary benefits of pay scale on regularisation. He submitted that the question of regularisation of the petitioner had already attained finality in favour of the petitioner in view of the judgment passed by the learned Single Judge in Writ Petition No.9417/09 (s) decided on 13.01.2011 and the same having been affirmed in writ appeal No.391/11 vide order dated 27.08.2011 passed by the Division Bench.

3. In order to appreciate the submission made by learned Senior counsel for the petitioner, we have gone through the record. After a close scrutiny of the earlier orders passed by this Court in petitioner's own case, we find that earlier when the petitioner's regularisation was cancelled he had filed a writ petition No.226/09 (s) before this Court. The said writ petition was disposed of by Single Bench of this Court on 20.02.2009 by quashing the order dated 08.10.2004 by which the regularisation order was cancelled, with liberty to the respondents to challenge the fresh order which was passed after issuing show cause notice and affording opportunity to the petitioner. The relevant paragraph of the order dated 20.02.2009 passed in Writ Petition No.226/09 (s) reads thus :-

“Having considered the contentions raised by learned counsel for the parties, I am inclined to quash the impugned order dt. 08.10.04 as has been quashed in the case of similarly situated employees.

However since the respondents have already passed a fresh order after issuing show cause notice and affording opportunity of hearing to the petitioner no further show cause notice and opportunity of hearing is required. It will be open for the petitioner to challenge the order which has been now passed by the respondents. Needless to say that as ordered in the earlier order in case of *Jeeva Rathore* (supra) the petitioner would also be entitled for the benefit accrued to him from the order dt. 14.09.1996 till the date when the respondents have taken the fresh decision as aforesaid.”

4. The aforesaid order dated 20.02.2009 passed in Writ petition No.226/09 (s) was challenged by the respondents /State in Writ Appeal No.418/09. The said writ appeal was dismissed by a Division Bench of this Court in view of the various earlier orders passed in the matter.

5. The fresh order of which mention is made in the aforesaid order cancelling the petitioner's regularisation was challenged by the petitioner in writ petition No.9417/2009 (s). The said writ petition was decided on 13.01.2011 by the learned Single Judge. The learned Single Judge taking note of the relevant facts as also the various orders passed by this Court from time to time including the orders passed in identically placed employees, passed following order in favour of the present petitioner :-

“15. In the present case, the petitioner as he was also a beneficiary of order dated 14.05.1996 submitted a representation before the respondents and as nothing was being done in the matter of grant of regular pay scale keeping in view the judgment delivered by this Court in the case of *Baliram Baghel*, the petitioner was left with no other choice except to approach this Court. The present petitioner preferred a writ petition i.e. W.P.No.226 of 09 (s) and the same was disposed of by this Court by an order dated 20.02.2009. This Court while quashing order dated 08.10.2004 also observed that the petition would be entitled for the benefits accrued to

him by virtue of order dated 14.05.1996 till the fresh decision is taken in the matter and as the order passed by the learned Single Judge was not complied with a Contempt Petition was also preferred and the same was disposed of by an order dated 21.12.2009 and time was granted to respondents-contemnors therein to pass appropriate order in the matter. The respondents-State has thereafter issued a show-cause notice and finally has passed the impugned order dated 17.12.2008 by which earlier order passed by respondents dated 14.05.1996 has been withdrawn.

16. This Court has carefully gone through the order dated 14.05.1996 as well as order dated 17.12.2008 and the order dated 14.05.1996 reveals that cases of those employees who have completed 5 years' service in the contingency establishment were considered for grant of regular pay scale in the light of circular dated 17.03.1978 and as many as 68 person were granted regular pay scale including the petitioner along with Shri Baliram Baghel, petitioner of W.P. No.1512 of 2004. The petitioner at the relevant point of time was having 5 years' of experience and he was granted regular pay scale and not the benefit of regularisation. The learned counsel for the petitioner confined his prayer in the present writ petition for grant of regular pay scale as has been granted to Shri Baliram Baghel by virtue of order dated 14.05.1996 and has also reserved his right to take appropriate action in accordance with law for ventilating his grievance in respect of regularisation.

17. This Court has carefully gone through impugned order dated 17.12.2008 (Annexure P-9) as well as annexure R-3 issued by General Administration Department. Annexure R-3 nowhere reflects that the earlier circular of the State Government dated 17.03.1978 has been withdrawn. The circular of General Administration Department dated 09.01.1990 imposes a ban in respect of appointment of contingency paid employees in a establishment where no sanctioned post is available. It does not deal with grant of regular pay scale at all and the fact remains that identically placed persons have been granted regular pay scale by virtue

of various orders passed by this Court from time to time including Shri Baliram Baghel, petitioner of writ petition No.1512 of 2004.

18. This Court is of the considered opinion that as the name of the petitioner was also included in the order dated 14.05.1996 along with Baliram Baghel, therefore, he cannot be discriminated in the matter of grant of regular pay scale as has been granted to Shri Baliram Baghel and other identically placed persons and, therefore, once the benefit has been extended to identically placed persons and they are enjoying the regular pay scale, there appears to be no justification in denying the benefit of regular pay scale to the present petitioner. Resultantly, the impugned order dated 17.12.2008 is hereby quashed."

6. Feeling aggrieved by the aforesaid order dated 13.01.2011 passed in W.P.No.9417/2009 (s) a Writ Appeal No.391/2011 was filed by the respondents/State. The said writ appeal was dismissed by a Division Bench of this Court vide order passed on 27.08.2011 keeping in view the detailed order passed in Writ Appeal No.85 of 2011 [*Dhanubai Vs. State of M.P. and others*].

7. It is pertinent to mention that on account of non-compliance by the State Government of the order dated 20.02.2009 passed in Writ Petition No.226/09(s), the petitioner filed a Contempt Petition No.743/09. The said contempt petition and the connected contempt petitions filed by others alleging identical non-compliance were disposed of by the learned Single Judge vide order dated 18.11.2009. The operative paragraph of the said order passed in contempt petition No.743/2009 reads thus :-

"In the facts and circumstances of the case, this petition and all the connected petitions are disposed with a direction that the petitioners shall submit the bunch of all the petitions along with copy of the order passed today to the competent authority in person under an acknowledgment and it will be the duty of the competent authority to pass an appropriate order by giving the monetary benefits to the petitioner within a period of two months. It will also be the duty of the competent authority not to make any discrimination. If the competent

authority is of the view that the petitioner is not entitled to the monetary benefit, then a reasoned order has to be passed by the competent authority. In case of failure on the part of the competent authority in compliance of the order passed by this Court, the competent authority shall be liable for payment of interest @ 12% per annum which shall be payable personally by the defaulting officer.”

8. Thereafter in the garb of the directions contained in Para 5 of the order dated 18.11.2009 passed in Contempt Case No.743/09 the respondents passed an order dated 26.02.2010 and instead of extending the monetary benefits and the fruits of the earlier order passed by this Court in W.P. No.226/2009 held that the petitioner is not entitled for regular pay scale and arrears on his completion of 5 years of service. It is this order dated 26.02.2010 passed in the garb of the compliance of the directions contained in the Contempt petition, has been challenged by the petitioner in writ petition No.3744/10 (s).

9. From the aforesaid background facts, it is clear that the petitioner's entitlement for grant of monetary benefits during the period from 14.05.1996 till passing of the fresh order (17.12.2008) was already crystalised by the order passed by the learned Single Judge in Writ Petition.No.226/2009. The said order was also affirmed by the Division Bench in Writ Appeal No.418/09. As regards the cancellation of regularisation order dated 17.12.2008, the same was also quashed by the learned Single Judge in W.P.No.9417/2009 (s) decided on 13.01.2011 which was also affirmed by the Division Bench in Writ Appeal No.391/2011.

10. In the circumstances, in our considered view in this writ petition No.3744/10 (s) the only question which is required to be decided by the learned Single Judge is as to whether after passing of the order in Writ Petition No.226/2009 holding the entitlement of the petitioner to get the monetary benefits from 14.05.1996 to the date of passing of the fresh order (17.12.2008) which has also been affirmed by the Division Bench in Writ Appeal No.418/2009 whether it was open for the respondents to have passed a fresh order dated 26.02.2010 denying the said benefit to the petitioner in the garb of the order passed in Contempt Petition No.743/09.

11. Thus, we find all the three questions referred to this Full Bench are not involving in the proceeding pending before the learned Single Judge. In the

circumstances, holding that the questions referred are not arising out of the proceedings pending before the learned Single Judge, we feel that they need not to be answered only for the academic purpose, and we do so.

12. In view of the aforesaid let the matter be now listed before the learned Single Judge for further orders.

Order accordingly

I.L.R. [2012] M.P., 691

FULL BENCH

***Before Mr. Sushil Harkauli, Acting Chief Justice, Mr. Justice
Rajendra Menon & Mr. Justice Alok Aradhe***

W.A. No. 311/2011 (Jabalpur) decided on 24 January, 2012

STATE OF M.P. & anr.

...Appellants

Vs.

PURANLAL NAHIR

...Respondent

A. *Interpretation of Statutes* - Intention of Legislature must be found by reading the statute as a whole. (Para 5)

क. कानूनों का निर्वचन - कानून को संपूर्णतः से पढ़कर विधायिका का आशय खोजा जाना चाहिए।

B. *Civil Services (Pension) Rules, 1976 (M.P.), Rule 9* - Non-conclusion of departmental enquiry within 2 years of its initiation - If the disciplinary enquiry is initiated against an employee after his retirement, it would not automatically come to an end in case the enquiry is not concluded within two years of its inception. (Para 10)

ख. सिविल सेवा (पेंशन) नियम 1976 (म.प्र.), नियम 9 - विभागीय जांच आरंभ होने के 2 वर्षों के भीतर निराकृत न की जाना - यदि कर्मचारी के विरुद्ध अनुशासनिक जांच उसकी सेवानिवृत्ति के पश्चात आरंभ की जाती है तब वह अपने आप समाप्त नहीं होगी यदि जांच आरंभ होने के दो वर्षों के भीतर समाप्त नहीं की जाती।

C. *Civil Services (Pension) Rules, 1976 (M.P.), Rule 9* - Powers of Governor - Governor is not precluded from passing final order in relation to payment of pension to a Govt. employee against whom disciplinary proceeding is initiated after his retirement and is not concluded within two years from its inception. (Para 10)

ग. *सिविल सेवा (पेंशन) नियम 1976 (म.प्र.), नियम 9 – राज्यपाल की शक्तियाँ* – राज्यपाल ऐसे कर्मचारी की पेंशन के भुगतान के संबंध में अंतिम आदेश पारित करने से प्रवारित नहीं जिसके विरुद्ध अनुशासनिक कार्यवाहियाँ उसकी सेवा निवृत्ति के पश्चात आरंभ की गई हैं तथा आरंभ होने के दो वर्षों के भीतर समाप्त नहीं की गई हैं।

Cases referred :

2006 (1) MPLJ 412 (Overruled), (1957) 1 All ER 49, AIR 1955 SC 1012, AIR 1955 SC 830, AIR 2000 SC 1261, AIR 2004 SC 2236, AIR 2009 SC 187.

R.D. Jain, A.G. with Rahul Jain, Dy. A.G. & Vivek Agrawal, G.A. for the appellants.

D.K. Dixit, for the respondent.

ORDER

The order of the court was delivered by : **ALOK ARADHE, J.** - A Division Bench as well as learned Single Judge of this Court having found difficulty in agreeing with the view taken by another Division Bench of this Court in *State of Madhya Pradesh Vs. R.L. Ogale*, 2006(1) MPLJ, 412 in exercise of powers under Rule 8 of Chapter 4 of the Madhya Pradesh High Court Rules, 2008, have referred the certain questions for consideration by a larger Bench. The questions referred for consideration in W.A. No.311/2011 are:-

"1. Whether the disciplinary proceedings initiated by the Government against a government servant any time after his retirement are deemed to have been instituted on the date of his retirement and if so, its effect on the period for conclusion of enquiry in view of Rule 9 of M.P. Civil Services (Pension) Rules, 1976 ?"

"2. Whether the disciplinary proceedings initiated by the Government against a government employee after his retirement automatically comes to an end in case the enquiry is not concluded within two years of its inception ?"

"3. Whether on the face of clause (c) of third proviso to sub-rule (4) of Rule 9 of M.P. Civil Services (Pension) Rules, 1976, the Governor is precluded from passing a final order in relation to payment of pension to a government employee,

against whom disciplinary proceedings are initiated after his retirement, in case the enquiry against him is not concluded within two years of its inception ?"

The questions which have been referred for consideration in W.P. No.3494/2011(s) are:-

"(i) Whether the law laid down by the Division Bench of this Court in the case of *State of Madhya Pradesh Vs. R.S. Ogale* (2006) 1 MPLJ 412, lays down the correct proposition of law ?"

"(ii) Whether in case of a retired government servant, the Governor can pass an order by way of punishment for withholding or withdrawing a pension or part thereof, whether permanently or for a specified period; and can also pass an order ordering recovery, even after expiry of two years period from the date of issuance of charge-sheet ?"

2. Background facts giving rise to the references briefly stated are that respondent in W.A. No.311/2011 attained the age of superannuation on 31st July, 2000. A charge-sheet dated 13.9.2002 was served on the respondent and disciplinary authority vide order dated 28.9.2006 imposed the punishment of stoppage of 20% of pension permanently under Clause (C) of third proviso of Rule 9(4) of M.P. Civil Services (Pension) Rules, 1976. The respondent challenged the said order in a writ petition. The writ petition was allowed by the learned Single Judge by placing reliance on the decision in the case of *R.L. Ogale* (supra) and it was held that disciplinary proceedings initiated against the government servant automatically came to an end, as the enquiry was not concluded within a period of two years of its inception and, therefore, the disciplinary authority cannot pass any order imposing punishment. Being aggrieved by the aforesaid order, the State Government preferred an appeal before the Division Bench. In W.P. No.3494/2011, the petitioner attained the age of superannuation on 31.5.2008. The disciplinary enquiry was initiated against him on 4.12.2004 and eventually, an order of punishment dated 5.2.2011 was passed by which reduction in the amount of pension by 30% for a period of five years was inflicted upon him. The petitioner challenged the order of punishment in the writ petition. The Division Bench by order dated 22.6.2011 and the learned Single Judge by order dated 25.4.2011 have referred the questions stated supra for consideration by the larger Bench.

3. Learned Advocate General appearing for the appellants in W.A.

No.311/2011 submitted that interpretation put forth by the Division Bench in *R.L. Ogale's* case on Rule 9(4) of the M.P. Civil Services (Pension) Rules, 1976 [hereinafter referred to as the 'Rules'] is not proper. The Division Bench has failed to consider Clause (C) of third proviso to Order 9 Rule (4) of 'the Rules' in its proper perspective. It is further submitted that if the provisions of Rule 9(4) of 'the Rules' are read in its entirety, it is axiomatic that the departmental proceedings against the government servant can continue beyond the period of two years and does not automatically come to an end. It is also submitted that the disciplinary authority is not precluded from passing final order in relation to payment of pension in case of delinquent employee against whom disciplinary proceedings are initiated after his retirement which are not concluded within two years from the date of its institution. However, the learned Advocate General fairly submitted that question No.1 formulated by the Division Bench does not arise for consideration. In support of his submissions, learned Advocate General has made reference to an order dated 25.8.2011 passed by the Division Bench of this Court in W.A. No.627/2011 as well as orders dated 13.5.2011 and 26.8.2011 passed by the learned Single Judge in W.P. No.12105/2011 (s) and W.P. No.6294/2008(s).

4. On the other hand, Shri D.K. Dixit, learned counsel for the respondent also fairly submitted that question No.1 framed by the Division Bench does not arise for consideration in the facts of the case and the decision relied on by the Division Bench of this Court in *R.L. Ogale's* case (supra)-lays down the correct proposition of law.

5. We have considered the submissions made on both sides. At this stage, it is appropriate to notice well settled rules of statutory interpretation. It is an elementary rule which has been referred by *Viscount Simonds in AG Vs. HRH Prince Ernest Augustus* (1957) 1 All ER 49 "as compelling rule" that intention of Legislature must be found by reading the statute as a whole. In *K.S. Paripooran Vs. State of Kerala*, AIR 1955 SC 1012, it has been that "no rule of construction can require that when the words of one part of a statute convey a clear meaning it shall be necessary to introduce another part of a statute for the purpose of controlling or diminishing the efficacy of the first part". Moreover, these observations have no application in the interpretation of related provisions. (See: "*Principles of Statutory Interpretation*, Justice G.P. Singh, 13th edition, page 35 and 37). The principle that the statute must be read as a whole is equally applicable to different parts of the same section. The section must be construed as a whole whether or not one of the parts is a saving clause or a proviso. Subbarao, J. calls it "an elementary rule

that construction of a section is to be made of all the parts together", and that "it is not permissible to omit any part of it; the whole section should be read together". Sub-sections in a section must be read as parts of an integral whole and as being interdependent. "each portion throwing light, if need be, on the rest". (See: "*Principles of Statutory Interpretation*", Justice G.P. Singh, 13th edition, page 42 and 43).

6. It is equally settled rule of statutory interpretation that where language of a statute in its ordinary meaning and grammatical construction, leads to a manifest contradiction of the apparent purpose of the enactment, or to some inconvenience or absurdity, hardship or injustice, presumably not intended, a construction may be to open it, which modifies the meaning of the words, and the structure of the sentence. See: *Tirath Singh Vs. Bachittar Singh*, AIR 1955 SC 830, *Molarmal Vs. Kay Iron Works (P) Ltd.*, AIR 2000 SC 1261 and *Modern Singh Vs. Union of India*, AIR 2004 SC 2236. The sub-sections must be read as parts of an integral whole and is being inter-dependent, an attempt should be made in construing them to reconcile them if it is reasonably possible to do so and to avoid repugnancy. See: "*Principles of Statutory Interpretation*", Justice G.P. Singh, 13th Edition, page 145.

7. Rule 9 of the Rules deals with right of Governor to withhold or withdraw the pension. Rule 9(4) deals with the case of a government servant who has retired on attaining the age of superannuation or otherwise against whom any departmental or judicial proceedings are instituted. Rule 9(4) is reproduced below:-

"9(4) In the case of a Government servant who has retired on attaining the age of superannuation or otherwise and against whom any departmental or judicial proceedings are instituted or where departmental proceedings are continued under sub-rule(2), a provisional pension and death-cum-retirement gratuity as provided in rule 64, as the case may be, shall be sanctioned:

Provided that where pension has already been finally sanctioned to a Government servant prior to institution of departmental proceedings, the Governor may, by order in writing, withhold, with effect from the date of institution of such departmental proceedings fifty per cent of the pension so sanctioned subject however that the pension payable after such withholding is not reduced to less than the minimum

pension as determined by the Government from time to time:

Provided further that where departmental proceedings have been instituted prior to the 25th October, 1978, the first proviso shall have effect as it for the words "with effect from the date of institution of such proceedings" the words "with effect from a date not later than thirty days from the date aforementioned", had been substituted:

Provided also that-

- (a) If the departmental proceedings are not completed within a period of one year from the date of institution thereof, fifty per cent of the pension withheld shall stand restored on the expiration of the aforesaid period of one year;
- (b) If the departmental proceedings are not completed within a period of two years from the date of institution the entire amount of pension so withheld shall stand restored on the expiration of the aforesaid period of two years; and
- (c) If in the departmental proceedings final order is passed to withhold or withdraw the pension or any recovery is ordered, the order shall be deemed to take effect from the date of the institution of departmental proceedings and the amount of pension since withheld shall be adjusted in terms of the final order subject to the limit specified in sub-rule (5) of rule 43."

8. The Division Bench in *R.L. Ogale's* case, supra by taking into account Clause (b) of third proviso to Rule 9(4) held that if the departmental enquiry is not concluded within a period of two years from the date of its institution, no further order on completion of the aforesaid period could be passed by the Governor and it would not be possible for the Governor to pass any final order for recovery.

9. The provisos and the clauses of Rule 9(4) are inter-related provisions and have to be read together as a whole. The intention of the Legislature is primarily to be gathered from the language used which means that attention should be paid to what has been said as also to what not has been said *See: Nagar Palika Nigam Vs. Krishi Upaj Mandi Samiti*, AIR 2009 SC 187, *Principles of Statutory Interpretation*, Justice G.P. Singh, 13th Edition, page 64. From careful scrutiny of Clauses (a) and (b) of third proviso to Rule 9(4), it is apparent that aforesaid clauses nowhere provide that if the

departmental proceeding is not concluded within the period of two years, the same would come to an end automatically. The aforesaid clauses only provide that if departmental proceeding is not concluded within a period of one year or two years, 50% of the amount of pension and entire amount of pension withheld shall stand restored to the delinquent employee, respectively. If the meaning of clause (b) of third proviso to Rule 9(4) is expanded to mean that Governor would not have any right to pass final order with regard to imposition of punishment as prescribed under clause (c), such an interpretation would bring clause (c) in conflict with clause (b) of third proviso to Rule 9(4) of the 1976 Rules and, therefore, such an interpretation cannot be accepted. Clauses of third proviso to Rule 9(4) have to be read as a whole and an attempt has to be made to reconcile them so that any repugnancy can be avoided. Thus, clause (a) and (b) of third proviso to Rule 9(4) have to be read subject to clause (c) of third proviso to Order 9 Rule (4). In other words, the withholding of pension as provided in clauses (a) and (b) of third proviso to Rule 9(4) of the Rules is provisional and tentative and is subject to the final order which may be passed by the Governor under clause (c) of third proviso to Rule 9(4).

10. In view of preceding analysis, our answer to the questions referred for our opinion are as follows:-

(a) In view of submissions made by learned Advocate General as well as learned counsel for the respondent that question No.1 formulated by the Division Bench does not arise for consideration in the facts of the case, it is not necessary for us to answer the same.

(b) The disciplinary proceeding initiated by the State Government against a government employee after his retirement, does not automatically come to an end in case the enquiry is not concluded within two years of its inception and can continue beyond the period of two years.

(c) The Governor is not precluded from passing final order in relation to payment of pension to a Government employee against whom disciplinary proceeding is initiated after his retirement and is not concluded within two years from its institution.

(d) The proposition of law laid down in State of M.P. Vs. R.L. Ogale, 2006(1) MPLJ 412 that in view of clause (b) of third proviso to Rule 9(4) of 'the Rules', if the departmental

proceedings is not concluded against a retired Government servant within a period of two years, the Governor does not have the right to impose the penalty, does not lay down the correct proposition of law.

(e) The second question of law referred by the learned Single Judge in W.P. No.3494/2011(s) has already been answered by us while answering the third question of law.

11. Let the writ appeal and the writ petition be placed for orders before the appropriate Benches.

Order accordingly

I.L.R. [2012] M.P., 698

WRIT APPEAL

Before Mr. Justice Shantanu Kemkar & Mr. Justice Prakash Shrivastava
W.A.No. 497/2011 (Indore) decided on 7 September, 2011

SURESH

...Appellant

Vs.

CHIEF EXECUTIVE OFFICER & ors.

...Respondents

A. *Panchayat Raj Evam Gram Swaraj Adhiniyam, M.P. 1993 (1 of 1994), Section 91 - Appeal* - Appellant, in memo of appeal had stated reasons for filing appeal belatedly - No objection with regard to the limitation was taken by appellant before S.D.O. - S.D.O. decided the appeal on merits - It would be assumed that S.D.O. had condoned the delay - Writ Court rightly declined to accept the plea of limitation - Appeal dismissed. (Para 8)

क. पंचायत राज एवं ग्राम स्वराज अधिनियम, म.प्र. 1993 (1994 का 1), धारा 91 - अपील - अपीलार्थी ने अपील मेमो में अपील विलम्ब से प्रस्तुत किये जाने के कारण बताये - अपीलार्थी द्वारा परिसीमा के संबंध में अनुविभागीय अधिकारी के समक्ष कोई आक्षेप नहीं लिया गया - अनुविभागीय अधिकारी ने गुणदोष के आधार पर अपील निर्णित की - यह समझा जावेगा कि अनुविभागीय अधिकारी ने विलम्ब क्षमा किया - रिट न्यायालय ने उचित रूप से परिसीमा के संबंध में अभिवचन ग्रहण करने से मना किया - अपील खारिज।

B. *Panchayat Raj Evam Gram Swaraj Adhiniyam, M.P. 1993 (1 of 1994), Section 85 - Appointment of Panchayat Karmi* - Appointment of appellant was made on the basis of majority of votes -

Scheme in vogue provided for appointment on merit basis - Appointment of appellant was rightly quashed by Writ Court. (Para 9)

ख. पंचायत राज एवं ग्राम स्वराज अधिनियम, म.प्र. 1993 (1994 का 1), धारा 85 - पंचायत कर्मी की नियुक्ति - अपीलार्थी की नियुक्ति मत की बहुलता के आधार पर की गई - गुणावगुण के आधार पर नियुक्ति की योजना प्रचलन में है - रिट न्यायालय द्वारा अपीलार्थी की नियुक्ति उचित रूप से अभिखंडित की गई।

Cases referred :

2009(1) MPLJ 40, W.P. No. 12498/2010(S), 2010(3) MPLJ 470.

A.S. Garg with Anuj Bhargava, for the appellant.

Pankaj Soni, for the respondent No.4.

ORDER

The order of the court was delivered by :
SHANTANU KEMKAR, J :- Heard on the question of admission.

2. This intra court appeal under *Section 2(1) of the Madhya Pradesh Uchcha Nyayalaya (Khand Nyayapeeth Ko Appeal) Adhiniyam, 2005* has been directed against the order dated 10.08.2011 passed by Single Bench of this Court in W.P. No.10387 of 2010 (S).

3. Briefly stated, the 3rd respondent - Gram Panchayat, Barwani invited applications for filling the post of Panchayat Karmi. The appellant and the 4th respondent (writ petitioner) submitted their applications amongst other candidates for the said post. After receipt of the applications a resolution was passed by the Gram Panchayat on 8.08.2007, resolving to appoint the appellant herein, as a Panchayat Karmi on the basis of majority of votes. Pursuant to the said resolution an order of appointment was issued by the Gram Panchayat on 9.08.2007 appointing the appellant as Panchayat Karmi.

4. The 4th respondent challenged the appointment of the appellant by filing an appeal before the Sub Divisional Officer (for short, the SDO) Barwani. The SDO Barwani, vide order dated 3.07.2008, dismissed the appeal of the 4th respondent and maintained the order of the Gram Panchayat by which the appellant was appointed as a Panchayat Karmi on the basis of majority of votes. The revision filed by the 4th respondent against the order of the SDO also suffered dismissal vide order dated 14.06.2010, passed by the Additional Commissioner in Revision No.285/2007-08.

5. Feeling aggrieved by the dismissal of the appeal by the SDO and Revision by the Additional Commissioner, the 4th respondent filed the aforesaid Writ Petition No.10387/2010 (S). The said writ petition has been allowed by the learned Single Judge vide impugned order dated 10.08.2011, placing reliance on the order passed in the case of *Prajapal Singh vs. State of M.P. and others* reported in [2009 (1) M.P.L.J. 40] and also on the order dated 14.10.2010 passed in the case of *Yatindra Gupta vs. State of M.P. and others* in W.P. No.12498 of 2010 (S). The learned Single Judge set aside the resolution, the order of appointment of the appellant, the order of the SDO and the Additional Commissioner and remanded the matter back to the Gram Panchayat to pass a fresh resolution on the basis of merit. Aggrieved, the appellant has filed this intra court appeal.

6. Shri AS Garg, learned Senior Counsel for the appellant argued that the appellant was duly appointed by the Gram Panchayat on the basis of the majority of votes being casted in favour of the appellant. The said appointment was in accordance with the existing provision and circular and there was no illegality in it. He pointed out that the circular dated 27.01.2006 was in force when the appellant was appointed, thereafter, the State Government issued another circular on 13.08.2007 in which, for the first time, it was made mandatory for the Gram Panchayat or to the Collector as the case may be to ensure compliance of merit in making appointments to the post of Panchayat Karmi. He argued that in the said circular dated 13.08.2007, it was made clear that the observance of merit for making appointment was not necessary in the Gram Panchayat in which appointments were already made as per circular dated 27.01.2006. Thus, according to him, the appointment of the appellant on the post of Panchayat Karmi on the basis of majority of votes could not have been set aside by the learned Single Judge by applying the circular which came into force w.e.f. 13.08.2007 i.e. after the issuance of the appellant's appointment order. He further argued that the Writ Court has failed to consider that the 4th respondent's appeal before the SDO was barred by limitation and therefore, was liable to be dismissed on that ground alone.

7. Shri Pankaj Soni, learned counsel appearing for the 4th respondent on the other hand supported the order passed by the learned Single Judge. He contended that in view of the law laid down by this Court in the case of *Prajapal Singh vs. State of M.P. and others* (supra) and also in the case of *Mahesh son of Mohan Jadhav vs. State of M.P. and others* reported in [2010 (3) M.P.L.J. 470] in which it has been held that even as per the circular

27.01.2006 the appointments, cannot be made by ignoring the merits, the learned Single Judge has rightly remanded the matter to the Gram Panchayat for making the appointment by observing merit. He also argued that at this stage when the objection of Limitation was not raised before the authorities below and when the matter has been decided on merits, it would be wholly unjustified to direct the SDO to decide the question as to whether the appeal of the 4th respondent was within limitation or not. He further argued that undisputedly the appointment of the appellant was made on the basis of majority of votes ignoring the merit, the objection of Limitation which was not raised before the authorities cannot now be allowed to be raised. In support of his contentions, he has drawn our attention to paragraph 8 of the order pass by this Court in the case of *Mahesh son of Mohan Jadhav vs. State of M.P. and others* (supra) which reads as under

"8.

In the circumstances at this point of time having fought the matter before various Forums and having regard to the fact that the matter stood decided on merits also, the second respondent cannot be directed to go before the Sub Divisional Officer for litigating the issue once again afresh. This is more so as even on merits, undisputedly the 2nd respondent secured more marks than the petitioner in the 10th standard examination of the system of 10+2 and as such was entitled to get appointment, in view of the law laid down by a Division bench of this Court, Bench at Indore in the case of *Devilal son of Bherulal Patidar vs. State of MP. and others* vide Order dated 20-3-2009 passed in Writ Petition No.5579 of 2008 (s)."

8. Having considered the submissions made by the learned counsel for the parties and having gone through the impugned orders, we find that the, 4th respondent, in paragraph no.9 of his memo of appeal filed before the SDO had very specifically stated the reasons for belated filing of the appeal and had very categorically prayed for condonation of the same. In the circumstances, if the appeal of the 4th respondent has been decided on merits by the SDO, it would be assumed that the delay has been condoned. In the circumstances, when the present appellant failed to raise this objection before the SDO and also before the Additional Commissioner, in our considered opinion, the learned Single Judge has rightly, declined to accept the said plea

of limitation while exercising jurisdiction under Article 226 of the Constitution of India.

9. So far as the appellant's contention that he could have been appointed as Panchayat Karmi on the basis of the majority of votes in view of the circular dated 27.01.2006 which was prevailing at the time of making of his appointment is concerned, we find no merit in this submission. In the circular dated 27.01.2006 it was provided that the list of all the applications received by the Gram Panchayat for the said post was to be prepared by the Gram Panchayat on the basis of seniority and merit. It further provided that after preparation of such list, the eligible candidate, as per seniority of such list, was to be appointed. Therefore, in our considered view as per the Scheme of appointment of Panchayat Karmi the merit was required to have been observed even as per the Circular dated 27.01.2006 which was in vogue when the appellant was appointed. The contention of the learned Senior Counsel for the appellant that in making the appointments prior to the Circular dated 13.08.2007 there was no necessity of observing of merit is, therefore, wholly misconceived. We find that in the present case ignoring the merit the appointment was made by the Gram Panchayat only on the basis of majority of votes. In such circumstances the appellant's appointment which was made giving complete go bye to the merit could not have been sustained and the same has rightly been set aside by the learned Single Judge and the matter has rightly been remanded to the Gram Panchayat for passing fresh resolution on the basis of merit.

10. As a result, no case is made out to interfere in the order passed by the learned Single Judge. Accordingly, the writ appeal deserves to be and is hereby dismissed.

Appeal dismissed.

I.L.R. [2012] M.P., 702

WRIT PETITION

Before Mr. Justice Sanjay Yadav

W.P. No. 5092/2008 (Jabalpur) decided on 4 January, 2012

JAYANT KUMAR (SMT.)

...Petitioner

Vs.

SMT. VASANTI DEVI & anr.

...Respondents

***Transfer of Property Act (4 of 1882), Sections 122, 123 -
Registration Act (16 of 1908), Section 49 - Unregistered and Unstamped***

gift deed - Trial Court while permitting the admission of unregistered gift deed in evidence for collateral purpose patently committed error of law and thus erred in exercise of jurisdiction vested in it - Impugned order quashed - Petition allowed. (Para19)

सम्पत्ति अन्तरण अधिनियम (1882 का 4), धाराएँ 122, 123 - रजिस्ट्रीकरण अधिनियम (1908 का 16), धारा 49 - अपंजीकृत और अमुद्रांकित दानविलेख - विचारण न्यायालय जब अपंजीकृत दान विलेख को साक्ष्य में सांपाश्विक प्रयोजन हेतु ग्राह्य करने के लिये अनुमति देता है, तो विधि की स्पष्टतः भूल करता है और इस प्रकार इसमें निहित क्षेत्राधिकार के प्रयोग की भूल करता है - प्रतिवादित आदेश अभिखंडित - याचिका मंजूर।

Cases referred :

AIR 1980 AP 139, AIR 1999 AP 188(1), 1999 (1) MPWN 13 NOTES 10, AIR 1959 M.P. 23, (1972) 3 SCC 799, (1981) 4 SCC 613, (1969) 1 UJ 89 (SC), (2008) 8 SCC 564, (2009) 2 SCC 532.

Ravish Agrawal with Sanjay Sarwate, for the petitioner.
Avinash Zargar, for the respondents.

ORDER

SANJAY YADAV, J:- Order dated 3.4.08 is being called in question vide this petition under Article 227 of the Constitution of India. By said order, the trial Court, in a suit for declaration and permanent injunction brought by the petitioner, over-ruled the petitioners' objection for admitting an unregistered and unstamped gift deed dated 30.12.83 in evidence allowing the same for collateral purpose, purportedly, as per proviso to Section 49 of the Registration Act, 1908.

2- The suit by the petitioner for declaration, injunction and possession with respect to the land described in Schedule A, annexed to the plaint is founded on a will dated 26.8.1987 said to be executed by one Rajkumaribai, mother in law of the petitioner (as well of respondent). The claim of the petitioner plaintiff is countered by the respondent defendant. It is contended that the will in question is forged and fabricated and that she is in possession and ownership of the suit land by virtue of gift deed dated 30.12.83.

3- The said gift deed, admittedly, unregistered, on a Stamp paper of Rs.5 (Rupees Five), was when tendered in evidence by the respondent defendant was objected at by the petitioner plaintiff on the ground that the same being

insufficiently stamped and unregistered. The trial Court by impugned order allowed the same to be taken for collateral purpose under Section 49 of 1908 Act.

4- The order is being questioned on the ground that the gift deed since conveys a title and is foundation for establishing ones own title and possession against the claim put forth by the petitioner plaintiff, unless registered could not even be taken for collateral purpose.

5- The respondent on its turn support the impugned order stating that, the same being in consonance with the proviso to Section 49 of 1908 Act does not warrant an interference. It is also contended that the gift of the suit land by the respondent's mother-in-law being customary it was not at all necessary to have it registered as the same is not a gift under the Transfer of Property Act, 1882.

6- Catena of decisions were relied upon by respective counsels in support of respective contentions.

7- Chapter VII of the Transfer of Property Act, 1882 deals with gifts. Section 122 defines "Gift" as "the transfer of certain existing movable or immovable property made voluntarily and without consideration by one person, called the donor, to another called the donee, and accepted by or on behalf of the donee."

8- Section 123 of 1882 Act makes the provision as to how the transfer of the immovable property, gifted is effected. It stipulates "123- Transfer how effected- for the purpose of making a gift of immovable property the transfer must be effected by a registered instrument signed by or on behalf of the donor, and attested by at least two witnesses.

For the purpose of making a gift of movable property, the transfer may be effected by a registered instrument signed as aforesaid or by delivery.

Such delivery may be made in the same way as goods sold may be made."

9- The gift deed is registrable is also evident from Section 17(1) (a) of the Registration Act, 1908 which stipulates:

"17- Documents of which registration is compulsory

(1)- The following documents shall be registered, if the property to which they relate is situate in a district in which,

and if they have been exempted on or after the date on which Act No. XVI of 1864, or the India Registration Act, 1866, or the Indian Registration Act, 1871, or the Indian Registration Act, 1877 or this Act came or comes, into force, namely, (a) instruments of gift of immovable property.”

