



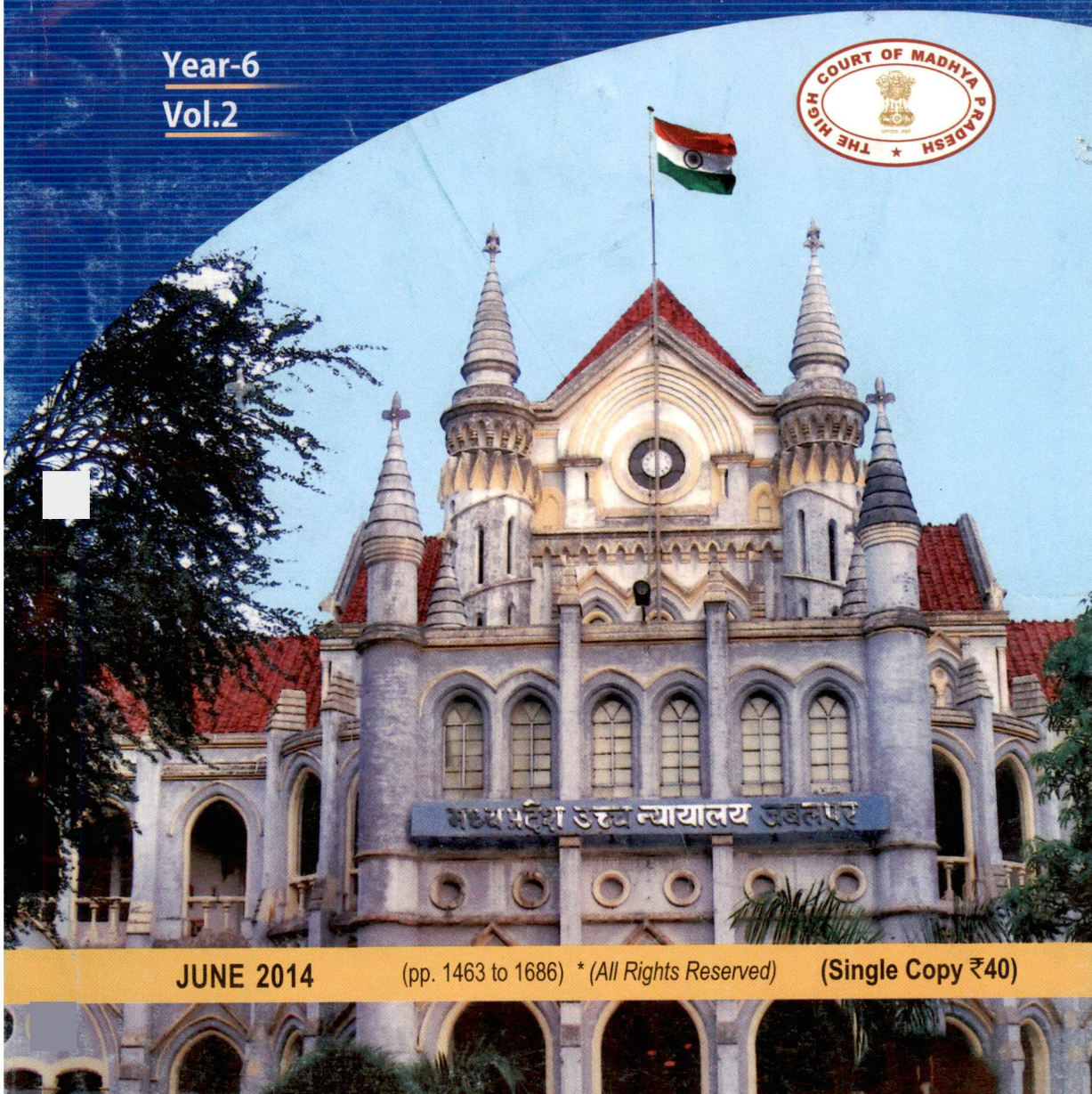
THE INDIAN LAW REPORTS

M.P. SERIES

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THE HIGH COURT OF MADHYA PRADESH

Year-6

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स्थान नियंत्रण अधिनियम, म.प्र. (1961 का 41), धारा 12 – लोक न्यास द्वारा वाद – लोक न्यास के सचिव द्वारा अन्य न्यासियों को संयोजित किए बिना वाद प्रस्तुत किया गया – अभिनिर्धारित – सह-न्यासियों की सहमति एवं मंजूरी से वाद प्रस्तुत किया गया था – न्यासी जिसने संकल्प पर हस्ताक्षर नहीं किये, उसकी ओर से कोई असहमति दर्शाने के लिए अभिलेख पर कुछ नहीं – दस में से एक न्यासी के हस्ताक्षर की अनुपस्थिति मात्र से वाद अपोषणीय नहीं बनेगा। (रामशंकर वि. गुरु सिंह समा) ...1541

Accommodation Control Act, M.P. (41 of 1961), Section 12 – Suit by Public Trust – Whether Plaintiff was required to plead and prove grounds enumerated u/s 12 of Accommodation Control Act, M.P. as it was not automatically exempted on being a religious Public Trust – Held – No objection or pleadings regarding non utilization of the income for the purpose of the trust – Defendants did not raise any plea that the plaintiff is not entitled for the benefit of exemption notification – No legal infirmity in the impugned judgment and decree – Substantial questions as raised do not arise. [Ramshankar Vs. Guru Singh Sabha] ...1541

स्थान नियंत्रण अधिनियम, म.प्र. (1961 का 41), धारा 12 – लोक न्यास द्वारा वाद – क्या वादी को स्थान नियंत्रण अधिनियम, म.प्र. की धारा 12 के अंतर्गत प्रमाणित आधारों का अभिवाक् करना और साबित करना अपेक्षित था, जैसा कि उसे धार्मिक लोक न्यास होने के नाते अपने आप छूट नहीं थी – अभिनिर्धारित – न्यास के प्रयोजन हेतु आय. का उपयोग नहीं किये जाने के संबंध में कोई आक्षेप या अभिवचन नहीं – प्रतिवादीगण ने कोई अभिवाक् नहीं उठाया कि वादी, छूट की अधिसूचना के लाभ का हकदार नहीं – आक्षेपित निर्णय एवं डिक्ली में कोई विधिक कमी नहीं – सारवान प्रश्न जैसे कि उठाये गये हैं, उत्पन्न नहीं होते। (रामशंकर वि. गुरु सिंह समा) ...1541

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on 01.12.2006 by virtue of relinquishment deed – Suit was filed on 16.06.2007 – As the period of 1 year was not expired after becoming owner – Therefore, suit is barred u/s 12(4) of the Act – Held – Suit property was undivided joint Hindu Family property and because of relinquishment deed dated 01.12.2006 petitioner has become absolute owner – It is not the case that the petitioner has purchased the suit property on 01.12.2006, Section 12(4) is not attracted – Impugned order is set aside – Suit be decided on merits after recording the evidence. [Premkumar Vs. Smt. Saroj] ...1257

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

आवश्यकता — आरसीए इस निष्कर्ष पर पहुँचा कि सुनवाई का सम्यक अवसर प्रदान करने के पश्चात, प्रकरण पूर्णतः साबित हुआ कि अनावेदक क्र. 2 को अंतरित परिसर की वास्तविक रूप से आवश्यकता है — शारीरिक असमर्थता के चिकित्सीय प्रमाण पत्र को भी चिकित्सक द्वारा सम्यक रूप से साबित किया गया — यह नहीं कहा जा सकता कि बेदखली की डिक्री को अवैध रूप से पारित किया गया। (पूनम कुमार दुग्गल वि. इंद्रजीत सिंह दुग्गल) ...1369

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स्थान नियंत्रण अधिनियम, म.प्र. (1961 का 41), धारा 23ए — देखें — सिविल प्रक्रिया संहिता, 1908, आदेश 9 नियम 9 (पूनम कुमार दुग्गल वि. इंद्रजीत सिंह दुग्गल) ...1369

Arbitration and Conciliation Act (26 of 1996), Section 8 & Civil Procedure Code (5 of 1908), Order 7 Rule 11 — Suit was filed by respondents No. 1 & 2 alleging the validity of the agreement and prayed that the agreement be declared as null and void and not binding as the same has been obtained by playing the fraud — Application filed u/s 8 of the Act and under order 7 Rule 11 by the petitioner, praying dismissal of suit being barred under the provisions of Arbitration & Conciliation Act, was dismissed — Held — Since the declaration sought could only be granted by Civil Court and not by arbitrator, matter could not be referred to arbitrator. [Kutubuddin Agarbattiwala Vs. Smt. Ameena] ...1286

माध्यस्थ और सुलह अधिनियम (1996 का 26), धारा 8 व सिविल प्रक्रिया संहिता (1908 का 5), आदेश 7 नियम 11 — करार की वैधता का अभिकथन करते हुए, प्रत्यर्थागण क्र. 1 व 2 द्वारा वाद प्रस्तुत किया गया और प्रार्थना की गई कि

करार को शून्य एवं अकूत तथा बंधनकारक नहीं होना घोषित किया जाए क्योंकि उक्त को कपट द्वारा अभिप्राप्त किया गया है - माध्यस्थम और सुलह अधिनियम के उपबंधों के अंतर्गत वाद को खारिज किये जाने की प्रार्थना के साथ अधिनियम की धारा 8 और आदेश 7 नियम 11 के अंतर्गत याची द्वारा प्रस्तुत किये गये आवेदन को खारिज किया गया - अभिनिर्धारित - चूंकि चाही गयी घोषणा को केवल सिविल न्यायालय द्वारा प्रदान किया जा सकता है और न कि माध्यस्थम द्वारा, मामला माध्यस्थम को निर्दिष्ट नहीं किया जा सकता। (कुतुबुद्दीन अंगरबत्तीवाला वि. श्रीमती अमीना) ...1286

Arbitration and Conciliation Act (26 of 1996), Section 11 - Contract - Appointment of Arbitrator - Petitioner's request to appoint an arbitrator was turned down on the ground that the claim of the petitioner is for an amount which is more than 20% of the contract value - Held - Court may not be able to decide whether particular dispute can be referred to arbitration but can examine whether a particular dispute falls within the arbitration clause or not - The dispute raised by the petitioner falls beyond the purview of clauses 63 and 64 of the General Conditions of the Contract, as the same is for an amount of more than 20% of the contract value - Dispute cannot be referred to arbitrator. [Diamond Agencies (M/s.) Vs. Union of India] ...1629

माध्यस्थम और सुलह अधिनियम (1996 का 26), धारा 11 - संविदा - मध्यस्थ की नियुक्ति - मध्यस्थ नियुक्त करने का याची का निवेदन इस आधार पर अस्वीकार किया गया कि याची का दावा ऐसी रकम के लिये है जो संविदा मूल्य के 20 प्रतिशत से अधिक है - अभिनिर्धारित - न्यायालय यह निश्चित करने के लिये सक्षम नहीं हो सकता कि क्या किसी विशिष्ट विवाद को माध्यस्थम के लिये निर्दिष्ट किया जा सकता है अथवा नहीं, किन्तु यह परीक्षण कर सकता है कि क्या कोई विशिष्ट विवाद माध्यस्थम खंड के भीतर आता है अथवा नहीं - याची द्वारा उठाया गया विवाद, संविदा की सामान्य शर्तों के खंड 63 व 64 की परिधि से परे आता है क्योंकि वह संविदा मूल्य के 20 प्रतिशत से अधिक की रकम के लिये है - विवाद, मध्यस्थ को निर्देशित नहीं किया जा सकता। (डायमंड एजेंसी (मे.) वि. यूनियन ऑफ इंडिया) ...1629

Arms Act (54 of 1959), Sections 13 & 14 - Application for grant of arms license rejected by licensing authority taking note of the fact that the petitioner has no danger from any group or person - Held - Provisions contained u/s 13 (2A) read with Section 14(1)(b)(i)(3) provide that recording of reason in refusing to grant the license is not postulated - Licensing Authority being satisfied in a given facts that there is no threat from any

group or person to the petitioner's life or property was within his right to refuse the grant of license – No interference is warranted – Petition dismissed. [Umesh Yadav Vs. State of M.P.] ...1009

आयुध अधिनियम (1959 का 54), धाराएं 13 व 14 – शस्त्र अनुज्ञप्ति प्रदान किये जाने हेतु आवेदन को अनुज्ञप्ति प्राधिकारी द्वारा इस तथ्य को ध्यान में रखकर अस्वीकार किया गया कि याची को किसी समूह या व्यक्ति से खतरा नहीं है – अभिनिर्धारित – धारा 13(2ए) सहपठित धारा 14(1)(बी)(i)(3) के उपबंध उपबंधित करते हैं कि अनुज्ञप्ति प्रदान करने से इंकार करने में कारण अभिलिखित किया जाना परिकल्पित नहीं है – प्रस्तुत तथ्यों में अनुज्ञप्ति प्राधिकारी की संतुष्टि कि याची के जीवन या संपत्ति को किसी समूह या व्यक्ति से कोई आशंका नहीं, अनुज्ञप्ति प्रदान करने से इंकार करना उसके अधिकार में था – किसी हस्तक्षेप की आवश्यकता नहीं – याचिका खारिज। (उमेश यादव वि. म.प्र. राज्य) ...1009

*Arms Act (54 of 1959), Sections 13, 14, & 15(3), Arms Rule 1962 – Rules 54 & 56 – Renewal of Arms license – Inordinate delay in filing application for renewal of license – Held – Renewal of license is ordinary incidence and the refusal must be accompanied by reasons recorded in writing – Provisions of Sections 13 & 14 are applicable to renewal also – If prescribed authority was of view that application is delayed then he could have directed the petitioner to deposit late fee – Petition allowed. [Pradeep Kumar Jain Vs. State of M.P.] ...*8*

आयुध अधिनियम (1959 का 54), धाराएं 13, 14 व 15(3), आयुध नियम 1962 – नियम 54 व 56 – शस्त्र अनुज्ञप्ति का नवीनीकरण – अनुज्ञप्ति के नवीनीकरण हेतु आवेदन प्रस्तुत करने में असीमित विलम्ब – अभिनिर्धारित – अनुज्ञप्ति का नवीनीकरण साधारण प्रसंग है और इससे इंकार किया जाना लिखित रूप से कारणों के साथ अंकित होना चाहिए – धारा 13 व 14 के उपबंध, नवीनीकरण को भी लागू होते हैं – यदि विहित प्राधिकारी का मत है कि आवेदन विलम्ब से किया गया है तब वह याची को विलम्ब शुल्क जमा करने के लिए निदेशित कर सकता था – याचिका मंजूर। (प्रदीप कुमार जैन वि. म.प्र. राज्य) ...*8

Arms Act (54 of 1959), Section 45(b)(ii) – See – Income Tax Act, 1961, Section 132 [Sunil Kapoor (Dr.) Vs. State of M.P.] ...1266

आयुध अधिनियम (1959 का 54), धारा 45(बी)(ii) – देखें – आयकर अधिनियम, 1961, धारा 132 (सुनील कपूर (डॉ.) वि. म.प्र. राज्य) ...1266

*Arms Rule 1962 – Rules 54 & 56 – See – Arms Act, 1959, Sections 13, 14, & 15(3) [Pradeep Kumar Jain Vs. State of M.P.] ...*8*

आयुध नियम 1962 - नियम 54 व 56 - देखें - आयुध अधिनियम, 1959, धाराएं 13, 14 व 15(3) (प्रदीप कुमार जैन वि. म.प्र. राज्य) ...*8

Bombay Public Trusts Act (29 of 1950), Section 50 - Suit against Public Trust - Jurisdiction - Suit against Public Trust can be filed in Court within local limits of whose jurisdiction the whole or the part of the subject matter of Trust is situate - Appeal allowed. [Pushpa Berry (Smt.) Vs. Shri Mahila Grih Udyog Lijjat Papad] ...1330

बाम्बे लोक न्यास अधिनियम (1950 का 29), धारा 50 - लोक न्यास के विरुद्ध वाद - अधिकारिता - लोक न्यास के विरुद्ध वाद उस न्यायालय में प्रस्तुत किया जा सकता है जिसकी अधिकारिता की स्थानीय सीमा के भीतर न्यास की विषयवस्तु पूर्णतः या अंशतः स्थित है - अपील मंजूर। (पुष्पा बेरी (श्रीमती) वि. श्री महिला गृह उद्योग लिज्जत पापड़) ...1330

Cantonment Act (2 of 1924), Section 181(3)(4) - Decision on application - Application submitted by the petitioners were either to be granted or to be rejected on valid reasons as mentioned in sub-section (4) of Section 181 of 1924 Act - Applications/Notices of execution of building were to be considered only and only under the scheme of 1924 Act. [S.L. Seth Vs. Union of India] ...948

छावनी अधिनियम (1924 का 2), धारा 181(3)(4) - आवेदन का विनिश्चय - याचीगण द्वारा प्रस्तुत आवेदन को वैध कारणों पर या तो स्वीकार या अस्वीकार करना चाहिये था, जैसा कि अधिनियम 1924 की धारा 181 उप धारा (4) में उल्लिखित किया गया है - भवन के निष्पादन के आवेदन/नोटिस को केवल और केवल अधिनियम 1924 की स्कीम के अधीन ही विचार में लिया जाना चाहिए था। (एस.एल. सेठ वि. यूनियन ऑफ इंडिया) ...948

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छावनी अधिनियम (1924 का 2), धारा 181(3)(4) - अनापत्ति प्रमाण पत्र - एक बार अनापत्ति प्रमाण पत्र जारी करने के बाद उच्चतर प्राधिकारी या किसी को मामला निर्देशित करने की शक्ति बोर्ड के पास उपलब्ध नहीं थी - मिलिट्री इस्टेट ऑफिसर के प्रबंधन के अधीन भूमि पर भवन के निष्पादन या पुनर्निष्पादन को

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Cantonment Act (2 of 1924), Section 181(3)(4) – Refusal of building permission – Rejection of application was not on specific ground but on such grounds which were not available – Lease deed was granted for the residential purposes; permission was also sought for construction of residential building – Held – If the mutation of the land in dispute was accepted, there is no question for asking the petitioner to surrender the original lease deed and to obtain sub-lease deed separately – It was the responsibility of the authority to issue the sub-lease deed in favour of the petitioners. [S.L. Seth Vs. Union of India] ...948

छावनी अधिनियम (1924 का 2), धारा 181(3)(4) – निर्माण की अनुमति अस्वीकार की जाना – आवेदन की अस्वीकृति किसी विनिर्दिष्ट आधार पर नहीं की गयी बल्कि उन आधारों पर जो उपलब्ध नहीं थे – निवासीय प्रयोजन हेतु पट्टा विलेख प्रदान किया गया था, निवासीय भवन के निर्माण हेतु अनुमति भी चाही गयी थी – अभिनिर्धारित – यदि वादग्रस्त भूमि के नामांतरण को स्वीकार किया जाता है, तब याची को मूल पट्टा विलेख का समर्पण करके पृथक् रूप से उप पट्टा विलेख अभिप्राप्त करने के लिये कहने का कोई प्रश्न नहीं – याचीगण के पक्ष में उप पट्टा विलेख जारी करने की जिम्मेदारी प्राधिकारी की थी। (एस.एल. सेठ वि. यूनियन ऑफ इंडिया) ...948

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यह दर्शाया गया है कि दावाकर्ताओं की माता ने स्वयं न, केवल आक्षेप प्रस्तुत किये बल्कि निर्देश भी प्रस्तुत किया था, जिसे जून-27, 2001 को खारिज किया गया, — इस प्रकार विचारण न्यायालय का निष्कर्ष है कि अपीलार्थीगण द्वारा जो वाद अभी प्रस्तुत किया गया है और जो स्वयं को स्वामी के विधिक वारिस होने का दावा करते हैं, उन्हें 9 वर्ष पश्चात पुनः उक्त वाद प्रस्तुत करने से रोका गया और परिसीमा के बिन्दू पर वाद खारिज किया गया — अपील खारिज। (शैलेश अग्निहोत्री वि. इंदौर डब्लेपमेन्ट अथॉरिटी) (DB)...1302

Civil Procedure Code (5 of 1908), Section 100, Land Revenue Code, M.P. (20 of 1959), Section 158 (1)(b), Inaam Inquiry Rules, Rule 20 & Evidence Act (1 of 1872), Section 90 – Second Appeal – Land in question was given in “Inaam” to the ancestor of the second plaintiff by then Holkar State to offer “Pooja” on 24.12.1930 – As per direction of the State Government, name of Collector has been endorsed as Vyavasthapak (Manager) – Plaintiff claimed that he became the Bhoomiswami – Circular is applicable for Government temple and not for private temple – Hence, claimed that name of Collector as Manager be removed from revenue record – Held – Revenue records cannot be corrected without holding any inquiry and giving opportunity of hearing to the plaintiff – Since the suit land was given in “Inaam”, plaintiff acquired Bhoomiswami right after coming into force of the Land Revenue Code u/s 158 (1)(b) of the Code – Thus, 1st question of law answered in favour of the plaintiff. [Murti Shri Pandharinath Mandir Vs. Collector] ...1061

सिविल प्रक्रिया संहिता (1908 का 5), धारा 100, मू. राजस्व संहिता, म.प्र. (1959 का 20), धारा 158(1)(बी), ईनाम जांच नियम, नियम 20, साक्ष्य अधिनियम (1872 का 1), धारा 90 – द्वितीय अपील – तत्कालीन होल्कर राज्य द्वारा प्रश्नगत भूमि को द्वितीय वादी के पूर्वज को “ईनाम” में “पूजा” अर्पित करने के लिये 24. 12.1930 को दी गयी थी — राज्य सरकार के निर्देशानुसार, कलेक्टर का नाम, व्यवस्थापक (मैनेजर), के रूप में पृष्ठांकित किया गया है — वादी ने दावा किया कि वह भूमिस्वामी बन गया — परिपत्र सरकारी मंदिर को लागू होता है और न कि निजी मंदिर के लिये — अतः यह दावा किया गया कि मैनेजर के रूप में कलेक्टर का नाम, राजस्व अभिलेख से हटाया जाये — अभिनिर्धारित — बिना किसी जांच के और वादी को सुनवाई का अवसर दिये बिना राजस्व अभिलेख में कोई सुधार नहीं किया जा सकता — चूंकि वाद भूमि “ईनाम” में दी गयी थी, संहिता की धारा 158(1)(बी) के अंतर्गत, मू. राजस्व संहिता प्रभावी होने के पश्चात, वादी ने भूमिस्वामी अधिकार अर्जित किया — अतः विधि का प्रथम प्रश्न वादी के पक्ष में उत्तरित किया गया। (मूर्ति श्री पंढरीनाथ मंदिर वि. कलेक्टर) ...1061

Civil Procedure Code (5 of 1908), Section 100, Land Revenue Code, M.P. (20 of 1959), Section 168 & Rewa Registration Act, 1917, Section 21 – Second Appeal – Admittedly, the original plaintiff's father and defendants No. 1 and 2's grandfather were in joint cultivating possession – Plaintiff has not set-up the case that suit lands were leased-out to the defendants – Held – Since the co-owner did not belong to category specified in Section 168(2) of the Code, provisions of Section 168 of the Code, have no application. [Mahesh Prasad Vs. Rambahadur] ...1321

सिविल प्रक्रिया संहिता (1908 का 5), धारा 100, भू राजस्व संहिता, म.प्र. (1959 का 20), धारा 168 व रीवा पंजीकरण अधिनियम, 1917, धारा 21 – द्वितीय अपील – स्वीकृत रूप से मूल वादी के पिता और प्रतिवादी क्र. 1 व 2 के दादा का संयुक्त कृतिकर्म कब्जा था – वादी ने ऐसा प्रकरण नहीं बनाया है कि वाद भूमि को प्रतिवादियों को पट्टे पर दी गई थी – अभिनिर्धारित – चूंकि सह-स्वामी, संहिता की धारा 168(2) में विनिर्दिष्ट श्रेणी का नहीं है, संहिता की धारा 168 के उपबंध प्रयोज्य नहीं। (महेश प्रसाद वि. रामबहादुर) ...1321