10- Thus Section 123 of Transfer of Property Act 1882 and Section 17 (1)(a) of the Registration Act, 1908 makes an instrument of gift of immovable property compulsorily registrable, as the same conveys a title in favour of donee.

11- The reliance placed upon by the respondent on the decision in *Bhubaneshwar Naik Santoshrai and etc. etc. v. The Special Tahsildar Land Reforms Tekkai and other*: AIR 1980 Andhra Pradesh 139 and *P. Buchi Reddy and others v. Ananthmla Sudhakar* AIR 1999 Andhra Pradesh 188(1), is of no assistance in the case at hand, even if it is accepted that, it was customary in the family of mother-in-law of the petitioner and respondent to gift a land to newly wed daughter in law. In the cases relied upon by the respondent the High Court of Andhra Pradesh was concerned with the gift of land in favour of daughter or sister towards “Pasupu Kumkuma” an obligation of father under Hindu Law to “maintain” an unmarried daughter which term includes reasonable expenses of an incident to her marriage; therefore, the act of discharging an obligation by giving away movable and immovable property was adjudged as not a gift within the meaning of Section 122 of Transfer of Property Act 1882.

12- The facts of present case are different as would attract any parity. No obligation seems to have been discharged by giving away a property. On the contrary there is positive act of conveying a right, title and interest over an immovable property, it is compulsorily thus registrable under Section 123 of the Act of 1882 and Section 17(1)(a) of 1908 Act. The decisions in *Bhubaneshwar Naik* (supra), *P. Buchi Reddy and others* (supra) are therefore, of no assistance to the petitioner. Similarly, because of Section 129 of Act 1882 (stipulating that “Nothing in this chapter relates to gifts of moveable property made in contemplation of death, or shall be deemed to affect any rule of Mohammadan Law) and Article 150 (4) of Mullah's Mohammadan Law (which says: “If it is to be proved by oral evidence that a gift was completed as required by law (Section 149 and 150), it is immaterial that the donor had also executed a deed of gift, but the deed has not been registered as required by the Registration Act under Section 17 (a) of the then Registration

Act”) and the decision in *Chotte Khan v. Johri Bi*: 1999 (1) MPWN 13 Notes 10, is of no assistance to the respondents.

13- In *Beni Madhav Prasad and others v. Raskal Ambalal and others* :AIR 1959 Madhya Pradesh 23, it is observed that-

“5- The deed of gift set up by the defendants is valueless to support their title as owners of the house as it is unregistered and not attested by any witness. It is not admissible even to show that the possession of the defendants was adverse. To do so would be really to hold on the basis of the unregistered and unattested deed that the house was gifted away by Rasik to Chunnilal.”

14- In the present case since the instrument dated 30.12.1983 has the the trapping of 'gift' as defined under Section 122 of Act of 1882 it is compulsorily registrable.

15- Question now is could an unregistered gift deed be taken in evidence for collateral purpose.

Section 49 of the 1908 Act provides for-

“49- Effect of non-registration of documents required to be registered- No document required by section 17 1[or by any provisions of the Transfer of Property Act, 1882 (4 of 1882)], to be registered shall-

(a) affect any immovable property comprised therein or

(b) confer any power to adopt, or

(c) be received as evidence of any transaction affecting such property or conferring such power, unless it has been registered:

[Provided that an unregistered document affecting immovable property and required by this act or the transfer of Property Act, 1882 (4 of 1882), to be registered may be received as evidence of a contract in suit for specific performance under Chapter II of the Specific Relief Act, 1877 (1 of 1877), or as evidence of part performance of a contract for the purposes of section 53A of the Transfer of Property Act, 1882 (4 of 1882), or as evidence of any collateral transaction not required

to be effected by registered instrument.]

16- Thus, though an unregistered document which is compulsorily registrable under Section 17 of the Act of 1908, can also be admitted into evidence for collateral purpose. [Please see (1972) 3 SCC 799 paragraph 10) and (1981) 4 SCC 613 paragraph 22]. But whether an instrument, such as gift deed, as in the present case, which records conveying of right, title and interest in an immovable property when used for the purpose of establishing such right can be said to be a collateral purpose. In the case at hand the answer would be in negative for the reasons that, on the basis of said gift deed the respondent defendant seeks extinguishment of the right of the petitioner plaintiff who has based her suit on the alleged will dated 26.8.87. It is by relying on the terms of the gift deed in question, respondent defendant intends to establish her right, title, interest and possession over the suit property, it therefore, cannot be said that the unregistered instrument is being used for collateral purpose. When the unregistered instrument is not admissible in evidence, the contents thereof is also not admissible. In this context reference can be had of a decision by Supreme Court in *Rana Vidya Bhushan Singh v. Ratiram* (1969) 1 UJ 89 (SC): wherein it is held-

"A document required by law to be registered, if unregistered, is inadmissible as evidence of a transaction affecting immovable property, but it may be admitted as evidence of collateral facts, or for any collateral purpose, that is for any purpose other than that of creating, declaring, assigning, limiting or extinguishing a right to immovable property. As stated by Mulla in his Indian Registration Act, 7th Edn., at p. 189 :

"The High Courts of Calcutta, Bombay, Allahabad, Madras, Patna, Lahore, Assam, Nagpur, Pepsu, Rajasthan, Orissa, Rangoon and Jammu & Kashmir; the former Chief Court of Oudh; the Judicial Commissioner's Court of Peshawar, Ajmer and Himachal Pradesh and the Supreme Court have held that a document which requires registration under Section 17 and which is not admissible for want of registration to prove a gift or mortgage or sale or lease is nevertheless admissible to prove the character of the possession of the person who holds under it."

17- The said decision finds its affirmation in *K. B. Saha and sons (P. Ltd) v. Development Consultants Ltd.* (2008) 8 SCC 564 in the following terms-

“34- From the principles laid down in the various decisions of this Court and the High Courts, as referred to hereinabove, it is evident that :-

1. A document required to be registered is not admissible into evidence under Section 49 of the Registration Act.

2. Such unregistered document can however be used as an evidence of collateral purpose as provided in the Proviso to Section 49 of the Registration Act.

3. A collateral transaction must be independent of, or divisible from, the transaction to effect which the law required registration.

4. A collateral transaction must be a transaction not itself required to be effected by a registered document, that is, a transaction creating, etc. any right, title or interest in immoveable property of the value of one hundred rupees and upwards.

5. If a document is inadmissible in evidence for want of registration, none of its terms can be admitted in evidence and that to use a document for the purpose of proving an important clause would not be using it as a collateral purpose.

18- Another decision in the context may be noted in *Avinash Kumar Chauhan v. Vijay Krishna Mishra*: (2009) 2 SCC 532;

“24- In this case, by reason of the statutory interdict, no transfer at all is permissible. Even transfer of possession is also not permissible. [*Pandey Oraon v. Ram Chander Sahu* 1992 Supp (2) SCC 77 and *Amrendra Pratap Singh v. Tej Bahadur Prajapati* (2004) 10 SCC 65] The Registration Act, 1908 provides for such a contingency in terms of the proviso appended to Section 49 thereof, which reads as under-

“49- Effect of non-registration of documents required to be registered-

No document required by section 17 or by any provision of the Transfer of Property Act, 1882 (4 of 1882), to be registered shall-

(a) affect any immovable property comprised therein, or

(b) confer any power to adopt, or

(c) be received as evidence of any transaction affecting such property or conferring such power, unless it has been registered:

Provided that an unregistered document affecting immovable property and required by this Act or the Transfer of Property Act, 1882 (4 of 1882), to be registered may be received as evidence of a contract in a suit for specific performance under Chapter II of the Specific Relief Act, 1877 (3 of 1877) or as evidence of any collateral transaction not required to be effected by registered instrument."

25- Section 35 of the Act, however, rules out applicability of such provision as it is categorically provided therein that a document of this nature shall not be admitted for any purpose whatsoever. If all purposes for which the document is sought to be brought in evidence are excluded, we fail to see any reason as to how the document would be admissible for collateral purposes.

26. The view we have taken finds support from the decision of the Privy Council in *Ram Rattan v. Parmananad*, [AIR 1946 PC 51] wherein it was held :-

[That] the words 'for any purpose' in Section 35 of the Stamp Act should be given their natural meaning and effect and would include a collateral purpose and that an unstamped partition deed cannot be used to corroborate the oral evidence for the purpose of determining even the factum of partition as distinct from its terms."

19- In view whereof, the trial Court while permitting the admission of unregistered gift deed in evidence for collateral purpose patently committed an error of law and thus erred in exercise of jurisdiction vested in it. In the result the impugned order is quashed:

20- The petition is allowed to the extent above. There shall be no costs.

Petition allowed

I.L.R. [2012] M.P., 710

WRIT PETITION

Before Mr. Justice Krishn Kumar Lahoti & Mrs. Justice Vimla Jain

W.P. No. 20620/2011 (Jabalpur) decided on 9 January, 2012

RAMESH KUMAR PATEL

...Petitioner

Vs.

MANAGING DIRECTOR & ors.

...Respondents

Industrial Disputes Act (14 of 1947), Section 10 - Departmental Enquiry - Labour Court held that departmental enquiry conducted against petitioner was bad - However, on the same day allowed the respondents to lead evidence to establish misconduct of the petitioner - Application for amendment was also allowed subsequently - Held - Labour Court is having power to permit the parties to lead evidence/ additional evidence including production of documents at any stage of proceedings before they are concluded - Once the Court had found that the enquiry was non est, the Labour Court rightly gave opportunity to respondent to establish the charges before passing award - Amendment application being formal in nature was rightly allowed by the Labour Court.

(Paras 9 & 10)

औद्योगिक विवाद अधिनियम (1947 का 14), धारा 10 - विभागीय जांच - श्रम न्यायालय ने अभिनिर्धारित किया कि याची के विरुद्ध की गई विभागीय जांच अनुचित थी - किन्तु उसी दिन प्रत्यर्थी को याची का अवचार स्थापित करने के लिये साक्ष्य प्रस्तुत करने की मंजूरी दी - बाद में संशोधन का आवेदन भी मंजूर किया - अभिनिर्धारित - श्रम न्यायालय के पास कार्यवाही समाप्त होने से पूर्व किसी भी प्रक्रम पर पक्षकारों को साक्ष्य/अतिरिक्त साक्ष्य जिसमें दस्तावेज प्रस्तुत करना सम्मिलित है प्रस्तुत करने की अनुमति देने की शक्ति है - एक बार जब न्यायालय ने यह पाया है कि जांच नास्ति (नॉन ईस्ट) थी, श्रम न्यायालय ने अवार्ड पारित करने से पूर्व प्रत्यर्थी को आरोप स्थापित करने के लिये उचित रूप से अवसर दिया - संशोधन आवेदन औपचारिक स्वरूप का होते हुए श्रम न्यायालय द्वारा उचित रूप से मंजूर किया गया।

Cases referred :

(1983) 4 SCC 491, (2001) 5 SCC 433, (2007) 15 SCC 789, (2007) 15 SCC 787.

Shailesh Mishra, for the petitioner.

Akash Choudhary, for the respondents.

ORDER

The order of the court was delivered by : **K.K. LAHOTI, J.:-** Petitioner has challenged order dated 23.8.2011 and order dated 16.11.2011 passed by the Labour Court, Jabalpur in case No.126/05/IDR by which the Labour Court while declaring the departmental enquiry as illegal, directed the respondents herein to lead evidence in respect of misconduct on the part of the petitioner and by subsequent order allowed an application seeking amendment to the similar affect. These orders are challenged by the petitioner on the following grounds

- i) That the Labour Court erred in permitting the respondents to lead evidence in respect of the misconduct on the part of the petitioner.
 - ii) That the respondents failed to plead in the original written statement in respect of seeking permission to lead evidence in respect of misconduct then such prayer could not be allowed by an amendment.
 - iii) In the case the departmental enquiry was found illegal, so subsequently allowing the same prayer is against the settled law. Reliance is placed by the petitioner to the Apex Court judgment in *Shambhu Nath Goel vs. Bank of Baroda and others*. [(1983) 4 SCC 491] and submitted that not only the application filed by the respondents seeking amendment may be dismissed but the order dated 23.8.2011 passed by the Labour Court permitting the respondents to lead evidence in respect of misconduct of the petitioner may also be set aside.
2. Learned counsel appearing for the respondents submitted that a larger Bench of the Apex Court reconsidered the matter in *Karnata State Road Transport Corpn. Vs. Lakshmiddevamma and another* [2001 (5) SCC 433] and thereafter a bunch of the Apex Court in *Rajasthan State Road Transport Corpn. & Anr. vs. Charan Singh* [(2007) 15 SCC 789] held that the Tribunal was having wide powers to permit parties to lead evidence in respect of misconduct and if the Labour Court allowed an opportunity to the respondents to lead evidence in respect of misconduct of the petitioner, the aforesaid order needs no interference of this Court.

3. We have heard the parties.

4. Facts of the case are that the petitioner herein was an employee of the respondents M/S Sahara India Pariwar. There were certain allegations against the petitioner in respect of short time embezzlement of money leading a departmental enquiry and after departmental enquiry the petitioner's services were terminated by the respondents. The petitioner sought a reference under Section 10 of the Industrial Disputes Act and the competent government referred the matter to the Labour Court for adjudication. Before the Labour Court, the petitioner herein submitted his statement of case and the respondents also filed reply of the claim raised by the petitioner. The Labour Court framed the issues and while deciding issue No.1 in respect of departmental enquiry, the Labour Court by an order dated 23.8.2011 found that the departmental enquiry conducted against the petitioner by the respondents was bad in law. While passing such an order, the Labour Court on the same day permitted the respondents to lead evidence in respect of misconduct of the petitioner and for this purpose the case was adjourned for 30.9.2011. On 30.9.2011, petitioner herein moved an application for passing an award as the departmental enquiry was held to be illegal. The respondents also moved an application seeking review of the earlier order. For consideration of these applications, case was adjourned for 16.11.2011. On 16.11.2011 another application for amendment was filed. The Labour Court firstly considered the application seeking amendment in the reply and allowed the same. The petitioner herein, because of allowing the amendment application, had not pressed his application accordingly it was rejected and the case was adjourned for recording evidence in respect of misconduct of the petitioner. This order is under challenge in this petition.

5. The judgment of Shambhu Nath (supra) was considered by a larger Bench of 5 Judges of the Apex Court in Laxmidevamma (supra) and two Judges of the Apex Court held in para 18,19, and 20 of the judgment, which reads as under :-

18. There is one other reason why we should accept the procedure laid down by this Court in Shambhu Nath Goyal case. It is to be noted that this judgment was delivered on 27-9-1983. It has taken note of almost all the earlier judgments of this Court and has laid down the procedure for exercising the

right of leading evidence by the management which we have held is neither oppressive nor contrary to the object and scheme of the Act. This judgment having held the field for nearly 18 years, in our opinion the doctrine of stare decisis requires us to approve the said judgment to see that a long-standing decision is not unsettled without a strong cause.

19. For the reasons stated above, we are of the opinion that the law laid down by this Court in the case of *Shambhu Nath Goyal v. Bank of Baroda* is the correct law on the point.

20. In the present case, the appellant employer did not seek permission to lead evidence until after the Labour Court had held that its domestic enquiry was vitiated. Applying the aforesaid principles to these facts, we are of the opinion that the High Court has rightly dismissed the writ petition of the appellant, hence, this appeal has to fail. The same is dismissed with costs.

6. Thereafter one learned Judge of the Apex Court descending the judgment of two judges held thus :-

41. In view of the above, I am of the opinion that *Shambhu Nath Goyal* case does not lay down correct law. The law has been correctly laid in *Shankar Chakravarti* case and *Rajendra Jha* case. The correct procedure is as stated in *Shankar Chakravarti* case subject to further safeguards for workman as already indicated above.

42. Despite the above conclusions, insofar as the present appeal is concerned, considering that the award was made by the Labour Court more than 16 years back and also that the employee has already retired as we are informed, it would not be appropriate to interfere in exercise of power under Article 136 of the Constitution. In this view, I would dismiss the appeal leaving the parties to bear their own costs.

7. Thereafter the matter was placed before the remaining two Judges and the Judges considering the aforesaid held thus :-

45. It is consistently held and accepted that strict rules of evidence are not applicable to the proceedings before the Labour Court/Tribunal but essentially the rules of natural justice are to be observed in such proceedings. Labour Courts/Tribunals have the power to call for any evidence at any stage of the proceedings if the facts and circumstances of the case demand the same to meet the ends of justice in a given situation. We reiterate that in order to avoid unnecessary delay and multiplicity of proceedings, the management has to seek leave of the court/tribunal in the written statement itself to lead additional evidence to support its action in the alternative and without prejudice to its rights and contentions. But this should not be understood as placing fetters on the powers of the court/tribunal requiring or directing parties to lead additional evidence including production of documents at any stage of the proceedings before they are concluded if on facts and circumstances of the case it is deemed just and necessary in the interest of justice.

8. Thereafter the matter was considered by the Apex Court in *Divyash Pandit Vs. Management, NCCBM* [(2007) 15 SCC 787] in which the Apex Court held thus :-

8. The appellant has challenged this decision of the High Court before us. We are of the view that the order of the High Court dated 2-12-2002 as clarified on 3-3-2003 does not need any interference, It is true no doubt that the respondent may not have made any prayer for (sic submitting) additional evidence in its written statement but, as held by this Court in *Karnataka SRTC v. Lakshmiddevamma* this did not place a fetter on the powers of the Court/Tribunal to require or permit parties to lead additional evidence including production of document at any stage of proceedings before they are concluded. Once the Labour Court came to the finding that the enquiry was nonest, the facts of the case warranted that the Labour Court should have given one opportunity to the respondent to establish the charges before passing an award in favour of the workman.

9. In view of the aforesaid settled position, there is no doubt that the Labour Court was having power to permit the parties to lead evidence/ additional evidence including production of documents at any stage of proceedings before they are concluded. Once the Labour Court came to the finding that the enquiry was non est, the facts of the case warranted that the Labour Court should have given one opportunity to the respondents to establish the charges before passing an award in favour of the workman. In view of the settled law by the Apex Court, if the Labour Court vide order dated 23.8.2011 permitted the respondents to lead evidence in respect of the misconduct on the part of the petitioner, no fault is found.

10. Now the question remains whether such amendment could have been allowed by the Labour Court or not. From the perusal of the amendment application, it is apparent that by the aforesaid application, the respondents made a prayer before the Labour Court that in the case of departmental enquiry has been found to be illegal then respondents be allowed an opportunity to lead evidence in respect of misconduct on the part of the petitioner and to produce evidence before the Labour Court. Such amendment was allowed by the Labour Court. Once the Labour Court had allowed opportunity to the respondents to lead evidence by order dated 23.8.2011 then merely there was no such pleadings in the written statement, would not affect the case of the respondents. In these circumstances the amendment application remains formal in nature and if the Labour Court had allowed such an amendment, no fault is found. For the complete adjudication of the dispute, if the Labour Court has permitted the respondents to lead evidence in respect of misconduct, no error of jurisdiction has been committed by the Labour Court. Apart from this it was a case of temporary embezzlement of money on the part of the petitioner, in which a departmental enquiry was conducted which was held to be illegal by the Labour Court vide order dated 23.8.2011 and if the Labour Court has permitted the petitioner to lead evidence, then by allowing the amendment, such prayer has been permitted to be inserted in the reply, no error of jurisdiction is found. For doing complete justification in the matter if the Labour Court permitted the respondents to lead evidence, the Labour Court has done justice in the matter in which no interference is required. This petition is found without merit and is dismissed with no order as to costs.

Petition dismissed

I.L.R. [2012] M.P., 716

WRIT PETITION*Before Mr. Justice Ajit Singh & Mr. Justice Sanjay Yadav*

W.P. No. 6184/2011 (Jabalpur) decided on 19 January, 2012

MAKHANLAL CHATURVEDI VISHWAVIDYALAYA

ADHYAYAN KENDRA SANGH

...Petitioner

Vs.

STATE OF M.P. & ors.

...Respondents

Makhanlal Chaturvedi Rashtiya Patrakarita Avam Sanchar Vihwavidyalaya Adhiniyam, M.P. (15 of 1990), Sections 5(xxxi) & 51 - Association of Study Institute Regulation, 2008, Clause 11.1 - Power of University to make regulations under Section 5(xxxi) are unlimited whereas General Council can make regulations only in respect of a matter for which provision is required to be made under the Act by Regulation - Amendment of Clause 11.1 for association on the basis of inspection by the inspection team is within jurisdiction of Director of University - Petition dismissed. (Para 10)

माखनलाल चतुर्वेदी राष्ट्रीय पत्रकारिता एवं संचार विश्वविद्यालय अधिनियम, म.प्र. (1990 का 15), धाराएँ 5 (xxxi) व 51 - एशोसियेशन ऑफ स्टडी इंस्टीट्यूट विनियमन 2008, खंड 11.1 - धारा 5 (xxxi) के अंतर्गत विनियमन बनाने की विश्वविद्यालय की शक्ति असीमित है जबकि सामान्य परिषद केवल उस मामले के संबंध में विनियमन बना सकती है जिसके लिये अधिनियम के अंतर्गत विनियमन द्वारा उपबंध बनाया जाना अपेक्षित है - निरीक्षण टीम द्वारा निरीक्षण के आधार पर एशोसियेशन के लिये खंड 11.1 का संशोधन विश्वविद्यालय के निदेशक के अधिकार क्षेत्र में है - याचिका खारिज।

V.S. Shrotri with Praveen Chaturvedi & Vikram Johri, for the petitioner.

Naman Nagrath, Addl. A.G. with Swapnil Sohgaure for the respondents.

Nitin Shukla, for the Intervenor.

ORDER

The order of the court was delivered by :
AJIT SINGH, J.:- The petitioner is an Association of the Institutes which are associated with respondent no.2 **Makhanlal Chaturvedi National University of Journalism and Communication** (in short, "the University"):

Respondent no.3 is Director of the University.

2. The University, has been established under section 3 of the **Madhya Pradesh Makhn Lal Chaturvedi Rashtriya Patrakarita Avam Sanchar Vishwavidyalaya Adhiniyam, 1990** (in short, "**the Act**") with a view to impart training, teaching and research in Hindi journalism. Under the Act, the University has framed **Association of Study Institute Regulation 2008** (in short, "**the Regulation 2008**"). Here, the word "Association" is understood to convey the meaning of "Affiliation". The Regulation 2008 came into force with effect from 1.1.2008.

3. Clause 11.1 of the Regulation 2008 provides for maximum number of institutes to be associated at a place. Prior to 21.5.2010, it was as under:

"11.1 Maximum number of institutes at a place

The University shall permit association to the Institute situated at not less than a Town/City having population of 25000 or more.

The University shall permit two institutes upto the population of 1 lakh. For subsequent 40000 population one additional institute shall be permitted thereafter. The basis of population shall be the latest census figures."

4. The above quoted clause was amended vide notification dated 29.5.2010, Annexure P5. After amendment, it now reads as under:

"11.1 Maximum number of institutes at a place

The inspection team will decide upon the feasibility of running Computer Courses at a particular place and the maximum number of Computer Institutes at that particular place. (The rule of minimum 25000 population for grant of association for Computer Courses and the basis of population as well as the formula for calculation of maximum number of institutes at a place, is quashed.)"

5. By the amendment the criteria for association on the basis of population has been given a go-bye and in its place the criteria of inspection by the inspection team has been substituted.

6. The petitioner aggrieved with the aforesaid amendment of Clause 11.1

of the Regulation 2008, has challenged the validity of the same on the ground that it has been made by the Director, respondent no.3, without any competence and authority. According to the petitioner, only the General Council of the University, which is empowered to make regulation under section 51 of the Act, can make such amendment and since the impugned amendment has been made by respondent no.3, it is without any competence. Respondent nos.2 and 3 in their return have defended the validity of the amendment under challenge. According to them, the Regulation 2008 has been made by the University under section 5 of the Act.

7. The question, therefore, which calls for our consideration is whether the amendment of Clause 11.1 of the Regulation 2008 by notification dated 29.5.2010 not having been made by the General Council of the University is invalid due to lack of competence.

8. Powers and functions of University have been enumerated in section 5 of the Act. Its relevant extract reads as under:

"5. Powers and functions of University.- The powers and functions of the University shall be -

xxxx

xxxx

xxxx

(xxxi) to make such regulations as may, from time to time, be considered necessary for regulating the affairs and the management of the University and to alter, modify and to rescind them;

9. Section 51 of the Act deals with the power of General Council to make regulation. It reads as under:

"51. Power of General Council to make regulation.- The General Council may make regulations, not inconsistent with this Act to provide for all the matters for which provision is required to be made under this Act by regulations :

Provided that the General Council shall not make any regulation affecting the status, powers or constitution of any authority of the University until such authority has been given an opportunity of expression of an opinion in writing on the proposed changes, and any opinion so expressed shall be considered by the General Council." (emphasis supplied)

10. By reading the above quoted provisions we find that the power of University to make regulations under section 5(xxxi) of the Act is unrestricted whereas the power of General Council to make regulation under section 51 is restricted in that the General Council can make regulations only in respect of a matter "for which provision is required to be made under this Act by regulations". There is no unrestricted power of the General Council to make regulations. The General Council can make regulation in a matter required to be made by regulations under the Act. Thus, the General Council cannot make regulation on a matter which is not required to be made by regulations under the Act. In other words, there has first to be a provision in the Act that it will be a matter on which the General Council will make regulations. In the present petition, the petitioner has failed to show that the impugned amendment made under Clause 11.1 is a matter on which the Act provides that it can be made by regulations. This being the situation, we are unable to agree with the petitioner and answer the question in negative.

11. The petition, therefore, fails and is dismissed with Rs.1,000/- as costs which shall be payable to respondent no.2.

Petition dismissed

I.L.R. [2012] M.P., 719

WRIT PETITION

Before Mr. Justice Ajit Singh & Mr. Justice Sanjay Yadav

W.P. No. 7494/2010 (Jabalpur) decided on 19 January, 2012

NEETU BAI (SMT.)

...Petitioner

Vs.

STATE OF M.P. & ors.

...Respondents

Constitution, Article 226 - Habeas Corpus - Illegal detention of petitioner's husband - In the Inquiry report by State Government there is specific finding about her husband been kept forcibly under illegal detention - Held - More than 1 ½ year has elapsed no report has been submitted - Slow pace of investigation by the Special Task Force has started creating doubt on its credibility - Complete investigation fairly and submit report as early as possible but not later than three months from today - Petition allowed with costs of Rs.1,000/- payable to petitioner by the State Government.

(Paras 8 & 13)

संविधान, अनुच्छेद 226 – बंदी प्रत्यक्षीकरण – याची के पति का अविधिपूर्ण निरोध – राज्य सरकार की जांच रिपोर्ट में उसके पति को बलपूर्वक अवैध निरोध में रखने का विनिर्दिष्ट निष्कर्ष – अभिनिर्धारित – 1½ वर्ष से अधिक बीत गया है; कोई रिपोर्ट प्रस्तुत नहीं की गई – स्पेशल टॉस्क फोर्स द्वारा अन्वेषण की धीमी गति उसकी विश्वसनीयता पर संदेह उत्पन्न करती है – समुचित रूप से जांच पूर्ण करें और आज से तीन माह के भीतर यथाशीघ्र रिपोर्ट प्रस्तुत करें – राज्य सरकार द्वारा याची को दिये खर्च रु. 1000/- के साथ याचिका मंजूर।

Cases referred :

(1978) 2 ALL ER 670, AIR 1993 SC 1960, AIR 1997 SC 610,
(2004) 6 SCC 213, AIR 1986 SC 494, AIR 2009 M.P. 153.

Ankit Agrawal, for the petitioner.

Rahul Jain, Dy. A.G. for the respondents No. 1 to 3.

Manish Datt, for the respondents No. 4 to 8.

ORDER

The order of the court was delivered by :
AJIT SINGH, J.:- In the present habeas corpus petition the petitioner, alleging illegal detention of her husband by respondent no.4 C. K. Patil Field Director Bandhavgarh Tiger Reserve and respondent no.6 Rajesh Tripathi Forest Ranger, has prayed for payment of compensation. Although prayer for some other reliefs have also been made in the petition, the learned counsel for petitioner during the course of arguments did not press for them.

2. The petitioner belongs to Scheduled Tribe and her husband Mansingh was a driver on muster-roll since 1997 in the Forest Department of the State Government. Mansingh had been posted in District Umaria and for the last one year he was driving the jeep of Forest Range Officer Lalit Pandey.

3. Bandhavgarh Tiger Reserve is situated in a place called Tala which falls in District Umaria. On 18.5.2010 Mansingh was required to drive his jeep inside the Tiger Reserve along with the Range Officer Lalit Pandey to inspect the construction work of pond. This work was being carried out in the Tiger Reserve under the National Rural Employment Guarantee Act. At that time A. K. Singh, Chief Executive Officer, District Panchayat, Umaria, also entered the Tiger Reserve but in a separate jeep. He too did so to inspect the same construction work. According to the petitioner, after inspection, Mansingh

returned in his jeep from the Tiger Reserve on the evening of 18.5.2010 itself.

4. Sometime between 18/19.5.2010 a tigress died in the Tiger Reserve allegedly due to dashing of jeep against it. This incident was highlighted by the media at national level and fingers were pointed against rich and powerful people for deliberately killing the tigress. Respondent no.3 Collector, Umariya, took the incident seriously and constituted a committee of two senior responsible officers for holding an inquiry and submitting a report. Karan Singh Karma, Sub-Divisional Officer (Police) and Shivpal Singh, Additional Collector, Umariya, were the members of this committee. They, after holding an inquiry, submitted a detailed report dated 3.6.2010, Annexure R4, to the Collector with their findings enumerated therein.

5. According to the petitioner, Mansingh was called on 19.5.2010 by Forest Ranger Rajesh Tripathi and Field Director C. K. Patil of the Tiger Reserve and they pressurized him to state that the tigress was hit by the jeep of A. K. Singh, Chief Executive Officer, but he declined to do so. The petitioner has also alleged that Mansingh was thereafter illegally detained from 24.5.2010 by the Field Director C. K. Patil and his men for ulterior motives. It is in this background the petitioner filed the present petition on 9.6.2010 for the release of Mansingh and payment of compensation.

6. On 10.6.2010 the petition came up for hearing on which date the Deputy Advocate General was directed to seek instructions within two days. On 14.6.2010 the Government Advocate was directed to produce the corpus of Mansingh before the court and the matter was fixed for hearing on 17.6.2010. On 17.6.2010 Mansingh was produced before the court. On that date Mansingh filed an affidavit along with I.A. No.6779/2010 stating therein as to how he was kept under illegal detention from 24.5.2010 up to 14.6.2010 by Field Director C. K. Patil who released him because of the habeas corpus petition.

7. The State Government in its return has stated that since Mansingh has been released, the petition has become infructuous. The State Government, however, has filed the aforesaid inquiry report dated 3.6.2010, Annexure R4, of the Sub-Divisional Officer (Police) and Additional Collector along with the return. The State Government has also mentioned in the return that the Special Task Force has been constituted by the Criminal Investigation Department to investigate the incident of killing of tigress in the Tiger Reserve.

Respondent no.4 Field Director C. K. Patil in his separate return has denied the allegation of detention of Mansingh by him.

8. On examining the inquiry report dated 3.6.2010 Annexure R4 filed by the State Government, we find that there is a specific finding about Mansingh having been kept forcibly under illegal detention since 24.5.2010 in a room at Tala by Field Director C. K. Patil for pressurizing him to state that the tigress was hit by the jeep of A. K. Singh, Chief Executive Officer, District Panchayat, Umaria, and his detention was violative of his human rights. The Deputy Advocate General could not deny the correctness of this finding in the inquiry report. Even the counsel appearing for respondent no.4 Field Director C. K. Patil could not show us any good ground to disbelieve the finding of the inquiry report regarding the illegal detention of Mansingh in a room at Tala. This being the situation, we have no hesitation in holding that Mansingh was under illegal detention from 24.5.2010 upto 14.6.2010 for no fault of his by the State Government or its officers while acting in the course of employment.

9. The liability of the State to pay compensation for deprivation of the fundamental right of life and personal liberty is a new liability in public law created by the Constitution and not vicarious liability or a liability in tort. For this reason, this new liability is not hedged in by the limitations, including the doctrine of sovereign immunity, which ordinarily apply to State's liability in tort. This view is strongly supported by the decision of the Privy Council in *Maharaj v. Attorney-General of Trinidad and Tobago* (1978) 2 All ER 670. Section 1 of the Constitution of Trinidad and Tobago recognizes amongst other "the right of the individual of life, liberty, security of person and the right not to be deprived thereof except by due process of law". Any person alleging contravention of this right and other human rights and freedoms recognized under sections 1 and 2 can apply under section 6 for redress to the High Court which is empowered to issue appropriate orders, writs and directions for enforcement or securing the protection of provisions of the aforesaid sections. The appellant in the case was a barrister and was committed to seven days imprisonment by a judge of the High Court which committal was set aside by the Privy Council in appeal on the ground that particulars of the specific nature of the contempt were not told to the appellant and the judge had thereby failed to observe a fundamental rule of natural justice. The appellant had in the meantime applied for redress under section 6 on the ground that he was deprived of his liberty without due process of law. This application was

dismissed by the High Court, but appellant again came up in appeal, to the Privy Council. The Privy Council held that section 6 of the Constitution impliedly allowed the High Court to award compensation as that may be the only practicable form of redress in some cases. The Privy Council also held that as the appellant's committal was in violation of the rules of natural justice, he was deprived of his liberty without due process of law in contravention of section 1 of the Constitution and was entitled to claim compensation from the State under section 6 thereof. In meeting the argument that a judge cannot be made personally liable for anything done or purporting to be done in the exercise or purported exercise of his judicial functions, LORD DIPLOCK speaking for the majority observed: "The claim for redress under section 6(1) for what has been done by a judge is a claim against the State for what has been done in the exercise of judicial power of the State. This is not vicarious liability : it is liability of the State itself. It is not a liability in tort at all : it is a liability in public law of the State, not of the judge, which has been created by sections 6(1) and (2) of the Constitution." As to the measure of compensation LORD DIPLOCK said : "The claim is not a claim in private law for damages for the tort of false imprisonment under which the damages recoverable are at large and would include damages for loss of reputation. It is a claim in public law for compensation for deprivation of liberty alone. Such compensation would include any loss of earnings consequent on the imprisonment and recompense for the inconvenience and distress suffered by the appellant during his incarceration."

10. The above view was accepted by the Supreme Court in *Nilabati Behra v. State of Orissa* AIR 1993 SC 1960 and thereafter in *D. K. Basu v. State of West Bengal* AIR 1997 SC 610. In both these cases although the basis for the concept of public law wrong, related to violation of Article 21, the observations in them are general that violation of fundamental rights will be public law wrong redressable under Articles 226 and 32. A three Judge bench of the Supreme Court, however, in *Hindustan Papers Corporation v. Ananta Bhattarcharjee* (2004) 6 SCC 213 has held that "the public law remedy for the purpose of grant of compensation can be resorted to only when the fundamental right of a citizen under Article 21 is violated and not otherwise". The court further said that "it is not every violation of the provisions of the constitution or a statute which would enable the court to direct grant of compensation." Earlier also in *Bhim Singh v. State of J & K* AIR 1986 SC 494 the Supreme Court in a case under Article 32 of the Constitution directed

the State of Jammu and Kashmir to pay Rs.50,000/- as compensation to the petitioner who was an M.L.A. and was illegally arrested and detained to prevent him from attending the assembly session.

11. A Division Bench of this High Court comprising of A. K. Patnaik, C. J. and myself in *Pooran Singh v. State of Madhya Pradesh* AIR 2009 Madhya Pradesh 153 after referring the above cases has held that it is now well settled that the defence of sovereign immunity is not available when the State or its officers, acting in the course of employment, infringe a person's fundamental right of life and personal liberty as guaranteed by Article 21 of the Constitution and the State can be directed in a writ jurisdiction under Articles 32 and 226 to repair the damage done to the victim by paying appropriate compensation.

12. We have already held that Mansingh was kept under illegal detention from 24.5.2010 upto 14.6.2010 in a room at Tala. We are also informed at the Bar that from the date of the death of tigress, no work has been taken from Mansingh by the Forest Department as a result of which he has become unemployed. Having regard to these facts, we direct the State Government to pay him compensation of Rs.1,00,000/- within two months from today. We have awarded this amount as compensation feeling that the amount is just and proper. While doing so, as held by the Supreme Court in the case of *D. K. Basu* (Supra), we have not taken into account the punitive element as the objective is to apply balm to the wounds of petitioner and not to punish the transgressor.