Civil Procedure Code (5 of 1908), Section 100 – Second Appeal – Since there was no proof of any agreement of lease with respondent No.2, Civil Court was not right in granting a decree against respondent No. 2 in favour of the appellant. [Chandramoul Shukla Vs. Ramvishwas] ...1339

सिविल प्रक्रिया संहिता (1908 का 5), धारा 100 – द्वितीय अपील – चूंकि प्रत्यर्थी क्र. 2 के साथ पट्टे के किसी अनुबंध का सबूत नहीं था, सिविल न्यायालय को अपीलार्थी के पक्ष में, प्रत्यर्थी क्र. 2 के विरुद्ध डिक्री प्रदान करना उचित नहीं था। (चंद्रमौल शुक्ला वि. रामविश्वास) ...1339

Civil Procedure Code (5 of 1908), Section 115, Order 7 Rule 11, Limitation Act (36 of 1963), Article 20 – Limitation for filing the suit based on payment of money by cheque is three years from the date when the cheque is given – Admittedly in the present case the said date was 15.05.2009 as set-forth in the plaint itself – Suit was filed on 23.08.2012 – Held – Suit is barred by limitation – No evidence was required to be recorded in terms of the law made in the Limitation Act – The postponement of the right to sue should be in writing – Revision allowed – Suit dismissed being barred by Limitation. [Neelam Kumar Bachani Vs. Bhishamlal] ...1632

सिविल प्रक्रिया संहिता (1908 का 5), धारा 115, आदेश 7 नियम 11, परिसीमा

अधिनियम (1963 का 36), अनुच्छेद 20 – चेक द्वारा रकम के भुगतान पर आधारित वाद प्रस्तुत करने के लिये परिसीमा, चेक दिये जाने की तिथि से तीन वर्ष है – स्वीकृत रूप से प्रस्तुत प्रकरण में उक्त तिथि 15.05.2009 थी, जैसा कि वादपत्र में ही दर्शाया गया है – वाद को 23.08.2012 को प्रस्तुत किया गया – अभिनिर्धारित – वाद परिसीमा द्वारा वर्जित – परिसीमा अधिनियम में दी गयी विधि की शर्तानुसार किसी साक्ष्य को अभिलिखित किया जाना अपेक्षित नहीं – वाद लाने के अधिकार का स्थगन, लिखित में होना चाहिए – पुनरीक्षण मंजूर – परिसीमा द्वारा वर्जित होने के कारण वाद खारिज किया गया। (नीलम कुमार बछानी वि. भीषमलाल) ...1632

Civil Procedure Code (5 of 1908), Order 6 Rule 2 – Pleadings – Although, plaintiff had not used the word “Adverse Possession” in plaint but pleaded all necessary facts – Trial court also framed issue regarding adverse possession – Parties also led evidence on this issue – It cannot be said that there was no clear pleading of adverse possession. [Satnam Singh Vs. Hukum Singh] ...1083

सिविल प्रक्रिया संहिता (1908 का 5), आदेश 6 नियम 2 – अभिवचन – यद्यपि वादी ने वादपत्र में “प्रतिकूल कब्जा” शब्द का उपयोग नहीं किया है किन्तु सभी आवश्यक तथ्यों का अभिवाक् किया है – विचारण न्यायालय ने भी प्रतिकूल कब्जा संबंधी विवाद्यक विरचित किया – इस विवाद्यक पर पक्षकारों ने साक्ष्य भी प्रस्तुत किये – यह नहीं कहा जा सकता कि प्रतिकूल कब्जे का स्पष्ट अभिवाक् नहीं था। (सतनाम सिंह वि. हुकुम सिंह) ...1083

Civil Procedure Code (5 of 1908), Order 6 Rule 17 – Application for amendment of plaint – Pleading by lawyer practicing in mufasil court – Not to be considered strictly – Nature of suit would not change on allowing amendment – Application allowed. [Ashok Diwan (Dr.) Vs. Smt. Shantibai] ...993

सिविल प्रक्रिया संहिता (1908 का 5), आदेश 6 नियम 17 – वादपत्र में संशोधन हेतु आवेदन – मुफस्सील न्यायालय में व्यवसाय कर रहे वकील द्वारा अभिवचन – कठोरता से विचार में नहीं लिया जाना चाहिए – संशोधन मंजूर करने पर वाद का स्वरूप नहीं बदलेगा – आवेदन मंजूर। (अशोक दीवान (डॉ.) वि. श्रीमती शांतिबाई) ...993

Civil Procedure Code (5 of 1908), Order 6 Rule 17 – Proviso to Rule 17 was incorporated in 2002 – Suit was filed in 1988 – Proviso to Rule 17 does not apply. [Ali Hussain (Died) by Legal Heirs Vs. Shabbir Hussain] ...1020

सिविल प्रक्रिया संहिता (1908 का 5), आदेश 6 नियम 17 – नियम 17 का

परंतुक, 2002 में सम्मिलित किया गया – वाद 1988 में प्रस्तुत किया गया – नियम 17 का परंतुक लागू नहीं होता। (अली हुसैन (मृत) द्वारा विधिक प्रतिनिधि वि. शब्बीर हुसैन) ...1020

Civil Procedure Code (5 of 1908), Order 7 Rule 11 – Counter claim – Non payment of court fee – Counter claim dismissed for want of court fee inspite of several opportunities given by trial court – No application for extension of time also filed – Trial court was within its jurisdiction to pass such an order, cannot be interfered. [Rajesh Jaiswal Vs. Sanjay Sarvagi] ...1639

सिविल प्रक्रिया संहिता (1908 का 5), आदेश 7 नियम 11 – प्रतिदावा – न्यायालय शुल्क का असंदाय – विचारण न्यायालय द्वारा अनेक अवसर दिये जाने के बावजूद न्यायालय शुल्क के अभाव में प्रतिदावा खारिज – समय की वृद्धि के लिये भी आवेदन दाखिल नहीं किया गया – आदेश पारित करना विचारण न्यायालय की अधिकारिता में, हस्तक्षेप नहीं किया जा सकता। (राजेश जायसवाल वि. संजय सरावगी) ...1639

Civil Procedure Code (5 of 1908), Order 7 Rule 11 – See – Arbitration and Conciliation Act, 1996, Section 8 [Kutubuddin Agarbattiwala Vs. Smt. Ameena] ...1286

सिविल प्रक्रिया संहिता (1908 का 5), आदेश 7 नियम 11 – देखें – माध्यस्थम् और सुलह अधिनियम, 1996, धारा 8 (कुतुबुद्दीन अगरबत्तीवाला वि. श्रीमती अमीना) ...1286

Civil Procedure Code (5 of 1908), Order 7 Rule 11 – See – Panchayat Raj Evam Gram Swaraj Adhiniyam, M.P. 1993, Sections 107 & 108 [Shanta Bai (Smt.) Vs. Kundlik] ...1117

सिविल प्रक्रिया संहिता (1908 का 5), आदेश 7 नियम 11 – देखें – पंचायत राज एवं ग्राम स्वराज अधिनियम, म.प्र. 1993, धाराएं 107 व 108 (शांता बाई (श्रीमती) वि. कुंडलिक) ...1117

Civil Procedure Code (5 of 1908), Order 8 Rule 6(A) – Counter claim by defendant – At the stage of closure of defence evidence, counter claim is not permissible. [Ali Hussain (Died) by Legal Heirs Vs. Shabbir Hussain] ...1020

सिविल प्रक्रिया संहिता (1908 का 5), आदेश 8 नियम 6(ए) – प्रतिवादी द्वारा प्रतिदावा – बचाव साक्ष्य के समापन के प्रक्रम पर, प्रतिदावा अनुज्ञेय नहीं। (अली हुसैन (मृत) द्वारा विधिक प्रतिनिधि वि. शब्बीर हुसैन) ...1020

Civil Procedure Code (5 of 1908), Order 9 Rule 9 & Accommodation Control Act, M.P. (41 of 1961), Section 23-A – Restoration of application for eviction – Original non-applicant died during pendency and his legal heirs were brought on record – Defendants claimed that one of them namely Indrajeet is in possession of shop – Notice of application under Order 9 Rule 9 CPC to Indrajeet issued – Non-issuance of notice to other respondents is immaterial as no prejudice was going to cause to them – No need to grant any opportunity to other legal heirs. [Poonam Kumar Duggal Vs. Indrajeet Singh Duggal] ...1369

सिविल प्रक्रिया संहिता (1908 का 5), आदेश 9 नियम 9 व स्थान नियंत्रण अधिनियम, म.प्र. (1961 का 41), धारा 23ए – बेदखली के लिए आवेदन का पुनःस्थापन – लंबन के दौरान मूल अनावेदक की मृत्यु हुई और उसके विधिक वारिसों को अभिलेख पर लाया गया – प्रतिवादियों ने दावा किया कि उनमें से एक, नामतः, इन्द्रजीत के कब्जे में दुकान है – आदेश 9 नियम 9 सि.प्र.सं. के अंतर्गत आवेदन की नोटिस, इन्द्रजीत को जारी की गई – अन्य प्रत्यर्थियों को नोटिस जारी नहीं किया जाना तत्त्वहीन है, क्योंकि उन्हें कोई प्रतिकूल प्रभाव कारित नहीं होने वाला था – अन्य विधिक वारिसों को कोई अवसर प्रदान करने की आवश्यकता नहीं। (पूनम कुमार दुग्गल वि. इन्द्रजीत सिंह दुग्गल) ...1369

Civil Procedure Code (5 of 1908), Order 9 Rule 13 & Limitation Act (36 of 1963), Section 5 – Setting aside ex-parte decree – Application under Order 9 Rule 13 filed after 10 years and 6 months on the ground that the Collector was not served – Although the defendant was served and was also represented by Government Pleader – On various dates, he sought time to file reply to I.A. and written statement – No application u/s 5 of Limitation Act was filed – Held – Application filed under Order 9 Rule 13 was quite vague – Reason assigned is concocted and is ex facie false – Trial Court acted illegally with material, irregularity in exercise of its jurisdiction while allowing the application – Discretion should be exercised in favour of a party who comes with clean hands – Revision succeeds – Impugned order is set-aside. [Ramesh Chandra Jain Vs. State of M.P.] ...1360

सिविल प्रक्रिया संहिता (1908 का 5), आदेश 9 नियम 13 व परिसीमा अधिनियम (1963 का 36), धारा 5 – एकपक्षीय डिक्री को अपास्त किया जाना – आदेश 9 नियम 13 के अंतर्गत आवेदन को 10 वर्ष और 6 माह पश्चात इस आधार पर पेश किया गया कि कलेक्टर को तामीली नहीं हुई – तथापि प्रतिवादी को

तामीली हुई थी और सरकारी अधिकृत द्वारा प्रतिनिधित्व भी किया गया — विभिन्न तिथियों पर उसने अंतर्वर्ती आवेदन का जबाब और लिखित कथन प्रस्तुत करने के लिये समय चाहा — परिसीमा अधिनियम की धारा 5 के अंतर्गत कोई आवेदन प्रस्तुत नहीं — अभिनिर्धारित — आदेश 9 नियम 13 के अंतर्गत प्रस्तुत आवेदन अस्पष्ट है — दिया गया कारण, कूटरचित है और प्रत्यक्षतः मिथ्या है — विचारण न्यायालय ने आवेदन मंजूर करते हुए अपनी अधिकारिता का प्रयोग करने में तात्त्विक अनियमितता के साथ अवैध रूप से कार्यवाही की — विवेकाधिकार का प्रयोग उस पक्षकार के पक्ष में किया जाना चाहिए जो स्वच्छ अंतःकरण से आता है — पुनरीक्षण सफल — आक्षेपित आदेश अपास्त। (रमेश चंद्र जैन वि. म.प्र. राज्य) ...1360

Civil Procedure Code (5 of 1908), Order 43 Rule 1, Order 39 Rule 1 & 2 – Balance of convenience – Merely construction is done by plaintiff in accordance with sanction, it cannot be said that the land is going to be destroyed and damaged – Hence, balance of convenience lies in favour of the plaintiff. [Lokendra Jain Vs. Bandiviya Samachar Patra] ...1346