13. Before parting, we wish to mention that surprisingly the incident of killing of the tigress is still under investigation by the Special Task Force of the Criminal Investigation Department. The Special Task Force has been constituted to unravel the mystery of killing of the tigress truthfully. But sadly although more than 1 1/2 year has elapsed, no report has been submitted. This slow pace of investigation by the Special Task Force has started creating doubt on its credibility. We, therefore, recommend the Special Task Force to complete the investigation fairly and submit its report as early as possible but not later than three months from today.

14. In the result, the petition is allowed with costs of Rs.1,000/- payable to the petitioner by the State Government.

Petition allowed

I.L.R. [2012] M.P., 725

WRIT PETITION

Before Mr. Justice Ajit Singh & Mr. Justice Sanjay Yadav

W.P. No.11503/2011 (Jabalpur) decided on 27 January, 2012

CATHOLIC BISHOP'S COUNCIL

Petitioner

Vs.

STATE OF M.P. & ors.

Respondents

Constitution, Article 28(1) - Religious Instruction - Geeta Sar - Religious instruction has a restricted meaning and conveys that teachings of customs, ways of worship, practice and rituals can not be allowed in educational institutions - Gita is a book on Indian Philosophy and not a book on Indian Religion - Petition dismissed. (Para 4)

संविधान, अनुच्छेद 28(1) - धार्मिक अनुदेश - गीता सार - धार्मिक अनुदेश का एक सीमित अर्थ है और प्रतिपादित करता है कि रीति रिवाजों, पूजा की विधि, आचरण और कर्मकाण्ड की शिक्षा शैक्षणिक संस्थानों में पढ़ाने की मंजूरी नहीं दी जा सकती - गीता भारतीय दर्शन पर एक किताब है और न कि भारतीय धर्म की किताब है - याचिका खारिज।

Case referred :

AIR 2002 SC 3176.

Rajesh Chand, for the petitioner.*Prashant Singh*, Addl. A.G. for the State.**ORDER**

The order of the court was delivered by
AJIT SINGH, J :- Heard on admission.

The petitioner, who is a Public Relation Officer and Spokesperson of Catholic Bishop's Council Madhya Pradesh, has filed the present public interest litigation essentially against the decision of the State Government directing all the Government schools to include the book *Gita Sar "Essence of Bhagwat Gita"* from coming academic session on the ground that it is violative of Article 28(1) of the Constitution of India. The petitioner has also prayed that instead of one religious book, the respondents be directed to teach summary of all religions in schools.

2. It is to be noted that but for the newspaper clippings, the petitioner

has not filed any order of the State Government directing to include the book Gita Sar "Essence of Bhagwat Gita" in all the Government schools from coming academic session. It is also to be noted that by order dated 29.7.2011 the counsel for petitioner was granted two months time to first read Gita before arguing this public interest litigation so that he may clearly understand whether Gita is a philosophy of life or is associated with any religion. The learned counsel for petitioner fairly stated that although he has read Gita, he could not fully understand it.

3. In *Aruna Roy v. Union of India* AIR 2002 SC 3176 the Supreme Court has held that expression "religious instruction" used in Article 28(1) has a restricted meaning and conveys that teachings of customs, ways of worship, practices and rituals cannot be allowed in educational institutions wholly maintained out of State funds.

4. On reading of Clause (1) of Article 28 we find that it does not ban moral instruction, disassociated from any denominational doctrines, which is an essential part of training in citizenship, maintenance of law and order in the State, and growth of social cohesion. Gita is essentially a book on Indian Philosophy and not a book on Indian Religion.

5. For these reasons, we find the petition wholly misconceived and dismiss it summarily.

Petition dismissed

I.L.R. [2012] M.P., 726

WRIT PETITION

Before Mr. Justice Alok Aradhe

W.P. No. 14816/2011 (Jabalpur) decided on 30 January, 2012

BHAGWATI PRASAD

...Petitioner

Vs.

SMT. MATHURA DEVI

...Respondent

Stamp Act (2 of 1899), Sections 33 & 35 - Impounding of insufficiently stamped instrument - When an insufficiently stamped instrument is tendered in the Court, the Court is duty bound to impound the same - Court has the power to admit the document in question on payment of duty with which the instrument is chargeable or amount required to make up the deficiency together with penalty - When the

instrument is impounded but has not been admitted in evidence, on payment of penalty and duty, the Court has to send the document to the Collector and the Collector is required to deal with the document in the manner prescribed under Section 40. (Paras 8 to 11)

स्टाम्प अधिनियम (1899 का 2), धाराएँ 33 व 35 - अपर्याप्त रुप से स्टाम्पित लिखत को परिबद्ध किया जाना - जब अपर्याप्त रुप से स्टाम्पित लिखत न्यायालय में पेश किया जाता है, न्यायालय कर्तव्य द्वारा आबद्ध है कि उसे परिबद्ध करे - न्यायालय को लिखत पर देय शुल्क या कमी को पूरा करने के लिये आवश्यक रकम शास्ति के साथ भुगतान किये जाने पर प्रश्नगत दस्तावेज को स्वीकार करने की शक्ति है - जब लिखत परिबद्ध किया गया है किन्तु उसे साक्ष्य में स्वीकार नहीं किया गया है, शास्ति और शुल्क का भुगतान किये जाने पर, न्यायालय को दस्तावेज कलेक्टर के पास भेजना चाहिये और कलेक्टर को चाहिये कि धारा 40 के अंतर्गत विहित पद्धति से दस्तावेज का निराकरण करे।

Cases referred :

(2002) 10 SCC 427, AIR 1970 MP 79.

R.P. Agrawal with Anuj Agrawal, for the petitioner.

R.K. Verma, for the respondent.

ORDER

ALOK ARADHE, J :- With the consent of parties, the matter is heard finally.

2. In this writ petition under Article 227 of the Constitution of India the petitioners have challenged the validity of the order dated 08.8.2011 passed by the trial Court. In order to appreciate the petitioners' challenge to the impugned order, few facts need mention which are state infra.

3. The respondents-plaintiffs filed the suit for specific performance of the contract on the basis of an agreement dated 25.7.2006. Under the agreement, out of total consideration of Rs.11,01,000/-, sum of Rs.6,01,000/- was paid to the defendants by way of cheques. The plaintiff submitted his examination-in-chief under Order 18 Rule 4 of the Code of Civil Procedure. On behalf of the defendants another agreement dated 05.8.2006 was produced in which the amount of sale consideration was mentioned as Rs.25 lacs and an amount of Rs.6,01,000/- was paid under the agreement to the defendants and the amount of Rs.18,99,000/- was shown payable to the defendants. An objection was raised by the counsel for the plaintiffs with

regard to the admissibility of the aforesaid agreement dated 05.8.2006 on the ground that the same was insufficiently stamped in view of the amendment made in the Indian Stamp Act, 1899 (for short the 'Act') as applicable to the State of Madhya Pradesh which came into force on 13.8.2002.

4. The trial Court thereupon directed the petitioners that in case they want to tender the aforesaid agreement in evidence, they will have to pay a sum of Rs.24,950/- by way of duty and a sum of Rs.2.5 lacs by way of penalty. Accordingly, the petitioners were granted time to deposit the amount of duty and penalty, in case they wanted to exhibit the document.

5. Learned senior counsel for the petitioners has assailed the aforesaid order passed by the trial Court on the ground that the trial Court ought to have impounded the document in question and should have sent the same to Collector of Stamps for determination of the stamp duty and penalty. It is further submitted that the Collector of Stamps is the only authority to determine the amount of duty and penalty as per his discretion. Learned senior counsel in support of his submission has placed reliance on the decision of the Supreme Court in *Petiti Subba Rao vs. Anumala S.Narendra*, (2002) 10 SCC 427.

6. On the other hand, learned counsel for the respondents submitted that the order passed by the trial Court is perfectly just and legal. It is further submitted that only when the petitioners inform the trial Court that they are not willing to pay the amount of duty and penalty then the Court is required to adopt the procedure under section 38(2) of the Act.

7. I have considered the submissions made on both sides. Section 33 of the Act provides that when an insufficient stamped document is filed in the Court, the Court is duty bound to impound the same. Section 35 of the Act provides that no instrument chargeable with duty shall be admitted in evidence for any purpose unless such instrument is duly stamped. Clause (a) of the proviso to Section 35 provides that such an instrument shall be admitted in evidence on payment of the duty with which the same is chargeable, or, in the case of an instrument insufficiently stamped, of the amount required to make up such duty, together with a penalty of five rupees, or when ten times the amount of the property duty or deficient portion thereof exceeds five rupees, of a sum equal to ten times such duty or portion. Section 38 prescribes the procedure after impounding a document. Section 38(1) provides that when the person impounding an instrument under Section 33 has by law or consent of parties authority to receive evidence and admit such instrument in evidence

upon payment of a penalty as provided by Section 35, or of duty as provided by Section 37, he shall send to the Collector an authenticated copy of such instrument, together with a certificate in writing, stating the amount of duty and penalty levied in respect thereof, and shall send such amount to the Collector, or to such person as he may appoint in this behalf. Sub-section (2) of Section 38 provides that in every other case, the person so impounding an instrument shall send it in original to the Collector. Section 40 of the Act deals with power of the Collector to stamp the instrument which have been impounded. Section 40(1)(b) provides that if the Collector is of the opinion that instrument is chargeable with duty and is not duly stamped, he shall required the payment of the property duty or the amount required to make up the same, together with a penalty of five rupees; or, if he thinks fit, an amount not exceeding ten times the amount of the proper duty or of the deficient portion thereof, whether such amount exceeds or falls short of five rupees.

8. Thus, the scheme of the Act is abundantly clear. Where the instrument is chargeable to duty is tendered in the Court, the Court is duty bound to impound the same, if it is of the opinion that the document is not duly stamped. The Court under Section 35 of the Act has the power to admit the document in question on payment of duty with which the instrument is chargeable or amount required to make up such deficiency together with penalty, limits of which are prescribed in the section. There is no other course open to the Court, once it is found that instrument tendered in evidence is not duly stamped. However, if the instrument has been impounded under section 33 of the Act, but has not been admitted in evidence, on payment of penalty and duty the Court has to send the document to the Collector under section 38(2) of the Act and the Collector is required to deal with the document in the manner prescribed under section 40 of the Act.

9. The Full Bench of this Court in *Nathuram Arjun vs. Siyasharan Hairprasad*, AIR 1970 MP 79 has held that the instrument can be send to the Collector under section 38(2) of the Act only when it is impounded under section 33 of the Act, but has not been admitted in evidence on payment of penalty and or duty with the aid of section 35 of the Act.

10. The Supreme Court in *Petiti Subbā Rao* (supra) has held that where the party fails to pay the penalty suggested by the Court the document impounded has to been sent to the Collector for the purpose of taking further steps in respect of document as provided in section 40 of the Act.

11. In the backdrop of aforesaid legal position if the impugned order is seen, the document is yet to be tendered in evidence. If the petitioners tender the document in evidence, the trial Court shall deal with the document in the light of the aforesaid well settled legal position and in view of the law laid down by Supreme Court in *Petiti Subba Rao's* case as well as by the Full Bench of this Court in *Nathruam Arjun's* case.

12. With the aforesaid direction, the writ petition is disposed of.

Petition disposed of

I.L.R. [2012] M.P., 730

WRIT PETITION

Before Mr. Justice Alok Aradhe

W.P. No. 14278/2010 (Jabalpur) decided on 2 February, 2012

RAJNI TIWARI (SMT.)

...Petitioner

Vs.

SMT. BHAGYAWATI BAI

...Respondent

Evidence Act (1 of 1872), Section 120, Powers of Attorney Act (7 of 1882), Section 1A, Civil Procedure Code (5 of 1908), Order 3 Rule 1 - Competent Witness - Husband is a competent witness for the wife - He can also be permitted to exhibit the documents and there is no need to execute the power of attorney - Husband of the Petitioner permitted to depose and exhibit the documents which have been produced by them.
(Paras 7 & 8)

साक्ष्य अधिनियम (1872 का 1), धारा 120, मुख्त्यारनामा अधिनियम (1882 का 7), धारा 1ए, सिविल प्रक्रिया संहिता (1908 का 5), आदेश 3 नियम 1 - सक्षम साक्षी - पत्नी के लिए पति सक्षम साक्षी है - उसे दस्तावेजों को प्रदर्शित करने की अनुमति दी जा सकती है और मुख्त्यारनामा निष्पादित करने की कोई आवश्यकता नहीं - याची के पति को उनके द्वारा प्रस्तुत किये गये दस्तावेजों को प्रदर्शित करने की तथा कथन करने की अनुमति दी गई।

A.K. Jain, for the petitioner.

None for the respondent.

ORDER

ALOK ARADHE, J;- In this petition under Article 227 of the Constitution of India the petitioner has challenged the validity of the order dated 26.8.2010 passed by the trial Court by which the trial Court has held that the husband of

the petitioner though is competent witness under Section 120 of the Indian Evidence Act, yet he cannot be permitted to exhibit and prove the document filed by the wife.

2. The facts, leading to filing of the writ petition, briefly stated, are that the petitioner has filed a suit seeking the relief of permanent injunction. The petitioner filed certain documents in support of her claim before the trial Court. The respondent defendant filed the written statement and contested the claim of the petitioner. The petitioner filed the examination-in-chief of her husband in the form of affidavit. When the husband of the petitioner was being cross-examined he wanted to exhibit certain documents. Thereupon, the counsel for respondent raised an objection that the petitioner cannot exhibit or prove the document. The trial Court in view of the objection of the respondent held that though the husband of the petitioner is competent witness under Section 120 of the Indian Evidence Act, 1872 yet he has not appeared before Court as attorney of the plaintiff and, therefore, he cannot be permitted to exhibit the document.

3. Learned counsel for the appellant submitted that there is no provision of law which debars a competent witness to exhibit a document or to prove the document. Learned counsel for the petitioner has drawn attention of this Court to Section 1A of the Powers of Attorney Act, 1882 and submitted that power of attorney includes any instruments empowering a specified person to act for and in the name of the person executing it. Therefore the power of attorney is not required to prove any document. It is also submitted that under Order 3 Rule 1 of the Code of Civil Procedure an appearance, application or act in or to any court, required or authorised by law to be made or done by a party in such court, may except where otherwise expressly provided by any law be made or done by the party in person or by his recognised agent, or by a pleader appearing, applying or acting as the case may be on his behalf.

4. I have considered the submissions made by learned counsel for the petitioner. Section 120 of the Indian Evidence Act reads as under:

"120. Parties to civil suit, and their wives or husbands. Husband or wife of person under criminal trial. - In all civil proceedings the parties to the suit, and the husband or wife or any party to the suit, shall be competent witnesses. In criminal proceedings against any person, the husband or wife

or such person respectively, shall be a competent witness."

5. Thus from perusal of Section 120 of the Indian Evidence Act, 1872, it is apparent that in all civil proceedings, the parties to the suit and the husband or wife of any party to the suit, shall be competent witnesses. Section 1A of the Powers of Attorney Act, 1882 which defines the expression 'power of attorney' reads as under:

"1A. Definition. - In this Act, "Power-of-Attorney" includes any instruments empowering a specified person to act for and in the name of the person executing it."

6. Thus from perusal of Section 1A of the Powers of Attorney Act, 1882 it is apparent that power of attorney is required to act for and in the name of the person executing it. Similarly Order 3 Rule 1 of the Code of Civil Procedure reads as under:

"Order III Recognised Agents and Pleaders

Rule 1. Appearance, etc., may be in person, by recognised agent or by pleader. - Any appearance, application or act in or to any court, required or authorized by law to be made or done by a party in such Court, may, except where otherwise expressly provided by any law for the time being in force, be made or done by the party in person, or by his recognised agent, or by a pleader appearing, applying or acting, as the case may be, on his behalf:

Provided that any such appearance shall, if the Court so directs, be made by the party in person."

7. Thus, if all the provisions referred to above are read conjointly, it is apparent that there is no prohibition in law to the effect that a competent witness cannot be permitted to exhibit the document. Under Section 120 of the Indian Evidence Act, 1872 the husband of a party to the suit is competent witness therefore he is entitled to depose about the facts about which either he or his wife has the knowledge. The husband of the petitioner being the competent witness for the wife can also be permitted to exhibit the document and there is no need to execute the power of attorney. However, the question of proof of a document is altogether different from the question of exhibiting a document.

8. For the aforementioned reasons, the order dated 26.8.2010 in paragraph 10 of the deposition sheet is hereby quashed. The husband of the petitioner shall be permitted to depose and to exhibit the documents which have been produced by him.

Accordingly, the writ petition is disposed of.

C.C. as per rules.

Petition disposed of

I.L.R. [2012] M.P., 733

WRIT PETITION

***Before Mr. Sushil Harkauli, Acting Chief Justice & Mr. Justice
Tarun Kumar Kaushal***

W.P. No. 1486/2009 (Jabalpur) decided on 2 February, 2012

POPULAR SALES (M/S)

...Petitioner,

Vs.

STATE OF M.P. & ors.

...Respondents

A. *Commercial Tax Act, M.P. 1994 (5 of 1995), Entry 41 of Part III of Schedule II - Toilet articles including medicinal preparation thereof - Borosoft natural and Borosoft Cream would be taxable under Entry 41.* (Para7)

क. वाणिज्यिक कर अधिनियम, म.प्र. 1994 (1995 का 5), अनुसूची II के भाग III की प्रविष्टि 41 - प्रसाधन वस्तुएं जिसमें औषधीय निर्मितियां समाविष्ट हैं - बोरोसॉफ्ट नेचुरल व बोरोसॉफ्ट क्रीम प्रविष्टि 41 के अंतर्गत कर योग्य हैं।

B. *Commercial Tax Act, M.P. 1994 (5 of 1995), Entry 11 of Part IV of Schedule II - Drugs and Medicines excluding those specified elsewhere - Dermicool Powder - Dermicool powder is described as prickly heat powder is commonly understood to be of used in treating prickly problem and not as an ordinary talcum powder - It must be held to be a medicine taxable under Entry 11 and not a medicinal preparation of a cosmetic.* (Para14,16)

ख. वाणिज्यिक कर अधिनियम, म.प्र. 1994 (1995 का 5), अनुसूची II के भाग IV की प्रविष्टि 11 - दवाएँ और औषधियाँ, अन्यत्र विनिर्दिष्ट को छोड़कर - डर्मीकूल पाउडर - डर्मीकूल पाउडर की घमौरियों के पाउडर के रूप में व्याख्या है जिसे सामान्य रूप से घमौरियों की समस्या के उपचार में उपयोग किया जाना समझा जाता है और न कि साधारण टाल्कम पाउडर के रूप में - इसे औषधि

माना जाना चाहिए जो प्रविष्टि 11 के अंतर्गत कर-योग्य है और न कि सौंदर्यवर्धक की औषधीय निर्मिति।

Case referred :

(2006) 145 STC 200, (2004) 167 ELT 374, (1999) 112 ELT 22 (Delhi).

Sumit Nema with Mukesh Agrawal for the petitioner.

Vivek Agrawal, G.A. for the respondent/State.

ORDER

The order of the court was delivered by :
SUSHIL HARKAULI, Actg.CJ :- We have heard learned counsel for the parties.

In the erstwhile M.P. Commercial Tax Act 1994 the duties payable on various categories of item are prescribed in Schedule II. The relevant entries in question are Entry 41 and 49 of Part-III of Schedule II, these attract Commercial Tax at the rate of 12%. The entries read as follows.

“41. Scents, perfumes, hair tonics, hair creams, hair oils, hair shampoo, depilatories, face creams, snows, lipsticks, rouge, nail polish and other cosmetics including medicinal preparation thereof.”

“49. Tooth paste, tooth powder, hair oils, face powder, talcum powder, toilet soap, washing soap] and other toilet articles including medicinal preparation thereof, combs, brushes, razors and razor blades.”

(Emphasis supplied)

2. There is yet another entry which is relevant and which attracts only 8% Commercial Tax or Sales Tax which is Entry no. 11 of Part-IV of Schedule II, which reads as follows:

“11. Drugs and medicines excluding those specified elsewhere in this Schedule.”

3. In this bunch of writ petitions, there are four items in issue which are manufactured by the petitioners namely (1) Boro Natural, (2) Borosoft Cream, (3) Borosoft Lotion, (4) Dermicool Powder, and (5) Itch Guard Cream.

4. According to the contention of Commercial Tax Department, all these items are taxable under Entry 41 or in the alternative Entry 49 of Part-III of

Schedule-II.

5. On the other hand, the manufacturer petitioner contends that these items are taxable under Entry 11 of Part-IV of the Schedule-II of M.P. Commercial Tax Act, 1994.
6. All these matters were heard together. During the course of arguments the claim of the petitioner regarding Borosoft Lotion was abandoned on the ground that manufacturing of this item has stopped.
7. The learned counsel for the petitioners has conceded that Borosoft Natural and Borosoft Cream are items which can be used to treat specific medical conditions and can also be used otherwise by persons who are not suffering from any such medical problems, for enhancement of beauty, and therefore these items would be taxable under Entry 41 of Part-III of Schedule-II.
8. The learned counsel for the State has conceded that the item Itch Guard Cream is used only for treatment of certain medical conditions and cannot be used otherwise merely for cosmetic purposes and therefore this item would fall within the Entry 11 of Part-IV of Schedule-II.
9. This leaves us with the item called *Dermicool Powder* which is basically a powder to be used in cases of prickly heat. It is not disputed that the powder is scented and therefore could possibly be used as a substitute for talcum powder.
10. We have given due thought to the matter. The words in which Entries 41 and 49 of Part-III of Schedule-II have been drafted leaves little doubt that the words "including medicinal preparation thereof" used along with the cosmetic items mentioned in the entries are intended to avoid evasion of tax by including some medical ingredients in cosmetic items in attempt to take them to Entry 11 of Part-IV which attracts mere 8% of tax. It is quite obvious that because of public sentiments, drugs and medicines have to carry a lower rate of tax as compared to cosmetics.
11. The words "*including medicinal preparation thereof*" in Entries 41 and 49 have therefore to be interpreted in that light and purpose.
12. In the above light, we are of the opinion that the test as to whether an item falls in Entry 41 or 49 or falls within the Entry 11 quoted above would be whether these items can be used as a cosmetic item for enhancement of the beauty of the body, irrespective of the specific medical problems which they

claim to relieve or cure. If the item can be used only for treating specific medical condition and not otherwise, it would not fall within the Entry 41 or 49. Further, if commonly the item is understood to be capable of use only to treat certain medical conditions and not otherwise, again it would not fall within the Entry 41 or 49. Prickly heat powders are normally used only for relieving prickly heat problem.

13. In fact in the case of *Puma Ayurvedic Harbal (P) Ltd. vs. Commissioner, Central Excise, Nagpur* reported in (2006) Vol.1 45 STC 200, the Supreme Court was examining the difference between cosmetic and medical preparation, although in the context of central excise. In that decision the Supreme Court has referred to the decision reported in (2004) 167 ELT 374 wherein *Johnson Prickly Heat Powder* was held to be medicinal because it was not ordinary talcum powder but was a powder to be used to treat the problem of prickly heat. The Supreme Court also cited the case reported in (1999) 112 ELT 22(Delhi) which was a case of *Nycil Prickly Heat Powder* which was also held not to be an ordinary powder but falling in the category of medicament.

14. We are also of the view that *dermicool* powder which is described as a prickly heat powder is also commonly understood to be of use in treating prickly problem and not as an ordinary talcum powder.

15. It is not the case of the State that the price of *dermicool* powder is substantially less than ordinary talcum powder, because of which common person may be tempted to use that scented powder as a substitute for ordinary talcum powder in place of ordinary talcum powder. If such stand had been taken then the manufacturer may have to show that the use of *dermicool* powder in conditions other than prickly heat could cause any medical problem.

16. Considering the all over facts and circumstances of the case, we are of the opinion that the item *dermicool* powder must be held to be a medicine taxable under Entry 11, and not a medicinal preparation of a cosmetic within the meaning of those words as used in Entry 41 or 49 quoted above.

17. Accordingly, all the impugned assessment orders will stand modified in respect of these 2 items namely (1) *Dermicool Powder*, and (2) *Itch Guard Cream*. The Assessing Officer will make consequential changes in the order.

18. All these petitions are disposed of with the aforesaid directions.

Petitions disposed of

I.L.R. [2012] M.P., 737

APPELLATE CIVIL

Before Mr. Justice A.K. Shrivastava

S.A. No. 15/1999 (Indore) decided on 22 November, 2011

AKBAR KHAN & ORS.

...Appellants

Vs.

FARIDABAI & ORS.

...Respondents

A. Muslim Law - Alienation of undivided property - There is no prohibition not to alienate any specific item of undivided share - Normally, any specific item should not be alienated as it may cause anomaly to the other co-owners - However, the alienation can not be said to be illegal or not recognized by law if a co-owner alienates any specific property without the consent of co-owners - However, the co-owners may sue for partial partition of the property so alienated.

(Para 16)

क. मुस्लिम विधि - अविभक्त सम्पत्ति का अन्य संक्रामण - अविभक्त हिस्से के किसी विनिर्दिष्ट भाग को अन्य संक्रामित नहीं किये जाने के लिये कोई प्रतिषेध नहीं - सामान्यतः किसी विनिर्दिष्ट भाग को अन्य संक्रामित नहीं करना चाहिए क्योंकि इससे अन्य सह स्वामियों को विषमता कारित हो सकती है - तथापि अन्य संक्रामण को अवैध या अविधिमान्य नहीं कहा जा सकता यदि सह स्वामी किसी विनिर्दिष्ट सम्पत्ति को सह स्वामियों की सहमति के बिना अन्य संक्रामित करता है - किन्तु सह स्वामी ऐसी अन्य संक्रामित सम्पत्ति के भागतः विभाजन के लिए मुकदमा कर सकते हैं।

B. Interpretation of Pleadings - Mufasil Pleadings - Parties are villagers - Suit was filed at Tahsil place - Some latitude should be given in case of mufasil pleadings and they should not be construed strictly.

(Para 18)

ख. अभिवचनों का निर्वचन - मुफसिल अभिवचन - पक्षकार ग्रामीण हैं - वाद तहसील में पेश किया गया - मुफसिल अभिवचनों के मामले में कुछ छूट देनी चाहिए और उनका यथार्थ रूप से अर्थ नहीं लगाना चाहिए।

C. Evidence Act (1 of 1872), Section 114 - Presumption - If a man refuses to answer a question which he is not compelled to answer by law, the answer, if given would be unfavorable to him. (Para 21)

ग. साक्ष्य अधिनियम (1872 का 1), धारा 114 - उपधारणा - यदि कोई व्यक्ति किसी प्रश्न का उत्तर देने से मना करता है जिसका उत्तर देने के लिये वह

विधि द्वारा बाध्य नहीं, यदि उत्तर दिया जाता है वह उसके पक्ष में नहीं माना जाएगा।

Cases referred :

AIR 1964 SC 538, AIR 1937 Nagpur 345.

Sunil Jain, for the appellants.

Vaibhav Jain, for the respondent No.1.

Ashish Vyas, for the respondents No. 2 to 4.

J U D G M E N T

A. K. SHRIVASTAVA, J.:- The judgment passed in this appeal shall also govern the disposal of connected S.A. No. 42/1999 (Yasin Khan Vs. Farida Bi & ors.) filed by fourth defendant Yasin Khan since both the appeals have arisen from a suit filed by the plaintiff/respondent No. 1.

2. Initially a suit for injunction was filed by the plaintiff on the basis of her ownership, however, according to her she was dispossessed from the suit property during the pendency of the suit in the Trial Court and eventually she amended her plaint and has also sought relief of possession.

3. The suit property is agricultural land, the description whereof has been mentioned in the plaint and which is the subject matter of the suit. According to plaintiff, she is the owner having possession of the suit property and is also cultivating the same. The land revenue is also being paid by her.

4. The defendants are not having any right in the suit property even then they are trying to take the possession illegally from her and with the said intention on 23.04.1987 they came and gave threat to dispossess the plaintiff, hence firstly she filed a suit for injunction and when later on she was dispossessed on 15.04.1989 she amended her plaint and pleaded this fact that she has been dispossessed and also amended the relief clause of her plaint by adding the relief of restoration of possession.

5. Defendants 1 to 3 filed a joint written-statement while defendants 4 to 6 filed a separate written-statement but in both the written statements all the defendants denied the plaint averments. In the written statement filed by defendants No.4 to 6 it is pleaded that the property in question is the part of ancestral land which was owned by defendants' and plaintiffs husband's father Nabi Noor Khan and after his death, plaintiffs husband and other three sons of Nabi Noor Khan became joint owner of the suit property and other land

left by said Nabi Noor Khan. Further they have pleaded that plaintiffs husband Shabir Khan was not having right to sell any specific share to plaintiff without partition and even if he has sold the undivided share to his wife (plaintiff) it will not jeopardize the right of defendants. The factum of possession of plaintiff on the suit property is also denied. The defendants prayed that suit be dismissed.

6. Learned Trial Court framed necessary issues and after recording the evidence of the parties, dismissed the suit and the dismissal was affirmed by learned First Appellate Court by the impugned judgment and decree.

7. In this manner, this second appeal has been filed by the defendants No.1 to 3, which was admitted by this Court on 08.12.1999 on the following substantial question of law:-

"Whether a co-owner of a joint property can convey valid title in specific parcel of land forming part of joint property without partition between the co-owners and without consent of all the co-owners?"

8. The other set of defendants 4 to 6 filed separate second appeal (S.A. No.42/1999) which was admitted on 29.01.1999 by this Court on the following substantial questions of law:-

1. Whether co-owner alone can sell the part of such commonly owned land when the shares of the co-owners are not specifically defined and exclusively owned and possessed?

2. Whether the 1st Appellate Court was within the jurisdiction in disturbing the findings recorded by the trial Court on the reasons given by it in its judgment?

3. Whether the judgment and decree passed by the 1st Appellate Court is illegal and perverse?

9. I have heard Shri Sunil Jain, learned counsel for appellants of this appeal and also Shri Ashish Vyas, learned counsel for appellants of connected second appeal (S.A. No.42/1999). Learned Counsel for appellants of both the appeals have submitted that admittedly the suit property was owned by Nabi Noor Khan who was having four sons namely Shabir Khan (husband of plaintiff), Akbar Khan, Yasin Khan and Ahmad Khan. By inviting my attention to the findings of learned Courts below it has been put forth by them that said Nabi Noor Khan had died somewhere in the year 1983 and after his death, his four sons and widow namely Phoolibai became joint owner of the entire

holdings left by said Nabi Noor Khan and if that would be the position, Shabir Khan who was one of the sons of Nabi Noor Khan was not having any right to sell the undivided share to his own wife on 07.06.1986. It has also been put-forth by learned counsel that the consideration was never passed by present plaintiff to her husband and therefore the sale-deed (Ex.P11) is a sham transaction. It has also been propounded by them that possession of the suit property was never delivered to the plaintiff and therefore the impugned judgment passed by learned First Appellate Court is illegal and it be set aside. Further it has also been submitted by them that nowhere the plaintiff has pleaded in her plaint that any partition was effected among the brothers and their mother and the suit property fell in the share of Shabir Khan and eventually he sold it to plaintiff. It has also not been pleaded by her that Shabir Khan ever sold the suit property to her and therefore by allowing this appeal, the impugned judgment and decree passed by learned First Appellate Court be set aside and the judgment and decree passed by learned Trial Court be restored.

10. On the other hand Shri Vaibhav Jain, learned counsel appearing for respondent/plaintiff argued in support of the impugned judgment and submitted that learned counsel for appellants could not point-out that under which provision of Mahomedan Law an undivided share cannot be sold by a co-owner. Since there is no such prohibition in the Mahomedan Law, if the suit property is sold by her husband to plaintiff, under law it would be deemed that a valid conveyance has been made in her favour.

11. By inviting my attention to Article 231 of the Mulla's Principles of Mahomedan Law 19th Edition at page 206 it has been submitted that right of pre-emption although does not remain in existence in view of Article 19(1)(f) of the Constitution of India but pre-emption as between co-sharers (shafi-i-sharik) or owners of dominant and servient tenements (shafi-i-Khalit) is saved by Article 19 of the Constitution of India. Learned Counsel submits that in the present case the family property has been retained in the family because husband of plaintiff has sold the suit property to his own wife and therefore the transaction is not in derogation to the principles of Mahomedan Law.

12. Learned Counsel for respondents further submits that plain and simple case of the plaintiff is that she is the owner of the suit property and in order to substantiate her case she was not required to plead that any partition ever took place in the family in which the suit property fell in the share of her husband and thereafter it was sold to the plaintiff. On these premised

submissions, it has been put-forth by learned counsel for respondent that cogent reasons have been assigned by learned First Appellate Court decreeing the suit and therefore this appeal be dismissed.

13. Having heard learned Counsel for the parties, I am of the view that this appeal as well as connected second appeal (S.A. No.42/1999) deserves to be dismissed.

Regarding substantial question of law No.(1):

14. Indeed the substantial question of law of this appeal and the substantial question of law No.1 of connected second appeal (S.A. No.42/1999) are akin to each other and eventually they are being decided together.

15. Learned counsel for appellants could not point out any particular provision under the Mahomedan Law that a co-owner of the joint property cannot convey a valid title of specific parcel of land forming part of joint property without partition between the co-owners and without consent of all the co-owners. Indeed, it is borne out from the testimony of the plaintiff, her husband Shabir Khan and that of defendant that partition took place in the family earlier in which the suit property fell in the share of plaintiffs husband which he sold later on to the plaintiff.

16. Even for the sake of arguments if it is hereby held that partition never took place among the brothers, there is no prohibition under the Mahomedan Law, not to alienate any specific item of the undivided share. According to me, under the Mahomedan Law normally any specific item of the undivided property should not be alienated by a Mahomedan because it may create anomaly to the other co-owners, but if a co-owner alienates any specific property without the consent of the other co-owners, the alienation cannot be said to be illegal or not recognised by the law, but the other co-owners may sue for a partial partition of the property so alienated or sold.

17. Under the Mahomedan Law a co-sharer (co-owner) is authorised to sell his undivided share and in this regard Articles 42 and 49 of the Principles of Mahomendan Law by Mulla 19th Edition may be seen. Since there is no prohibition under the Mahomedan Law not to alienate the undivided share or even a specific share prior to the partition, the sale-deed executed by Shabir Khan in favour of plaintiff cannot be said to be bad in law particularly when it was never challenged by any of the defendants by filing counter-claim.

18. I do not find any merit in the contention of learned counsel for appellants

that because plaintiff has not come-forward on the basis of her sale deed dated 07.06.1986 (Ex.D1) executed by her husband to her after partition in the family and she has further failed to plead the factum of partition took place in her plaint, therefore, her suit should be dismissed. According to me, the parties are residents of Village Malhargarh, which comes in Tahsil Narayangarh of District Mandsaur. The suit was filed in the Trial Court at Tahsil Narayangarh. Bearing this proposition on many occasions some latitude should be given in the case of mufasil pleadings and they should not be construed strictly. In this regard, decision of Supreme Court *Badat and Co., Bombay v. East India Trading Co.*, AIR 1964 SC 538 at page 545 may be seen. This principle has already been laid down and was taken note of by the Division Bench of this Court long back (more than seven decades ago) in *Arjunsu Raghusa and others v. Mohanlal Harakchand*, AIR 1937 Nagpur 345 at page 350.

19. Even otherwise, no substantial question of law has been framed in respect of above said submissions which are raised by learned counsel for appellants. The question which has been framed is whether a co-owner can convey the valid title of a specific piece of land forming a part of joint property without partition, which I have already decided hereinabove that there is no prohibition under the Mahomedan Law in that regard.

20. Looking to the testimony of plaintiff and her husband Shabir Khan this Court finds that there was a partition in the family in which the suit property fell in the share of Shabir Khan who later on sold it to plaintiff. On bare perusal of the cross-examination of defendant Akbar Khan (para-3) this Court finds that he has categorically admitted that all the brothers are cultivating separate land and further admitted that he is not cultivating the suit land but by changing his version of his own, has later on stated that all the brothers are cultivating the same. On the material point going to the root of the matter, first defendant Akbar Khan was cross-examined by plaintiff in respect of partition which took place between him and his brothers including Shabir Khan but he did not give any answer to the question and remained silent on this point in cross-examination and this demeanour was noted by learned Trial Court in the deposition-sheet of defendant Akbar Khan (DW-1).

21. Section 114, Illustration (h) of the Evidence Act speaks that if a man refuses to answer a question which he is not compelled to answer by law, the answer, if given would be unfavourable to him. Thus, if the answer to the question put to Akbar Khan (DW-1) whether partition has taken place would have been given by him, it would have been unfavourable to him and therefore,

he kept silent on this point and did not give any answer to this question. Hence, it can be inferred that the partition took place between the brothers and by not answering the material question in this regard defendant Akbar Khan is suppressing the reality that partition has already taken place. If his silence in answering the question is read in context to para 3 of his cross-examination, where he has admitted that all the brothers are cultivating the separate land in juxtaposition to each other, no other inference can be drawn except that partition had taken place between the brothers earlier.

22. Learned First Appellate Court by taking note of the demeanour of defendant Akbar Khan has categorically held that deliberately the defendant did not answer the material question pin pointing and going to the root of the matter and thus had come to the conclusion that there was a partition in the family in which the suit property fell in the share of Shabir Khan who sold lateron vide sale-deed dated 07.06.1986 (Ex.P/1) to the plaintiff and therefore learned First Appellate Court has rightly arrived at a pure finding of fact that there was a partition in the family of plaintiff in which the suit property fell in the share of plaintiffs husband Shabir Khan.

23. The substantial question of law No.1 of this appeal and the substantial question of law No.1 of connected S.A. No.42/1999 are thus answered that since there is no prohibition under the Mahomedan Law it cannot be said that a co-owner cannot alienate specific undivided share.

Regarding Substantial Question of Law No.2 of S.A. No.42/1999

24. In view of above, the substantial question of law No.2 is thus answered that learned First Appellate Court was within the jurisdiction in disturbing the findings recorded by the Trial Court on the reasons given by it in its judgment.

Regarding Substantial Question of Law No.3 of SA No.42/i 999

25. After giving my anxious and bestowed consideration, I could not find the impugned judgment and decree of learned First Appellate Court to be illegal or perverse. The substantial question of law is thus answered against the appellants.

26. Resultantly, this appeal and connected second appeal (S.A. No.42/1999) fails and are hereby dismissed with costs. Counsel fee Rs.1000/- in each appeal if pre-certified. Let a copy of this judgment be kept in the record of S.A. No. 42/1999.

Appeal dismissed.

I.L.R. [2012] M.P., 744

APPELLATE CIVIL

Before Mr. Justice R.C. Mishra

F.A. No. 206/1992 (Jabalpur) decided on 12 January, 2012

MISRIYA (SINCE DEAD) THROUGH LR's & ors. ...Appellants

Vs.

KISHANDAS(SINCE DEAD) & ors. ...Respondents

Civil Procedure Code (5 of 1908), - Order 22, Rule 9 - Limitation Act (36 of 1963), Section 5 - Condonation of Delay - First Appeal - Joint property sale deed executed on 15/02/69 - Setting aside the abatement - Delay of 12 years - Held - Death of respondents not brought on record in time - Condonation of delay and the application for setting aside the abatement are dismissed. (Paras 2,4,19 & 22)

सिविल प्रक्रिया संहिता (1908 का 5), . आदेश 22, नियम 9 - परिसीमा अधिनियम (1963 का 36), धारा 5 - विलम्ब के लिए माफी - प्रथम अपील - संयुक्त सम्पत्ति विक्रय विलेख दिनांक 15.02.1969 को निष्पादित किया गया - उपशमन को अपास्त किया जाना - 12 वर्षों का विलम्ब - अभिनिर्धारित - प्रत्यर्थीगण की मृत्यु को यथा समय अभिलेख पर नहीं लाया गया - विलम्ब के लिए माफी तथा उपशमन को अपास्त किये जाने का आवेदन खारिज।

Cases referred :

AIR 1985 SC 1, 1999 (2) MPLJ 620, AIR 2010 SC 3043, AIR 2011 SC 1199, AIR 1964 SC 215, AIR 2009 SC 2907, AIR 1962 SC 361, AIR 1973 SC 204.

Mohd. Ali & Vijay Shukla, for the appellants.

R.K. Samaiya, for the respondents No. 6 & 7 as well as proposed LR's of respondents No. 2 to 5. (since dead)

A.K. Chourasia, G.A. for the respondent No.8.

O R D E R

R.C. MISHRA, J:- By this common order, the following interlocutory applications based on identical facts and involving common question of law are being disposed of -

- (i) I.A. No.740/11 in F.A. No.206/92 and I.A. No.741/11 in F.A. No.252/92 under Order XXII Rule 4 & 11 of the Code of Civil Procedure (for short 'the Code') for substitution

of legal representatives of respondent nos.2 to 5 and also for deletion of respondent no.1, who has died issueless.

(ii) I.A. No.745/11 in F.A. No.206/92 and I.A. No.742/11 in F.A. No.252/92 under Order XXII Rule 9 read with Section 151 of the Code for setting aside abatement and

(iii) I.A. No.747/11 in F.A. No.206/92 and I.A. No.743/11 in F.A. No.252/92, under Section 5 of the Limitation Act, 1963, for condonation of delay in filing the aforesaid IAs.

2. These appeals are interlinked as preferred against a common judgment and decree passed on 22.10.92 by First Additional Judge to the Court of District Judge, Sehore at Ashta in Civil Suit Nos.1-A/83 and 5-A/82. By that judgment, -

(a) Civil Suit No.1-A/83 instituted as early as on 7.4.69 by appellant no.1 Misriya (since dead) & others against the Chouthibai & others for declarations that (i) the property in suit was their joint family property and (ii) the sale-deed executed on 15.2.69 by Chouthibai in favour of Daryao Singh, Ranjit Singh, Ajju Khan and Jorawar Singh (impleaded in both the appeals as respondent nos.2 to 5 respectively) was null and void, was dismissed and

(b) Civil Suit No.5-A/82 filed as early as 26.4.68 by Chouthibai and others against Misriya and others for possession and mesne profits was decreed and the appellants were directed to hand over possession of the lands to Daryao Singh, Ranjit Singh, Ajju Khan and Jorawar Singh and to pay mesne profits @ Rs.4,000/- per month w.e.f. 17.9.75.

3. According to the appellants -

Although, the counsel representing the respondents communicated information regarding deaths of respondent nos.1 to 5 by way of application (I.A. No.12725/08 in F.A. No.206/92) on 7.11.08 yet, copy thereof was served upon their counsel on 5.1.11 only. Being rustic villagers, they had no information regarding deaths of respondents, who were not their co-villagers and further, they had no knowledge of the Court's procedure.

4. Prayers for condonation of delay and setting aside the abatement have been vehemently opposed on the ground of absence of sufficient cause. The proposed legal representatives of respondent no.2 have further pointed out that being natives of nearby village, the appellants are not expected to be ignorant about death of as many as 5 respondents during a considerable period of 12 years. According to them, the assertion that copy of the I.A. containing information regarding deaths of respondent nos.1 to 5 was supplied to the previous counsel, even if assumed to be true, would not be of any significance in absence of declaration that entire file of the case was not handed over to the present counsel.

5. No dispute has been raised by the appellants in respect of the contents of I.A. No.12725/08 suggesting that -

- (a) Respondent no.1 Kishandas expired in the year 1999.
- (b) Respondent no.2 Daryao Singh died on 21/5/1999.
- (c) Respondent no.3 Ranjit Singh died on 8/8/1999.
- (d) Respondent no.4 Ajju Khan died in the year 2004.
- (e) Respondent no.5 Jorawar Singh died in the year 2000.

Consequently, the appeals stood automatically abated as against the respective respondent upon expiry of period of 90 days from the date of his death.

6. Learned counsel for the appellants has urged that in the facts and circumstances of the case, ignorance of the deaths of the respondents should be held as sufficient cause. Placing reliance on decision of Supreme Court in *Sital Prasad v. Union of India* (AIR 1985 SC 1) and that of a co-ordinate Bench of this Court in *Dolatram v. Kishan* 1999 (2) MPLJ 620, he has strenuously contended that the expression 'sufficient cause' in Section 5 of the Limitation Act and in sub-Rule (3) of Rule 9 of Order 22 of the CPC should receive a liberal construction so as to advance substantial justice particularly when the appellants had given a reasonably plausible explanation for the delay.

7. In response, learned counsel for the proposed legal representatives has submitted that the appellants have not been able to furnish satisfactory explanation for such an inordinate delay in making a prayer for setting aside

the abatement of appeals even after being informed about the deaths of respondents by way of I.A. No.12725/08 as back as on 7.11.08. He is further of the view that since a valuable right has accrued to the legal representatives due to negligence or inaction on the part of the appellants, it should not be defeated by condoning delay in a causal manner. To buttress the contention, reference has been made to the ratio laid down by the Apex Court in *Balwant Singh v. Jagdish Singh* AIR 2010 SC 3043 and re-affirmed in *Lanka Venkateswarlu v. State of U.P.* AIR 2011 SC 1199 to the effect that even though the Courts have power to condone the delay, condonation without any justification would result in rendering the provisions contained in the Limitation Act redundant and inoperative.

8: The first question to be considered is as to whether the appellants were prevented by any sufficient cause from continuing the suit ?

9. A bare perusal of the records would expose the following features -

(a) A period of more than 11 years has expired after the deaths of respondent nos.1 to 3 and 5 whereas death of respondent no.4 had taken place in the year 2004.

(b) Both the appeals, registered as F.A. Nos.206/92 and 252/92, were dismissed on 29/8/2005 for want of prosecution and F.A. No.252/92 was restored vide order-dated 6/1/2006 passed in MCC No.2518/05 and the other one was restored vide order-dated 28/6/2008 passed in MCC No.2031/05. Both the restoration applications were presented and argued by the present counsel. Although none of the Vakalatnamas bears any date yet, the aforesaid facts clearly suggest that the present counsel were engaged by the appellants somewhere in the year 2005.

(c) In accordance with the prevailing practice, I.A. No.12725/08 appears to have been presented on 7.11.08 only after serving copy thereof on the opposite counsel and the corresponding acknowledgment was made by the present counsel and not by the earlier advocate appointed by the appellants.

(d) On 4/9/2008, observing that none of the parties was

represented in F.A. No.206/92, direction was given to issue SPCs to them for final hearing on a date to be fixed by the office and the SPCs issued to respondent nos.2 to 5 were returned unserved on 03.11.2008 with the report that they had expired.

10. In *Sital Prasad's* case (supra), Mahendra Kumar claiming to be one of the sons of late Sital Prasad Saxena, who had expired in the year 1976, had moved the application for setting aside the abatement along with an application for condonation of delay in filing the same in the year 1978. Observing that in a traditional rural family the father may not have informed his son about the litigation and further that rules of procedure are designed to advance justice and should be so interpreted and not to make them penal statutes for punishing erring parties, the Supreme Court proceeded to set aside the order passed by the High Court. Following the ruling, a single Bench of this Court in *Daulat Ram's* case (above) condoned the delay in moving application for setting aside the abatement, considering the facts that (a) for the first time, the appellant had come to know about the requirement of law to bring the LRs of the deceased-respondents, who had expired on 27.7.93 and 8.8.93, by way of a letter sent to him by his counsel on 30.7.96 and (b) the application was filed on 3.8.96.

11. However, the facts of the present appeals are clearly distinguishable. In the light of the circumstances as highlighted above, it can safely be presumed that the information with regard to deaths of respondent nos.1 to 5 had come within the knowledge of the appellants in the year 2008 whereas applications for condonation of delay and setting aside the abatement have been filed on 14.01.2011.

12. While construing the words 'sufficient cause', Raghubar Dayal J., speaking for a three-Judge Bench in *Union of India v. Ram Charan* AIR 1964 SC 215, made the following illuminating observations -

"Of course, the Court, in considering whether the appellant has established sufficient cause for his not continuing the suit in time or for not applying for the setting aside of the abatement within time, need not be over-strict in expecting such proof of the suggested cause as it would accept for holding certain fact established, both because the question does not relate to the merits of the dispute between the parties and because if the

abatement is set aside, the merits of the dispute can be determined while, if the abatement is not set aside, the appellant is deprived of his proving his claim on account of his culpable negligence or lack of vigilance. This, however, does not mean that the Court should readily accept whatever the appellant alleges to explain away his default. It has to scrutinize it and would be fully justified in considering the merits of the evidence led to establish the cause for the appellant's default in applying within time for the impleading of the legal representatives of the deceased or for setting aside the abatement. It is true that it is no duty of the appellant to make regular enquiries from time to time about the health or existence of the respondent, but it does not mean that the mere fact of the appellant's coming to know of the respondent's death belatedly will, by itself, justify his application for setting aside the abatement. That is not the law. Rule 9 of O. XXII of the Code requires the plaintiff to prove that he was prevented by any sufficient cause from continuing the suit. The mere allegation about his not coming to know of the death of the opposite party is not sufficient. He had to state reasons which, according to him, led to his not knowing of the death of the defendant within reasonable time and to establish those reasons to the satisfaction of the Court, specially when the correctness of those reasons is challenged by the legal representatives of the deceased who have secured a valuable right on the abatement of the suit.

(Emphasis supplied)

13. Adverting to the facts of the case, it is difficult to conceive that the appellants were not in touch with their present advocates from 2008 onwards. If not every week, they were expected to contact their lawyers once in a year. There is nothing on record to indicate as to when the intimation given by learned counsel for the respondents regarding the deaths was communicated to the appellants by their counsel. It is also well settled that ignorance of legal consequence without something more would be not sufficient to condone such a huge delay (*Katari Suryanarayana v. Koppiseti Subba Rao* AIR 2009 SC 2907 relied on).

14. Upon conspectus of all the leading decisions on the subject, the Supreme Court, in *Balwant Singh's* case (supra), has opined -

"delay is just one of the ingredients which has to be considered by the Court. In addition to this, the Court must also take into account the conduct of the parties, bona fide reasons for condonation of delay and whether such delay could easily be avoided by the applicant acting with normal care and caution. The statutory provisions mandate that applications for condonation of delay and applications belatedly filed beyond the prescribed period of limitation for bringing the legal representatives on record, should be rejected unless sufficient cause is shown for condonation of delay. Thus, it is the requirement of law that these applications cannot be allowed as a matter of right and even in a routine manner".

In that case, the Court quoted with approval the following observations made in *Ramlal v. Rewa Coalfields Ltd.* AIR 1962 SC 361 -

"It is however, necessary to emphasize that even after sufficient cause has been shown a party is not entitled to the condonation of delay in question as a matter of right. The proof of a sufficient cause is a condition precedent for the exercise of the discretionary jurisdiction vested in the court by Section 5. If sufficient cause is not proved nothing further has to be done; the application for condoning delay has to be dismissed on that ground alone. If sufficient cause is shown then the Court has to enquire whether in its discretion it should condone the delay. This aspect of the matter naturally introduces the consideration of all relevant facts and it is at this stage that diligence of the party or its bona fides may fall for consideration;..."

Reiterating the principle in *Lanka Venkateswarlu's* case (supra), which related to delay attributable to inefficiency and ineptitude of Government pleaders, the Supreme Court has observed that -

"Whilst considering applications for condonation of delay under S. 5 of the Limitation Act, the Court do not enjoy unlimited and unbridled discretionary powers. All discretionary

powers, especially judicial powers, have to be exercised within reasonable bounds, known to the law. The discretion has to be exercised in a systematic manner informed by reason. Whims or fancies; prejudices or predilections cannot and should not form the basis of exercising discretionary powers.

The concepts such as "liberal approach", "justice-oriented approach", "substantial justice" cannot be employed to jettison the substantial law of limitation. Especially, in cases where the Court concludes that there is no justification for the delay".

15. The true legal position, therefore, is that the words "sufficient cause" in Section 5 of Limitation Act and Order 22 Rule 9 of the Code should receive a liberal construction so as to advance substantial justice only when the delay is not on account of any dilatory tactics, want of bona fides, deliberate inaction or negligence on the part of the appellant.

16. In *Balwant Singh's* case (ibid), the ground raised for condonation of delay of over two years in applying for setting aside the abatement was found not only insufficient but also unbelievable. Similar is the situation here.

17. Conduct of the appellants in not taking timely steps for bringing the legal representatives of the respondent nos.2 to 5 within a reasonable period after their respective deaths as well as in not bothering to move applications for condonation of delay & for setting aside the abatement is sufficient to infer gross negligence and deliberate inaction on their part.

18. Thus, viewed from any angle, the explanation given for the delay in filing the applications for setting aside the abatement does not deserve acceptance. The question formulated above is answered in the negative.

19. Now, the other aspect that has to be considered is whether each one of the appeals has abated as a whole on the deaths of the respondents as their legal representatives were not brought on record in time?

20. In appeal, nature of abatement will have to be decided not upon the nature of relief involved in the suit but upon the nature of relief awarded by the decree appealed against.

21. As indicated already, these appeals have been preferred against a common judgment dismissing the Civil Suit filed by Misriya and others for

declaration of title in respect of the suit lands and annulment of sale-deed in question and decreeing the suit filed by Chouthibai and others for possession and mesne profits in favour of respondent nos.2 to 5 (since dead). In such a situation, both the appeals must be held to have abated in toto (*Babu Sukhram Singh v. Ram Dular Singh* AIR 1973 SC 204 followed).

22. In the result, the applications for condonation of delay as well as the applications for setting aside the abatement are hereby dismissed. The other I.As for substitution of legal representatives of respondent nos.2 to 5 also stand rejected as rendered redundant.

23. As an obvious consequence, both the appeals are hereby dismissed as abated. However, in the facts of the case, there shall be no orders as to costs.

24. A copy of this order be retained in the connected appeal.

Appeal dismissed.

I.L.R. [2012] M.P., 752

APPELLATE CRIMINAL

Before Mr. Justice I.S. Shrivastava

Cr. A. No. 153/2004 (Gwalior) decided on 1 December, 2011

RAMKUMAR

...Appellant

Vs.

STATE OF M.P.

...Respondent

A. Evidence Act (1 of 1872), Section 119 - Deaf and Dumb Witness - Oath not administered to interpreter - Signs and gestures used during the evidence of deaf and dumb witness not recorded - Evidence not legal. (Para 14)

क. साक्ष्य अधिनियम (1872 का 1), धारा 119 - बधिर और मूक साक्षी - दुभाषिया को शपथ नहीं दिलायी गई - बधिर और मूक साक्षी के साक्ष्य के दौरान प्रयोग किये गये चिन्ह व हावभाव/संकेत अभिलेखित नहीं किये गये - साक्ष्य वैध नहीं।

B. Criminal Procedure Code, 1973 (2 of 1974), Section 27 - Seizure of Weapons - Independent witnesses turned hostile - I.O. did not specifically depose that weapon was seized by the seizure memo - Seized weapon not produced before the Court - Prosecution also did

not prove that injuries could be caused by seized weapon - Seizure of weapon not proved. (Para 18)

ख. दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 27 - हथियारों की जब्ती - स्वतंत्र साक्षी पक्षविरोधी हो गये - अन्वेषण अधिकारी ने विनिर्दिष्ट रूप से यह कथन नहीं किया कि हथियार जब्ती मेमो द्वारा जब्त किये गये - जब्त हथियार न्यायालय के समक्ष प्रस्तुत नहीं किये गये - अभियोजन ने यह भी साबित नहीं किया कि चोटें जब्त हथियार से कारित हो सकती हैं - हथियार की जब्ती साबित नहीं।

Cases referred :

2010(1) JLJ 346, 1998 (1) JLJ 236.

V.K. Bhardwaj with Raja Sharma, for the appellant.

A.K. Shrivastava, P.L. for the respondent/State.

J U D G M E N T

I.S. SHRIVASTAVA, J :- This appeal has been filed by appellant Ramkumar being aggrieved by the judgment dated 28.2.04 passed by ASJ, Seonda, Datia, in S.T.No.174/00, by which appellant Ramkumar has been convicted under Section 307 of IPC and sentenced to five years rigorous imprisonment along with fine of Rs.200/-.

2. According to prosecution story, on 25.7.00 at about 8 am Ramnath was planting a Jamun tree at his land, at that time, accused Shivdayal, Ramkumar, Seetaram and Sarman came there and objected to it and abused him and stated that why he is planting tree in their land. He replied that you have closed my way and he is planting the tree at his land. Thereafter, Ramkumar with intention to kill him assaulted by axe on his head which caused bleeding injury. Accused Seetaram, Sarman and Shivdayal assaulted by lathis on his legs. On his cries, her daughter Janki, brother Itwari, Rajjan Dangi and other persons came there, then accused persons ran away. Thereafter, police reached on the spot and *Dehati Nalishi* (Ex.P/12) was recorded by Shri B.P.Kachhware (PW-11) at about 9.30 a.m. on the same day. On the basis of which FIR (Ex.P/21) at Crime No.85/2000 was registered under Sections 307, 323 and 294/34 of IPC. After investigation, Challan was filed against accused Shivdayal, Sarman, Seetaram and Ramkumar. After trial, Shivdayal, Sarman and Seetaram have been acquitted by the trial Court and appellant Ramkumar has been convicted as mentioned above. Hence, this appeal.

3. It has been argued by the appellant's counsel that Ramnath (PW-8)

was a deaf and dumb witness and as per his statement, he was unable to speak after the incident and he was unable to lodge the FIR. In cross-examination, he has admitted that FIR was not lodged by him, but by his brother. The Court has also noted the fact that Ramnath (PW-8) was a deaf and dumb witness, hence, his evidence was recorded with the help of Girish Chandra Tiwari, teacher in the Government Deaf and Dumb School, Gwalior, but no oath was administered to Shri Girish Chandra Tiwari and the signs and gestures used by him for his statement were not taken on record. When the witness was deaf, how could he understand the questions. From the statement of Ramnath, it also reveals that he was a literate person and was educated upto 5th class, hence, his statement could have been recorded by writing, but no finding was given to this fact that he was not able to write. Hence, his statement was recorded with the help of other person Shri Girish Chandra Tiwari. The statement of Ramnath (PW-8) does not inspire confidence for the conviction of the appellant because he has stated that appellant Ramkumar inflicted two axe blows on his head, while only one incised wound was found on his head. He has also deposed that his forearm and elbow were fractured at two places, but this fact is not supported by medical evidence and no such injury was found on the elbow and forearm of Ramnath. The other witnesses are the interested witnesses and they are not reliable. Janki Devi (PW-2) is the daughter of Ramnath, Savitri (PW-3) is the wife of Ramnath, Babulal (PW-4) is the father of Ramnath and Itwari (PW-6) and Asharam (PW-7) are the real brothers of Ramnath. No independent witness was examined by the prosecution in this case and the witnesses who are said to be the independent witnesses have turned hostile and have not supported the prosecution story. An axe was seized on the information of Ramkumar for which memo Ex.P/6 was prepared and in furtherance of it after seizure of the axe, seizure memo Ex.P/8 was prepared, but it was not proved by the prosecution evidence and the axe was not produced at the time of evidence. Hence, the seizure of the axe was not legally proved. Therefore, the appeal should be allowed.

4. It has been argued by respondent's counsel that the appellant has been convicted by the trial Court on the basis of the evidence produced before it. The statement of Ramnath was recorded with the help of interpreter legally and the case was proved on the basis of statement of Ramnath and other evidence. The statements were supported by the medical evidence. The appeal being devoid of merits, be dismissed accordingly.

5. Considered the arguments and perused the record of the trial Court.

6. From the spot map (Ex.P-14), it reveals that the place of incident is not adjacent to the house of Ramnath and the door of the house of Ramnath is in the opposite direction of the place of incident. On the backside of the house of Ramnath, houses of Shivdayal and Sarman are situated and on the backside of their houses, there is an open land where Ramnath was planting the tree and he was assaulted at this place. From the house of Ramnath, it is not possible to view the place of incident. There is a lane before the houses of Shivdayal and Sarman which is in the backside of the house of Ramnath and from there the lane has to be crossed from the front side of the houses of Shivdayal and Sarman and then after reaching on the spot, the place of incident can be viewed. It was not possible from the house of Ramnath to view the place of incident.

7. Janki Devi (PW-2), daughter of Ramnath, has deposed that her father was planting a tree. On this point, there was a dispute and she witnessed the incident and saw that Ramkumar assaulted her father by axe. In cross-examination, she deposed that hearing the noise, she came out of the house and saw that Ramkumar assaulted two blows of axe on his father, but this fact is not mentioned in her police statement (Ex.D/1). Ramnath (PW-8) in cross-examination has deposed that he was assaulted by only one blow of axe, hence, the statement of this witness is not reliable.

8. Savitri (PW-3) is the wife of Ramnath. According to her statement, at the time of incident, she was at home and hearing the noise, she went to the spot and saw that her husband was being assaulted by the accused persons. In cross-examination, she has admitted that she reached on the spot after the incident and thereafter further she states that she reached on the spot at the time of the assault, but again she has deposed that when she reached on the spot, the assailants were running away. This shows that she was not an eye-witness of the incident.

9. Babulal (PW-4) is the father of Ramnath. He deposed that at the time of incident, he was sitting in the veranda of his house and he viewed the incident from there and further he has deposed that none came to the spot. In cross-examination, he has admitted that from the place where he resides, the hut of pigs is not visible and from his house, the place of incident is not visible. He has further admitted in the cross-examination that his age is 82 to 85 years, while according to assessment of the Court at the time of incident his age has

been mentioned as 60 years. He has further deposed that he feels some difficulty in movement and he has deposed the facts of the case as per the information received from other persons.

10. Itwari (PW-6) is the real brother of Ramnath and he deposed that at the time of incident he was at his home and on the cries of his niece Janki, he reached on the spot and saw that Ramkumar after assault was taking out the axe. As soon as he reached there, the assailants ran away. Thereafter, he took his brother to Datia for treatment and then from Datia to Gwalior. In cross-examination, he deposed that at the spot none reached except his brother Asharam. This contradicts the reliability of the statements of Janki (PW-2), Savitri (PW-3), Babulal (PW-4) because as per their statements, they all reached on the spot, but this witness has not supported this fact.

11. Asharam (PW-7) is the real brother of Ramnath. According to him, at the time of cries of daughter of Ramnath, he was in his house. Thereafter, he reached on the spot and saw that Ramkumar assaulted by axe on Ramnath which caused injury in his head and other assailants assaulted by lathi. When he reached on the spot, the accused persons ran away. In cross-examination, he has deposed that after hearing the noise, in 1 and 2 minutes he reached on the spot and saw the assailants running away. Further, he has stated that he also saw them assaulting, but he has deposed that lathis were assaulted on the waist, legs and backside which is not the version of other eye-witnesses. He has also deposed that on the spot only Rajjan Dangi and no other person reached. He went to the hospital with Ramnath and Itwari. In cross-examination, he has deposed that all the accused persons assaulted 6-6, 7-7 lathis; but this is not the prosecution story. It seems that being the real brother of Ramnath, this witness has tried to be an eye-witness; but he is not reliable.

12. Rajjan (PW-9) has turned hostile and has not supported the prosecution story and denied to be the eye-witness of the incident. In this way, all these witnesses, who are the family members of Ramnath (PW-8), have deposed as they are the witnesses of prosecution.

13. Shri B.P.Kachhware (PW-11), the investigating Officer, has deposed in cross-examination that from the house of Ramnath to reach the place of incident, lane has to be crossed. From the house of Ramnath, the place of incident is not visible. He has accepted that after departure of the assailants from the spot, Savitri, Janki, Asharam, Babulal and Rajjan came on the spot. This shakes the reliability of the evidence of Janki Devi (PW-2), Savitri

(PW-3), Babulal (PW-4), Itwari (PW-6) and Asharam (PW-7). Hence, their statements are not reliable.

14. As regards the statement of Ramnath (PW-8), a note has been appended by the Court before starting of his statement that this witness is deaf and dumb, hence, the statement has been recorded by signs and gestures with the help of Girish Chandra Tiwari, teacher of Deaf and Dumb School, Gwalior and as per the meaning expressed by Girish Chandra Tiwari, the statement of the witness has been recorded. From the order-sheet dated 11.12.02, it reveals that statement of Ramnath was recorded with the help of Girish Chandra Tiwari, but this fact has not been mentioned that he was given any oath in this respect. From the statement of Ramnath (PW-8), it does not reveal that any note was provided by Girish Chandra Tiwari about the signs and gestures used by him for the statement of Ramnath. It seems that whatever has been explained by Girish Chandra Tiwari has been noted down as the evidence of Ramnath (PW-8). In the case of *Vinod v. State of M.P.*, 2010(1)JLJ 346, it has been held that at the time of recording of the statement of a deaf and dumb witness if the signs and gestures have not been recorded and only the interpretation has been recorded and oath was not administered to the interpreter, then such evidence is not legal evidence. Therefore, prima facie the evidence of Ramnath (PW-8) is not legal evidence in the eye of law.

15. As regards *Dehati Nalishi* which was recorded by Ramnath (PW-8), it has been mentioned in his statement that *Dehati Nalishi* (Ex.P/12) was read over to him and he accepted it to be lodged by him, but it is also to be considered that when at the time of lodging of the *Dehati Nalishi* Ramnath was deaf and dumb, then how could he listen the contents of *Dehati Nalishi* (Ex.P/12). Hence, this fact is not reliable. About lodging of the *Dehati Nalishi*, in cross-examination, he has admitted that report was lodged with the help of his brother. Further he admitted the fact that at the time of the report, he was unconscious and report was lodged by his brother. Further, the witness was asked whether at the time of lodging of *Dehati Nalishi* he was in a position to speak, the witness has replied that at the time of lodging of the *Dehati Nalishi*, he was not capable to speak. This shows that *Dehati Nalishi* was not lodged by Ramnath and it was lodged by his brother, while from the perusal of *Dehati Nalishi* (Ex.P/12), it reveals that it was recorded only on oral dictation of Ramnath.

16. Shri Sultan Singh Rawat (PW-12) has deposed in this respect that on

25.7.2000 he was station officer of police Station, Civil Lines, Datia, and he reached at the house of Ramnath and as per his instructions, he lodged the *Dehati Nalishi* which bears his signature. In cross-examination, again he has replied that as per the dictation of Ramnath, he noted it. But when Ramnath himself has deposed this fact that at the time of lodging of *Dehati Nalishi*, he was not in a position to speak and *Dehati Nalishi* was lodged by his brother, this fact is not reliable.

17. Asharam (PW-7) in this respect has deposed that he and Itwari took Ramnath to Datia hospital. Rajjan (PW-9) though has turned hostile, but has deposed in this respect in cross-examination that Ramnath was lying unconscious in the village. He took him directly to hospital by his tractor. Itwari came to call him and thereafter he took him to Datia hospital and Ramnath was unconscious till they reached hospital. Ramnath (PW-8) has also deposed in this respect in cross-examination that after the assault, he became unconscious and his senses came back at police station, but in this case, *Dehati Nalishi* was lodged in the village at his home. Hence, there was no opportunity of reaching this witness to police Station. In this way, all these circumstances, create a suspicion about lodging of *Dehati Nalishi* by Ramnath himself, therefore, *Dehati Nalishi* was not proved and is not reliable.

18. Ramnath (PW-8) about the incident deposed that in the incident his forearm and elbow were fractured at two places, but this fact has not been supported by the medical evidence. He was assaulted by Ramkumar by axe on his head. This axe was seized during the investigation on his information for which memo (Ex.P/6) was prepared and by seizure (Ex.P/8) the axe was seized. Panchu (PW-5) the witness of memo and seizure has turned hostile and he has not supported the prosecution story. The other independent witness Motilal has not been examined by the prosecution. In this respect, B.P. Kachhware (PW-11) has deposed that on the information of Ramkumar he prepared memo (Ex.P/6) and seizure was made by Ex.P/8. He has not specifically mentioned that axe was seized by Ex.P/8. The seized axe was not produced at the time of evidence. Therefore, the seizure of axe was not legally proved as held in the case of *Raju Dubey v. State of M.P.*, 1998(1) J.L.J. 236. It was the duty of the prosecution when the axe was seized to prove that by this axe the injuries of Ramnath could be caused for which the prosecution failed. Hence, it cannot be said that by seized axe Ramnath was assaulted by appellant Ramkumar.

19. Therefore, on the basis of above discussion, I conclude that the eye-witnesses are not reliable as they were not on the spot and as per the statement of Investigating Officer B.P.Kachhware (PW-11) and FIR was not proved, as at the time of lodging of the FIR complainant Ramnath (PW-8) was not in a position to speak. The statement of Ramnath (PW-8) was not recorded as per the procedure and no oath was administered to interpreter Shri Girish Chandra Tiwari and no record was received from him about the signs and gestures used by him during the statement. Under these circumstances, the sole statement of Ramnath about the incident is not reliable and does not inspire confidence for the conviction of the appellant. The memo and seizure of the axe were not proved, hence, it cannot be said that by the seized axe, appellant Ramkumar assaulted complainant Ramnath. Under these circumstances, the appellant is not liable to be convicted.

20. Therefore, on the basis of above discussion, the appeal is allowed and the appellant is acquitted from the charge under Section 307 of IPC. His bail bonds are discharged. Fine amount if deposited by him be refunded to him.

Appeal allowed.

I.L.R. [2012] M.P., 759

APPELLATE CRIMINAL

Before Mr. Justice Rakesh Saxena & Mr. Justice M.A. Siddiqui

Cr.A. No. 698/1994 (Jabalpur) decided on 17 January, 2012

SANJAY KUMAR & ors.

...Appellants

Vs.

STATE OF M.P.

...Respondent

Penal Code (45 of 1860), Sections 302, 326/34 - Appellant was sitting in bakery shop and deceased demanded Rs.500/- and altercation took place and assaulted by Gupti and hockey - Held - Sentence of imprisonment is reduced to the period of sentence already undergone - Appeal partly allowed. (Paras 2, 18 & 19)

दण्ड संहिता (1860 का 45), धाराएँ 302, 326/34 - अपीलार्थी बेकरी शॉप में बैठा था और मृतक ने रुपये 500/- की मांग की और कहा सुनी हुई तथा गुप्ती व हाकी से हमला किया गया - अभिनिर्धारित - मुगताई गई अवधि के कारावास तक दण्डादेश घटाया गया - अपील अंशतः मंजूर।

V.K. Lakhera, for the appellants.

Amit Pandey, P.L. for the respondent.

J U D G M E N T

The Judgment of the Court was delivered by :
RAKESH SAKSENA, J. :- Appellants have filed this appeal against the judgment dated 30.6.1994, passed by First Additional Sessions Judge, Shahdol, in Sessions Trial No.104/1993, convicting appellant No.2 Dipak Kumar @ Munda under Section 302 of the Indian Penal Code and sentencing him to imprisonment for life with fine of Rs.100 and convicting appellant No.1 Sanjay Kumar and appellant No.3 Santosh Kumar @ Gudda under Section 326/34 of the Indian Penal Code and sentencing them to rigorous imprisonment for three years with fine of Rs.100/- to each of them.

2. In short, the prosecution case is that on 25.3.1993, in Railway Colony, Shahdol, when Suresh, the deceased, had been sitting at his bakery shop, accused Sanjay reached there. When Suresh demanded Rs.500/- from Sanjay, which were due on him, there occurred an altercation. Sanjay went away. However, after sometime, at about 7.00 pm, he came back with his brothers Dipak and Santosh Kumar. While Suresh was standing in front of his shop, Sanjay dealt a blow with a hockey on his back and accused Dipak dealt blows with a *Gupti* in his abdomen. All the three accused persons then dragged and dropped him in a drain and ran away. He managed to come back near his shop and fell down unconscious. His brother Shanker, sister and mother lifted him and took him inside the shop. They wrapped clothes around his injuries and took him to hospital. However, he died. Shanker (PW-1) went to Police Kotwali and lodged first information report (Ex.P/1). Investigating officer inspected the dead body and conducted inquest proceedings. He prepared inquest memorandum (Ex.P/3). The dead body of Suresh was referred for postmortem examination.

3. Dr. M.D. Shukla (PW-5) conducted postmortem examination of the body of Suresh and found six incised injuries on various parts of his body. In his opinion, the cause of his death was excessive bleeding and the injuries to vital organs.

4. During investigation accused persons were arrested. Weapons and blood stained clothes were recovered and seized from their possession. After completion of investigation, charge sheet was filed in the court of CJM, Shahdol who committed the case to sessions court for trial.

5. All the accused persons were charged under Section 302 and 302/34 of the Indian Penal Code. They abjured their guilt and pleaded false implication. However, no specific plea in their defence was put forth by them.