सिविल प्रक्रिया संहिता (1908 का 5), आदेश 43 नियम 1, आदेश 39 नियम 1 व 2 – सुविधा का संतुलन – वादी द्वारा मंजूरी के अनुसरण में मात्र निर्माण किया जाना, यह नहीं कहा जा सकता कि भूमि का नाश होगा या क्षतिग्रस्त होगी – अतएव, सुविधा का संतुलन वादी के पक्ष में जाता है। (लोकेन्द्र जैन वि. बनदिविया समाचार पत्र) ...1346

Civil Procedure Code (5 of 1908), Order 43 Rule 1, Order 39 Rule 1 & 2 – Irreparable loss – Even if building is constructed, the appellant can be compensated in terms of money – No illegality committed by court below in granting temporary injunction – Appeal dismissed. [Lokendra Jain Vs. Bandiviya Samachar Patra] ...1346

सिविल प्रक्रिया संहिता (1908 का 5), आदेश 43 नियम 1, आदेश 39 नियम 1 व 2 – अपूर्णीय क्षति – यदि भवन का निर्माण किया जाता है तब भी अपीलार्थी की प्रतिपूर्ति रकम के तौर पर की जा सकती है – अस्थायी व्यादेश प्रदान करने में निचले न्यायालय ने कोई अवैधता कारित नहीं की – अपील खारिज। (लोकेन्द्र जैन वि. बनदिविया समाचार पत्र) ...1346

Civil Procedure Code (5 of 1908), Order 43 Rule 1, Order 39 Rule 1 & 2 – Prima facie case – Was in favour of respondent No. 1/ plaintiff as he was having the lease deed in his favour – Physical possession is materially important and undisputedly appellant/defendant is not in physical possession of the land in suit – Hence, unless a counter

claim is made by the defendant, no prayer for grant of temporary injunction can be entertained. [Lokendra Jain Vs. Bandiviya Samachar Patra] ...1346

सिविल प्रक्रिया संहिता (1908 का 5), आदेश 43 नियम 1, आदेश 39 नियम 1 व 2 - प्रथम दृष्टया प्रकरण - प्रत्यर्थी क्र. 1/वादी के पक्ष में था क्योंकि उसके पास उसके पक्ष में (पट्टा विलेख) था - वस्तुगत कब्जा तात्त्विक रूप से महत्वपूर्ण है और अविवादित रूप से अपीलार्थी/प्रतिवादी के वस्तुगत कब्जे में वाद भूमि नहीं - अतः, जब तक कि प्रतिवादी द्वारा प्रतिदावा नहीं किया जाता, अस्थाई व्यादेश प्रदान किये जाने का निवेदन ग्रहण नहीं किया जा सकता। (लोकेन्द्र जैन वि. बनदिविया समाचार पत्र) ...1346

Civil Services (Pension) Rules, M.P. 1976, Rules 42 & 79 - Period of Service - Petitioner had not completed 20 years of service, therefore, she was not found entitled for pension - Case of the petitioner was recommended by authorities to condone short fall of 21 days in view of Rule 79 to avoid undue hardship - Held - Since concerned department recommended the case in favour of petitioner after recording the reasons, that rules are causing undue hardship - There was no justification on the part of Finance Department in not giving the concurrence without assigning any reason - Respondents directed to do the needful so that petitioner can get pension. [Sujata Bhargava (Dr.) (Smt.) Vs. State of M.P.] ...1525

सिविल सेवा (पेंशन) नियम, म.प्र. 1976, नियम 42 व 79 - सेवा की अवधि - याची ने 20 वर्ष की सेवा पूर्ण नहीं की इसलिए, उसे पेंशन का हकदार नहीं पाया गया - याची के प्रकरण की अनुशंसा प्राधिकारियों द्वारा नियम 79 को दृष्टिगत रखते हुए, असम्यक् कठिनाई से बचने के लिये 21 दिनों की सेवा की कमी की माफी के लिये की गयी - अभिनिर्धारित - चूंकि संबंधित विभाग ने कारण अभिलिखित करने के पश्चात याची के पक्ष में प्रकरण की अनुशंसा की कि नियम असम्यक् कठिनाई कारित कर रहे हैं - वित्त विभाग की ओर से, बिना कोई कारण दर्शाये, सहमति नहीं दिये जाने का कोई न्यायोचित्य नहीं - प्रत्यर्थीगण को आवश्यक कार्यवाही करने के लिये निदेशित किया गया जिससे कि याची को पेंशन प्राप्त हो सके। (सुजाता भार्गव (डॉ.) (श्रीमती) वि. म.प्र. राज्य) ...1525

Constitution - Public Interest Litigation - Basic Amenities - Where the local authorities are not serious to provide basic amenities to the inhabitants of the locality, directions for taking immediate steps for providing basic amenities like Nala, Road, Electricity, Sewer line issued - Petition disposed off. [Dinesh Singh Bhadoriya Vs. State of

M.P.] (DB)...1291

संविधान - जनहित याचिका - मूलभूत सुविधाएँ - जब स्थानीय प्राधिकारी, परिक्षेत्र के रहवासियों को मूलभूत सुविधाएँ प्रदान करने के लिये गंभीर नहीं है, मूलभूत सुविधाएँ जैसे कि नाला, सड़क, बिजली, भूमिगत नाली उपलब्ध कराने के लिये तत्काल कदम उठाने के निदेश जारी किये गये - याचिका का निपटारा किया गया। (दिनेश सिंह मदौरिया वि. म.प्र. राज्य) (DB)...1291

Constitution - Article 20(2) - Double Jeopardy - Offence u/s 138 of Negotiable Instruments Act is altogether different from the offence punishable u/s 420 of IPC - Ingredient of both the offences are different, hence conviction in both offences separately is not prohibited under Article 20(2). [Alok Vs. Praveen Kumar] ...1112

संविधान - अनुच्छेद 20(2) - दोहरा संकट - परक्राम्य लिखत अधिनियम की धारा 138 के अंतर्गत अपराध, भा.द.सं. की धारा 420 के अंतर्गत दण्डनीय अपराध से बिल्कुल भिन्न है - दोनों अपराधों के घटकांग भिन्न हैं, अतः अनुच्छेद 20(2) के अंतर्गत दोनों अपराधों में पृथक् दोषसिद्धि प्रतिषिद्ध नहीं। (आलोक वि. प्रवीण कुमार) ...1112

Constitution, Article 21, Criminal Procedure Code, 1973 (2 of 1974), Section 309 - Speedy trial - Fair, just and reasonable procedure is implicit in Article 21 - This right comprehends all stages viz investigation, trial, inquiry, appeal, revision and retrial. [Shri Mahila Grih Udyog Lijjat Papad, Jabalpur Vs. State of M.P.] ...1641

संविधान, अनुच्छेद 21, दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 309 - शीघ्र विचारण - अनुच्छेद 21 में उचित, न्यायसंगत और युक्तियुक्त प्रक्रिया विवक्षित है - इस अधिकार में सभी प्रक्रमों का बोध है, नामतः अन्वेषण, जांच, विचारण, अपील, पुनरीक्षण एवं पुनः विचारण। (श्री महिला गृह उद्योग लिज्जत पापड़, जबलपुर वि. म.प्र. राज्य) ...1641

Constitution - Article 226, Policy of Rehabilitation dt. 21.09.1972 - Benefit to the families who have suffered depredation at the hands of dacoits - The policy is extended as succour to the family who are facing mental, physical and financial hardship on account of depredation - It cannot be used as a perennial source of employment for all the subsequent generations to come - Further held, grandson of the person who was not directly affected by depredation caused by the dacoits, cannot be permitted to claim rehabilitation. [Avinash Upmanyu Vs. State of M.P.] (DB)...946

संविधान - अनुच्छेद 226, पुनर्वास पॉलिसी दि. 21.09.1972 - डकैतों के हाथों लूटपाट सहन करने वाले परिवारों को लाभ - लूटपाट के कारण जो परिवार मानसिक, शारीरिक एवं आर्थिक कठिनाई का सामना कर रहे हैं, उन्हें सहायता के रूप में पॉलिसी लागू होती है - इसका उपयोग सभी आने वाली पश्चातवर्ती पीढ़ियों के लिये नियोजन का चिरस्थायी जरिया के रूप में नहीं किया जा सकता - आगे अभिनिर्धारित किया गया कि, ऐसे व्यक्ति का पौत्र जो डकैतों द्वारा कारित लूटपाट से सीधे प्रभावित नहीं हुआ था, पुनर्वास का दावा करने की अनुमति नहीं दी जा सकती। (अविनाश उपमन्यु वि. म.प्र. राज्य) (DB)...946

Constitution - Article 226 - Revaluation of Answer Sheets - In absence of any statutory rules and regulations, revaluation of answer sheets and issuance of Mandamus is not permissible - However, if the material available prima facie demonstrates that a case of gross negligence or irregularity in evaluation of answer sheets is made out, a Writ of Mandamus can always be issued. [Dheeraj Pandey Vs. State of M.P.] (DB)...1027

संविधान - अनुच्छेद 226 - उत्तर पुस्तिकाओं का पुनर्मूल्यांकन - किसी कानूनी नियम एवं विनियमन की अनुपस्थिति में, उत्तर पुस्तिकाओं का पुनः मूल्यांकन एवं परमादेश का जारी करना अनुज्ञेय नहीं - किन्तु, यदि उपलब्ध सामग्री प्रथम दृष्ट्या यह दर्शाती है कि उत्तर पुस्तिकाओं के मूल्यांकन में घोर लापरवाही या अनियमितता का प्रकरण गठित होता है, तब परमादेश याचिका को निश्चित जारी किया जा सकता है। (धीरज पांडे वि. म.प्र. राज्य) (DB)...1027

Constitution - Article 226 - Revaluation of Answer Sheets - Petitioner must averr that what was the material on which the petitioner answered the question, what was the answer given by the petitioner and how the petitioner says that the answer books are not evaluated properly. [Dheeraj Pandey Vs. State of M.P.] (DB)...1027

संविधान - अनुच्छेद 226 - उत्तरपुस्तिकाओं का पुनर्मूल्यांकन - याची को प्रश्न करना चाहिए कि याची ने प्रश्न का उत्तर किस सामग्री के आधार पर दिया है, याची द्वारा दिया गया उत्तर क्या था और याची कैसे कहता है कि उत्तर पुस्तिकाओं का उचित रूप से मूल्यांकन नहीं किया गया। (धीरज पांडे वि. म.प्र. राज्य) (DB)...1027

Constitution - Article 226 - Writ Jurisdiction - Alternative remedy - Objection can be sustained only when the impugned order/notice was passed in accordance with the provisions of law - If any impugned order is not passed in accordance with the provisions of law,

then it is not necessary for the party to avail the alternative efficacious remedy but he can very well approach this court under this Article. [Srinath Awasth Vikas Pvt. Ltd., Gwalior Vs. State of M.P.] (DB)...1293

संविधान - अनुच्छेद 226 - रिट अधिकारिता - वैकल्पिक उपचार - आक्षेप केवल तब पोषणीय हो सकता है जब आक्षेपित आदेश/नोटिस को विधि के उपबंधों के अनुसार पारित किया गया था - यदि कोई आक्षेपित आदेश, विधि के उपबंधों के अनुसार पारित नहीं किया गया है, तब पक्षकार के लिये वैकल्पिक प्रभावकारी उपचार का अवलंब लेना आवश्यक नहीं किन्तु वह भलिभांति इस अनुच्छेद के अंतर्गत इस न्यायालय के समक्ष जा सकता है। (श्रीनाथ आवास विकास प्रा.लि., ग्वालियर वि. म.प्र. राज्य) (DB)...1293

Constitution - Article 226 - Writ Petition - Petitioners sought relief by making false averments in the Writ Petition - Act of petitioner is not fair - Petitioner not coming with clean hands, are not entitled to any relief - Petition dismissed by imposing cost of Rs. 25,000/- - Writ petition dismissed. [Pragati Petrol Pump (M/s.) Vs. Indian Oil Corporation] ...1270

संविधान - अनुच्छेद 226 - रिट याचिका - याचीगण ने रिट याचिका में मिथ्या प्रकथन देकर अनुतोष चाहा - याची का कृत्य उचित नहीं - याची स्वच्छ अंतःकरण से नहीं आया, किसी अनुतोष का हकदार नहीं - व्यय रु. 25,000/- अधिरोपित करते हुए याचिका खारिज - रिट याचिका खारिज। (प्रगति पेट्रोल पम्प (मे.) वि. इंडियन ऑयल कारपोरेशन) ...1270