6. Prosecution, to support its case in the trial, examined 18 witnesses. Most of the witnesses did not support the prosecution case. However, relying mainly on the evidence of eyewitness Shanker (PW-1) and the medical evidence of Dr. M.D. Shukla (PW-5), learned Additional Sessions Judge held accused Dipak Kumar guilty of the charge under Section 302 of the Indian Penal Code and convicted and sentenced him accordingly. Finding the evidence insufficient for convicting accused Sanjay and Santosh Kumar under Section 302/34 of the Indian Penal Code, learned Additional Sessions Judge acquitted them of that charge. However, finding enough evidence to establish charge under Section 326/34 of the Indian Penal Code he convicted and sentenced them accordingly. Aggrieved by the impugned judgment of conviction and sentence, accused/appellants have filed this appeal.

7. Learned counsel for the appellants submitted that the trial court misappreciated the evidence of eyewitness Shanker (PW-1), who happened to be a younger brother of deceased and a child of about 12 years of age. Since other witnesses did not support the prosecution case, appellants were entitled to be acquitted. He further submitted that the conviction of appellants Sanjay and Santosh Kumar under Section 326/34 of the Indian Penal Code was not justified in view of the medical evidence of Dr. M.D. Shukla (PW-5), who, on postmortem examination of the body of deceased, found no injury on his body caused by hard and blunt object. According to him, the evidence of sole eyewitness Shanker (PW-1) was belied by the medical evidence. In alternative, learned counsel for the appellants submitted that appellants Sanjay and Santosh were young boys at the time of occurrence, which took place in the year 1993. In the facts and circumstances of the case, their jail sentences deserved to be reduced. On the other hand, learned counsel for the State submitted that the evidence of Shanker (PW-1) was cogent, consistent and reliable. It was corroborated by the other circumstances proved, and further by the medical evidence of Dr. M.D. Shukla (PW-5). He justified the conviction of accused/appellants and supported the impugned judgment.

8. From the evidence of Shanti Rajak (PW-2), Raju (PW-3) and Deepak Kumar Rajak (PW-4) it is clearly established that Suresh Kumar had died due to injuries. Their evidence stood corroborated from the inquest memorandum (Ex.P/3) drawn by K.P. Shukla (PW-12) in presence of the

aforesaid witnesses. On examination of the body of deceased by witnesses, many injuries by sharp and pointed weapon were found by them on his body. The fact that he died because of the injuries was mentioned in the first information report (Ex.P/1). The fact that he died a homicidal death is also established by the evidence of Dr.M.D. Shukla (PW-5), who conducted autopsy of the body. According to Dr.Shukla (PW-5), he found following injuries on the body of deceased:-

- “1. Incised wound 6 cm x 4 cm deep into cavity near right armpit.
2. Penetrating wound 2 cm x 1 cm x cavity deep near 10th rib.
3. Penetrating wound 2 cm x 1 cm x cavity deep near 7th rib. It had pierced spleen.
4. Penetrating wound 2 cm x 1 cm x abdominal cavity deep on left side near 9th rib, on mid axillary line.
5. Incised wound 3 cm x 1 cm x deep up to brain over vertex, on back side of head.
6. Penetrating wound 3 cm x 1 cm on iliac spine of spinal bone.

All the aforesaid injuries were *ante-mortem* and homicidal in nature. On internal examination liver and spleen were found cut. All the injuries had been caused by sharp and pointed weapon. The death of deceased had been caused due to shock resulted from excessive haemorrhage from the injuries. The postmortem examination report (Ex.P/11) was written and signed by him.

From the above evidence, it is clearly established that the deceased died a homicidal death.

9. Shanker (PW-1), a young boy of about 12 years of age, who happened to be the real brother of deceased, deposed that at about 7.00 O'clock in the evening, when he was present in front of his bakery shop, all the three accused persons came to his shop and called Suresh out of the shop. They talked about some transaction of money. In the meanwhile, suddenly, accused Dipak

dealt a blow of *Gupti* in the abdomen of Suresh. He dealt further 5-6 blows of *Gupti* to Suresh. Accused Sanjay and Santosh assaulted Suresh with Lathi and hockey. They dragged him and dropped in a drain. When Suresh shouted, his mother, who was inside the house near the bakery shop, came out. Other persons also assembled there. By that time, accused persons ran away. Suresh came out of the drain and fell near the garbage. He, his mother and two servants lifted Suresh and took him inside the bakery and wrapped clothes on his wounds. He took Suresh to hospital, but he died. He and his mother went to police station and lodged a report (Ex.P/1).

10. It is true that at the time of incident Shanker (PW-1) was a young boy of about 12 years of age, but he was subjected to a lengthy and rigorous cross-examination, which he faced firmly and remained undeviated. His presence at the spot cannot be doubted. He was present at the bakery shop since before the occurrence. He categorically stated that when his brother was assaulted, he was standing at the door of the shop. The evidence of this witness stood corroborated by the first information report (Ex.P/1) lodged by him soon after the occurrence. The names of all the accused persons were mentioned by him in the said report. It was clearly stated in the FIR that accused Dipak assaulted deceased with *Gupti*. The evidence of Shanker (PW-1) stood further corroborated by the evidence of Dr. M.D. Shukla (PW-5), who found six penetrating injuries on the body of deceased.

11. Though Shanti Rajak (PW-2), mother of deceased, stated that when she reached, deceased told to her that Munda (Dipak), Sanjay and Santosh assaulted him, but her evidence about this oral dying declaration was disbelieved because no injuries caused by hard and blunt object were found on the body of deceased on postmortem examination. In our opinion, trial court committed error in doing so because Shanti Rajak (PW-2) did not say as to with which weapon accused persons assaulted deceased. She merely stated that deceased told to her that the aforesaid three accused persons assaulted him. Thus, the evidence of Shanti Rajak about the oral dying declaration made by the deceased to her was reliable and it furnished corroboration to the evidence of Shanker (PW-1). The evidence of Raju (PW-3), younger brother of deceased, appears to be hearsay in nature since he named the appellants on the basis of information furnished to him by his mother. Shanti Rajak (PW-2), however, did not say that she told to him that Dipak, Sanjay and Santosh assaulted the deceased.

12. On a close appraisal of the evidence of Shanker (PW-1) we find that

his evidence was cogent, consistent and reliable. He did not appear to be a tutored witness. His evidence was natural and spontaneous. In our opinion, the trial court committed no error in placing reliance on his evidence.

13. From the evidence of Dr. M.D. Shukla (PW-5), it was clearly established that the injuries found on the body of deceased were sufficient in ordinary course of nature to cause his death. It was established by the evidence of Shanker (PW-1) that accused Dipak caused those injuries to deceased with a *Gupti*. Thus, trial court committed no mistake in holding accused Dipak Guilty of commission of offence u/s 302 of the Indian Penal Code.

14. As far as the conviction of accused/appellants Sanjay Kumar and Santosh Kumar is concerned, the evidence in regard to causing of injuries by them to deceased with hockey and *Lathi* stands belied by the evidence of Dr.M.D. Shukla (PW-5), who did not find any injury on his body caused by hard and blunt object. Therefore, in our opinion, trial court was justified in holding that they did not share the intention of accused Dipak or had common intention with him to commit murder of deceased, but, since they went at the shop of deceased with accused Dipak and quarreled with him when Dipak wielded a weapon like *Gupti*, it could be clearly inferred that they knew that a grievous hurt was likely to be caused to deceased with a sharp cutting and pointed weapon. The trial court rightly held them guilty of the charge under Section 326/34 of the Indian Penal Code, which could be held to be a minor offence of charge under Section 302 of the Indian Penal Code.

15. For the aforesaid reasons, we are of the opinion that the trial court rightly convicted appellant Dipak @ Munda under Section 302 of the Indian Penal Code and to appellants Sanjay and Santosh under Section 326/34 of the Indian Penal Code. Their conviction for the aforesaid charges is, therefore, affirmed.

16. As far as the question of sentence of appellants Sanjay Kumar and Santosh Kumar under Section 326/34 of the Indian Penal Code is concerned, trial court has imposed sentence of imprisonment for three years on them.

17. Learned counsel for the appellants submitted that the incident in question had occurred in the year 1993. Since then about 18 years have elapsed. At the time of occurrence, appellants were young boys of about 27 and 22 years of age. By now, both the appellants have settled in their occupations. They are looking after their families and leading peaceful life.

Though it was alleged that they assaulted deceased with hockey and *Lathi*, but it has been found that they did not cause any injury to deceased. They have been convicted only because they accompanied accused Dipak, who assaulted deceased with *Gupti*. In these circumstances, if the aforesaid appellants are sent back to suffer imprisonment, it shall irreparably affect their lives and career and shall serve no purpose. Appellant No.1 Sanjay has served out about one year of jail sentence and appellant No.3 Santosh has remained in custody for a period of 8 months and 10 days. Their sentence of imprisonment therefore deserved to be reduced to the period of sentence already undergone by them.

18. We find substance in the submission made by the learned counsel for the appellants. Therefore-

(a) The conviction of appellant No.2 Dipak Kumar @ Munda under Section 302 of the Indian Penal Code and sentence of life imprisonment awarded to him is affirmed. His appeal is dismissed.

(b) The conviction of appellant No.1 Sanjay Kumar and appellant No.3 Santosh Kumar @ Gudda under Section 326/34 is affirmed. However, the sentence of imprisonment of three years as awarded to them by the trial court is reduced to the period of sentence already undergone by them. Sentence of fine is, however, affirmed.

19. Appeal partly allowed.

Appeal partly allowed

I.L.R. [2012] M.P., 765

APPELLATE CRIMINAL

Before Mr. Justice Rakesh Saxena & Mr. Justice M.A. Siddiqui

Cr.A. No. 1012/2002 (Jabalpur) decided on 19 January, 2012.

THAKUR SINGH

Vs.

STATE OF M.P.

...Appellant

...Respondent

Penal Code (45 of 1860), Sections 302 & 201 - Appellant lodged missing report of his wife - Parents of deceased suspected that appellant might have killed the wife and son by strangulation - Held - Appellant last seen with deceased persons - Recovery of dead

bodies on the memorandum of appellant - Appeal dismissed (Para 25)

दण्ड संहिता (1860 का 45), धाराएँ 302 व 201 - अपीलार्थी ने पत्नी के लापता होने की रिपोर्ट दर्ज करायी - मृतिका के माता-पिता को संदेह था कि अपीलार्थी ने पत्नी व बच्चे को गला घोटकर मार दिया - अभिनिर्धारित - अपीलार्थी को अंतिम बार मृतक व्यक्तियों के साथ देखा गया - अपीलार्थी की निशानदेही पर शव बरामद किये गये - अपील खारिज।

Cases referred :

AIR 1999 SC 1776, AIR 2001 SC 979, AIR 1993 SC 110.

Durgesh Gupta, for the appellant.

Pramod Chourasiya, for the respondent/State.

J U D G M E N T

The Judgment of the Court was delivered by :
RAKESH SAKSENA, J. :- Appellant has filed this appeal against the judgment dated 05.07.2002 passed by Special Judge [Atrocities], Narsinghpur in Sessions Trial No.45/2000 convicting him under section 302 I.P.C. and section 201 I.P.C. (on two counts) and sentencing him to imprisonment for life with fine of Rs.1000/- and rigorous imprisonment for 3 years (on two counts) with fine of Rs.500/-, on each count respectively.

2. In short, the prosecution case is that appellant had married Dashoda Bai, the deceased. She was his second wife. After marriage, for about 1-2 years she lived with appellant and gave birth to a child Ashish, but after that she went back to her parents' house and started living with them. On 24.12.1999, appellant came to the house of her parents and took deceased and her son Ashish, aged about 3 years, on a motorcycle to Narsinghpur for showing her to some doctor, as she had pain in her ears. In the night, appellant came back and informed to her parents that after visiting the doctor he and deceased had gone to see a picture. After that he asked deceased and his son to sit on the culvert near a temple and went to fetch medicine. When he returned he did not find them there. He searched them for about 2 hours but failed to locate them. Appellant then, in the morning, lodged a missing report at police station. Parents of deceased viz. Jiji Bai (PW-4) and Vijay Singh (PW-7) suspected that appellant might have killed the deceased and her son as in the past he had also committed murder of his uncle and further that he was annoyed from the fact that his father had executed an agreement of three acres of agricultural land in favour of deceased.

3. On the basis of suspicion expressed by the parents of deceased, when police interrogated appellant, he disclosed that he committed murder of his wife and son by strangulating them and buried their bodies in the embankment of his *Tukiya Wala* field. On the said information, a memorandum was recorded and in the presence of witnesses and Executive Magistrate Ajay Pathak (PW-3) the dead bodies were dug out and recovered from the field. Broken bangles and a five rupee note of the deceased was also seized from the spot, margin intimation Ex.P/25 and first information report Ex.P/24 was also recorded. After investigation, charge sheet under sections 302/201 I.P.C. was filed against him in the Court.

4. Since in the memorandum of information, appellant had disclosed that he committed murder of deceased persons with the help of Kammu Nai, he was also made accused in the case and charge sheet against him was also filed in his absence, but during the pendency of the case, Kammu Nai committed suicide, therefore, the case against him was closed.

5. During trial, appellant abjured his guilt and pleaded false implication. As per his statement under section 313 Cr.P.C., on 24.12.1999 on the request of mother of Dashoda Bai, he took Dashoda Bai to doctor for the treatment of her ears. He took her to Dr.D.Kumar (PW-9) who prescribed some medicines. Thereafter, as wished by Dashoda Bai, he went to see picture with her. After the show, he asked his wife and child to sit in the *Madhia* in front of the talkies and went to bring medicine. After about 15-20 minutes when he came back he did not find them at the place where they were sitting. He searched them at all places but when they were not found he informed about their missing to the parents of Dashoda Bai and thereafter in the morning at about 10-11:00 a.m. he lodged a report with the police about their missing. On 27.12.1999 when he came to Narsinghpur police arrested him and informed that Kammu Nai had killed his wife and child and buried them in the field. Police also informed him that a false case was being concocted against him on the insistence of his father-in-law and brother-in-law. According to him, police people demanded money from him for exonerating him. In the said statement, appellant also stated that there were illicit relations between deceased and Kammu Nai.

6. To substantiate its case, prosecution examined 15 witnesses. Appellant also examined Tarvar Singh as a defence witness.

7. It is to be noted that initially appellant was charged under section 303 I.P.C. also but the trial Court in view of the ratio of the decision of the Apex

Court rendered in *Mitthu Vs. State of Punjab*-AIR 1983 SC 473,,dropped the said charge.

8. There was no direct evidence in the case. Prosecution, therefore, proceeded on the basis of circumstantial evidence i.e. (i) motive (ii) evidence of appellant being last seen with the deceased (iii) recovery of dead bodies of deceased persons on the information given by appellant and (iv) the medical evidence.

9. Learned trial Judge, relying on the circumstantial evidence adduced by the prosecution, held the appellant guilty under sections 302 and 201 I.P.C. and convicted him accordingly. Aggrieved by his conviction, appellant has filed the present appeal.

10. Learned counsel for the appellant submitted that the evidence of prosecution witnesses was not reliable. The evidence of last seen together was of the family members of deceased, who were inimical to him. The recovery of dead bodies of deceased persons at the instance of appellant was concocted. There was no reason or motive for the appellant to have killed his wife and son. On the other hand, learned Panel Lawyer for the State submitted that the evidence adduced by the prosecution was reliable and was sufficient to establish the chain of circumstances sought to be proved against the appellant. He justified and supported the impugned judgment of conviction and sentence passed against him.

11. We have heard the learned counsel for the parties and perused the impugned judgment and evidence on record carefully.

12. It has not been disputed that both the deceased persons viz. Dashoda Bai and Ashish died a homicidal death. Prithviraj Singh (PW-1), the brother of Dashoda Bai, stated that on the information given by appellant, dead bodies of Dashoda Bai and Ashish were recovered from his field. It is thus established that Dashoda and Ashish had died and their dead bodies were recovered from his field. After recovery of the dead bodies, inquest memorandum Ex.P/4 and P/5 were prepared by Sub Inspector H.P.Singh (PW-14) and the dead bodies were sent for postmortem examination.

13. Dr. S.K.Nema (PW-8), Assistant Surgeon of District Hospital, Narsinghpur conducted the postmortem examination of the dead body of Ashish on 28.12.1999 at the spot. According to him, it was a body of male child emanating mild foul smell. Moist soil was present over all the exposed parts of face, hands etc. Tongue was protruding out and was clinched between teeth.

Blood stained froth was coming out from both nostrils and mouth. Skin cuticle was peeled off in front and side of middle neck. Underlying dermis was ecchymosed. On internal examination, he found subcutaneous extravasation of blood around and over thyroid cartilage and sides of the neck and lower part of nape of neck muscles. In his opinion, the cause of death of Ashish was asphyxia as a result of throttling. Duration of death was between 72-96 hours before the postmortem examination.

14. Dr. S.K. Nema, on the postmortem examination of body of Dashoda Bai on 28.12.1999, found her eye balls protuberant. Tongue protruded out and clinched between teeth. Blood stained thick froth coming out from her both nostrils and mouth. Blood stained fluid was present in her both external ears. He also noted sub conjunctival haemorrhagic spots. Cuticle (skin) was peeled below both angles of mandible and front of neck. Ecchymosis was present over thyroid region and adjoining region and nape of neck. Abdomen was protuberant due to gravid uterus. On internal examination, he found subcutaneous extravasation of blood in subcutaneous tissue around and over thyroid cartilage. Muscles were lacerated and extravasation of blood was seen in that area. Mucosa of the trachea under the marks as described above, was congested. In his opinion, the cause of death of Dashoda Bai was asphyxia as a result of throttling. Duration of death was between 72-96 hours from the postmortem examination. Postmortem examination reports Ex.P/20 and Ex.P/21 in that regard were written and signed by him.

15. From the aforesaid evidence, it is established beyond doubt that deceased persons Dashoda Bai and Ashish had died a homicidal death.

16. Another circumstance sought to be proved by the prosecution is that of deceased persons being last seen together with the appellant. This piece of evidence has not been agitated by the appellant himself. Even according to appellant, as stated by him in his statement under section 313 Cr.P.C., on 24.12.1999, he had taken away Dashoda Bai and Ashish for consultation with the doctor in respect of the ailment of Dashoda Bai in her ears. He admitted that after visiting doctor and viewing cinema, he made both the deceased persons sit at the *Madhia* in front of talkies and went to fetch medicine. According to him, when he returned after about 15-20 minutes, he did not find both of them. Despite search in the vicinity and village he could not trace them out and therefore he informed to police, brother of deceased, and also lodged a missing report at police station. This fact is further corroborated from the evidence of Prithviraj Singh (PW-1), Jiji Bai (PW-4)

and Vijay Singh (PW-7) respectively, brother, mother and father of deceased Dashoda Bai. They categorically stated that Dashoda Bai, who, with her child, was living at their house for last 2-3 years, was taken away by the appellant on 24.12.1999 for visiting a doctor. Dr. D.Kumar (PW-9) also stated that on 24.12.1999 Dashoda Bai had visited him in respect of ailment of her ears, at his house. He had prescribed some medicine to her vide prescription Ex.P/22. Thus, it has been amply proved that both the deceased persons were with the appellant till late night and thereafter they were never seen alive. In that regard, a missing report was also got recorded by the accused at police station Narsinghpur but the same was not produced in the case. However, Arvind Dahake (PW-13), the investigating officer, admitted that on 25.12.1999 appellant had lodged a report in respect of missing of his wife. This report was recorded by Moharrir Sarika Pandey.

17. The next important circumstance against the appellant is that when he was interrogated he disclosed that with the help of Kammu Nai he strangled and killed child Ashish and wife Dashoda Bai and buried their dead bodies in the *Medh* of his *Tukiya Wala* field. This disclosure by the appellant was recorded under memorandum Ex.P/I by Investigating Officer Arvind Dahake (PW-13). In consequence of the admissible part of the said information, dead bodies of deceased persons were recovered from the *Medh* of the field of appellant.

18. Learned counsel for the appellant argued that the memorandum Ex.P/1 recorded under section 27 of the Evidence Act did not bear the signatures of the appellant, therefore, it was doubtful. It was also argued that since the fact about the presence of dead bodies in the field was mentioned in marg intimation Ex.P/25 which was recorded earlier, the disclosure memo was not reliable. No doubt ordinarily it is expected from the Investigating Officer that whenever an incriminating fact is disclosed by the accused, he should obtain the signatures of the accused on the memorandum recorded in that regard, but it cannot be held to be an essential, legal or statutory requirement. It has been observed by the Apex Court in *State of Rajasthan Versus Teja Ram* - AIR 1999 SC 1776 that "the Investigating Officer is not obliged to obtain the signature of an accused in any statement attributed to him while preparing seizure memo for the recovery of any article covered by section 27 of the Evidence Act. But, if any signature has been obtained by an investigating officer, there is nothing wrong or illegal about it. Hence, we cannot find any force in the contention of the learned counsel for the accused that the signatures of the accused in Exs.

P/3 and P/4 seizure memo would vitiate the evidence regarding recovery of the axes." Apart from it, memorandum Ex.P/1 was recorded in the presence of Prithviraj Singh (PW-1) and Devi Singh (PW-2). Learned counsel contended that these witnesses were relatives of deceased, therefore, their evidence was not reliable. Devi Singh (PW-2) denied that he was relative of Prithviraj, the brother of deceased Dashoda Bai. Prithviraj and Devi Singh categorically stated that appellant in their presence disclosed that he buried the dead bodies of Dashoda Bai and Ashish in the *Medh* of his field and the memorandum Ex.P/1 was recorded in this regard. It is not disputed that Prithviraj Singh is the real brother of deceased Dashoda Bai, but merely on that ground his evidence cannot be discarded. Apex Court in *Sanjay alias Kaka Versus State [N.C.T. of Delhi]*- AIR 2001 SC 979 in the similar circumstances observed "We find no substance in the submission of the learned defence counsel that as no independent witnesses were associated with the recoveries, a doubt is created in the prosecution version. Satish Khanna (P.W.22) is the natural witness being brother of deceased to be present during the investigation when the accused are stated to have made the statements within the meaning of S.27 of the Evidence Act. Otherwise also there is no reason to disbelieve the testimony of the IO Harbans Singh (P.W.25)."

19. The evidence of Prithviraj and Devi Singh find support from the evidence of Investigating Officer Arvind Dahake (PW-13) who categorically stated that on a minute interrogation appellant disclosed that the dead bodies of deceased persons were lying buried in *Tukiya Wala* field. PW13 further stated that when the parents of deceased expressed their suspicion on appellant, he interrogated accused and recorded memorandum Ex.P/1 and thereafter he recorded marg report Ex.P/25. Trial Court after a close appraisal of the evidence in this regard found that the marg intimation and the first information report Ex.P/24 were recorded after the disclosure memorandum Ex.P/1 was recorded. We find no fault with the finding recorded by the trial Court.

20. It appears from the evidence of Investigating Officer Arvind Dahake (PW-13) that after recording first information report Ex.P/24 he was put on duty in Municipal Elections, therefore, he handed over case diary to Sub Inspector H.P. Singh (PW-14) for further investigation.

21. H.P. Singh (PW-14) deposed that he obtained permission from Sub. Divisional Magistrate for digging out the dead bodies of deceased persons. He along with doctor and Executive Magistrate Ajay Pathak went at the place shown by accused and got it dug by sweeper Rakesh (PW-10). On excavation,

dead bodies of Dashoda Bai and Ashish were recovered, which were identified by Prithviraj, the brother of deceased Dashoda. Memorandum Ex.P/2 was drawn and inquest was conducted. This witness was subjected to a lengthy cross-examination, however, he remained firm. The evidence of H.P. Singh (PW-14) finds corroboration from the evidence of Ajay Pathak (PW-13), the Executive Magistrate, Narsinghpur. He categorically stated that on the direction of Sub Divisional Magistrate, Narsinghpur he went with the police for digging out the dead bodies. The staff of Municipality also accompanied him. He stated that appellant pointed out the place from where the dead bodies were recovered. In our opinion, from the above evidence, it has been amply established that the dead bodies of deceased Dashoda Bai and Ashish were recovered at the instance of appellant.

22. Learned counsel for the appellant placing reliance on *Anant Bhujrangrao Kulkarni Versus State of Maharashtra*- AIR 1993 SC 110, contended that merely on the basis of circumstances that deceased was last seen alive in the company of appellant and the dead body of deceased was recovered at the instance of appellant, it cannot be held that appellant was the author of the murder of deceased person. In our opinion, the facts and circumstances of the present case are clearly distinguishable from that of *Anant Bhujrangrao Kulkarni's* case (supra) wherein the dead body of deceased was found near the residential portion of the appellant and he was last seen alive in the company of appellant. In the instant case, deceased persons were the wife and son of appellant and their dead bodies were recovered buried in the field of appellant on the information furnished by him under section 27 of the Evidence Act. Therefore, the ratio of *Anant Bhujrangrao Kulkarni's* case (supra) does not render any help to appellant.

23. From the statement of accused under section 313 Cr.P.C., it is revealed that he suspected that Dashoda Bai had illicit relations with Kammu Nai. He stated that on the day when he was going with Dashoda Bai to Narsinghpur for her treatment, Kammu Nai met them on way. He stopped them and took Dashoda Bai to some distance and talked to her in secret manner. According to him, Kammu Nai had illicit relations with Dashoda Bai.

24. In the cross-examination of Vijay Singh (PW-7) and Jiji Bai (PW-4) suggestions were made by the defence that deceased had illicit relations with Kammu Nai, she had gone with him and that it was he who killed Dashoda and Ashish. Thus, it can be safely inferred that appellant suspected the character and chastity of his wife Dashoda.

25. On a close appraisal of the evidence of prosecution witnesses, it stands proved that:

- (i) Appellant suspected fidelity and chastity of his wife Dashoda;
- (ii) Appellant was last seen together with deceased persons who were living away from him at her parents' house since last 2 years;
- (iii) The dead bodies of deceased persons were recovered at the instance of appellant and were found buried in the *Medh* of the field of accused;
- (iv) Death of both the deceased persons was proved to be homicidal in nature. They died due to asphyxia because of throttling.

26. In a case resting on circumstantial evidence, if the accused fails to offer a reasonable explanation in discharge of the burden placed on him, that itself provides an additional link in the chain of circumstances proved against him. Appellant, in the instant case, merely furnished an explanation that within 15 minutes when he returned after getting medicine from the shop, his wife and son were missing from the public place i.e. from the culvert near the temple and were not traceable despite search being made by him in the night. It appears that he offered a false explanation about the missing of deceased persons who were ultimately found dead and their dead bodies buried in his field. By these circumstances, in our opinion, various links in the chain of circumstantial evidence stood clearly established by the prosecution evidence and ruled out any reasonable likelihood of the innocence of the appellant. It also stood established that with a view to screen the commission of offence, appellant concealed the dead bodies under the earth.

27. For the aforesaid reasons, we are satisfied that the trial Court committed no error in holding that it was appellant who committed murder of Dashoda Bai and Ashish and with a view to screen himself from the legal punishment buried the dead bodies in the field and in convicting the appellant under sections 302 and 201 I.P.C.

28. Accordingly, the conviction of appellant under sections 302 and 201 I.P.C. and the sentences awarded to him by the trial Court are affirmed.

29. Appeal fails and is dismissed.

Appeal dismissed.

**I.L.R. [2012] M.P., 774
APPELLATE CRIMINAL**

Before Mr. Justice Rakesh Saxena & Mr. Justice N.K. Gupta
Cr.A. No.2191/2008 (Jabalpur) decided on 14 February, 2012

BUDDHU PAL & anr.

...Appellants

Vs.

STATE OF M.P.

...Respondent

A. Evidence Act (1 of 1872), Section 3, Penal Code (45 of 1860), Section 302 - Eye witness - Reliability - Eye witness stated that A2 assaulted deceased by farsa for three times and A1 assaulted by stick for 2-3 times - In FIR she had stated that only one blow by farsa was given by A2 - Such improvement in 161 statement after the MLC of deceased was done as 5 visible injuries were found - She further admitted that she was collecting cow dung at a place which was 300-400 meters away from place of incident - Identification of accused from their back at a distance of 70-80 feet was not possible by her - Witness not reliable. (Paras 12 to 14)

क. साक्ष्य अधिनियम (1872 का 1), धारा 3, दण्ड संहिता (1860 का 45), धारा 302 - चक्षुदर्शी साक्षी - विश्वसनीयता - चक्षुदर्शी साक्षी ने बताया कि ए-2 ने मृतक पर फरसा से तीन बार हमला किया और ए-1 ने छड़ी से 2-3 बार हमला किया - प्रथम सूचना रिपोर्ट में उसने बताया कि ए-2 द्वारा केवल एक बार फरसा से वार किया गया - मृतक की एमएलसी के बाद 161 के कथन में उपरोक्त सुधार किया गया क्योंकि 5 दृश्य घाव पाये गये थे - उसने आगे स्वीकार किया कि वह घटना स्थल से 300-400 मीटर की दूरी पर गाय का गोबर एकत्र कर रही थी - 70-80 फीट की दूरी से अभियुक्त की पीछे से पहचान उसके द्वारा संभव नहीं - साक्षी विश्वसनीय नहीं।

B. Criminal Procedure Code, 1973 (2 of 1974), Section 154 - Delay - Police station situated at a distance of 11 Kms - FIR lodged after 2 hours & 45 minutes - F.I.R. can not be said to be delayed - However, complainant had opportunity to consult with other which is apparent from the evidence - It can not be said that true account of incident was mentioned in F.I.R. (Para 16)

ख. दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 154 - विलम्ब - पुलिस स्टेशन 11 किमी की दूरी पर स्थित था - प्रथम सूचना रिपोर्ट 2 घंटे 45 मिनट के बाद दर्ज कराई गई - प्रथम सूचना रिपोर्ट विलम्ब से दर्ज करना नहीं

कहा जा सकता — यद्यपि शिकायतकर्ता के पास दूसरों से सलाह करने का अवसर था जो कि साक्ष्य से प्रकट होता है — यह नहीं कहा जा सकता है कि प्रथम सूचना रिपोर्ट में घटना का सही वृत्तांत दिया गया है।

C. Criminal Procedure Code, 1973 (2 of 1974), Section 27 - Seizure of weapons - Weapons were seized after 2 months of incident - No memorandum was recorded - Independent witnesses not examined - FSL report not proved - No question put in statement under Section 313 of Cr.P.C., signature not proved. (Paras 17 to 18)

ग. दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 27 — हथियारों की जब्ती — घटना के 2 माह बाद हथियार जब्त किये गये — कोई ज्ञापन अभिलिखित नहीं किया गया — स्वतंत्र साक्षी परीक्षित नहीं किये गये — एफ.एस.एल. रिपोर्ट को साबित नहीं किया गया — दण्ड प्रक्रिया संहिता की धारा 313 के अंतर्गत कथन में कोई प्रश्न नहीं पूछा गया, हस्ताक्षर साबित नहीं।

D. Prosecution documents - Not proved - Prosecution documents which were not proved can not be read against the accused however if any portion is favouring the accused, the same can be read. (Para 18)

घ. अभियोजन दस्तावेज — साबित नहीं किया जाना — अभियोजन दस्तावेज जिन्हें साबित नहीं किया गया अभियुक्त के खिलाफ नहीं पढ़े जा सकते किन्तु यदि कोई भाग अभियुक्त के पक्ष में है तो पढ़ा जा सकता है।

Cases referred :

AIR 1987 SC 1507, AIR 2011 SC 1736.

Vasant Daniel, for the appellants.

Nirmala Nayak, P.P. for the respondent/State.

J U D G M E N T

The Judgment of the Court was delivered by : N. K. GUPTA, J :- Being aggrieved with the judgment dated 30.9.2008 passed by Special Judge under SC/ST (Prevention of Atrocities) Act, 1989 (hereinafter it is mentioned as 'the Act'), Damoh, by which both the appellants were convicted for offence punishable under section 302 read with section 34 of IPC and sentenced for life imprisonment with fine of Rs.2,000/-. In default of payment of fine an additional imprisonment of six months, for each of them..

2. Prosecution's case, in short, is that, on 13.4.2007 at about 6:00 p.m.,

the complainant Indrani (P.W.1) was working with her husband Kaluram (the deceased) in making a stake of raw bricks on the land of one Malthu at village Deori, Police Station Tendukheda, District Damoh. Witness Nanhi Bai was also helping the complainant. Appellants Buddhu and Bhurru arrived at the spot having stick and *farsa* respectively and directed the deceased Kaluram not to make *Bhatta* on that place. The complainant told them that land belongs to her and therefore, they could not interfere. However, appellants started assaulting the deceased Kaluram by *farsa* and sticks. The appellant Bhurru gave three strokes of *farsa* on head of deceased Kaluram, whereas the appellant Buddhu Pal assaulted the deceased Kaluram by sticks on various parts of his body. By such assault, the deceased fell down on the Earth. On shouting of the complainant Indrani (P.W.1) and witness Nanhi Bai (P.W. 9), Narayan (P.W.2) and Onkar (P.W.5), sons of the deceased, arrived at the spot. They tried to save their father. The appellants ran away from the spot. The deceased was taken to the Police Station Tendukheda in a bullock cart with the help of Bhagwat Singh and others. Uttam Pal had also accompanied with the complainant and the injured deceased. Since the injured Kaluram was unable to speak, FIR was lodged by the complainant Indrani (P.W.1). The deceased Kaluram was referred for his medical examination to Govt. hospital, Tendukheda. Dr. Rajesh Namdeo (P.W.6) at about 9.15 p.m. in the night examined the deceased Kaluram and found that he had three incised wounds on his head and two blunt injuries on left arm and right eye. He referred the injured person to Medical College, Jabalpur. After 2-3 days treatment of the deceased, he succumbed to injuries. The dead body of the deceased Kaluram was referred for post-mortem.

3. Dr. Mukesh Agrawal (P.W.4) has examined the dead body of the deceased Kaluram and gave the post-mortem report, Ex.P/7. He found two small abrasions on right elbow, one laceration on chin and six injuries on his head. Due to external injuries, both parietal bones were found fractured. He had also found a hole in the left side of the chest having dimension of 1 X ¼ inch. He found that the deceased Kaluram died due to shock and coma because of head injury. In investigation, police seized one *farsa* from accused/appellant Bhurru and one stick from accused/appellant Buddhu. However, in forensic examination, no human blood was found from the stick but, human blood was found on *farsa*. Investigation officer examined various eye witnesses under section 161 of Cr.P.C. and also found that the deceased had given his dying declaration before the witness Onkar (P.W.5), Babulal (P.W.10) and Bhura (P.W.11). After due investigation, challan was filed before the concerned

Magistrate, who committed the case to the Special Judge for trial.

4. The appellants abjured their guilt but, no specific defence was taken by them. They recalled Patwari Bahadur Singh (P.W.3) to prove the distance between the place of incident and the place where the well was dug by Pancham Sen.

5. Learned Special Judge after considering the evidence adduced by the prosecution, acquitted the appellants for offence punishable under section 3(2) (v) of the Act but, convicted them for offence punishable under section 302 read with section 34 of IPC and sentenced as mentioned above.

6. Heard the learned counsel for the parties at length.

7. Learned counsel for the appellants has submitted that there was no eye witness in the case. The deceased Kaluram was found injured at the spot and till his death, he could not speak anything. Witness Nanhi Bai has turned hostile, whereas it is proved that Narayan (P.W.2) and Onkar (P.W.5) were $\frac{3}{4}$ kms away from the spot at the time of incident and therefore, neither they could hear any shout nor they could come to the spot at the time of incident. Similarly, Indrani (P.W.1) was also not present at the spot. It was mentioned in the FIR that Indrani took the bullock cart of one Bhagwat Singh accompanied by Uttam and therefore, there was no possibility of giving dying declaration by the deceased to the witness Babulal (P.W.10) or Bhura (P.W.11). There is a lot of contradiction between the statements of various witnesses relating to dying declaration. Remaining chain of circumstances is broken. The deceased has enmity with so many persons and therefore, he was an easy target of so many persons but, the police has falsely implicated the appellants. It is also submitted that learned Special Judge wrongly convicted the appellants for offence punishable under section 302 read with section 34 of IPC.

8. On the other hand, learned Govt. Advocate appreciated the evidence of various eye witnesses and oral dying declaration observed by witnesses Babulal (P.W.10) and Bhura (P.W.11). It is submitted that the testimony of these two witnesses could not be impeached and therefore, conviction directed by the learned Special Judge is correct.

9. There is no challenge from any of the side to the fact that death of the deceased Kaluram was homicidal. Dr.Mukesh Agrawal (P.W.11) found as many as five injuries on the head of the deceased. Due to those injuries both the parietal bones of the deceased were found fractured and the deceased died due to brain hemorrhage. Therefore, it is apparent that injuries caused on his head were fatal in nature and sufficient to cause his death in due course.

Therefore, looking to the nature of injuries, death of the deceased Kaluram appears to be homicidal.

10. Prosecution has examined four eye witnesses in the case namely Indrani (P.W.1), Narayan (P.W.2), Onkar (P.W.5) and Nanhi Bai (P.W.9). Out of these witnesses, Nanhi Bai turned hostile. She has stated that at the time of incident, she was working at her home. Narayan and Onkar have claimed that they ran from their place of work to the spot after hearing shouts of their mother and father but, witness Narayan and Onkar accepted that they were at Panchu's place to dig a well. Patwari Bahadur Singh (P.W.3) in para 7 of his cross-examination has accepted that Panchu's place was $\frac{3}{4}$ kms away from the place of incident. Similarly, witness Indrani (P.W.1), mother of the witnesses Narayan and Onkar has accepted in para 6 that Narayan and Onkar were working at place of Panchu Khawas and that place was half a kilometer away from the spot. Narayan and Onkar have also admitted that no any other companions came to the spot with them after hearing shouting of their mother and father. Looking to the evidence given by these witnesses, it appears that Narayan and Onkar were not in a position to hear shouting of their mother and father. They did not come to the spot after hearing their shouting otherwise, their companions must have followed them. Similarly, to cover a distance of half a kilometer by running, approximately 10 to 20 minutes are required and looking to the various injuries of the deceased Kaluram, it would be clear that such injuries could be caused within five to ten minutes. Indrani (P.W.1) mother of the witnesses Onkar and Narayan has accepted in para 7 that when Narayan came to the spot, accused persons had already left the spot. Onkar (P.W.5) has accepted that he went to the spot with his brother Narayan and therefore, it is apparent from the evidence of complainant Indrani that Onkar and Narayan could reach the spot after the incident and they were not the eye witnesses.

11. Looking to the contradictions between the statements of Onkar and Narayan with their previous statements under section 161 of Cr.P.C., it appears that they are now informing the Court so many new things by claiming themselves to be eye witnesses but, they did not see the incident. Under such circumstances, now only testimony of the complainant Indrani is to be assessed, being an eye witness.

12. Indrani (P.W.1) has stated that appellant Bhurru assaulted the deceased Kaluram by *farsa* for three times and Buddhu assaulted him by stick for 2-3 times but, in FIR, Ex.P/2 she has informed about one stroke of *farsa* given by appellant Bhurru and three strokes of Lathi given by appellant Buddhu. If she

was the eye witness then, she could see the entire incident. In FIR, she did not allege about three strokes of *farsa* given by Bhurru but, after MLC of the deceased was recorded, she improved her statement and in her case diary statement, she has stated that accused Bhurru gave three strokes of *farsa*. Also, Dr. Agrawal (P.W.4) in PM report, EX. P/7 found five visible injuries on the head of the deceased but, no narration was given by the complainant Indrani (P.W.1) as to how the deceased sustained more than three injuries on his head.

13. Initially, Indrani claimed that she was working with her husband at the spot. The deceased Kaluram was making stake of wood for preparation of *Bhatta* to make bricks, whereas she was helping in making stake of *Kandas* (cow dung cakes) but, in her cross examination she has admitted in para 6 that at the time of incident, she was collecting the cow dung at Kudariya Nala, which was 300 to 400 meters away from the spot. It appears difficult to hear the shouting of her husband from 300 to 400 meters, whereas so many trees are grown in gardens of so many persons in between those two places as per her admission. Similarly, if it is presumed that she heard the shouting of her husband then, she should have taken at least 15 minutes time to reach the spot and in that time, the assailants must have completed their assaults etc. Indrani herself has admitted in para 6 that she saw the appellants for the first time when they were running from the spot and she could see the back of the assailants. Again she changed her version and told that the appellants ran towards the direction from where, she was approaching to the spot. If the accused persons were running towards Indrani then, Indrani could see the faces of the accused persons but, she has categorically admitted that she saw the backs of the appellants. Therefore, her version cannot be accepted that the assailants ran towards her at that time when they were leaving the spot.

14. When a person approaches from a distance then such person could see a particular place from a distance at least of 70-80 feet and therefore, when the complainant Indrani saw the assailants for the first time, they must be 70 to 80 feet away from Indrani. From such a distance, it is not possible for anyone to identify any person by seeing his back. Under such circumstances, it appears that witness Indrani (P.W.1) could not see the incident at all, whereas she claims that she saw the backs of two persons from a distance.

15. If testimony of witness Indrani is not believable then, it is a case of no ocular evidence and therefore, remaining evidence is to be examined to see

as to whether the chain of circumstantial evidence is complete or not or if any part of the testimony of Indrani is accepted then, it should be seen as to whether it is corroborated by other evidence.

16. Indrani (P.W. 1) had lodged an FIR, Ex.P/1 before the police. FIR was lodged after 2 hours and 45 minutes, whereas, the place of incident was 11 kms away from the Police Station. However, in arranging a bullock cart and calling for the assistance, sufficient time was required by the complainant and therefore, *prima facie* it cannot be said that FIR was delayed but, at the same time it is apparent from the evidence that she had an opportunity to consult with so many persons namely Bhura, Babulal etc. Result of the consultation is visible in the FIR. Indrani has accepted in the Court that she did not see any incident, whereas in FIR, she has claimed herself to be an eye witness. Since she was not an eye witness, she could not know that according to the MLC report, the deceased sustained three injuries on his head caused by sharp cutting weapon and therefore, in FIR, Ex. P/1 it was mentioned that the appellant Bhurru gave one blow of *farsa* on the head of the deceased and therefore, witness Indrani improved her statement when she was examined under section 161 of Cr.P.C. Similarly, she could not know that Dr. Agrawal found five visible injuries on the head of the deceased and therefore, no explanation could be given about those injuries in the statement of the complainant Indrani in the trial Court. Under such circumstances, FIR is lodged after due consultation and therefore, it cannot be said that it is a true account of the incident, no corroboration can be obtained by the complainant from the FIR lodged by her.

17. Indrani (P.W. 1) has not stated that she saw any weapon in the hands of the appellants at the time when they were running from the spot and therefore, it cannot be presumed that the appellants have assaulted the deceased by *farsa* and stick. Police has seized one *farsa* from the appellant Bhurru and one stick from the appellant Buddhu. It is submitted by learned counsel for the appellants that witnesses relating to seizure memo Ex.P/11 and Ex.P/12 namely Gopi and Narayan were not examined before the trial Court. No reason has been shown as to why the independent witnesses were not examined which were related to seizure. DSP Shri A.K. Shrivastava (P.W.7) has shown the seizure of weapons from the appellants without recording their memo under section 27 of Evidence Act. On the contrary, Shri Shrivastava had admitted in para 5 that seizure took place after two months of the incident. Therefore, it appears that police has arranged one stick and *farsa* and it is

shown to be seized from the appellants. Looking to the evidence of Shri Shrivastava, contention advanced by learned counsel for the appellants appears to be acceptable. No independent witness relating to seizure is examined. No memo under section 27 of Evidence Act was recorded and a plain seizure is shown against the appellants. It also appears that seizure memo Ex. P/ 11 and Ex. / 12 is prepared by someone else and Shri Shrivastava placed his signature on the seizure memo. Therefore, by the statement of Shri Shrivastava, it cannot be said that either *farsa* or *lathi* was seized from any of the appellants.

18. Both weapons were sent for their forensic analysis. FSL report was received by the Court on or after 26.7.2008 and therefore, neither it was referred in the questions prepared by the learned Additional Sessions Judge under section 313 of Cr.P.C. nor the report was exhibited and therefore, that report cannot be read against the accused persons at present. However, if any portion which is favourable to the accused persons then, it should be read because it is a prosecution document on which prosecution relies. In that FSL report, it is mentioned that no blood was found on the stick seized from Buddhu and therefore, recovery of the stick from Buddhu does not create any evidence against him. Similarly, when FSL report cannot be read against the appellant Bhurru then, no reference can be taken from the FSL report that human blood was found on the axe seized from the appellant Bhurru. Therefore, circumstances relating to seizure of weapon have no evidentiary value in the case.

19. Looking to the statements of Indrani and her sons it would be clear that there was a dispute of land between the parties. Initially the land was of Thippa and Ram Singh and they were cultivating the disputed land. In Panchayat, the deceased was directed to return the money to Thippa and Ram Singh and consequently they would leave the land. Actually the land was taken by Baliram, father of the accused Bhurru and uncle of accused Buddhu. Baliram returned the land as per the decision given by Panchayat but, Indrani has admitted in para 11 of her statement that money was not given either to Thippa, Ram Singh or Baliram. She states that money was returned to one Milan and she was not aware as to whether Milan gave that money to Thippa or Baliram. However, she has admitted that Milan absconded with money. She has also admitted that Baliram was always blaming the deceased that he did not receive the money. Under such circumstances, it appears that there was enmity between Baliram and the deceased relating to the payment of money towards the disputed land. Enmity is a doubled edged weapon and appellants could kill the deceased due to enmity or they could be falsely

implicated on the basis of enmity.

20. Witness Narayan (P.W.2) has also accepted that the deceased had a dispute with one Chunnilal in the past. He also had a dispute with Jugara and Hulasi and therefore, contention of the learned counsel for the appellants may be accepted that there is a possibility that the deceased could be killed by anyone else. However, there was motive with the appellants to kill the deceased because of non payment relating to the disputed land.

21. Witness Bhura (P.W. 11), Babulal (P.W. 10) and Narayan (P.W.2) have stated that the deceased Kaluram had stated himself that he was assaulted by the appellants Bhurru and Buddhu by *farsa* and stick respectively. They have claimed that when they took Kaluram in the bullock cart then, in the way to the Police Station, Kaluram stated about the incident. Witness Babulal is real younger brother of the deceased Kaluram. Bhura (P.W. 11) has stated in para 9 that at the spot Kaluram did not inform anything but, immediately he took a somersault. He has stated that the deceased Kaluram informed about the incident at the spot. He was talking to them till they reached the village Budela, whereas witness Babulal has stated that Kaluram did not say anything at the spot. At village Budela, Kaluram became conscious and told the story and thereafter he became unconscious. Narayan (P.W.2) has stated in para 12 that Kaluram told the story in the way. On the contrary, Onkar (P.W.5), son of the deceased has stated in para 15 that he tried to talk to his father but, he could not speak at the spot because he was unconscious. Similarly, Indrani (P.W. 1) who went with the deceased up to the police station and lodged the FIR has stated in para 19 that her husband was unconscious from the very beginning when he was found at the spot and he remained unconscious till his death. Looking to the evidence of Indrani, wife of the deceased, it appears that the deceased has not given any information about the incident to anyone and therefore, it appears that witness Narayan, Bhura and Babulal are telling a falsehood about hearing a dying declaration from the deceased Kaluram.

22. Witness Indrani (P.W. 1) has stated that Sarpanch Bhagwat Singh had provided his bullock cart and the deceased was taken by Bhagwat Singh and Uttam with this witness. She has admitted in para 9 that ex-sarpanch Uttam came to the spot and he went up to the hospital. In this respect, FIR lodged by the complainant may be perused in which it was mentioned that she went to the police station with sarpanch Uttam Pal and Bhagwat Singh. It is nowhere mentioned that either Bhura or Babulal accompanied the bullock cart or the bullock cart was brought by Onkar. Indrani (P.W. 1) has stated that

bullock cart was brought by her sons but, she has admitted in para 10 that she was accompanied by Uttam, Bhura and Onkar when she went to the police station from the spot. She did not say anything about the presence of Babulal in the bullock cart. Similarly, the witness Onkar (P.W.5) has stated that it was his brother Narayan who went with his father and mother, whereas Indrani does not confirm the presence of witness Narayan in the transit from the spot to the police station. Under such circumstances, where it appears that neither Narayan nor Babulal went to the police station by bullock cart then, there was no possibility that they could hear any word from the deceased. Onkar and Indrani did not claim that they heard anything from the deceased and therefore, statements of Bhura relating to dying declaration cannot be believed. Under such circumstances, it is not proved beyond doubt that the deceased said anything about the incident.

23. If the entire evidence other than ocular evidence is considered collectively then, following pieces of chain of circumstances are proved. (1) There was enmity between the appellants and the deceased, hence the appellants had a motive to do such crime. (2) The deceased was a target of so many persons. (3) Death of the deceased was homicidal. On the other hand it is not proved that the appellants were seen with the deceased just before the incident. No quarrel took place on the day prior to the incident. No dying declaration of the deceased was proved. No extra judicial confession of the appellants is on record. Seizure of various weapons from the appellants could not be proved beyond doubt. Under such circumstances, chain of circumstantial evidence is broken and by available circumstances, it cannot be said that the appellants were the culprits who assaulted the deceased by farsa and stick.

24. Learned Govt. Advocate has urged that human blood was found on the *farsa* seized from the appellant Bhurru and therefore, it was for the appellants to explain as to how the human blood was there on his *farsa*. However, seizure is not proved beyond doubt, FSL report not shown to the appellants, therefore, it cannot be used against the appellants. Also, chain of circumstantial evidence is broken and therefore, on the basis of blood found on a weapon, conviction cannot be directed on the sole basis of such blood spots. In this connection, judgment passed by Hon'ble the Apex Court in the case of "*Kansa Behra Vs. State of Orrisa*" [AIR (1987) SC 1507] may be referred, in which it is laid that the evidence about the blood group is only conclusive to connect the blood stains with the deceased. If such cognate

evidence is absent then, such conclusion cannot be drawn against the accused.

25. Learned counsel for the appellants invited the attention of this Court to Para 32 (n) of the judgment passed by Hon'ble the Apex Court in case of "*Kuldip Yadav Vs. State of Bihar*" [AIR (2011) SC 1736] to show that in what manner eye witness may not be believed or remaining circumstantial evidence may be considered. Relating para of that judgment is as under:-

"32. (n) The version given by eye-witnesses who were also interested witnesses on account of their relationship with the deceased and being inimically deposed against the accused persons is highly exaggerated, contrary to each other and not fully corroborated with medical evidence and there are discrepancies about the number of accused persons, weapons and ammunitions carried by them and they are not in tune with what (PW-9) informant has stated in his deposition. In other words, the prosecution has not presented true version on most of the material parts and therefore, the witnesses and material placed on their side does not inspire confidence and cannot be accepted on its face value."

26. On the basis of aforesaid discussion and in the light of observation made in case of *Kuldip* (supra), it would be clear that no eye witness is believable, so as to prove that the appellants assaulted the deceased by *farsa* and stick and killed him. Similarly, there is no cognate circumstantial evidence available on record by which it can be said that the appellants were the persons who assaulted the deceased by such weapons causing his death. Under such circumstances, the appellants could not be convicted for offence punishable under section 302 of IPC either directly or with the help of section 34 of IPC or for any inferior offence of the same nature. Learned Special Judge has erred in believing the eye-witnesses of the case and therefore, he erred in convicting the appellants for offence punishable under section 302 of IPC. The appeal filed by the appellants appears to be acceptable and therefore, appeal is allowed. Conviction and sentence directed against the appellants are hereby set aside. The appellants are acquitted from all the charges appended against them.

27. The appellants are in custody at present and therefore, they be released forthwith.

Appeal allowed.

I.L.R. [2012] M.P.; 785

CIVIL REVISION

Before Mr. Justice R.C. Mishra

C.R. No. 470/2010 (Jabalpur) decided on 19 January, 2012

SANTOSH SULLERE & another Applicants

Vs. SMT. SAROJ SULLERE Non-applicant

SMT. SAROJ SULLERE Non-applicant

A. Succession Act (39 of 1925), Section 387 - Succession Certificate - Civil Suit - Unsuccessful party to a proceeding for succession certificate can file a regular suit in a competent civil court on the same question - Appreciation of evidence in civil revision not at all necessary. (Para 9)

क. उत्तराधिकार अधिनियम (1925 का 39), धारा 387 - उत्तराधिकार प्रमाण पत्र - सिविल वाद - उत्तराधिकार प्रमाण पत्र हेतु कार्यवाही के असफल पक्षकार उसी प्रश्न पर सक्षम सिविल न्यायालय में नियमित वाद प्रस्तुत कर सकता है - सिविल पुनरीक्षण में साक्ष्य का अधिमूल्यन बिल्कुल भी आवश्यक नहीं।

B. Succession Act (39 of 1925), Section 383 - Revocation of Succession Certificate - Concealment of facts - Petitioners were aware of the status of respondent as the nominee of deceased - Even then she was not made party to the succession proceedings - Succession Certificate was rightly revoked as the same was obtained by concealment of material facts. (Para 10)

ख. उत्तराधिकार अधिनियम (1925 का 39), धारा 383 - उत्तराधिकार प्रमाण पत्र का प्रतिसंहरण - तथ्यों का छिपाव - याचीगण को मृतक का नामित होने की प्रत्यर्थी की स्थिति की जानकारी थी - तब भी उसे उत्तराधिकार कार्यवाहियों में पक्षकार नहीं बनाया गया - उत्तराधिकार प्रमाणपत्र को उचित रूप से प्रतिसंहृत किया गया क्योंकि उसे तात्त्विक तथ्यों का छिपाव कर अभिप्राप्त किया गया था।

C. Succession Act (39 of 1925), Sections 372, 383 & 384 - Grant of Succession Certificate - Application under Section 372 of Act must conform strictly to the requirements of the Section and corresponding proceeding is not a proceeding in rem - Succession Certificate can not be issued on the basis of an additional prayer made in the application under Section 383 of the Act - Order revoking succession certificate confirmed whereas direction for issuance of succession certificate in favour of respondent set aside - Upon filing a

fresh application by respondent, the Court shall issue succession certificate in her favour with regard to the deceased as early as possible.

(Paras 14 to 18)

ग. उत्तराधिकार अधिनियम (1925 का 39), धाराएँ 372, 383 व 384 – उत्तराधिकार प्रमाण पत्र प्रदान किया जाना – अधिनियम की धारा 372 के अंतर्गत आवेदन में धारा की अपेक्षाओं का कड़ाई से अनुपालन करना चाहिए और तत्संबंधी कार्यवाही सर्वबंधी कार्यवाही नहीं है – उत्तराधिकार प्रमाण पत्र अधिनियम की धारा 383 के अंतर्गत आवेदन में की गई अतिरिक्त प्रार्थना के आधार पर जारी नहीं किया जा सकता – उत्तराधिकार प्रमाण पत्र प्रतिसिद्ध करने के आदेश की पुष्टि की गई जबकि प्रत्यर्थी के पक्ष में उत्तराधिकार प्रमाण पत्र जारी करने का निदेश अपास्त – प्रत्यर्थी द्वारा नया आवेदन प्रस्तुत करने पर, न्यायालय मृतक के संबंध में उसके पक्ष में उत्तराधिकार प्रमाण पत्र यथा शीघ्र जारी करेगा।

Cases referred :

AIR 1961 MANIPUR 52, 2003(1) MPLJ 67.

Siddharth Gulatee, for the applicants.

Amrit Ruprah, for the non-applicant.

ORDER

R.C. MISHRA, J. :- The subject matter of challenge in this revision is the order-dated 28.10.2010 passed by First Additional District Judge, Chhatarpur in M.A. No.01/10 whereby the petitioners' appeal under Section 384 of the Succession Act, 1925 (hereinafter referred to as 'the Act') against the order-dated 15.04.2010 passed by Third Civil Judge Class I, Chhatarpur in Succession Case No.13/08, was dismissed and revocation of succession certificate granted to them and the direction for issuance of the certificate in favour of the respondent were affirmed.

2. Ramdas Sullere, who died on 28.12.2003 at Kulpahar Distt. Mahoba (U.P.), was superannuated on 31.07.2003 from the post of Peon in the Tahsil Office at Chhatarpur. The respondent claims to be his legally-wedded wife whereas petitioner no.1, the husband of petitioner no.2, is the son of his nephew namely Harsahay.

3. While asserting that -

(i) by way of application-dated 29.08.2002 addressed to the Tahsildar, the deceased had nominated them in place of the respondent to receive provident fund, gratuity, family

pension and other post-retirement benefits and

(ii) the respondent had lived with the deceased for a few days as a mistress and thereafter, had started residing with another person

- the petitioners filed an application, under Section 372 of the Act, for succession certificate in respect of the amounts deposited in the name of the deceased with the bank as well as in the Provident Fund Account. However, they did not prefer to implead the respondent as one of the parties to the proceedings.

4. As none had appeared to contest the application, it was allowed vide order-dated 31.01.2005 passed by Second Civil Judge Class-I, Chhatarpur in Succession Case No.44/04 and accordingly, the succession certificate was issued in favour of the petitioners.

5. On 22.02.2005, the respondent moved an application, under Section 383 of the Act, for revocation of the succession certificate on the ground that it was obtained fraudulently without informing her and by suppressing the material facts. In that application, she also prayed for grant of such a certificate in her favour. According to the respondent, her marriage was solemnized with Ramdas as per Hindu rites and ceremonies and therefore, being his heir of the nearest degree, only she was entitled to grant of succession certificate.

6. In reply, the petitioners explained that they had not arrayed the respondent in their application for succession certificate as she was not the legally-wedded wife of the deceased. Attention was also invited to the fact that the respondent did not raise any objection before the Succession Court in response to the public notice advertised in local newspaper 'Sandhya Prakash' on 28.12.2004. They also pointed out that the respondent was able to receive family pension on the basis of a forged death certificate suggesting that Ramdas had expired at Chhatarpur.

7. Upon appreciation of the evidence on record, learned Civil Judge, for the reasons assigned in the order-dated 15.04.2010, not only revoked the succession certificate in question but also directed issuance of succession certificate in favour of the respondent on furnishing the requisite stamp duty. As indicated already, the appeal preferred by the petitioners was also dismissed by way of the order impugned in the instant revision.

8. The first contention raised by learned counsel for the petitioners is that the findings that the respondent is the legally-wedded wife of the deceased and the petitioner no. 1 is not one of his successors, though concurrent, suffer from serious error of jurisdiction inasmuch as there was no clear and cogent evidence to establish that the marriage was performed with proper ceremonies and in due form according to law applicable to the parties.

9. It is well-settled that the revisional jurisdiction can not embark upon re-appreciation of evidence unless the finding of fact is, on the face of it, illegal or perverse. However, the factual findings in question cannot be said to be, in any way, uncalled for or not based on relevant evidence. There is yet another aspect of the matter. Section 387 of the Act enables an unsuccessful party to a proceeding for succession certificate to file a regular suit in a competent Civil Court on the same question. For these reasons, re-appreciation of the evidence on record is not at all necessary.

10. It is then contended on behalf of the petitioners that the order of revocation is not sustainable as there was no wilful or fraudulent suppression of the facts concerning relationship between the respondent and the deceased.

11. A bare perusal of the order-dated 31.01.2005 (*supra*) granting succession certificate to the petitioners would reveal that they were well aware of the status of the respondent as the nominee of Ramdas to receive family pension and other benefits in the event of his death. In such a situation, their explanation for her non-joinder in the proceedings was not reasonably acceptable.

12. Provisions of Section 383 of the Act read thus -

"383. Revocation of certificate.- A certificate granted under this Part may be revoked for any of the following causes, namely:-

(a) that the proceedings to obtain the certificate were defective in substance;

(b) that the certificate was obtained fraudulently by the making of a false suggestion, or by the concealment from the Court of something material to the case;

(c) that the certificate was obtained by means an untrue allegation of a fact essential in point of law to justify the

grant thereof, though such allegation was made in ignorance or inadvertently;

(d) that the certificate has become useless and inoperative through circumstances;

(e) that a decree or order made by a competent Court in a suit or other proceeding with respect to effects comprising debts or securities specified in the certificate renders it proper that the certificate should be revoked."

13. As indicated in the order dated 15.04.2010 (*ibid*), the succession certificate was revoked for the cause contemplated in clause (b) [above]. Further, the order-dated 31.01.2005 granting the certificate reflects that the corresponding application contained no reference to the respondent. In this view of the matter, the revocation of the succession certificate obtained by concealment of material facts was rightly affirmed as well merited.

14. The last contention advanced by learned counsel for the petitioners relates to the direction for grant of succession certificate in favour of the respondent. Placing reliance on the decision of learned Judicial Commissioner in *Deity Laipakhangba Khoumbomba, represented by Saikhom Purno Singh v. Taorem Khomdonjao Singh*, AIR 1961 MANIPUR 52, he has argued that the respondent was not even entitled to apply for issuance of succession certificate before getting the certificate issued in favour of the petitioners revoked.

15. Per contra, learned counsel for the respondent, while supporting the order passed by the appellate Court, has pointed out that her application, though styled as one under Section 383 of the Act for revocation of the succession certificate, also contained prayer for grant of certificate. According to learned counsel, asking the respondent to file a fresh application under Section 372 of the Act would amount to a hyper-technical approach as the requirements of the section in respect of the estate of the deceased have already been complied with. Inviting attention to the decision of this Court in *Madhulika Verma v. Prabhawati Verma* 2003(1) M.P.L.J. 67, she has further urged that it is open to the Court to modify a succession certificate even upon an application for revocation thereof. However, facts of the present case are distinguishable as in that case, *Madhulika* happened to be the wife of Sanjay Verma, who was arrayed as the respondent in the application under Section 372 of the Act. Further, it is trite that the application under S.372 of the Act

must conform strictly to the requirements of that section and the corresponding proceeding is not a proceeding *in rem*.

16. This apart, powers of the appellate Court under Section 384 of the Act are limited and its area of jurisdiction is clearly defined. It can only declare the person to whom the certificate should be granted and direct the inferior Court, on application being made therefor, to grant it accordingly, in supersession of the certificate already granted.

(Emphasis supplied)

17. Thus, learned ADJ committed an error of jurisdiction in upholding the direction for issuance of succession certificate in favour of the respondent on the basis of the additional prayer made in the application, under Section 383 of the Act, particularly when the statutorily mandatory requirements were not complied with. The direction, therefore, deserves interference under the revisional jurisdiction.

18. For these reasons, the revision stands allowed in part. The part of the impugned order that relates to revocation of the succession certificate is hereby affirmed. But, the direction for issuance of succession certificate in favour of the respondent is set-aside. Instead, it is directed that upon a fresh application being made by the respondent therefor strictly in accordance with law, the Civil Judge shall issue succession certificate in her favour with regard to the estate of Ramdas as early as possible.

Revision partly allowed.

I.L.R. [2012] M.P., 790

CRIMINAL REVISION

Before Mr. Justice U.C. Maheshwari

Cr. Rev. No. 1976/2011(Jabalpur) decided on 24 November, 2011

PREETAM CHOUKSEY

...Applicant,

Vs.

STATE OF M.P.

....Non-applicant

Criminal Procedure Code, 1973 (2 of 1974), Section 386 - Powers of Appellate Court - Remand - Trial Court did not consider the evidence as well as the exhibited documents - Held - Appellate Court rightly remitted the case back for deciding afresh after re-appreciation of evidence - Revision dismissed.

(Paras 2, 5 & 6)

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 386 – अपीली न्यायालय की शक्तियाँ – प्रतिप्रेषण – विचारण न्यायालय ने साक्ष्य तथा प्रदर्शित दस्तावेजों पर विचार नहीं किया – अभिनिर्धारित – अपीली न्यायालय ने मामले को साक्ष्य का नये सिरे से मूल्यांकन के बाद पुनः निर्णित करने के लिये उचित रूप से प्रतिप्रेषित किया – पुनरीक्षण खारिज।

Safiq Ullah, for the applicant.

Alok Tapikar, PL for the non-applicant.

ORDER

U. C. MAHESHWARI J. :- The applicant/ accused has preferred this revision challenging the sustainability of judgment dated 14.10.2011 passed by the Sessions Judge, Sagar in Cr. Appeal No.264/2011 whereby allowing the appeal of the applicant in part and after setting aside the judgment dated 29.6.2011 passed by Judicial Magistrate Sagar in Criminal Case No.473/2005 acquitting the applicant from the charge of Section 409, 420, 468 and 120-B of IPC, the case has been remitted back with a direction to decide afresh after proper appreciation of evidence led by the parties on record.

2. The applicant's counsel after taking me through the impugned judgment of the Courts below along with the provision of Section 386 of Cr. P. C. argued that in the available circumstances the provision of aforesaid Section 386 of Cr. P. C. was not available with the appellate Court for remitting back the matter to the trial Court after setting aside the judgment of such Court to decide afresh by re-appreciation of the evidence; as such re-appreciation of evidence could be carried out by the appellate Court itself instead to remand the matter to the trial Court. In continuation he also said that the appellate Court being the Court of facts can also re-appreciate the available evidence and for that purpose remitting back the case to the trial Court is not necessary. With these submission, he prayed for setting aside the impugned judgment of the appellate Court by admitting and allowing this revision.

3. Keeping in view the arguments advanced by the applicant's counsel, I have carefully gone through the judgment of the trial Court as well as impugned judgment of the appellate Court remitting back the matter to the trial Court with a direction to decide afresh in accordance with the direction given in paragraph 15 of the impugned judgment.

4. Before giving any finding in the matter as ready reference, I would like to produce the provision of Section 386 of Cr. P. C. by which the appellate

Court is empowered to remand the matter with some direction to decide afresh, the same are read as under :

386. Powers of the Appellate Court.

After perusing such record and hearing the appellant or his pleader, if he appears, and the Public Prosecutor, if he appears, and in case of an appeal under section 377 or section 378, the accused, if he appears, the Appellate Court may, if it considers that there is no sufficient ground for interfering, dismiss the appeal, or may-

(a) In an appeal from an order of acquittal, reverse such order and direct that further inquiry be made, or that the accused be re-tried or committed for trial, as the case may be, or find him guilty and pass sentence on him according to law;

(b) In an appeal from a conviction-

(i) Reverse the finding and sentence and acquit or discharge the accused, or order him to be re-tried by a court of competent jurisdiction subordinate to such appellate Court or committed for trial, or

(ii) Alter the finding, maintaining the sentence, or

(iii) With or without altering the finding, alter the nature or the extent, or the nature and extent, of the sentence, but not so as to enhance the same;

(c) In an appeal for enhancement of sentence-

(i) Reverse the finding and sentence and acquit or discharge the accused or order him to be re-tried by a court competent to try the offence, - or

(ii) Alter the finding maintaining the sentence, or

(iii) With or without altering the finding, alter the nature or the extent, or the nature and extent, of the sentence, so as to enhance or reduce the same;

(d) In an appeal from any other order, alter or reverse such order; (3) Make any amendment or any consequential or

incidental order that may be just or proper.

Provided that the sentence shall not be enhanced unless the accused has had an opportunity of showing cause against such enhancement:

Provided further that the Appellate Court shall not inflict greater punishment for the offence, which in its opinion the accused has committed, than might have been inflicted for that offence by the Court passing the order or sentence under appeal.

5. Keeping in view the aforesaid provision after going through the judgment of the trial Court as well as the appellate Court, I have found while deciding the case by the trial Court the material evidence of some witnesses namely Shikhar Chand (P.W.1), Aurn Kumar Pataskar (P.W.2), Rajendra Kumar (P.W.3), Nandram Gupta (P.W.4) Shyamsunder Choubey (P.W.5) have not been appreciated and considered with proper approach, even the exhibited documents were not taken into consideration with proper approach and the applicant along with co-accused were acquitted from the alleged offence of Section 409, 420, 468 and 120-B of IPC. It appears that considering all such circumstances the appellate Court by invoking the powers vested in it under Section 386 of Cr. P. C. after setting aside the impugned judgment of the trial Court has remitted back the matter to such Court with a direction to decide afresh after re-appreciation of available evidence in which some of the witnesses have made direct allegations with respect of alleged offence committed by the applicant along with co-accused. On joint reading of both the judgments I have not found any error in the judgment of the appellate Court, as such the same appears to be passed after taking into consideration the entire factual matrix of the case along with the recorded evidence and exhibited papers, in the lack of specific finding of the trial Court on the evidence the appellate Court did not found fit to consider the matter itself at first instance and appreciate such evidence available on the record. Therefore, to appreciate such part of the evidence of the examined prosecution witnesses, the case has been remitted back to the trial Court so the present applicant subject of decision of the trial Court on arising the occasion may file the appeal again and contest the matter in appeal also on facts as well as law. In such premises the impugned judgment of the appellate Court appears to be under the vested jurisdiction of such Court enumerated under the aforesaid Section 386 of Cr. P. C. Accordingly, I have not found any perversity, illegality,

irregularity or anything against the propriety of law in the impugned judgment requiring any interference at this stage under the revisional jurisdiction of this Court. Thus, this revision being devoid of any merits is dismissed at the initial stage of motion hearing on admission.

6. The revision is dismissed as indicated above.

Revision dismissed.

I.L.R. [2012] M.P., 794

CRIMINAL REVISION

Before Mr. Justice S.C. Sinho

Cr. Rev. No. 859/2006 (Jabalpur) decided on 24 January, 2012

RAJ KUMAR DUBEY @ RAJU

...Applicant

Vs.

SMT. REKHA DUBEY @ GOTHAL BAI

...Non-applicant

Criminal Procedure Code, 1973 (2 of 1974), Section 125 - Maintenance - Decree of divorce passed against wife on the ground that she is living in adulterous life - Wife is not entitled for maintenance allowance.
(Para 7)

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 125 - मरणपोषण - पत्नी के विरुद्ध तलाक की डिक्री इस आधार पर पारित की गई कि वह व्यभिचारिणी का जीवन जी रही थी - पत्नी मरणपोषण भत्ते की हकदार नहीं।

Case referred :

AIR 2000 SC 952.

J.L. Soni, for the applicant.

None for the non-applicant.

J U D G M E N T.

S.C. SINHO, J. :- This criminal revision has been filed under Section 397/401 of Code of Criminal Procedure, being aggrieved by the order dated 2.5.2005 passed in Criminal Revision No. 278/2004, passed by the IVth Additional Sessions Judge, Jabalpur, whereby the order dated 17.8.2004 passed in M.J.C. No. 109/03 by the learned Judicial Magistrate First Class, Jabalpur under Section 127 of Cr.P.C was set aside. Hence, this revision petition is filed by the applicant / husband.

2. The brief facts of the case are that the respondent / wife filed an

application under Section 125 of Cr.P.C for grant of maintenance before the JMFC First Class, vide order dated 10.2.1998 granted the maintenance of Rs.300/- per month. After the order was passed, Civil Suit No. 15-A/01 was filed by the applicant / husband against the respondent / wife under Section 13 (1) of the Hindu Marriage Act vide impugned judgment and decree dated 22.10.2002 it was held that the respondent wife is living in adulterous life and ex-party decree was granted. Thereafter the applicant filed an application under Section 127 (2) (3) and 125 (5) on the ground that respondent wife is living in adulterous life. The learned Magistrate vide order dated 17.8.2004 in M.J.C No. 109/200 held that the respondent/ wife is living in adulterous life hence not entitled for maintenance under Section 125 of Cr.P.C.

3. Being aggrieved by the aforesaid order, the respondent/wife has filed a Revision Petition No. 278/2004, whereby vide impugned order dated 2.5.2005; the learned Sessions Judge held that the aforesaid decree of divorce on the ground of adulterous was granted ex-party, therefore, the applicant is liable to pay maintenance and quashed the order of learned Magistrate regarding payment of maintenance.

4. Learned counsel for the applicant Shri Soni submitted that respondent has filed a petition under Order 9 Rule (13) of C.P.C for quashing the ex-party decree dated 22.1.2010 passed in Civil Suit No. 15-A/01, it is also dismissed and the aforesaid decree of divorce on the ground of adultery has become final.

5. Admittedly, in the instant case, the respondent / wife is a divorcee and the decree of divorce is passed on the ground that she is living in adulterous life. However, the aforesaid decree was passed ex-party, but the respondent's application under Order 9 Rule (13) of C.P.C is also dismissed vide order dated 31.7.2007 in M.J.C. 03/04, hence the aforesaid decree has become final.

6. *Hon'ble Apex Court in the case of Rohtash Singh Vs. Smt. Ramendri and others* (AIR 2000 Supreme Court 952) in para 5 and 6 has held as under:

(5) Sub-section (4) of Section 125, Cr.P.C. provides as under:

(4) No wife shall be entitled to receive an allowance from her husband under this section if she is living in adultery, or if, without any sufficient reason, she refuses to live with her

husband, or if they are living separately by mutual consent.

(6) Under this provision, a wife is not entitled to any Maintenance Allowance from her husband if she is living in adultery or if she has refused to live with her husband without any sufficient reason or if they are living separately by mutual consent. Thus, all the circumstances contemplated by sub-section (4) of section 125 Cr.P.C presuppose the existence of matrimonial relations. The provision would be applicable where the marriage between the parties subsists and not where it has come to an end. Taking the three circumstances individually, it will be noticed that the first circumstances on account of which a wife is not entitled to claim Maintenance Allowance from her husband is that she is living in adultery. Now, adultery is the sexual intercourse of two persons, either of whom is married to a third person. This clearly supposes the subsistence of marriage between the husband and wife and if during the subsistence of marriage, the wife lives in adultery, she cannot claim Maintenance Allowance under Section 125 of the Code of Criminal Procedure.