Constitution - Articles 226, 324 & 329 (b) - Rejection of nomination paper - Maintainability of writ petition - The term 'election' may be taken to embrace the whole procedure which consists of several stages and embraces many steps, whereby an "elected member" is returned, whether or not it be found necessary to take poll - It is not used in narrow sense - Since the election is in process, the only remedy available to the petitioner is to file election petition. [Mathias Vs. State of M.P.] ...1522

संविधान - अनुच्छेद 226, 324 व 329(बी) - नामांकन पत्र की अस्वीकृति - रिट याचिका की पोषणीयता - 'निर्वाचन' शब्द के अर्थ में संपूर्ण प्रक्रिया जिसमें विभिन्न प्रक्रम और कई कार्यवाहियों के साथ समावेश है, जिसके द्वारा एक "चुने गये सदस्य" को निर्वाचित किया जाता है मले ही मतदान कराया जाना आवश्यक पाया जाये अथवा नहीं - इसे संकुचित भाव से उपयोग नहीं किया गया है - चूंकि, निर्वाचन प्रक्रिया अभी चल रही है, याची को केवल निर्वाचन याचिका प्रस्तुत करने

का उपचार उपलब्ध है। (मथिआस वि. म.प्र. राज्य) ...1522

Constitution – Article 227 & Van Upaj Vyapar (Viniyaman) Adhiniyam, M.P. (9 of 1969), Section 15(6) – Confiscation of vehicle owing to its involvement in Commission of forest offence – Held – Under Section 15(6) of the Act burden is cast upon the owner of the vehicle to prove that his vehicle was being used for commission of forest offences without his knowledge and not with his connivance – Owner has lodged F.I.R. against driver, he has aided and helped the Forest Officials in recovering the accused person – Court rightly released the vehicle – Writ by State dismissed. [State of M.P. Vs. Ankit Rathore] ...1015

संविधान – अनुच्छेद 227 व वन उपज व्यापार (विनियमन) अधिनियम, म.प्र. (1969 का 9), धारा 15(6) – वन अपराध कारित करने में शामिल होने से वाहन की जब्ती – अभिनिर्धारित – अधिनियम की धारा 15(6) के अंतर्गत वाहन के स्वामी पर यह साबित करने का भार है कि वन अपराध कारित करने में उसके वाहन का उपयोग उसकी जानकारी के बिना किया गया और न कि उसकी मौनानुमति से – स्वामी ने वाहन चालक के विरुद्ध प्रथम सूचना रिपोर्ट दर्ज की, उसने अभियुक्त व्यक्ति को पकड़ने में वन कर्मचारियों की सहायता और मदद की – न्यायालय ने उचित रूप से वाहन को मुक्त किया – राज्य की रिट खारिज। (म.प्र. राज्य वि. अंकित राठौर) ...1015

Constitution – Articles 233 & 234 – Recruitment – Evaluation – Process of normalization – Considering the fact that near about 3000 candidates had appeared and answer sheets were evaluated by Several District Judges, the process of normalization was rightly adopted. [Mahinder Kumar Vs. High Court of M.P. through Registrar General] (SC) ...881

संविधान – अनुच्छेद 233 व 234 – भर्ती – मूल्यांकन – सामान्य बनाने की प्रक्रिया – यह तथ्य विचार में लेते हुए कि करीब 3000 अभ्यर्थी उपस्थित हुए और कई जिला न्यायाधीशों द्वारा उत्तर पुस्तिकाओं का मूल्यांकन किया गया, सामान्य बनाने की प्रक्रिया को उचित रूप से अपनाया गया था। (महिन्दर कुमार वि. हाईकोर्ट ऑफ एम.पी. द्वारा रजिस्ट्रार जनरल) (SC)...881

Contempt of Courts Act (70 of 1971) – Whether Contempt petition can be filed at Gwalior bench alleging non compliance of the orders passed by the Principal Seat at Jabalpur? – Held – Territorial jurisdiction of the principal seat at Jabalpur and benches at Indore and Gwalior has already been assigned – Hence, Contempt petition

arising out of the order passed by the principal seat can be filed only at principal bench – Contempt proceedings cannot be initiated on mere asking without factual foundation of jurisdictional nature – Constitutional power is conferred upon High Court to ensure majesty of law on the touchstone of rule of law as no one is above the rule of law. [Shashkiya Mahavidhyalaya Shikshak Sangh, M.P. Vs. Shri V.S. Sampat] ...1034

न्यायालय अवमान अधिनियम (1971 का 70) – क्या जबलपुर मुख्यपीठ द्वारा पारित किये गये आदेशों का अनुपालन नहीं किये जाने का अभिकथन करते हुये अवमानना याचिका को खंडपीठ ग्वालियर में प्रस्तुत किया जा सकता है? – अभिनिर्धारित – मुख्यपीठ जबलपुर और खंडपीठ इन्दौर एवं ग्वालियर का क्षेत्राधिकार पहले से नियत है – अतः, मुख्यपीठ द्वारा पारित किये गये आदेश से उत्पन्न होने वाली अवमानना याचिका को केवल मुख्यपीठ में प्रस्तुत किया जा सकता है. – क्षेत्राधिकार के स्वरूप के तथ्यात्मक आधार के बिना, केवल ऐसा चाहने मात्र से अवमानना कार्यवाही आरंभ नहीं की जा सकती – उच्च न्यायालय को विधि की प्रमुसत्ता, विधि के नियम की कसौटी पर सुनिश्चित करने के लिये संवैधानिक शक्ति प्रदान की गयी है क्योंकि कोई भी विधि के नियम से ऊँचा नहीं। (शासकीय महाविद्यालय शिक्षक संघ, म.प्र. वि. श्री व्ही.एस. संपत) ...1034

Contract – Encashment of Bank Guarantee – Petitioner alleges that respondents are not adhering to the conditions of the contract and not releasing the payment, are playing fraud, by getting bank guarantee encashed – Held – Mere non-release of the amount claimed to be due and on the other hand encashing the Bank Guarantee will not amount to be a ‘fraud’ – Petitioner having furnished unconditional Bank Guarantee as performance security, the invocation of Bank Guarantee cannot be said to be illegal. [Advantage Equi Fund Pvt. Ltd. Co. (M/s.) Vs. M.P. Rural Road Development Authority] (DB)...1495

संविदा – बैंक गारंटी को भुनाना – याची का अभिकथन है कि प्रत्यर्थागण, संविदा की शर्तों का पालन नहीं कर रहे हैं और भुगतान को मुक्त नहीं कर रहे हैं, बैंक गारंटी भुनवाकर कपट कर रहे हैं – अभिनिर्धारित – मात्र दावा की गयी रकम को मुक्त नहीं किया जाना और दूसरी ओर बैंक गारंटी भुनाना, ‘कपट’ की कोटि में नहीं आयेगा – याची द्वारा संपादन प्रतिभूति के रूप में बिना शर्त बैंक गारंटी पेश की गयी, अतः बैंक गारंटी का अवलंबन अवैध नहीं कहा जा सकता। (एडवांटेज इक्वी फंड प्रा.लि. कं. (मे.) वि. एम.पी. रूरल रोड डेवेलपमेन्ट अथॉरिटी) (DB)...1495

Contract – Rejection of bid – Owing to non-attestation – Petition challenging acceptance of single offer for grant of licence to sell country

and foreign liquor – Since the petitioner had not made an attestation in the documents annexed in Part-I of his bid as required under clauses 16.14 & 20, treated the same to be incomplete Part-II bid was not opened, although the same was on higher side – Held – Clause 16.14 and 20 of the notice inviting tender are not the essential condition but are collateral ones, as the consequence of non-compliance thereof is not provided – Same should have been got corrected and the bid of the petitioner which is higher, should be opened in the interest of revenue – District Committee is directed to get attestation of documents and to accept the bid of the petitioner. [Rajendra Rai Vs. State of M.P.] ...1531

संविदा – बोली की अस्वीकृति – साक्ष्यांकन नहीं किये जाने के कारण – देशी और विदेशी मदिरा के विक्रय हेतु अनुमति प्रदान किये जाने के लिये एकल प्रस्थापना की स्वीकृति को चुनौती देते हुए याचिका – चूंकि याची ने अपनी बोली के भाग-I में सलग्न दस्तावेजों पर साक्ष्यांकन नहीं किया था जैसा कि खंड 16.14 व 20 के अंतर्गत अपेक्षित था, उसे अपूर्ण माना गया, बोली का भाग-II नहीं खोला गया, यद्यपि वह उच्चतर थी – अभिनिर्धारित – निविदा आमंत्रण नोटिस के खंड 16.14 व 20 आवश्यक शर्त नहीं है बल्कि सांपर्षिक है क्योंकि उसके अननुपालन के परिणाम उपबंधित नहीं हैं – उक्त में सुधार कराया जाना चाहिए था और याची की बोली जो कि उच्चतर है, को राजस्व के हित में खोला जाना चाहिए – जिला समिति को दस्तावेजों का साक्ष्यांकन करवाकर, याची की बोली स्वीकार करने के लिये निदेशित किया गया। (राजेन्द्र राय वि. म.प्र. राज्य) ...1531

Criminal Procedure Code, 1973 (2 of 1974), Sections 4, 5, 438/439 – See – Recognised Examination Act, M.P., 1937, Section 4 [Bal Kumar Kaushik Vs. State of M.P.] (DB)...1673

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धाराएं 4, 5, 438/439 – देखें – मान्यताप्राप्त परीक्षा अधिनियम, म.प्र., 1937, धारा 4 (बाल कुमार कौशिक वि. म.प्र. राज्य) (DB)...1673

Criminal Procedure Code, 1973 (2 of 1974), Section 156(3) – Power to direct for investigation u/s 156(3) – Guidelines for the exercise of power u/s 156(3) issued. [Ramyash Tiwari Vs. State of M.P.] ...1404

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 156(3) – धारा 156(3) के अंतर्गत जांच हेतु निदेश देने की शक्ति – धारा 156(3) के अंतर्गत शक्ति का प्रयोग करने के लिये दिशानिर्देश जारी किये गये। (रामयश तिवारी वि. म.प्र. राज्य) ...1404

Criminal Procedure Code, 1973 (2 of 1974), Sections 156(3), 200, 202 – Magistrate rejected the application filed u/s 156(3) but was

duty bound to proceed further u/s 200 to 203 read with Section 190 of Cr.P.C. – After recording evidence court is to consider the evidence and proceed further – Matter remitted back. [Abhinav Chakradhar Vs. State of M.P.] ...1664

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धाराएं 156 (3), 200, 202 – मजिस्ट्रेट ने धारा 156(3) के अंतर्गत प्रस्तुत किये गये आवेदन को अस्वीकार किया परन्तु वह द.प्र.सं. की धारा 200 से 203 सहपठित धारा 190 के अंतर्गत कार्यवाही करने के लिये कर्तव्यबद्ध था – साक्ष्य अभिलिखित किये जाने के पश्चात् न्यायालय को साक्ष्य को विचार में लेना चाहिए और आगे कार्यवाही करना चाहिए – मामला प्रतिप्रेषित। (अभिनव चक्रधर वि. म.प्र. राज्य) ...1664

Criminal Procedure Code, 1973 (2 of 1974), Sections 177, 482, Penal Code (45 of 1860), Sections 498-A, 204 & 506/34, Dowry Prohibition Act (28 of 1961), Sections 3 & 4 – Quashing of proceedings – Jurisdiction – Complaint filed u/s 498-A, 204 & 506/34 I.P.C. and u/s 3 & 4, Dowry Prohibition Act, 1961 against husband and his relations by the wife at Damoh where she came to stay after leaving her husband's house – All the offences alleged to have taken place at Jabalpur – Said offences not continuing one – No part of cause of action arose at Damoh – Held – Magistrate at Damoh has no jurisdiction to deal with the matter – Proceedings quashed – Complainant given liberty to file complaint in appropriate court. [Jayesh Tiwari Vs. State of M.P.] ...1652