7. In the case in hand, the responden's marriage life between the parties do not subsist. The decree of divorce is granted on the ground that wife is living in adultery life therefore, in view of Section 125 (4) she is not entitled for maintenance allowance.

8. Accordingly, the revision is allowed and order dated 2.5.2005 passed in Cr. Appeal No. 278/2004, consequently, order dated 17.8.2004 passed in MJC No. 109/03 are hereby set aside.

Revision allowed.

I.L.R. [2012] M.P., 796

CRIMINAL REVISION

Before Mr. Justice S.N. Aggarwal

Cr. Rev. No. 52/2012 (Gwalior) decided on 7 February, 2012

NARAYAN SHARMA

...Applicant

Vs.

STATE OF M.P.

...Non-applicant

Juvenile Justice (Care and Protection of Children) Act (56 of

2000), Section 12 - Bail - Denial of - Bail to a juvenile can not be denied unless his case falls within any of the exceptions engrafted in Section 12 of the Act, 2000. (Para 4 to 6)

किशोर न्याय (बालकों की देख-रेख और संरक्षण) अधिनियम (2000 का 56), धारा 12 - जमानत - का इंकार - किशोर को जमानत देने से इंकार नहीं किया जा सकता जब तक कि उसका प्रकरण अधिनियम 2000 की धारा 12 में अंतर्विष्ट किसी भी अपवाद के अंतर्गत न आता हो।

Sanjay Gupta, for the applicant.

Prabal Solanki, P.P. for the non-applicant/State.

ORDER

S.N. AGGARWAL, J. :- Whether a juvenile below 18 years of age on the date of offence can be denied bail merely on subjective presumption that his release is likely to bring him into association with any known criminal or expose him to moral, physical or psychological danger or that his release would defeat the ends of justice only because he is involved in a heinous crime, is the only short question that craves for an answer in the present revision petition preferred by the revisionist aggrieved by the concurrent orders of the two Courts below denying him bail under section 12 of the Juvenile Justice (Care & Protection of Children) Act, 2000 (for brevity, the "Act").

2. Briefly stated the facts of the case giving rise to the above question are that a criminal case under section 302 IPC was registered against the revisionist and his other family members vide Crime No.30/09 at Police Station Andori, District Bhind with regard to murder of one Makhan Lal Jatav, an MLA from Gohad constituency in the incident that took place on 14th April, 2009. The age of the revisionist that he was below 18 years of age on the date of crime is not in issue as it is admitted by the learned public prosecutor appearing on behalf of the State and is also so borne out from the impugned orders of the Courts below. Furthermore, a perusal of the impugned orders of the Courts below would show that the revisionist was denied bail as the Courts below formulated an opinion only on the basis of gravity of the crime that his release on bail was likely to bring him into association with known criminals.

3. The learned public prosecutor appearing on behalf of the State has opposed the present revision petition on the ground that the Courts below were justified in drawing a presumption against the revisionist that he may be

exposed to moral, physical and psychological danger as there is a possibility of his coming in association with known criminals in view of gravity of the crime in which he is involved. According to the learned public prosecutor, there is no reason for this Court to interfere with the opinion formulated by the Courts below for denying bail to him under section 12 of the Act.

4. It shall be relevant and useful to have a quick glimpse on the relevant provisions governing bail to a juvenile in conflict with law as enacted in the Act. Section 12 of the Act deals with such powers of the Board or Court, it annexe ;

“Bail of juvenile.- (1) When any person accused of a bailable or non-bailable offence, and apparently a juvenile, is arrested or detained or appears or is brought before a Board, such person shall, notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974) or in any other law for the time being in force, be released on bail with or without surety [or placed under the supervision of a Probation Officer or under the care of any fit institution or fit person] but he shall not be so released if there appear reasonable grounds for believing that the release is likely to bring him into association with any known criminal or expose him to moral, physical or psychological danger or that his release would defeat the ends of justice.”

(2) When such person having been arrested is not released on bail under sub-section (1) by the officer incharge of the police station, such officer shall cause him to be kept only in an observation home in the prescribed manner until he can be brought before a Board.

(3) When such person is not released on bail under sub-section (1) by the Board it shall, instead of committing him to prison, make an order sending him to an observation home or a place of safety for such period during the pendency of the inquiry regarding him as may be specified in the order.”

5. What is discernible from the above statutory provision governing bail to a juvenile is that a juvenile in conflict with law should normally be granted bail unless his case falls within one of the exceptions engrafted thereunder and those exceptions are that there appears reasonable grounds for believing that

his release is likely to bring him into association with any known criminal or expose him to moral, physical or psychological danger or that his release would otherwise defeat the ends of justice. Unless the aforesaid rider is satisfied, bail to a juvenile should not be refused. It is significant to note that the gravity of the offence or its seriousness alone, divorced from the above exceptional reasons, has not been taken as a rider by the legislature to deny bail to a juvenile in conflict with law. It is only when there is danger to his moral, physical or psychological qualities or likelihood of his attaching himself with criminals or that his release may otherwise defeat the ends of justice, the Board or the Court may not exercise discretion in his favour and enlarge him on bail. For such a determination, no hard and fast rule of inflexible nature can be laid down as it depends on the facts and circumstances peculiar to each case.

6. In the opinion of this Court, the Juvenile Justice Board may be justified in denying bail to a juvenile involved in a heinous crime only if there is material before it to form a *prima facie* opinion on the aspects carved out as exception to rule of bail in section 12 of the Act itself. There must be some mechanism with the Juvenile Justice Board to gather material and form an opinion as to whether the juvenile need to be denied bail by bringing his case under the exceptions to bail engrafted in section 12. The opinion to be formed by the Board, by no means, can be subjective and has to be objective. Either the prosecution should place some *prima facie* material before the Board or the Court to show that release of a juvenile on bail may expose him to moral, physical or psychological danger or the Board may obtain a report from the Probation Officer attached to the Board regarding antecedents and circumstances attended to the juvenile, both pre and post crime and it is only thereafter the Board or the Court should crystallised its opinion regarding release or non-release of the juvenile on bail, though involved in a heinous crime. A reference to the statutory provisions governing bail to a juvenile contained in section 12 would show that there is a mandate of law that the juvenile has to be released on bail, except only in those cases where the case falls in one or the other exception engrafted by the legislature in section 12 itself.

7. A perusal of the impugned orders of the Courts below would show that they do not contain any discussion about the material that might have been collected by the Board before forming an opinion that release of the revisionist on bail would expose him to moral, physical or psychological danger

or bring him into association with known criminals. The opinion formed by the Board as also by the revisional Court appears to be based only presumption and assumption drawn from the gravity of the crime. Such a presumption or assumption has no place in law. Under the circumstances, this Court is left with no option but to set aside the impugned orders of the Courts below as they are not legally sustainable. Accordingly, the impugned orders of the Courts below are hereby set aside. This revision is accepted. The Juvenile Justice Board is directed to pass a fresh speaking order on the plea of the revisionist for his bail as per law after hearing his counsel, as expeditiously as possible, but not later than three weeks of the receipt of certified copy of this order. This revision petition is disposed of accordingly. Registry is directed to send a copy of this order to the Juvenile Justice Board through fax and also by a special messenger by tomorrow for compliance.

Revision disposed of.

I.L.R. [2012] M.P., 800

MISCELLANEOUS CRIMINAL CASE

Before Mr. Justice T.K. Kaushal

M.Cr.C. No. 11493/2010 (Jabalpur) decided on 7 July, 2011

V.K. JAIN & ors.

...Applicants

Vs.

STATE OF M.P. & ors.

...Non-applicants

Penal Code (45 of 1860), Section 498-A - Cruelty-Marriage was declared a nullity on the ground that wife had suppressed her age deliberately - Whether the husband demanded Rs. 5 lacs or not is a question which is to be decided in trial-Delay in lodging F.I.R. may also be explained-However, allegations against the relatives are exaggerated and seems to be not well founded-Continuance of trial against relatives of husbands will certainly be the abuse of process of Court of law-Truthfulness of F.I.R. can not be seen by the Court at this stage-Continuance of trial against relatives of husband quashed-However, proceedings shall continue against husband. (Paras 12 to 14)

दण्ड संहिता (1860 का 45), धारा 498-ए - क्रूरता - विवाह को इस आधार पर अकृत घोषित किया गया कि पत्नी ने जानबूझकर अपनी उम्र का छिपाव किया - क्या पति ने रुपये 5 लाख की मांग की अथवा नहीं एक ऐसा प्रश्न है जिसका विनिश्चय विचारण में किया जाना है - एफ.आई.आर. दर्ज करने में विलम्ब को भी स्पष्ट किया जा सकता है - किन्तु, रिश्तेदारों के विरुद्ध अभिकथन अतिशयोक्त है

और आधारहीन प्रतीत होते हैं – पति के रिश्तेदारों के विरुद्ध विचारण जारी रखना निश्चित रूप से न्यायालय की प्रक्रिया का दुरुपयोग होगा – एफ.आई.आर. की सत्यता इस प्रक्रम पर न्यायालय द्वारा नहीं देखी जा सकती – पति के रिश्तेदारों के विरुद्ध जारी विचारण अभिखंडित – तथापि पति के विरुद्ध कार्यवाहियां जारी रहेंगी।

Case referred :

2006(1) MPHT 349.

H.S. Dubey, for the applicants.

Pramod Chourasiya, P.L. for the non-applicant No.1/State.

Imtiaz Husain, for the non-applicant No.2.

ORDER

T.K. KAUSHAL, J.: - Petitioners have filed this petition under Section 482 of the Code of Criminal Procedure, 1973 (hereinafter referred as Code) seeking a relief for quashing the criminal proceedings of Criminal Case No.1171/2010 pending in the Court of J.M.F.C. Sihora, District-Jabalpur, under Section 498-A/34 IPC against the petitioners.

2. Facts giving rise to this petition, in short, are that on 17.2.2005, petitioner No.1 was married to respondent No.2. Having some doubt regarding age of respondent No.2, petitioner obtained mark sheet of respondent No.2 from Government Middle School, Majholi in which her date of birth was mentioned as 1.1.1967. It was revealed that at the time of marriage respondent No.2 was aged 38 years whereas petitioner No.1 was only 26 years old. Fact of actual age was concealed by the wife.

3. Having felt cheated by marrying with a lady 11 years elder to him, respondent No.1 on 26.4.2005 filed a petition under Section 12(1)(c) of the Hindu Marriage Act to declare the marriage a nullity.

4. During pendency of that matter in Family Court, on 5.8.2006, F.I.R. was lodged at Police Station Majholi, District-Jabalpur. A case under Section 498-A/34 IPC and 3/4 of Dowry Prohibition Act was registered against the petitioners.

5. On 24.4.2009, petition filed by the petitioner No.1 in the Family Court was allowed and marriage dated 17.2.2005 was declared nullity on the ground that overage of the wife was suppressed deliberately by her. Aforesaid judgment of the Family Court was assailed by the wife in the High Court.

Vide judgment dated 14.12.2008, appeal No.341/07 was dismissed holding that marriage was a result of fraud practice adopted by the wife by showing her less age and concealing her real age.

6. It is submitted by the petitioners that Police Majholi, District-Jabalpur found no case is made out against the appellant and sent a Khatma report under Section 169 of the Code but J.M.F.C. Sihora did not agree with the khatma report and charge sheet was filed in the court of J.M.F.C. Sihora and bailable warrant against the petitioners were issued.

7. Learned counsel for petitioners placing reliance on 2006(1) M.P.H.T. 349, *Kailash Chandra Maheshwari and others Vs. State of M.P. and others*, submitted that F.I.R. is lodged after a period of 15 months from the date of incident and as a counter blast of divorce petition filed by the husband hence such abuse of process of court of law should be stopped.

8. Per contra it is submitted by the counsel for respondents that findings of Civil Court is not at all come in the way of the trial court while a criminal case is registered and charge sheet is submitted on the basis of F.I.R.

9. According to respondent No.2, petitioner No.1 while was working as a Salesman of Dabar Company came into her contact at her Kirana shop at Majholi. Intimacy was developed and marriage was solemnized with the consent of parties with full understanding that she is elder to the husband. About Rs. 10 lacs were spent in the marriage. From the next day of the marriage petitioners expressed their dissatisfaction and were expecting more cash from her family members. At the time of marriage, she stayed for about 10 days in the matrimonial house. She came back to her parents house. After about 8 days, petitioners. came to her parents house and demanded Rs.5.00 lacs more to open a Readymade Garments shop but parents of respondent No.2 were not in a position to fulfill the demand. She visited her matrimonial house 4-5 times but was subjected to harassment by the petitioners.

10. Husband filed application in the Family Court just after a period of 2½ months of the marriage. Husband and wife visited Parivar Paramarsh Kendra repeated times but was of no avail. Whether there had been a demand of Rs.5.00 lacs for starting Readymade Garments business from the wife so that she can be permitted to live as a wife with husband is the main question which required to be decided in the criminal trial. Whether any such demand was raised by him or not is a question of fact and requires evidence.

11. Case diary reveals that in view of the judgment of the Civil Court,

I.L.R.[2012]M.P. Priya @ Subhlata Agrawal (Smt.)Vs State of M.P. 803
khatma was proposed because no case under Section 498-A/34 IPC and 3/4 of Dowry Prohibition Act would be made out against the petitioners. Even then, the charge sheet has been submitted in the trial Court.

12. Taking entire facts in totality and judgment of the Civil Court into consideration, it appears that over age of the wife remained the point of controversy always. Since Rs. 10.00 lacs were spent in the marriage. Whether husband demanded Rs. 5.00 lacs from the wife or not is the question to be decided in the trial. Then, cause of fifteen months delay in lodging the FIR. may also be explained.

13. Prima facie allegations of harassment of wife leveled against the husband. As against other relatives, facts of cruelty and harassment is exaggerated and seems to be not well founded hence in respect of other relatives of husband, like father, mother, sister and jija ji, continuing of this criminal trial, will certainly abuse of the process of the court of law. Husband and wife remained litigants in civil case, in Parivar Paramarsh Kendra. F.I.R. and charge sheet against the husband can not be quashed.

14. Truthful and genuiness of the F.I.R. cannot be seen by this Court at this stage. Scope of the inherent power is only to prevent the abuse of the process. Continuance of the criminal trial against the petitioners, except husband, will be abuse of process of law hence criminal proceedings in the trial Court are quashed in respect of petitioners No.2 to 5. In respect of petitioner No.1, criminal proceedings are allowed to be continued.

Petition is partly allowed as indicated above.

Petition partly allowed.

I.L.R. [2012] M.P., 803

MISCELLANEOUS CRIMINAL CASE

Before Mr. Justice G.S. Solanki

M.Cr.C.No. 14504/2011 (Jabalpur) decided on 9 January, 2012

PRIYA AGRAWAL @ SHUBHLATA AGRAWAL(SMT.)

& ors. ... Applicants

Vs.

STATE OF M.P. ... Non-applicant

Criminal Procedure Code, 1973. (2 of 1974), Section 438 - Application for anticipatory bail directly to High Court - Whether maintainable - Application under Section 438 should have been filed at

the first instance before Sessions Court and thereafter in case necessity arises, the applicants should approach the High Court - Application disposed off with liberty to approach Sessions Court. (Paras 8 & 9)

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 438 – अग्रिम जमानत के लिये आवेदन सीधे उच्च न्यायालय के समक्ष – क्या पोषणीय है – धारा 438 के अंतर्गत आवेदन सर्वप्रथम सत्र न्यायालय के समक्ष प्रस्तुत करना चाहिए था और तत्पश्चात्, यदि आवश्यकता उत्पन्न होती है, तब आवेदकों को उच्च न्यायालय के समक्ष जाना चाहिए – सत्र न्यायालय के समक्ष जाने की स्वतंत्रता के साथ आवेदन का निपटारा किया गया।

Cases referred :

1993 Cri.L.J. 3508(1), 2004 Cri.L.J. 3427, 1989 J.L.J. 323, 2003(2) MPHT 303, AIR 1978 SC 179.

T.S. Ruprah with Harmeet Ruprah for the applicants.

Akshay Namdeo, P.L. for the non-appliant/State.

H.S. Dubey, for the objector.

ORDER

G. S. SOLANKI, J. :- The applicants are apprehending their arrest in connection with Crime No. 197/2011 registered at P.S. Civil Lines, District Sagar for the offence punishable under sections 406, 420/34 of IPC, therefore, they preferred this application under section 438 of Cr.P.C. for grant of anticipatory bail directly before this Court without approaching the Court of Session at the first instance.

2. On 29.12.2011, when this matter was listed before the coordinate Bench of this Court, this Court made a query whether without exhausting the remedy before the Sessions Court, having the lowest jurisdiction over the matter, this petition could be entertained directly by this Court? Learned counsel for the applicants sought time to argue on this point.

3. Learned counsel for the applicants submits that Section 438 of Cr.P.C. provides concurrent jurisdiction and therefore, it is the choice of the applicants to approach either of the Court. The applicants are resident of Jhansi (U.P.) and husband and in-laws of applicant No. 1 are big businessman of Sagar, they are influential persons and have good connections in the government as well as in the Police Department, therefore, it is not at all safe for the applicants to go to Sagar and apply for anticipatory bail, thus, they directly approached

this Court. Learned Sr. counsel has placed reliance on the decision in *Y. Chendrasekhara Rao and others Vs. Y.V. Kamala Kumari and others* - 1993 Cri.L.J. 3508(1) and *Balan Vs. State of Kerala* - 2004 Cri.L.J. 3427.

4. Learned counsel appearing for the State and objector have opposed the contentions raised by the learned counsel for the applicants and submitted that view of this Court is consistent since 1989 till today in regard to concurrent jurisdiction of the Court of Session and High Court, that though High Court has concurrent jurisdiction with the Court of Session under sections 438 and 439 of Cr.P.C. yet applicant should have approached the Court of Session at the first instance. Counsel have placed reliance on the decisions of this Court in *Daini @ Raju Vs. State of M.P.* - 1989 J.L.J. 323; and *Smt. Manisha Neema Vs. State of M.P.* - 2003 (2) MPHT 303 in which the principle laid down by the Apex Court in *Gurcharan Singh and others Vs. State (Delhi Administration)*- AIR 1978 SC 179 have been followed.

5. I have gone through the decisions of Andhra Pradesh High Court in *Y. Chendrasekhara Rao and others Vs. Y.V. Kamala Kumari* and others (supra) and Kerala High Court in *Balan Vs. State of Kerala* (supra), in which it has been held that the application filed under section 438 of Cr.P.C. cannot be returned to the applicant because he did not move at the first instant to the Sessions Court, if such application is returned, that is illegal and violative of Article 21 of the Constitution of India. In the aforesaid judgments of Andhra Pradesh High Court and Kerala High Court, the judgment passed by this Court in *Daini @ Raju Vs. State of M.P.* (supra) has not been referred and considered, though so many judgments of other High Courts have been considered.

6. I have also gone through the decisions of this Court in *Daini @ Raju Vs. State of M.P.* (supra) and *Smt. Manisha Neema Vs. State of M.P.* (supra) and the decision of Apex Court in *Gurcharan Singh and others Vs. State (Delhi Administration)* (supra). The view of this Court has been consistent since 1989 till today that though the High Court has concurrent jurisdiction with the Court of Sessions under section 438 of Cr.P.C. yet the applicant should approach the Sessions Court at the first instance, which would examine the facts and pass the suitable order and may be in that case petitioner was not required to apply before this Court.

7. The applicants pleaded their apprehension that they are not safe to go to Sagar but the aforesaid apprehension has no basis. It may be possible

that husband and in-laws of applicant No. 1 are the big businessman of Sagar and they are influential persons, but it cannot be said that they own the government and the Police Department. It is also not necessary to personally appear before the Sessions Court to pursue the application under section 438 of Cr.P.C.

8. In view of the aforesaid decisions of Apex Court and this Court, I am of the view that the application under section 438 of Cr.P.C. should have been filed by the applicants at the first instance before the Sessions Court at Sagar and thereafter, in case necessity arises, the applicants are free to approach this Court.

9. Thus, this application is disposed of with liberty to the applicants to file application under section 438 of Cr.P.C. before the Sessions Court concerned and if such application is filed, the concerned Sessions Court expected to decide the same expeditiously as far as possible within one week from the date of filing of the aforesaid application. However, it is made clear that this Court has not expressed any view on the merits of the case and the Sessions Court is free to decide the matter on its merits.

10. This application is disposed of with the aforesaid observations.

Application disposed of.

I.L.R. [2012] M.P., 806

MISCELLANEOUS CRIMINAL CASE

Before Mr. Justice G.S. Solanki

M.Cr.C. No. 13538/2011 (Jabalpur) decided on 11 January, 2012

LAXMAN GURJAR

...Applicant

Vs.

STATE OF M.P.

...Non-applicant

Criminal Procedure Code, 1973 (2 of 1974), Section 438 - Anticipatory Bail - Last Seen Together - Provision of anticipatory bail was recommended to curb the tendency of false implication on the basis of rivalry for the purpose of disgracing the person by getting them detained in jail for some days - Applicant was seen for the last time in the company of deceased - Facts do not fall in the exceptional category - Application dismissed. (Paras 6 to 8).

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 438 - अग्रिम जमानत -

अंतिम बार एक साथ देखा जाना – अग्रिम जमानत के उपबंध की सिफारिश व्यक्ति को कुछ दिनों के लिये जेल अभिरक्षा में रखकर उन्हें अपमानित करने के प्रयोजन हेतु वैमनस्यता के आधार पर मिथ्या आलिप्त करने की प्रवृत्ति को रोकने के उद्देश्य से है – अपीलार्थी को अंतिम बार मृतक के सानिध्य में देखा गया – तथ्य आपवादिक श्रेणी में नहीं आते – आवेदन खारिज।

Ashok A. Tiwari, for the applicant.

C.K. Mishra, G.A. for the non-applicant/State.

ORDER

G. S. SOLANKI, J. :- Heard on the application under Section 438 Cr.P.C. for grant of anticipatory bail.

2. Applicant apprehends his arrest in connection with Crime No.163/2010 registered under Sections 302 and 201/34 of IPC at police-station-Narsingh-Garh district Rajgarh (M.P.).

3. Learned counsel for the applicant submitted that the applicant has been falsely implicated in this case. There is no direct evidence in this case. It is only alleged that he was last seen together on 09.05.2010 and dead body was recovered on 11.05.2010. Therefore, no prima facie case against this applicant is made out. The trial would take considerable time for its conclusion. Therefore, he prays for grant of anticipatory bail.

4. Learned Government Advocate appearing for respondent/ State has opposed the prayer for bail.

5. I have perused the case-diary. Though there is no direct evidence in this case but there is strong circumstances against this applicant that he was last seen together by a witness Mangilal. The applicant has not come under section 439 CrPC. The applicant is praying for bail under section 438 CrPC. This section is introduced in the Code for providing protection to the person who is politically falsely implicated in the criminal cases on the basis of rivalry. This provision for the first time was introduced in the Code of Criminal Procedure, 1953 on the basis of observation in 41st Law Commission Report of September, 1969. The recommendations in this regard is as follows:

“The necessity for granting anticipatory bail arises mainly because sometimes influential persons try to implicate their rivals in false cases for the purpose of disgracing them or for

other purposes by getting them detained in-jail for some days. In recent times, with the accentuation of political rivalry, this tendency is showing signs of steady increase. Apart from false cases, where there are reasonable grounds for holding that a person accused of an offence is not likely to abscond, for otherwise misuse his liberty while on bail, there seems no justification to require him first to submit to custody, remain in prison for some days and then apply for bail.

We recommend the acceptance of this suggestion. We are further of the view that this special power should be conferred only on the High Court and the Court of Session, and that the order should take effect at the time of arrest or thereafter.

The suggestion of Law Commission was accepted by Government of India and Clause 447 was incorporated in the draft Bill of Code of Criminal Procedure, 1970. The Law Commission of India in its 48th Report, adverting to this aspect, expressed the view .

“The Bill introduces a provision for the grant of anticipatory bail. This is substantially in accordance with the recommendation made by the previous Commission. We agree that this would be a useful addition, though we must add that it is in very exceptional cases that such a power should be exercised.

6. On perusal of aforesaid recommendations of 41st and 48th report of Law Commission, which clearly indicate that this provision was recommended to curb the tendency of false implication on the basis of rivalry for the purpose of disgracing the person by getting them detained in jail for some days. Further, Law Commission in it's 48th report expected that this provision would be applied in very exceptional cases.

7. The facts, in the instant case, are not in exceptional category because allegation made against this applicant is for heinous offence under section 302 of IPC and there is prima facie evidence that the applicant was last seen together with deceased Bhagirath who was found dead, thereafter.

8. On due consideration of all the facts and circumstances of the case along with the contentions raised on behalf of the parties, without commenting

on the merits of the case, I am not inclined to enlarge the applicant on anticipatory bail. Therefore, the application filed under section 438 CrPC is hereby dismissed.

C.C. as per rules.

Application dismissed.

I.L.R. [2012] M.P., 809

MISCELLANEOUS CRIMINAL CASE

Before Mr. Justice G.S. Solanki

M.Cr.C. No. 9004/2011 (Jabalpur) decided on 11 January, 2012

SHAHEED KHAN

.....Applicant

Vs.

JALEEL KHAN

.....Non-applicant

Criminal Procedure Code, 1973 (2 of 1974), Section 439(2) - Cancellation of bail - Bail once granted should not be cancelled in a mechanical manner without considering whether any supervening circumstances have rendered it no longer conducive to a fair trial to allow the accused to retain his freedom by enjoying the concession of bail during trial. (Para 7)

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 439(2) - जमानत रद्द की जाना - एक बार प्रदत्त जमानत को यांत्रिक ढंग से रद्द नहीं किया जाना चाहिए, बिना विचार किये कि क्या किन्हीं अकस्मात परिस्थितियों के कारण अभियुक्त को विचारण के दौरान जमानत की छूट का लाभ देकर उसकी आजादी बनाये रखने की अनुमति देना समुचित विचारण के लिये अब सहायक नहीं रह गया है।

Cases referred :

(1995) 1 SCC 349, (2004) 13 SCC 617.

Maqbool Khan, for the applicant.

Alok Tapikar, P.L. for the non-applicant/State.

ORDER

G. S. SOLANKI, J. :- Both these applications are being disposed of by this common order as they arise out of common crime number.

2. Applicant Shaheed Khan has preferred these applications under section 439(2) of the Cr.P.C. for cancellation of bail granted to respondents

Jaleel Khan, Bablu Khan, Sageer Khan and Majnu @ Mohd. Siddiqui Khan @ Babu (hereinafter referred to as 'the respondents') by Sixth Additional Sessions Judge, Rewa vide order dated 29.6.2011 passed in Bail Application No. 907/2011 and order dated 30.6.2011 passed in Bail Application No. 904/2011.

3. It is submitted that the learned trial Court has failed to consider the fact that bail application of one of co-accused Mohd. Ahmad @ Tiwari has been rejected by this Court vide order (P-4) dated 16.12.2009 passed in M.Cr.C. No. 9161/2009. The trial Court has wrongly granted bail to the respondents on the basis of parity of order of bail passed in favour of co-accused Hafeez Khan and Mohd. Yunus. The respondents have tampered with the evidence and threatened the applicant by uttering abusive words, therefore, the applicant filed complaints (P-5 and P-6) in this regard to the Superintendent of Police and SHO, Gudh.

4. During the course of the arguments, learned counsel for the applicant has submitted that the Court below has failed to consider the fact that the respondents could have repeated such offence or abscond or may create obstacle in the trial, therefore, the bail granted to the respondents be cancelled.

5. Learned counsel for the respondents and State have opposed the application and submitted that bail can be cancelled only on the existence of cogent and overwhelming circumstances but not on re-appreciation of the facts of the case.

6. I have perused the FIR and impugned orders along with order dated 19.5.2011 passed in M.Cr.C. No. 4047/2011, by which this Court granted bail to Hafeez Khan and Mohd. Yunus. On persual of First Information Report, it reveals that deceased was assaulted by the respondents along with co-accused Hafeez Khan and Mohd. Yunus by feasts, kicks and *danda*, but there is no specific allegation that who assaulted the deceased by *danda*. In these circumstances, learned Court below released the respondents on the basis of parity with Hafeez Khan and Mohd. Yunus.

7. It is well established principle of law that different considerations have to be weighed while dealing with the applications for cancellation of bail and for grant of bail respectively. In *Dolatram and others Vs. State of Haryana* - 1995 (1) SCC 349, the Apex Court observed that the bail once granted should not be cancelled in a mechanical manner without considering whether

any supervening circumstances have rendered it no longer conducive to a fair trial to allow the accused to retain his freedom by enjoying the concession of bail during trial. Similar is the view taken by the Apex Court in *Ramcharan Vs. State of M.P.* - 2004 (13) SCC 617.

8. In the instant case, in my opinion, the Court below rightly granted bail to the respondents on the basis of parity with Hafeez Khan and Mohd. Yunus. The applicant only alleged against the respondents that they abused him and threatened him, however, no crime was registered against the respondents on the basis of aforesaid complaint of the applicant. Thus, it cannot be said that there is any supervening circumstances, in which the bail granted to the respondents should be cancelled.

9. Consequently, I do not find any ground to interfere in the orders passed by the Court below and to cancel the bail granted to the respondents. The applications being devoid of merits, are hereby dismissed.

Application dismissed.

I.L.R. [2012] M.P., 811

MISCELLANEOUS CRIMINAL CASE

Before Mr. Justice Sujoy Paul

M.Cr.C. No. 213/2012 (Gwalior) decided on 3 February, 2012

RAMNIWAS Applicant
Vs.

GAME RANGE CHAMBAL SANCTUARY, MORENA... Non-applicant

A. Forest Act (16 of 1927); Section 52-C (M.P. Amendment)
- **Bar to jurisdiction of Courts** - It is a complete code in itself by giving sufficient safeguards both substantive and procedural against any arbitrary exercise of Power - Because of non-obstante clause used in Section 52-C, it will have an overriding effect on other laws including general provisions of Cr.P.C. - Once intimation of initiation of confiscation proceeding is given to Magistrate, the jurisdiction of the Magistrate is ousted. (Para 17)

क. वन अधिनियम (1927 का 16), धारा 52-सी(म.प्र. संशोधन) - न्यायालयों की अधिकारिता का वर्जन - यह अपने आप में संपूर्ण संहिता है जिसमें शक्ति के किसी मनमाने प्रयोग के विरुद्ध पर्याप्त सुरक्षा सारभूत और प्रक्रियात्मक दोनों दी गई है - धारा 52-सी में प्रयुक्त सर्वोपरि खंड के कारण, इसका अन्य विधि पर अध्यारोही प्रभाव रहेगा जिसमें द.प्र.सं. के सामान्य उपबंध समाविष्ट हैं -

एक बार जब्ती कार्यवाही आरंभ होने की सूचना मजिस्ट्रेट को दिये जाने पर, मजिस्ट्रेट की अधिकारिता समाप्त हो जाती है।

B. Forest Act (16 of 1927), Section 52-C, Criminal Procedure Code, 1973 (2 of 1974), Sections 397 & 451 - Interim Custody - Magistrate and Revisional Court can not grant interim custody of vehicle dehors the bar of Section 52-C.
(Para 17)

ख. वन अधिनियम (1927 का 16), धारा 52-सी, दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धाराएँ 397 व 451 - अंतरिम अभिरक्षा - मजिस्ट्रेट और पुनरीक्षण न्यायालय धारा 52-सी के वर्जन से असंबद्ध होकर वाहन की अंतिम अभिरक्षा प्रदान नहीं कर सकता।

C. Criminal Procedure Code, 1973 (2 of 1974), Section 482 - Interim Custody - High Court in exercise of power under Section 482 can not direct for interim release of a seized vehicle /property under the M.P. Amendment Act.
(Para 17)

ग. दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 482 - अंतरिम अभिरक्षा - उच्च न्यायालय धारा 482 के अंतर्गत शक्ति का प्रयोग करते हुए म.प्र. संशोधन अधिनियम के अंतर्गत जब्तशुदा वाहन/सम्पत्ति की अंतरिम मुक्ति हेतु निदेशित नहीं कर सकता।

D. Interpretation of Statutes - If a law prescribes a thing to be done in a particular manner, it has to be done in the same manner and other methods are barred.
(Para 21)

घ. कानूनों का निर्वचन - यदि विधि किसी कार्य को किसी विशिष्ट ढंग से किये जाने के लिये विहित करती है, तब उसे उसी ढंग से किया जाना चाहिए और अन्य रीतियां विवर्जित हैं।

Cases referred :

(2003) 2 SCC (CRI) 1943, (2010)3 SCC (CRI) 226, (2007) 3 SCC (CRI) 353, (2003) 2 SCC (CRI) 1085, 2002 (1) SCC (CRI) 889, 1987 CRI.L.J. 368, 1992 CR. L.J. 1764, 2002(3) MPLJ 245, (2004) 4 SCC 159, 2000(1) MPLJ 289, 2000 (3) MPLJ 27, M.Cr.C. 7937/2008, (2011) 10 SCC 714, 2011(2)MPLJ 690, (2010)1 SCC 79, 2001(2) MPHT 21 (CG).

Vijay Dutt Sharma, for the applicant.

Sangeeta Pachouri, for the non-applicant/State.

ORDER

SUJOY PAUL, J. :- Since common questions of facts and law are involved in these similar matters, with the consent of parties the matters were analogously heard and decided by this common judgment.

2. The facts are taken from Misc.Cri.Case No.213/2012.

On 14.3.2011 a tractor trolley of the petitioner was seized by forest officials under the provisions of Indian Forest Act, 1927 (hereinafter referred to as the '1927 Act'). As per the story of prosecution, the forest officials were petrolling in the Chambal Sanctuary to check illegal mining of surface soil, sand. During the said petrolling, petitioner's tractor trolley was found laden with sand, surface soil, a forest produce in the prohibited area. Accordingly, the vehicle was seized and a forest criminal case was registered against the petitioner under 1927 Act. The 'forest produce' is defined in Section 4 of the 1927 Act. It is not in dispute between the parties that forest officials sent an intimation of aforesaid seizure to the Magistrate as per section 52 of 1927 Act (Madhya Pradesh Amendment) and it is also not in dispute that such an information was duly received by the concerned Magistrate.

3. The petitioner filed an application under section 451 read with section 457 of Cr.P.C. before the Magistrate for releasing his vehicle. The learned Magistrate by order dated 8.4.2011 rejected the said application on the ground that the information of seizure of said tractor trolley is already received by the Magistrate and, therefore, under the provisions of the Forest Act, the jurisdiction of Magistrate is ousted. At this stage, the petitioner filed a revision under Section 397 Cr.P.C. before the Additional Sessions Judge, Morena, which was registered as Case No.63/2011. The said Court by order dated 16.6.2011 rejected the revision on the ground that once information is given under Section 52 of the 1927 Act by the forest officials to the Magistrate, the jurisdiction of Magistrate is ousted. Thus, no fault was found in the order of the Magistrate and revision was rejected.

4. Learned counsel appearing for the petitioners in these matters submitted that in view of the recent judgment of this Court in Misc.Cri.Case No. 7937/2008 (*Dilip vs. State of Madhya Pradesh*), the vehicle should have been released and the courts below had jurisdiction to entertain the application under section 451 read with section 457 of Cr.P.C.

5. Shri V.D.Sharma, learned counsel for the petitioner, placed heavy

reliance on (2003) 2 SCC (Cri) 1943 (*Sunderbhai Ambalal Desai vs. State of Gujarat*), which was recently followed in (2010) 3 SCC (Cri) 226 (*General Insurance Council and others vs. State of Andhra Pradesh and others*) to submit that if vehicle is unnecessarily kept in the police station or with the forest department, no useful purpose would be served. The vehicle would be damaged because it is exposed to sun and rain and in that eventuality in view of *Sunderbhai's case* (supra), the vehicle can very well be released. He also placed reliance on 2007 (3) SCC (Cri) 353 (*State of U.P. vs. Lalloo Singh*) and 2003 (2) SCC (Cri) 1085 (*State of Karnataka vs. K.A.Kunchindammed*). By placing reliance on 2002 (1) SCC (Cri) 889 (*Moti Lal vs. Central Bureau of Investigation and another*), Shri Sharma submits that both the courts below have committed an error of law in not releasing the vehicle.

6. Shri V.D.Sharma placed heavy reliance on Section 55 (1) of the 1927 Act (Madhya Pradesh Amendment). On the basis of this provision, it is submitted that confiscation is possible only upon conviction. As on date, there is no conviction and, therefore, in absence of any conviction neither seizure nor confiscation is permissible. He further submits that as per the Wild Life Protection Act, 1972 (hereinafter referred to as the '1972 Act'), very stringent provisions are made with regard to forest offences and, therefore, the authorities should not have applied the provisions of the 1927 Act.

7. Shri Satyendra Dixit, learned counsel appearing for the petitioners in Misc.Cri.Case No.779/2012, almost borrowed the same argument. Shri Prashant Sharma, learned counsel appearing for the petitioner in Misc.Cri.Case No. 6856/2010 has also placed heavy reliance on Section 55 of the 1927 Act (Madhya Pradesh Amendment) and submits that unless the petitioners are found to be guilty by an authority/court of competent jurisdiction, their vehicles cannot be even seized. He submits that it violates their fundamental rights and such a provision cannot be read in the fashion whereby a person is deprived from his tractor trolley/vehicle etc. He submits that the fundamental rights guaranteed to the petitioners include right to get engaged in a business of their choice and if their vehicle which is main source of business is seized and if it is not released, their fundamental rights are infringed.

8. *Per Contra*, Smt. Sangita Pachauri, learned Public Prosecutor, supported the action and placed reliance on various provisions of 1927 Act to submit that there exists a special provision dealing with seizure, confiscation

and release of the vehicle etc. By taking the court to various provisions of 1972 Act, she submits that both the provisions of 1927 Act and 1972 Act are totally different and deal with different situations:-

9. I have heard learned counsel for the parties and perused the record.

10. Section 52 of the 1927 Act (Madhya Pradesh Amendment) reads as under:-

"52. Seizure of property liable to confiscation and procedure therefor.—(1) When there is reason to believe that a forest offence has been committed in respect of any forest produce, such produce, together with all tools, boats, vehicles, ropes, chains or any other article used in committing any such offence may be seized by any Forest-officer or Police Officer.

(2) Every officer seizing any property under this section shall place on such property a mark indicating that the same has been so seized and shall, as soon as may be, either produce the property seized before an officer not below the rank of an Extra Assistant Conservator of Forest authorised by the State Government in this behalf by notification (hereinafter referred to as the authorised officer) or where it is, having regard to quantity of bulk or other genuine difficulty, not practicable to produce the property seized before the authorised officer, make a report about the seizure to the authorised officer or where it is intended to launch criminal proceedings against the offender immediately, make a report of such seizure to the magistrate having jurisdiction to try the offence on account of which the seizure has been made:

Provided that when the forest produce with respect to which offence is believed to have been committed is the property of Government and the offender is unknown, it shall be sufficient if the officer makes, as soon as may be, a report of the circumstances to his official superior.

(3) Subject to sub-section (5), where the authorised officer upon production before him of property seized of

upon receipt of report about seizure, as the case may be, is satisfied that a forest offence has been committed in respect thereof, he may by order in writing and for reasons to be recorded confiscate forest produce so seized together with all tools, vehicles, boats, ropes, chains or any other article used in committing such offence. A copy of order on confiscation shall be forwarded without any undue delay to the Conservator of Forests of the forest circle in which the timber produce, as the case may be, has been seized.

(4) No order confiscating any property shall be made under sub-section (3) unless the authorised officer-

(a) sends an intimation in form prescribed about initiation of proceedings for confiscation of property to the magistrate having jurisdiction to try the offence on account of which the seizure has been made;

(b) issues a notice in writing to the person from whom the property is seizure, and to any other person who may appear to the authorised officer to have some interest in such property;

(c) affords an opportunity to the persons referred to in clause (b) of making a representation within such reasonable time as may be specified in the notice against the proposed confiscation, and

(d) gives to the officer effecting the seizure and the person or persons to whom notice has been issued under clause (b), a hearing on date to be fixed for such purpose.

(5) No order of confiscation under subsection (3) of any tools, vehicles, boats, ropes, chains or any other article (other than the timber or forest produce seized shall be made if any person referred to in clause (b) of sub-section (4) proves to the satisfaction of authorised officer that any such tools, vehicles, boats, ropes, chains or other articles were used without his knowledge or connivance or as the case may be, without the knowledge or connivance of his servant or agent and that all reasonable and necessary

precautions had been taken against use of the objects aforesaid for commission."

Section 52A (Madhya Pradesh Amendment) reads as under:-

"52A. Appeal against the order of confiscation.— (1) Any person aggrieved by an order of confiscation may, within thirty days of the order, or if the fact of such order has not been communicated to him, within thirty days of date of knowledge of such order, prefer an appeal in writing, accompanied by such fee and payable in such form as may be prescribed, along with certified copy of order of confiscation to the conservator of forests (hereinafter referred to as Appellate Authority) of the forest circle in which the forest produce has been seized.

Explanation-(1) The time requisite for obtaining certified copy of order of confiscation shall be excluded while computing period of thirty days referred to in this sub-section.

(2) The Appellate Authority referred to in sub-section (1), may, where no appeal has been preferred before him, "suo motu" within thirty days of date of receipt of copy of order of confiscation by him, and shall on presentation of memorandum of appeal issue a notice for hearing of appeal or, as the case may be, of "suo motu" action to the officer effecting seizure and to any other person (including appellant, if any) who in the opinion of the Appellate Authority, is likely to be adversely affected by the order of confiscation, and may send for the record of the case:

Provided that no formed notice of appeal need be issued to such amongst the appellant, officer effecting seizure and any other person likely to be adversely affected as aforesaid, as may waive the notice or as may be informed in any other manner of date of hearing of appeal by the Appellate Authority.

(3) The Appellate Authority shall send intimation

in writing of lodging of appeal or about "suo motu" action, to the authorised officer.

(4) The Appellate Authority may pass such order of "Interim" nature for custody preservation or disposal (if necessary) of the subject matter of confiscation, as may appear to be just or proper in the circumstances of the case.

(5) The Appellate Authority having regard to the nature of the case or the complexities, involved, may permit parties to the appeal to be represented by their respective legal practitioner.

(6) On the date fixed for hearing of the appeal or "suo motu" action, or on such date to which the hearing may be adjourned, the Appellate Authority shall peruse the record and hear the parties to the appeal if present in person, or through any agent duly authorised in writing or through a legal practitioner, and shall thereafter proceed to pass an order of confirmation, reversal or modification order of confiscation:

Provided that before passing any final order, the Appellate Authority may if it is considered necessary for proper decision of appeal or for proper disposal of "suo motu" action make further inquiry itself or cause it to be made by the authorised officer, and may also allow parties to file affidavits for asserting or refuting any fact that may raise for consideration and may allow proof of facts by affidavits.

(7) The Appellate Authority may also pass such orders of consequential nature, as it may deem necessary.

(8) Copy of final order on an order of consequential nature, shall be sent to the authorised officer for compliance or for passing any appropriate order in conformity with the order of Appellate Authority.

Section 52B (Madhya Pradesh Amendment) reads as under:-

"52B. Revision before Court of Sessions against order of

Appellate Authority.— (1) Any party to the appeal, aggrieved by final order or by order of consequential nature passed by the Appellate Authority, may within thirty days of the order sought to be impugned, submit a petition for revision to the Court of Sessions division whereof the headquarters of the Appellate Authority are situate.

Explanation.— In computing the period of thirty days under this sub-section the time requisite for obtaining certified copy of order of Appellate Authority shall be excluded.

(2) The Court of Sessions may confirm, reverse or modify any final order or an order of consequential nature passed by the Appellate Authority.

(3) Copies of the order passed in revision shall be sent to the Appellate Authority and to the Authorised Officer for compliance or for passing such further order or for taking such further action as may be directed by such Court.

(4) For entertaining, hearing and deciding a revision under this section, the Court of session shall as far as may be, exercise the same powers and follows the same procedure as it exercises and follows while entertaining, hearing and deciding a revision under the Code of Criminal Procedure, 1973 (Act No. 2 of 1974).

(5) Notwithstanding anything to the contrary contained in the Code of Criminal Procedure, 1973 (Act No. 2 of 1974) the order of the Court of Sessions passed under this section shall be final and shall not be called in question before any Court.

There is yet another State Amendment, i.e., Section 52C.

11. A bare perusal of Section 52 shows that it deals with seizure of property liable to confiscation and prescribes a procedure therefor. Section 52(4) makes it obligatory for the authority to send an intimation in the prescribed form about initiation of confiscation proceedings for confiscation of property to the

Magistrate having jurisdiction to try the offence on account of which the seizure has been made. Section 52A provides an appeal against the order of confiscation. Section 52B provides a remedy of revision before the Court of Session against the order of Appellate Authority. Section 52C puts a bar to the jurisdiction of courts in certain circumstances.

12. The basic question before this Court is whether after getting an information under section 52(4) of the 1927 Act the Magistrate will have jurisdiction to release the vehicle? In fact, on more than one occasion various Benches of this Court have held that once such an intimation is given to the Magistrate, as per the bar created under Section 52C of 1927 Act, the Magistrate's jurisdiction for providing the vehicle on interim custody stands ousted. This view is taken in 1987 Cri.L.J. 368 (*Kanhaiyalal v. State of M.P.*). Para 17 of the said judgment reads as under:-

"17. In the ultimate analysis I find that the applicability of S. 52-C of the Central Act is attracted in the instant case and the Magistrate's jurisdiction to make orders with regard to interim custody of the truck in question stands ousted."

13. In 1992 Cri.L.J. 1764 (*Rishi Nath Singh vs. State of M.P. and others*) this Court again took the same view in para 9, which reads as under:-

"9. Therefore, in my opinion, after the directions of this Court in writ petition the legal proceedings to acquire the vehicle on Supurdgi are not saved after the notice and intimation of confiscation of the seized truck under the provisions of Forest Act. Therefore, the Magistrate had no jurisdiction to deal and decide the application of the applicant for the same."

14. Thereafter in 2002 (3) MPLJ 245 (*Vishambhar Yadav vs. State of MP*), this Court again took the same view. Last para of the judgment reads as under:-

"In case the confiscation proceedings are initiated under clause 3 of section 52 of the Forest Act, the J.M.F.C. exercising jurisdiction over the relevant area, ceases to have any jurisdiction to pass an order, on application seeking Supurdagi under section 457 of the Criminal

Procedure Code in cases he is informed by Forest Officer under section 52(4) of the Forest Act. Therefore, the learned J.M.F.C. is found to have committed no illegality or impropriety in rejecting the petitioner's application moved under section 457 of the Criminal Procedure Code. Thus this revision petition does not merit which is accordingly disallowed and rejected at this stage of motion hearing.

15. Thus, this Court consistently held that in view of bar created in section 52C of the 1927 Act, the vehicle cannot be released by the Magistrate after getting the intimation of seizure under section 52 of the 1927 Act.

16. Similar issue travelled to Supreme Court in (2004) 4 SCC 159 (*State of West Bengal and others vs. Sujeet Kumar Rana*). In the said case the effect of West Bengal amendment in 1927 Act was under consideration before the Supreme Court. For the purpose of analysis, it is profitable to quote both the provisions, which are reproduced as under:-

Sec. 59-G of West Bengal Amendment	Sec. 52C of Madhya Pradesh Amendment
Bar of jurisdiction in certain cases. <u>— Notwithstanding anything to the contrary contained in this Act or in the Code of Criminal Procedure, 1973 (2 of 1974), or in any other law for the time being in force, the officer authorized under Section 59-C or the District Judge to whom an appeal may be preferred under Section 59-D shall have and any other officer or Forest Officer or court, tribunal or authority shall not have jurisdiction to make orders with regard to the custody, possession, delivery, disposal or distribution of any property or</u>	<i>Bar to jurisdiction of courts etc. under certain circumstances:-</i> <i>(1) On receipt of intimation under Sub-section 4 of Section 52 about initiation of the proceeding for confiscation of the property by the Magistrate having jurisdiction to try the offence on account of which the seizure of the property which is subject matter of confiscation, has been made, no court, tribunal or authority (other than the authorized officers, appellate authority and the court of Sessions referred to in Section 52, 52-A, and 52-B), shall have</i>

tools, ropes, chains, boats, vehicles or cattle seized under Section 52.

(Emphasis Supplied)

jurisdiction to make order with regard to possession, delivery, disposal of distribution of the property in regard to which proceedings for confiscation are initiated under Section 52, notwithstanding any thing to the contrary contained in this Act or any other law for the time being in force.

Explanation : where under any law for the time being in force two or more courts have jurisdiction to try forest offence, then receipt of intimation under sub-section 4 of Section 52 by one of the courts of Magistrate having such jurisdiction shall be construed to be in receipt of intimation under that provision by all the courts and the bar to exercise jurisdiction shall operate on all such courts. "

(Emphasis Supplied)

A perusal of both the aforesaid provisions would show that the same are almost *pari materia* and are introduced with same aim and object. The apex Court while dealing with the same provision has held as under:-

"31. The said authority before passing a final order in terms of Section 59-A(3) of the Act is required to issue notice and give opportunity of hearing to the parties concerned. Unless such a notice is issued, the confiscation proceeding cannot be said to have started. Once, however, a confiscation proceeding is initiated, in terms of Section

59-G of the Act, the jurisdiction of the criminal court in this behalf stands excluded. The criminal court although indisputably has the jurisdiction to deal with the property which is the subject-matter of offence in terms of the provisions of the Code of Criminal Procedure but once a confiscation proceeding is initiated, the said power cannot be exercised by the Magistrate.

32. The High Court cannot, thus, in such a situation exercise its jurisdiction under Section 482 of the Code of Criminal Procedure. The said provision reads thus:

"482. Saving of inherent powers of High Court.— Nothing in this Code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any court or otherwise to secure the ends of justice."

33. From a bare perusal of the aforementioned provision, it would be evident that the inherent power of the High Court is saved only in a case where an order has been passed by the criminal court which is required to be set aside to secure the ends of justice or where the proceeding pending before a court amounts to abuse of the process of court. It is, therefore, evident that power under Section 482 of the Code can be exercised by the High Court in relation to a matter pending before a court; which in the context of the Code of Criminal Procedure would mean "a criminal court" or whence a power is exercised by the court under the Code of Criminal Procedure. Once it is held that the criminal court had no power to deal with the property seized under the Act, the question of the High Court exercising its jurisdiction under Section 482 of the Code of Criminal Procedure would not arise.

34. The amendments carried out by the State of West Bengal by reason of Sections 59-A to 59-G in the

Indian Forest Act provide for a complete Code. The validity or otherwise of the said provisions is not in question before us. An order of confiscation in respect of a property must be distinguished from an order of forfeiture thereof. Although the effect of both confiscation and forfeiture of a property may be the same, namely, that the property would vest in the State but the nature of such order having regard to the statutory scheme must be held to be different. A proceeding for confiscation can be initiated irrespective of the fact as to whether prosecution for commission of a forest offence has been lodged or not. A confiscation proceeding, therefore, is independent of a criminal proceeding. We may also notice that the State has been made liable to refund the amount which has been deposited pursuant to an auction held in respect of the confiscated property only in the event the order of confiscation is set aside or annulled under Section 59-A(4)(b) thereof. No provision has been made in the statute unlike Section 6-C of the Essential Commodities Act, 1955 to the effect that the confiscated property or the amount deposited in the treasury pursuant to the auction of the confiscated goods would be returned to the owner thereof in the event, the criminal trial ends in an acquittal.

35. This Court, in this case, is not concerned with the effect of acquittal vis-à-vis a confiscation proceeding. There may be a case where a judgment of acquittal has been rendered not on merit of the matter but by way of giving benefit of doubt or for certain reasons unrelated to the adjudication on merits as for example dropping of the proceeding as the prosecution witnesses did not turn up despite service of summons.

36. This Court in *Sudhakar Rao* (1985) 4 SCC 573, we may note, however, approved the decision of a Division Bench of the Andhra Pradesh High Court in *Mohd. Yaseen v. Forest Range Officer* stating: (SCC pp. 584-85, para 14)

"14. We find that a later Division Bench consisting of Kondaiah, C.J. and Punnayya, J. in Mohd. Yaseen v. Forest Range Officer approved of the view expressed by Jeewan Reddy, J. in P.K. Mohd. case and held that the Act contemplates two procedures, one for confiscation of goods forming the subjectmatter of the offence by the authorized officer under sub-section (2-A) of Section 44 of the Act, and the other for trial of the person accused of the offence so committed under Section 20 or 29 of the Act. The learned Judges held that the Act provides for a special machinery for confiscation of illicitly felled timber or forest produce by the authorized officer under sub-section (2-A) of Section 44 enacted in the general public interest to suppress the mischief of ruthless exploitation of government forests by illicit felling and removal of teak and other valuable forest produce. They further held that merely because there was an acquittal of the accused in the trial before the Magistrate due to paucity of evidence or otherwise did not necessarily entail in nullifying the order of confiscation of the seized timber or forest produce by the authorized officer under sub-section (2-A) of Section 44 of the Act based on his satisfaction that a forest offence had been committed in respect thereof. We affirm the view expressed by Jeewan Reddy, J. in State of A.P. vs. P.K. Mohd. (1978) 1 APLJ 391 and by Kondaiah, C.J. and Punnayya, J. in Mohd. Yaseen case (1980) 1 An LT 8."

37. In State of W.B. v. Gopal Sarkar (2002) 1 SCC 495, this Court followed Sudhakar Rao and on construction of sub-section (3) of Section 59-A held: (SCC p. 498, para 10)

"10. On a fair reading of the provision it is clear that in a case where any timber or other forest produce which is the property of the State Government is produced under sub-section (1) and an authorised officer is satisfied that a forest offence has been committed in respect of such property he may pass order of confiscation of the said

property (forest produce) together with all tools, ropes, chains, boats, vehicles and cattle used in committing the offence. The power of confiscation is independent of any proceeding of prosecution for the forest offence committed." (emphasis supplied)

38. Yet again, in *State of Karnataka v. K.A. Kunchindammed* (2002) 9 SCC 90, this Court observed that even the expression "sandalwood" as contained in the Karnataka Forest Act, 1963 would include "sandalwood oil". This Court in no uncertain terms held: (SCC p. 99, paras 23-24)

"23. The Karnataka Forest Act is a special statute enacted for the purpose of preserving the forests and the forest produce in the State. The scheme of the Act, as expressed in the sections, is to vest power in the authorised officers of the Forest Department for proper implementation /enforcement of the statutory provisions and for enabling them to take effective steps for preserving the forests and forest produce. For this purpose, certain powers including the power of seizure, confiscation and forfeiture of the forest produce illegally removed from the forests have been vested exclusively in them. The position is made clear by the non obstante clause in the relevant provisions giving overriding effect to the provisions in the Act over other statutes and laws. The necessary corollary of such provisions is that in a case where the authorised officer is empowered to confiscate the seized forest produce on being satisfied that an offence under the Act has been committed thereof the general power vested in the Magistrate for dealing with interim custody/release of the seized materials under CrPC 15 MCRC No. 213/2012 has to give way. The Magistrate while dealing with a case of any seizure of forest produce under the Act should examine whether the power to confiscate the seized forest produce is vested in the authorised officer under the Act and if he finds that such power is vested in the authorised officer

then he has no power to pass an order dealing with interim custody/release of the seized material. This, in our view, will help in proper implementation of provisions of the special Act and will help in advancing the purpose and object of the statute. If in such cases power to grant interim custody/release of the seized forest produce is vested in the Magistrate then it will be defeating the very scheme of the Act. Such a consequence is to be avoided.

24. From the statutory provisions and the analysis made in the foregoing paragraphs the position that emerges is that the learned Magistrate and the learned Sessions Judge were right in holding that on facts and in the circumstances of the case, it is the authorized officer who is vested with the power to pass order of interim custody of the vehicle and not the Magistrate. The High Court was in error in taking a view to the contrary and in setting aside the orders passed by the Magistrate and the Sessions Judge on that basis."

39. The courts cannot shut their eyes and ignore their obligations indicated in the Act enacted for the purposes of protecting and safeguarding both the forests and their produce. The forests are not only the natural wealth of the country but also protector of human life by providing a clean and unpolluted atmosphere. We are of the considered view that when any vehicle is seized on the allegation that it was used for committing a forest offence, the same shall not normally be returned to a party till the culmination of all the proceedings in respect of such offence, including confiscatory proceedings, if any. Nonetheless, if for any exceptional reasons a court is inclined to release the vehicle during such pendency, furnishing a bank guarantee should be the minimum condition. No party shall be under the impression that release of vehicle would be possible on easier terms, when such vehicle is alleged to have been involved in commission of a forest offence. Any such easy release would tempt the

forest offenders to repeat commission of such offences. Its casualty will be the forests as the same cannot be replenished for years to come.'

8. From the above dictum of this Court, we find that when a vehicle is involved in a forest offence the same is not to be released to the offender or the claimant as a matter of routine till the culmination of the proceedings which may include confiscation of such vehicle."

41. In view of the aforementioned binding precedents, we are of the opinion that the High Court exceeded its jurisdiction in releasing the vehicles in exercise of its jurisdiction under Section 482 of the Code of Criminal Procedure.

42. In view of our findings aforementioned, the contention of the learned counsel that this Court may not exercise its jurisdiction under Article 136 of the Constitution of India having regard to the purported findings of the criminal court, will have to be judged. As indicated hereinbefore, there exists a distinction between confiscation and conviction.

43. A confiscation envisages a civil liability whereas an order of forfeiture of the forest produce must be preceded by a judgment of conviction. Although indisputably having regard to the phraseology used in sub-section (2) of Section 59-A, there cannot be any doubt whatsoever that commission of a forest offence is one of the requisite ingredients for passing an order of confiscation; but the question as to whether the order of acquittal has been passed on that ground and what weight should be attached thereto is a matter which, in our opinion, should not be gone into at this stage."

17. The principles which can be culled out from the provisions of the 1927 Act and the judgment in *Sujeet Kumar Rana's case* (supra) are as under:-

- (i) Forest Act is a Special Act;
- (ii) M.P. Amendments provide a complete Code in itself by giving sufficient safeguards both substantive and procedural against any arbitrary exercise of power. It also prescribe hierarchy of adjudicatory bodies;
- (iii) Section 52-C creates a bar on the jurisdiction of courts as described in it. Because of non-obstante clause used in Section 52-C it will have an overriding effect on other laws including general provisions of Cr.P.C.;
- (iv) Once intimation of initiation of confiscation proceedings is given to Magistrate, the jurisdiction of Magistrate is ousted;
- (v) Magistrate and revisions Courts can't grant interim custody of vehicle de hors the bar of Section 52-C.
- (vi) Once confiscation proceeding is initiated, the jurisdiction of criminal courts in terms of Section 52-C of the 1927 Act is barred, the High Court also cannot exercise its jurisdiction under section 482 Cr.P.C. for interim release of such vehicle/property.

18. It is also clear that this Court in various judgments has taken a consistent view that as per bar created under section 52-C, the Magistrate cannot release the vehicle on interim custody. The Apex Court has finally drawn the curtains on this issue in *Sujeet Kumar Rana's case* (supra).

19. The petitioners although have placed reliance on 2000 (I) MPLJ 289 (*Madhukar Rao vs. State of Madhya Pradesh*), decided by Full Bench, but in the opinion of this Court, the said judgment has no application in the facts and circumstances of this case. In the said case, the Full Bench was dealing with a different question regarding provisions of 1972 Act.

20. Learned Public Prosecutor has relied on 2000 (3) MPLJ 27 (*Union of India vs. Raju Construction Company*). Para 16 of the said judgment reads as under:-

"16. Therefore this court has an unenviable task of choosing between the two views. With great respect,

the view taken in the case of Nandayal Cooperative Spinning Mills Ltd. (supra) was decided on 11.5.1993 without taking note of the earlier judgment in case of M/s. H.S.Tulli and Sons Builders Pvt.Ltd. vs. Union of India (supra) which was decided on 11.2.1992. It appears that this case was reported also prior to delivery of the subsequent Judgment. It appears to this Court that this subsequent decision is per incuriam in the sense that the earlier judgment was not brought to the notice of their Lordships. It is per incuriam for another reason that it does not discuss the essential terms of section 8(1)(a) of the Act that there should be consent of both the parties which was not there after delegation of power to the named authority. After analysing section 8(1)(a) of the Act in paragraph (8) of judgment and mentioning the condition No.4, regarding consent, their Lordships of the Supreme Court omitted to consider if condition No.4 was applicable to the facts of the case. The judgment rendered is sub silentio."

(Emphasis supplied).

On the basis of this judgment, it is argued that in *Dilip's case* (Misc.Cri.Case No.7937/2008) neither the provisions of 1927 Act were considered nor the judgments delivered by the Coordinate Benches by dealing with the specific bar created under Section 52-C of the 1927 Act. Thus, it is submitted that *Dilip's case* (supra) cannot be pressed into service and courts below have not committed any error in rejecting the applications.

21. In the opinion of this Court, the provisions of 1927 Act (Madhya Pradesh Amendment) in no uncertain terms make it crystal clear that the procedure is laid down for the purpose of seizure, confiscation etc. The statutory forums are created. Statutory bar is introduced for the courts in certain circumstances. This is age old principle of law that if something is provided in law, it has to be followed in the same manner or not at all. This view is taken in (2011) 10 SCC 714 (*J&K Housing Board and another vs. Kumwar Sanjay Krishan Kaul and others*) and 2011 (2) MPLJ 690

(*Satyanjay Tripathi and another vs. Banarsi Devi*).

22. Shri V.D.Sharma, learned counsel for the petitioner, placed heavy reliance on *2010 (1) SCC (Cri) 79 (Babubhai Jamnadas Patel vs. State of Gujarat and others)*, to submit that this Court has tremendous power under section 482 of the Code of Criminal Procedure and, therefore, this Court can direct for release of the vehicle in its section 482 jurisdiction.

23. In my considered opinion, this argument deserves to be rejected in the light of categorical finding given by the Supreme Court in *Sujeet Kumar Rana* (supra). In so many words it has been held by the Apex Court that the 1927 Act provides a Code in itself and the entire adjudicating machinery has to act in accordance with law provided in the Act. It is stated that even jurisdiction of this Court for releasing vehicle under section 482 of Cr.P.C. is ousted. In paras 41 and 46 of the said judgment the Apex Court has taken this view.

24. Apart from this, the Legislature in its wisdom has prescribed methodology to deal with the forest offences, seizure, confiscation, release etc. Once such a procedure is prescribed, the courts have to examine the rights of the parties as per the procedure so prescribed. In the opinion of this Court, various Single Benches in the cases of *Kanhaiyalal* (1987 Cri.L.J.368), *Rishinath Singh* (1992 Cri.L.J. 1764) and *Vishambhar Yadav* (2002 (3) MPLJ 245) (supra) have rightly taken a consistent view that the vehicle cannot be released after getting an intimation from the forest department by the Magistrate. The Supreme Court has dealt with almost similar procedure in *Sujeet Kumar Rana* (supra). Thus, I am unable to hold that the Magistrate and Revisional Court have committed any error in rejecting the applications preferred by the petitioner under section 451/457 of Cr.P.C. In view of the special provision of 1927 Act, the general provision laid down in *Sunderbhai's case* (supra) cannot be pressed into service for release of vehicle from the Court of Magistrate.

25. Shri Amit Lahoti, learned counsel appearing in one matter (Misc.Cri.Case No.18/2012), fairly submits that as per his understanding of law, Section 52-C of 1927 Act prescribes a complete bar on the jurisdiction of Magistrate once intimation of seizure is received by him. He fairly submits

that as per his legal research, the Magistrate's order and Revisional Court's order cannot be found fault with. He further submits that as per Section 53 of 1927 Act, power to give interim custody of vehicle is vested with forest authority and not with Magistrate or Sessions Court. However, by placing reliance on 2001 (2) MPHT 21 (CG) (*Smt. Indrani Shrivastava vs. State of Chhattisgarh and another*) he submits that such a power can be exercised by this Court under Article 226 of the Constitution of India for releasing the vehicle.

26. In the opinion of this Court, this argument cannot be accepted because these petitions are not filed under Article 226 of the Constitution of India.

Apart from this, reliance placed on Section 55(1) of State Amendment is of no help to the petitioners. Admittedly, this matter is not regarding validity of confiscation proceedings. The lis is regarding jurisdiction of Magistrate and revisional Court to release the vehicle on interim custody. Section 55(1) does not deal with that eventuality and for that special provisions are made in Sections 52-A, 52-B and 52-C of the State Amendments in 1927 Act. Thus, heavy reliance placed on Section 55(1) is of no assistance to the petitioners.

27. In view of aforesaid legal position, the judgment in *Dilip's case* (supra) cannot be pressed into service for release of vehicle by the Court of Magistrate or by the Revisional Court. In the case of *Dilip* neither the provisions of Forest Act were dealt with nor the judgment of Supreme Court holding the field in *Sujeet Kumar Rana* (supra) was taken into account. Earlier judgments of this Court were also not brought to the notice of this Court in the case of *Dilip*. In this view of the matter, the judgment of *Dilip* is distinguishable.

28. On the basis of aforesaid analysis, I have no hesitation to hold that in the light of the provisions of 1927 Act and as per the judgments by various Benches of this Court in the cases of *Kanhaiyalal*, *Rishinath Singh and Vishambhar Yadav* (supra) and because of binding judgment of Supreme Court in *Sujeet Kumar Rana* (supra), the Magistrate and the Revisional Court have not committed any error in rejecting the applications.

30. Resultantly, petitions are dismissed. No costs.

Petition dismissed.

I.L.R. [2012] M.P., 833.

MISCELLANEOUS CRIMINAL CASE*Before Mr. Justice S.N. Aggarwal*

M.Cr.C. No. 973/2011 (Gwalior) decided on 7 February, 2012

MAHESH MISHRA

...Applicant

Vs.

MUNISH GUPTA & ors.

...Non-applicants

Criminal Procedure Code, 1973 (2 of 1974), Section 200 - Defence Evidence before framing of Charge in complaint case - In case instituted otherwise than on police report, the accused persons can not be permitted to lead evidence before framing of charge.

(Para 5)

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 200 - परिवाद मामले में आरोप विरचित करने से पूर्व प्रतिरक्षा साक्ष्य - पुलिस रिपोर्ट पर संस्थित को छोड़कर अन्य प्रकरण में अभियुक्त व्यक्तियों को आरोप विरचित किये जाने से पूर्व साक्ष्य प्रस्तुत करने की अनुज्ञा नहीं दी जा सकती।

Case referred :

(2008) 14 SCC 1.

Sanjay Kumar Sharma, for the applicant.*Atul Gupta*, for the non-applicants No. 1 to 5.*Prabal Solanki*, P.P. for the non-applicant No. 6/State.**ORDER**

S.N. AGGARWAL, J. :- The only short question that arises for consideration in the present petition is whether accused person is entitled in law to lead defence evidence in a private complaint case before framing of charge against him.

2. Briefly stated the facts of the case giving rise to the above question are that the petitioner was the complainant before the trial court and he had filed a private complaint under Section 200 of Code of Criminal Procedure for offence under Section 103 of Trade Marks Act, 1999 and had alleged infringement of his registered trade mark "G-5" in relation to educational institution run by him and it was alleged that respondents No. 1 to 5 by using the trade mark "G-5 Gwalior" in relation to educational institution run by them have committed an offence punishable under Section 103 of Trade Marks

Act, 1999. After pre-summoning evidence was produced by the petitioner being the complainant, cognizance was taken by the trial court against respondents No.1 to 5 and they were summoned for offence under Section 103 of Trade Marks Act, 1999. There is a controversy between the complainant on one hand and respondents No.1 to 5 on the other hand regarding infringement of trade mark in question. The use of trade marks "G-5" by the petitioner and "G-5 Gwalior" by respondents No.1 to 5 is not in dispute. After respondents No.1 to 5 were summoned by the trial court after taking cognizance against them, the witnesses examined by the petitioner/complainant in pre-summoning evidence were cross-examined on their behalf. However, respondents No.1 to 5 were aggrieved by their summoning by the trial court and had filed a petition under Section 482 of Cr.P.C. for quashing of criminal proceedings on the private complaint instituted by the petitioner against them and the said petition filed by respondents No.1 to 5 was finally disposed of by this court vide its order dated 11th May 2010 with the directions to the trial court to consider the following points before framing of charge :

"(1) Whether, any application has been filed by the respondent and the petitioners No.3 to 5 and Mr.R.C.Jain for registration of Trade Mark "G-5" in the name of all the five persons ?

(2) Whether, the Trade Mark "G-5" stood granted in favour of five persons in their individual names and whether that Trade Mark cannot be used by the petitioners without complainant's prior permission or consent ?

(3) Whether, any regulation was laid down at the time of registration of Trade Mark "G-5" ?

(4) Whether, on 12.03.2007 the petitioners No.3 to 5, applied for registration of another Trade Mark used by them being "G-5 Gwalior" in the office of Registrar of Trade Marks.

(5) Whether, the Trade Marks "G-5" and "G-5 Gwalior" are different. First in the joint names of five persons including complainant and second in the joint names of petitioners ?"

3. The need for the petitioner to file the present petition arose because respondents No.1 to 5 intend to lead evidence in their defence to establish that they have not infringed the trade mark of the petitioner/ complainant as

alleged by him in his complaint. Respondents No.1 to 5 have been permitted by the trial court vide order impugned in the present petition to lead their evidence in defence on the aforementioned points, which were ordered to be considered by this court vide its order dated 11th May 2010 in M.Cr.C.No.2914/10. The said order of the trial court permitting respondents No.1 to 5/accused persons to lead their evidence in defence before framing of charge has also been affirmed by the sessions court in exercise of its revisional jurisdiction. It appears that respondents No.1 to 5 have been permitted to lead their defence evidence before framing of charge under some misconception misconstruing the earlier order of the High Court as if the trial court has been directed by this court to take evidence on the points formulated in its earlier order dated 11th May 2010 extracted herein above.

4. Shri Atul Gupta, learned counsel appearing on behalf of respondents No.1 to 5/accused persons has referred to para 21 and 22 of the judgment of the Hon'ble Supreme Court in *Rukmini Narvekar Vs. Vijaya Satardekar and others* reported as (2008) 14 SCC 1 and has contended that in terms of the judgment of the said court, it is open to the trial court to take defence evidence before framing of charge. This argument advanced on behalf of respondents No.1 to 5 is misplaced and is not borne out from the judgment on which reliance is placed on their behalf. What is held by the Hon'ble Supreme Court in the aforementioned judgment is that in very rare cases the defence material can be looked into by the trial court at the time of framing of charge or taking cognizance. Firstly, the Supreme Court has said that the defence material can be looked into by the trial court at the time of framing of charge or at the time of taking cognizance only in very rare cases and not as a matter of routine. Secondly, the observation of the Hon'ble Supreme Court that the trial court can look into defence material in very rare cases does not mean that the trial court as a matter of course has to give an opportunity to the accused persons to lead their evidence in defence before charge is framed against them. Giving an opportunity to the accused persons to produce documents in their possession which they may seek to rely in their defence before framing of charge is altogether different from permitting them to examine their witnesses and thereby lead evidence in their defence before charge is framed against them. The accused persons can have an opportunity to lead their evidence in defence only in the event charge is framed against them and after the complainant would close his evidence.

5. It may be noted that a perusal of the earlier order of this court dated

11th May 2010 in M.Cr.C.No.2914/10, wherein certain directions were given to the trial court to consider certain points before framing of charge, nowhere says that respondents No.1 to 5 were permitted to examine their witnesses in defence and it seems that direction of this court is misconstrued by the courts below while permitting respondents No.1 to 5 to produce their witnesses in defence. Admittedly, the charge against respondents No.1 to 5 has not so far been framed by the trial court. After cognizance on private complaint is taken by the trial court, the trial court is required to follow the procedure for trial as laid down in Sections 244 to 247 of Code of Criminal Procedure, 1973. The permission given by the courts below to respondents No.1 to 5 for leading their evidence in defence before framing of charge is legally unsustainable. In case the impugned orders of the courts below are allowed to stand, then it will amount to travesty of justice with the complainant as procedure for trial of cases instituted otherwise on police report laid down in Sections 242-247 of the Code of Criminal Procedure shall be given a complete go-bye and it would amount to evolving a different procedure for trial contrary to the one laid down in the Code.

6. In view of the foregoing, this petition is accepted. Impugned orders of the court below are set aside. The trial court is directed to proceed to hear and decide on the question of charge against respondents No.1 to 5 as per law. This petition is disposed of accordingly.

Petition disposed of.