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धाराएं 177, 482, दण्ड संहिता (1860 का 45), धाराएं 498-ए, 204 व 506/34, दहेज प्रतिषेध अधिनियम (1961 का 28), धाराएं 3 व 4 – कार्यवाही अभिखंडित की जाना – अधिकारिता – धारा 498-ए, 204 व 506/34 भा.द.सं. एवं धारा 3 व 4, दहेज प्रतिषेध अधिनियम, 1961 के अंतर्गत पति तथा उसके रिश्तेदारों के विरुद्ध पत्नी द्वारा दमोह में शिकायत प्रस्तुत की गई, जहां वह अपने पति का घर छोड़ने के बाद रहने आयी थी – सभी अपराध अभिकथित रूप से जबलपुर में घटित हुए – उक्त अपराध निरंतर स्वरूप के नहीं – वाद हेतुक का कोई भाग दमोह में उत्पन्न नहीं हुआ – अभिनिर्धारित – दमोह मजिस्ट्रेट को मामले में कार्यवाही करने की अधिकारिता नहीं – कार्यवाहियां अभिखंडित – शिकायतकर्ता को समुचित न्यायालय में शिकायत प्रस्तुत करने की स्वतंत्रता दी गई। (जयेश तिवारी वि. म.प्र. राज्य) ...1652

Criminal Procedure Code, 1973 (2 of 1974), Section 227 – See – Penal Code, 1860, Sections 406, 409 & 420 [Daulat Singh Vishwakarma Vs. State of M.P.] ...1123

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 227 - देखें - दण्ड संहिता, 1860, धाराएँ 406, 409 व 420 (दौलत सिंह विश्वकर्मा वि. म.प्र. राज्य) ...1123

Criminal Procedure Code, 1973 (2 of 1974), Section 294 - No formal proof of certain documents - Applicant was not permitted to produce the aforesaid document photographs in cross-examination of said material witnesses of the case - Held - Wherever the opponent has declined to avail himself of the opportunity to put his essential and material case in cross-examination, it must follow that he believed that the testimony given could not be disputed at all - It is wrong to think that this is merely a technical Rule of evidence - It is a rule of essential justice, it serves to prevent surprise at trial and mis-carriage of justice - Impugned order is held to perverse and deserves to be set aside - Revision allowed. [Madhav Sharma Vs. State of M.P.] ...1120

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 294 - कतिपय दस्तावेजों का कोई औपचारिक प्रमाण नहीं - आवेदक को उपरोक्त दस्तावेज फोटोग्राफ, प्रकरण के उक्त महत्वपूर्ण साक्षीगण के प्रति-परीक्षण में प्रस्तुत करने की अनुमति नहीं दी गई - अभिनिर्धारित - जब भी प्रति-परीक्षण में विरोधी ने अपने आवश्यक एवं महत्वपूर्ण प्रकरण को रखने के अवसर का अवलंब लेने से इंकार करता है, इसका अर्थ होगा कि उसे विश्वास है कि दिये गये परिसाक्ष्य को विवादित बिल्कुल नहीं किया जा सकता - यह सोचना गलत है कि यह साक्ष्य का मात्र तकनीकी नियम है - यह आवश्यक न्याय का नियम है, वह विचारण के समय अप्रत्याशितता एवं न्याय हानि रोकने का कार्य करता है - आक्षेपित आदेश विपर्यस्त अभिनिर्धारित और अपास्त किये जाने योग्य - पुनरीक्षण मंजूर। (मधव शर्मा वि. म.प्र. राज्य) ...1120

Criminal Procedure Code, 1973 (2 of 1974), Section 309 - See - Constitution, Article 21 [Shri Mahila Grih Udyog Lijjat Papad, Jabalpur Vs. State of M.P.] ...1641

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 309 - देखें - संविधान, अनुच्छेद 21 (श्री महिला गृह उद्योग लिज्जत पापड़, जबलपुर वि. म.प्र. राज्य) ...1641

Criminal Procedure Code, 1973 (2 of 1974), Section 311 - Recalling of Prosecution Witness - Held - Once the witness is examined as a prosecution witness, he cannot be recalled merely because he filed an affidavit. [Gariba @ Naresh @ Ramnaresh Vs. State of M.P.] ...1135

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 311 - अभियोजन साक्षी को वापस बुलाया जाना - अभिनिर्धारित - एक बार जब साक्षी का परीक्षण, अभियोजन

साक्षी के रूप में किया जाता है, तब मात्र इसलिए कि उसने शपथपत्र प्रस्तुत किया है, उसे वापस नहीं बुलाया जा सकता। (गरीबा उर्फ नरेश उर्फ रामनरेश वि. म.प्र. राज्य) ...1135

Criminal Procedure Code, 1973 (2 of 1974), Sections 320(2), Penal Code (45 of 1860), Sections 341, 294, 324, Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act (33 of 1989), Section 3(i)(x) – Compounding – Complainant filed an application u/s 320(2) of the Cr.P.C. seeking permission to compound the aforesaid offences, which has been partly allowed and on the basis of compromise, the applicant has been acquitted to the charge u/s 341, 294 of the I.P.C. but the aforesaid application has been dismissed with respect to the offence u/s 324 of the IPC read with Section 3(i)(x) of the SC/ST (Prevention of Atrocities) Act on the ground that both the offences are not compoundable – Held – Amendment Act, 2005 has been made enforceable vide notification dated 30.12.2009 issued by Ministry of Home Affairs Notification No. S.O. 3313(E), dated the 30.12.2009 – It means before 31.12.2009, the offence punishable u/s 324 of the IPC was compoundable. [Shamsher Bahadur Singh Chandel @ Golend Singh Vs. State of M.P.] ...1393

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 320(2), दण्ड संहिता (1860 का 45), धाराएं 341, 294, 324 अनुसूचित जाति और अनुसूचित जनजाति (अत्याचार निवारण) अधिनियम (1989 का 33), धारा 3(i)(x) – प्रशमन – शिकायतकर्ता ने दंड प्रक्रिया संहिता की धारा 320(2) के अंतर्गत उपरोक्त अपराधों के प्रशमन की अनुमति चाहते हुए एक आवेदन पत्र प्रस्तुत किया, जो कि अंशतः मंजूर किया गया और समझौते के आधार पर, आवेदक को मा.द.सं. की धारा 341, 294 के अंतर्गत आरोप से मुक्त किया गया किन्तु मा.द.सं. की धारा 324 सहपठित धारा 3(i)(x) अनुसूचित जाति/अनुसूचित जनजाति (अत्याचार निवारण) अधिनियम के अंतर्गत दोनों अपराध प्रशमनीय न होने के आधार पर उपरोक्त आवेदन खारिज – अभिनिर्धारित – गृह मंत्रालय की अधिसूचना क्र. एस.ओ. 3313(ई) दिनांक 30.12.2009 द्वारा संशोधन अधिनियम 2005 को अधिसूचना दिनांक 30.12.2009 से प्रवर्तनीय बनाया गया है – अर्थात् 31.12.2009 के पूर्व मा.द.सं. की धारा 324 के अंतर्गत दंडनीय अपराध प्रशमनीय था। (शमशेर बहादुर सिंह चंदेल उर्फ गोलेंद सिंह वि. म.प्र. राज्य) ...1393

Criminal Procedure Code, 1973 (2 of 1974), Section 374, Narcotic Drugs and Psychotropic Substances Act (61 of 1985), Section 8/19 & 26 – Appellant was having the license to grow opium – Land

was being cultivated by co-accused on lease – Co-accused admitted that opium was kept in his house – However, appellant failed to inform the official – Held – Since there is clear admission by co-accused that opium was kept in his house after weighment – Appellant was responsible for breach of conditions of license which is punishable u/s 26 of the Act – Conviction of the appellant was altered to u/s 26 instead of Section 8/19 of the N.D.P.S. Act and sentenced to 3 years R.I. with fine of Rs. 30,000/-. [Raju Vs. Central Bureau of Narcotics] ...1102

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 374, स्वापक औषधि और मनःप्रभावी पदार्थ अधिनियम (1985 का 61), धाराएं 8/19 व 26 – अपीलार्थी के पास अफीम उगाने की अनुज्ञप्ति थी – सह अभियुक्त द्वारा पट्टे पर भूमि जोती जा रही थी – सह अभियुक्त ने स्वीकार किया कि अफीम उसके घर रखी गई – किन्तु अपीलार्थी शासन को सूचित करने में असफल रहा – अभिनिर्धारित – क्योंकि यहां सह अभियुक्त ने स्पष्ट रूप से स्वीकार किया है कि तौल के बाद अफीम उसके घर रखी गई थी – अपीलार्थी, अनुज्ञप्ति की शर्तों को भंग करने का उत्तरदायी जो कि अधिनियम की धारा 26 के अंतर्गत दण्डनीय है – धारा 8/19 के अंतर्गत अपीलार्थी की दोषसिद्धि स्वापक औषधि और मनः प्रभावी पदार्थ अधिनियम की धारा 26 में परिवर्तित एवं 30,000/- रुपये जुर्माने के साथ 3 वर्ष के कठोर कारावास से दण्डादिष्ट किया गया। (राजू वि. सेन्द्रल ब्यूरो ऑफ नारकोटिक्स) ...1102

Criminal Procedure Code, 1973 (2 of 1974), Section 397 – Power of Session Court to call and examine the record – Revisional Court has jurisdiction to reverse the findings of the lower trial court and give its own finding – Revisional powers are to be read and construed together and not in isolated water tight compartment – Sections 398 & 399 of Code would have to be read together as one integral whole – It would be immaterial to investigate as to which specific provision has been actually invoked by it. [Raghuveer Singh Vs. Bhoori Bai] ...1128

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 397 – सत्र न्यायालय की अभिलेख बुलाने एवं परीक्षण करने की शक्ति – पुनरीक्षण न्यायालय को यह अधिकारिता प्राप्त है कि निम्न विचारण न्यायालय के निष्कर्ष को उलट दे और स्वयं अपना निष्कर्ष दे – पुनरीक्षण शक्तियों को एक साथ पढ़ना और अर्थान्वयन करना चाहिए और न कि अलग-अलग करके – संहिता की धाराएं 398 व 399 को एक साथ, अखंड पूर्णता के रूप में पढ़ा जाना चाहिए – यह तत्त्वहीन होगा कि उसके द्वारा वास्तविक रूप से किस विनिर्दिष्ट उपबंध का अवलंब लिया गया इसकी विवेचना की जावे। (रघुवीर सिंह वि. भूरी बाई) ...1128

Criminal Procedure Code, 1973 (2 of 1974), Section 407 – Transfer

of criminal case – Applicants were arrested for the offence u/s 457, 380, I.P.C. – They sought transfer of case from Sagar to Jabalpur – They stated that the complainant is a practicing advocate under the jurisdiction of Sessions Court, Sagar – He is pressurizing and giving threats to the advocates of Sagar not to appear in the case of the applicants – Applicants have no faith or believe upon their counsel or any counsel of Sagar – Held – Not clarified in the petition, names of the advocates of other districts to whom the relatives of the applicants contacted and they refused to defend the applicants – It is also not a case in which the Bar Association of the District, Sagar had passed any resolution that any member advocate of the Bar Association will not to argue or defend the case of the applicants – No substantial ground made out for transfer of case from Sagar to Jabalpur – Hence, the application is rejected on its merit. [Neelesh Vs. State of M.P.] ...1675

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 407 – आपराधिक प्रकरण का अंतरण – आवेदकगण को भा.द.सं. की धारा 457, 380 के अंतर्गत अपराध के लिये गिरफ्तार किया गया – उन्होंने प्रकरण का सागर से जबलपुर स्थानांतरण चाहा – उनका कथन है कि शिकायतकर्ता सत्र न्यायालय, सागर के क्षेत्राधिकार के अंतर्गत वकालत कर रहा है – वह सागर के अधिवक्ताओं को आवेदकों के प्रकरण में उपस्थित नहीं होने के लिए दबाव डाल रहा है और धमका रहा है – आवेदकगण को अपने वकील पर या सागर के किसी वकील पर विश्वास या भरोसा नहीं है – अभिनिर्धारित – याचिका में अन्य जिलों के अधिवक्ताओं के नाम स्पष्ट नहीं जिनसे आवेदकों के रिश्तेदारों ने संपर्क किया और उन्होंने आवेदकगण का बचाव करने से मना कर दिया – यह ऐसा प्रकरण भी नहीं जिसमें जिला सागर के अधिवक्ता संघ ने कोई संकल्प पारित किया हो कि अधिवक्ता संघ का कोई सदस्य आवेदकों के प्रकरण में तर्क या बचाव नहीं करेगा – प्रकरण को सागर से जबलपुर अंतरित करने के लिये कोई ठोस आधार नहीं बनता – अतः गुणदोषों पर आवेदन को अस्वीकार किया गया। (नीलेश वि. म.प्र. राज्य) ...1675

Criminal Procedure Code, 1973 (2 of 1974), Section 438 – Conditions – Reasonable – Word “any condition” used in the provision has to be interpreted as a reasonable condition – Condition of depositing Rs. 50 lakh in fixed deposit, is unreasonable, harsh and erroneous and defeat the very purpose of grant of anticipatory bail – Same would result in denial of liberty – Condition of depositing Rs. 50 lakh is set-aside. [Pawan Kumar Dhimaan Vs. State of M.P.] ...1667

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 438 – शर्तें – युक्तियुक्त –

उपबंध में प्रयुक्त शब्द "कोई शर्त" का निर्वचन युक्तियुक्त शर्त के रूप में किया जाना चाहिए — सावधि जमा के रूप में रु. 50 लाख जमा करने की शर्त, अयुक्तियुक्त, कठोर एवं त्रुटिपूर्ण है और अग्रिम जमानत प्रदान करने के प्रयोजन को ही विफल बनाता है — उक्त का परिणाम स्वतंत्रता से वंचित किया जाना होगा — रु. 50 लाख जमा करने की शर्त अपास्त। (पवन कुमार धीमान वि. म.प्र. राज्य) ...1667

Criminal Procedure Code, 1973 (2 of 1974), Sections 451 & 457 – Supurdaginama – Property has been seized not only under Wild Life Protection Act but also under Indian Forest Act and there is a specific bar of jurisdiction of the courts u/s 52-C of the Indian Forest Act – Held – No jurisdiction to release the disputed vehicle on supurdaginama to the applicant. [Biresh Kumar Singh Vs. State of M.P.] ...1384

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धाराएं 451 व 457 – सुपुर्दगीनामा – सम्पत्ति का अधिग्रहण न केवल वन्य जीव संरक्षण अधिनियम के अंतर्गत किन्तु साथ ही भारतीय वन संरक्षण अधिनियम के अंतर्गत किया गया और भारतीय वन अधिनियम की धारा 52-सी के अंतर्गत न्यायालय की अधिकारिता का स्पष्ट वर्जन है — अभिनिर्धारित — सुपुर्दगीनामे पर विवादित वाहन आवेदक को सौंपने की अधिकारिता नहीं। (बीरेश कुमार सिंह वि. म.प्र. राज्य) ...1384

Criminal Procedure Code, 1973 (2 of 1974), Sections 451 & 482 – Custody and disposal of property pending trial – Applicants sought interim custody of the vehicles used for an offence registered u/s 4, 5, 6 & 9 of the M.P. Govansh Vadh Pratishedh Adhiniyam, 2004 and Section 11-D of the Prevention of Cruelty to Animals Act, 1960 while transporting the alleged cattle, cow-progeny and beef – Held – Application u/s 451 of the Cr.P.C. filed by any person aggrieved, seeking interim custody of the vehicle, cow progeny and beef can be entertained by the criminal courts during the pendency of confiscation proceedings. [Raees Vs. State of M.P.] ...1192

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धाराएं 451 व 482 – विचारण के लंबित रहते सम्पत्ति की अभिरक्षा एवं व्ययन – आवेदकगण ने म.प्र. गौवंश प्रतिषेध अधिनियम, 2004 की धारा 4,5,6 व 9 तथा पशुओं के प्रति क्रूरता का निवारण अधिनियम 1960 की धारा 11डी के अंतर्गत, अमिकथित पशु, गौवंश एवं गौमांस का परिवहन करते समय पंजीबद्ध अपराध में प्रयुक्त वाहनों की अभिरक्षा चाही — अभिनिर्धारित — अधिहरण कार्यवाही के लंबित रहने के दौरान दाण्डिक न्यायालय, वाहन, गौवंश एवं गौमांस की अंतरिम अभिरक्षा चाहते हुये किसी पीड़ित व्यक्ति द्वारा द.प्र.सं. की धारा 451 के अंतर्गत प्रस्तुत किये गये आवेदन को ग्रहण कर सकता है। (रईस वि. म.प्र. राज्य) ...1192

Criminal Procedure Code, 1973 (2 of 1974), Section 482 – Inherent jurisdiction – Application u/s 482 against not taking the cognizance by Magistrate against respondents No: 2 & 3 for want of sanction u/s 197 of Cr.P.C. as they are the Government servants – Held – Revision against order refusing to take cognizance rejected by revisional court – Petition u/s 482 is maintainable – However, power has to be exercised only in a case where there is grave miscarriage of justice or abuse of the process of the court or where the required statutory procedure has not been complied with or where there is failure of justice or that the order passed requires correction. [Jai Prakash Narayan Mishra Vs. Devendra Kumar Mishra] ...1648

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 482 – अंतर्निहित अधिकारिता – मजिस्ट्रेट द्वारा, प्रत्यर्थी क्र. 2 व 3 जो कि सरकारी कर्मचारी थे, के विरुद्ध, द. प्र.सं. की धारा 197 के अंतर्गत मंजूरी के अभाव में, संज्ञान नहीं लिये जाने के विरुद्ध धारा 482 के अंतर्गत आवेदन – अभिनिर्धारित – संज्ञान लेने से इंकार करने के आदेश के विरुद्ध पुनरीक्षण को पुनरीक्षण न्यायालय द्वारा अस्वीकार किया गया – धारा 482 के अंतर्गत याचिका पोषणीय – किन्तु, शक्ति का प्रयोग केवल ऐसे प्रकरण में किया जाना चाहिए जहां न्याय हानि या न्यायालय की प्रक्रिया का दुरुपयोग हुआ है अथवा जहां आवश्यक कानूनी प्रक्रिया का अनुपालन नहीं किया गया या जहां न्याय विफल हुआ हो या पारित किये गये आदेश में सुधार अपेक्षित है। (जय प्रकाश नारायण मिश्रा वि. देवेन्द्र कुमार मिश्रा) ...1648

Criminal Procedure Code, 1973 (2 of 1974), Section 482 – Inherent power – Powers u/s 482 can be exercised only when some error of law or illegality is found to be committed by courts below. [Rajendra Agrawal Vs. Smt. Suman Agrawal] ...1432

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 482 – अंतर्निहित शक्ति – धारा 482 के अंतर्गत शक्तियों का प्रयोग केवल तब किया जा सकता है जब निचले न्यायालय द्वारा विधि की कोई त्रुटि या अवैधता कारित किया जाना पाया जाता है। (राजेन्द्र अग्रवाल वि. श्रीमती सुमन अग्रवाल) ...1432

Criminal Procedure Code, 1973 (2 of 1974), Section 482, Negotiable Instruments Act (26 of 1881), Section 138 & General Clauses Act (10 of 1897), Section 27 – Service of notice – Notice regarding demand of sum of the cheque sent by complainant within prescribed period at the correct address of the applicant and concerning official of the post office has placed the same for its delivery at the correct address of the applicant – At this stage contrary to the aforesaid

provision of presumption no inference could be drawn in the matter by invoking the inherent power of this court enumerated u/s 482 of Cr.P.C. — Petition dismissed. [Dhanraj Vs. Ashok Kumar] ...1172

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 482, परक्राम्य लिखत अधिनियम (1881 का 26), धारा 138 व साधारण खण्ड अधिनियम (1897 का 10), धारा 27 — नोटिस की तामीली — शिकायतकर्ता ने चेक की रकम की मांग से संबंधित नोटिस आवेदक के सही पते पर विहित अवधि के भीतर भेजा और डाक कार्यालय के संबंधित कर्मचारी ने आवेदक के सही पते पर उसे भेजे जाने के लिये उसे रखा — इस प्रक्रम पर उपधारणा के उपरोक्त उपबंध के विपरीत, मामले में द. प्र.सं. की धारा 482 के अंतर्गत प्रदत्त इस न्यायालय की अंतर्निहित शक्ति का अवलंब लेकर कोई निष्कर्ष नहीं निकाला जा सकता — यांचिका खारिज। (धनराज वि. अशोक कुमार) ...1172

Criminal Procedure Code, 1973 (2 of 1974), Section 482, Penal Code (45 of 1860), Sections 498-A, 294, 506, 34 & Dowry Prohibition Act (28 of 1961), Section 3/4 — Inherent jurisdiction — Quashing FIR — Quashment on the ground of compromise — Held — Settlement arrived at between the parties in form of marital settlement agreement (Annex. A/2) is a sensible step that will benefit the parties, give quietus to the controversy and rehabilitate and normalize the relationship between them — In light of compromise between the parties for offences related to matrimonial disputes chances of recording of conviction against the petitioners are totally bleak and the entire exercise of trial is destined to be exercise of futility — The continuation of criminal proceedings would tantamount to abuse of process of law. [Jitendra Singh Vs. State of M.P.] ...1451

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 482, दण्ड संहिता (1860 का 45), धाराएं 498-ए, 294, 506, 34 व दहेज प्रतिषेध अधिनियम (1961 का 28), धारा 3/4 — अंतर्निहित शक्तियां — प्रथम सूचना रिपोर्ट को अभिखंडित किया जाना — समझौते के आधार पर अभिखंडित किया जाना — अभिनिर्धारित — पक्षकारों के बीच वैवाहिक समझौता करार (संलग्नक ए/2) के रूप में हुआ समझौता एक उचित कदम है जो पक्षकारों को लाभ पहुंचायेगा, विवाद को शांत करेगा और उनके बीच संबंधों को सामान्य करेगा — वैवाहिक विवादों से संबंधित अपराधों के लिये पक्षकारों के बीच के समझौते के आलोक में, याचीगण के विरुद्ध दोषसिद्धि अभिलिखित किये जाने की संभावना कम है और विचारण की संपूर्ण कार्यवाही, व्यर्थ कार्यवाही होगी — दाण्डिक कार्यवाही को जारी रखना, विधि की प्रक्रिया का दुरुपयोग होगा। (जितेन्द्र सिंह वि. म.प्र. राज्य) ...1451

Criminal Procedure Code, 1973 (2 of 1974), Section 482, Pre-conception and Pre-natal diagnostic Techniques (Prohibition of Sex Selection), Adhiniyam, (57 of 1994), Section 28 – Quashing of complaint – Whether Additional Collectors, who filed the private complaints are authorized to file it as per Section 28 of the Adhiniyam, or they have been notified as appropriate authority – Held – Appointment of appropriate authority or officer authorized shall be as per the provisions of the Adhiniyam by the Central or the State Government – The order of nomination passed by the District Magistrate cannot be termed the order of appointment of appropriate authority or the officers authorized for the purpose of Section 17(2)(3)(b) and for the purpose of Section 28(1)(a) of the PC & PNDT Adhiniyam – Private complaints filed by Additional Collectors are not filed by the appropriate authority or the officer authorized – Complaint is not maintainable. [Manvinder Singh Gill (Dr.) Vs. State of M.P.] ...1176

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 482, गर्भधारण पूर्व और प्रसवपूर्व निदान तकनीक (लिंग चयन का प्रतिषेध) अधिनियम (1994 का 57), धारा 28 – शिकायत को अमिखांडित किया जाना – अतिरिक्त कलेक्टर, जिन्होंने व्यक्तिगत शिकायतें प्रस्तुत की हैं क्या वे उसे अधिनियम की धारा 28 के अनुसार प्रस्तुत करने के लिये प्राधिकृत हैं अथवा उन्हें समुचित प्राधिकारी के रूप में अधिसूचित किया गया है – अभिनिर्धारित – समुचित प्राधिकारी या प्राधिकृत अधिकारी की नियुक्ति, केन्द्र या राज्य सरकार के अधिनियम के उपबंधोंनुसार होगी – जिला मजिस्ट्रेट द्वारा पारित नामांकन के आदेश को धारा 17(2)(3)(बी) एवं पीसी व पीएनडीटी अधिनियम की धारा 28(1)(ए) के प्रयोजन हेतु समुचित प्राधिकारी अथवा प्राधिकृत अधिकारी का नियुक्ति आदेश होना नहीं माना जा सकता – अतिरिक्त कलेक्टर द्वारा प्रस्तुत व्यक्तिगत शिकायतें समुचित प्राधिकारी या प्राधिकृत अधिकारी द्वारा प्रस्तुत नहीं – शिकायत पोषणीय नहीं। (मानविंदर सिंह गिल (डॉ.) वि. म.प्र. राज्य) ...1176

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को नया अधिनियम प्रवर्तनीय होने के बीच की अवधि के लिये डीटीएच प्रसारण पर मनोरंजन कर देय नहीं - 1936 का अधिनियम केवल स्थान संबंधित मनोरंजन को लागू होता है। (टाटा स्काई लि. (मे.) वि. म.प्र. राज्य) (SC)...1209

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Evidence Act (1 of 1872), Section 132 – Self incrimination – Evidence given by witness voluntarily without any compulsion or forced by court to depose before it – Proviso to Section 132 not applicable – His statement can be used against him. [Rabia Ahmad Khan (Smt.) Vs. State of M.P.] ...1388

साक्ष्य अधिनियम (1872 का 1), धारा 132 – स्वयं को अपराध में फंसाने वाला कथन – साक्षी द्वारा बिना किसी विवशता के या न्यायालय द्वारा अपने समक्ष कथन देने की बाध्यता के बिना स्वेच्छापूर्वक साक्ष्य दिया गया – धारा 132 का परंतुक लागू नहीं होता – उसके कथन का उपयोग उसके विरुद्ध किया जा सकता है। (राबिया अहमद खान (श्रीमती) वि. म.प्र. राज्य) ...1388

Family Courts Act (66 of 1984), Section 19, Hindu Marriage Act (25 of 1955), Sections 13(1)(a) & 28 – Divorce petition – By Husband – Cruelty and adultery – Efforts made to reconcile differences failed – Held – Conduct of respondent/wife even if it may not be said to be adulterous, but certainly amounts to infliction of mental cruelty upon the appellant – She was found alone with one 'L' in a closed room, who was wearing underwear and banyan only – Leaves no room for doubt – Thus, respondent/wife treated the appellant with cruelty – Marriage between the parties is dissolved u/s 13(1)(a) of the Hindu Marriage Act. [Hariom Vs. Manjulata Sahu] (DB)...1042

कुटुम्ब न्यायालय अधिनियम (1984 का 66), धारा 19, हिन्दू विवाह अधिनियम (1955 का 25), धाराएँ 13(1)(ए) व 28 – विवाह विच्छेद याचिका – पति द्वारा – क्रूरता और जारकर्म – मतभेदों को दूर करने के लिये किये गये प्रयास विफल रहे – अभिनिर्धारित – प्रत्यर्थी/पत्नी का आचरण भले ही यदि जारतापूर्ण नहीं कहा जा सके परंतु निश्चित रूप से अपीलार्थी पर मानसिक क्रूरता कारित करने की कोटि में आता है – उसे बंद कमरे में एक 'एल' के साथ पाया गया जो केवल अंतर्वस्त्र एवं बनियान पहने था – संदेह के लिये कोई जगह नहीं छोड़ता – अतः प्रत्यर्थी/पत्नी ने अपीलार्थी के साथ क्रूरता का व्यवहार किया – पक्षकारों के मध्य विवाह का हिन्दू विवाह अधिनियम की धारा 13(1)(ए) के अंतर्गत विघटन किया गया। (हरिओम वि. मंजूलेता साहू) (DB)...1042

General Clauses Act (10 of 1897), Section 27 – See – Criminal Procedure Code, 1973, Section 482 [Dhanraj Vs. Ashok Kumar] ...1172

साधारण खण्ड अधिनियम (1897 का 10), धारा 27 – देखें – दण्ड प्रक्रिया संहिता, 1973, धारा 482 (धनराज वि. अशोक कुमार) ...1172

Gram Rojgar Sahayak Ki Niyukti Se Sambandhit Naveen Disha Niradesh, Clause 8 Sub clause 6 & 7 – Appointment of Gram Rojgar Sahayak under the Scheme – Despite having more meritorious, respondent No. 4 was not selected for want of I.D. proof not furnished with application form – Collector by impugned order rejected the appointment of the petitioner – Held – In view of sub clause 7 of clause 8, it was not mandatory for any candidate to have enclosed the document – Sub clause only prohibits receiving of application after the last date – Since respondent No. 4 is the resident of the concerned Gram Panchayat having his name registered in the voter list and more meritorious – Conclusion arrived at by the Collector cannot be faulted with – Petition is dismissed. [Rajkumar Singh Lodhi Vs. State of M.P.] ...1498

ग्राम रोजगार सहायक की नियुक्ति से संबंधित नवीन दिशा निर्देश, खंड 8 उप खंड 6 व 7 – योजना के अंतर्गत ग्राम रोजगार सहायक की नियुक्ति – अधिक गुणवत्ता धारक होने के बावजूद, प्रत्यर्थी क्र. 4 को, आवेदन पत्र के साथ पहचान प्रमाण प्रस्तुत नहीं करने के अभाव में, चयनित नहीं किया गया – आक्षेपित आदेश द्वारा कलेक्टर ने याची की नियुक्ति अस्वीकार की – अभिनिर्धारित – खंड 8 के उपखंड 7 को दृष्टिगत रखते हुए, किसी अम्यर्थी को दस्तावेज संलग्न करना बाध्यकर नहीं था – उपखंड केवल अंतिम तिथि के पश्चात आवेदन स्वीकार करने को प्रतिषिद्ध करता है – चूंकि प्रत्यर्थी क्र. 4, संबंधित ग्राम पंचायत का निवासी है, जिसका नाम मतदाता सूची में पंजीबद्ध है और वह अधिक गुणवत्ता धारक है – कलेक्टर के निष्कर्ष में त्रुटि नहीं पायी जा सकती – याचिका खारिज। (राजकुमार सिंह लोधी वि. म.प्र. राज्य) ...1498

Guardians and Wards Act (8 of 1890), Sections 10 & 47 – Appointment as the guardian of minor – Ward was born out of wedlock of appellant and his deceased wife who committed suicide – Respondent who is maternal grand father of ward has been looking after her since her birth and after the death of her mother – There is possibility of second marriage of appellant who does not have any female support to look after the girl – Held – In considering the question of custody of a minor, the court has to be guided by the only consideration of the welfare and interest of the minor – There is no illegality in impugned order in appointing the maternal grand father as guardian – Appeal is dismissed. [Rajeev Varma Vs. Santosh Kumar Kushwaha] (DB)...1073

संरक्षक और प्रतिपाल्य अधिनियम (1890 का 8), धाराएं 10 व 47 – नाबालिग के संरक्षक की नियुक्ति – अपीलार्थी एवं उसकी मृत पत्नी जो आत्महत्या कर चुकी के वैवाहिक बंधन के फलस्वरूप प्रतिपाल्य का जन्म – प्रत्यर्थी जो कि प्रतिपाल्य का नाना है, उसके जन्म के बाद एवं उसकी मां की मृत्यु के उपरांत से उसकी देखभाल कर रहा है – चूंकि लड़की की देखभाल के लिये किसी महिला का सहयोग न होने के कारण अपीलार्थी के द्वितीय विवाह की संभावना है – अभिनिर्धारित – नाबालिग के संरक्षण के प्रश्न का विचार करते समय न्यायालय को केवल नाबालिग का हित और उसके कल्याण को ध्यान में रखना होगा – नाना की संरक्षक के रूप में नियुक्ति के आक्षेपित आदेश में कोई अवैधता नहीं – अपील खारिज। (राजीव वर्मा वि. संतोष कुमार कुशवाहा) (DB)...1073

Hindu Marriage Act (25 of 1955), Sections 13(1)(a) & 13(1)(ia) – Divorce – Cruelty and desertion – After the marriage appellant's behaviour was not co-operative with husband and his family – She used to visit parental house without husband's consent – They had been

living separately for considerable length of time – She also made allegation of illicit relation – Held – Allegation of illicit relation cannot be lightly ignored which caused mental agony – Appellant's behaviour was also not proper – She was not doing any household work – Appellant is responsible for mental agony which amounts to cruelty – There had been irretrievable break down of their marriage – No illegality in the impugned order granting divorce – Appeal dismissed. [Souram Bai (Smt.) Vs. Babu Lal] (DB)...1068

हिन्दू विवाह अधिनियम (1955 का 25), धाराएं 13(1)(ए) व 13(1)(ia) – विवाह विच्छेद – क्रूरता एवं परित्याग – विवाह के पश्चात अपीलार्थी का व्यवहार पति एवं उसके परिवार के साथ सहयोगात्मक नहीं था – वह पति की सहमति के बिना मायके जाती थी – वे कांफी लंबी अवधि से अलग रह रहे हैं – उसने अवैध संबंध का भी अभिकथन किया है – अभिनिर्धारित – अवैध संबंध के अभिकथन की साधारण रूप से उपेक्षा नहीं की जा सकती जो मानसिक यातना का कारण है – अपीलार्थी का व्यवहार भी उचित नहीं था – वह कोई घरेलू कार्य नहीं करती थी – अपीलार्थी मानसिक यातना की दोषी है जो क्रूरता की श्रेणी में आता है – उनके विवाह में असुधारयोग्य अवरोध उत्पन्न हो गया है – विवाह विच्छेद का आदेश देने में कोई अवैधता नहीं – अपील खारिज। (सौराम बाई (श्रीमती) वि. बाबू लाल) (DB)...1068

Hindu Marriage Act (25 of 1955), Sections 13(1)(a) & 28 – See – Family Courts Act, 1984, Section 19 [Hariom Vs. Manjulata Sahu] (DB)...1042

हिन्दू विवाह अधिनियम (1955 का 25), धाराएं 13(1)(ए) व 28 – देखें – कुटुम्ब न्यायालय अधिनियम, 1984, धारा 19 (हरिओम वि. मंजूलता साहू) (DB)...1042

Hindu Marriage Act (25 of 1955), Section 13(1)(i-a) – Cruelty and desertion – There is no proof of mental cruelty caused by wife – It is also not proved that the wife left her matrimonial home without just and reasonable cause – She had to live with her parents out of compulsion – No error or illegality in disallowing the petition – Appeal dismissed. [Prem Narayan @ Hallebhai Vs. Smt. Banti Bai] (DB)...1588

हिन्दू विवाह अधिनियम (1955 का 25), धारा 13(1) (i-a) – क्रूरता एवं परित्याग – पत्नी द्वारा मानसिक क्रूरता कारित किये जाने का कोई प्रमाण नहीं – यह भी साबित नहीं कि पत्नी ने बिना उचित और युक्तियुक्त कारण के दाम्पत्य निवास को छोड़ा था – उसे विवश होकर अपने माता पिता के साथ रहना पड़ा – याचिका नामंजूर किये जाने में कोई त्रुटि या अवैधता नहीं – अपील खारिज। (प्रेमनारायण उर्फ हल्लेभाई वि. श्रीमती बंटी बाई) (DB)...1588

Hindu Marriage Act (25 of 1955), Section 25 – Permanent Alimony – Marriage between the parties was declared as null and void under Section 5(2) of Act, 1955, on the ground of non-consummation of marriage due to impotency of wife – Wife not entitled for maintenance as the marriage was void. [Kamlesh Vs. Geeta] (DB)...1095

हिन्दू विवाह अधिनियम (1955 का 25), धारा 25 – स्थाई निर्वाह व्यय – पत्नी की नपुंसकता के कारण विवाह संपूर्ण नहीं के आधार पर अधिनियम 1955 की धारा 5(2) के अंतर्गत पक्षों के मध्य विवाह अकृत एवं शून्य घोषित – शून्य विवाह होने के कारण, पत्नी भरण पोषण की हकदार नहीं। (कमलेश वि. गीता) (DB)...1095

Hindu Marriage Act, (25 of 1955), Section 28 – Enhancement of Maintenance amount – Held – Judicial Notice can be taken that now a days the education and other relevant expenses are very high and hence in such a circumstances the quantum of interim alimony may be enhanced. [Megha Gupta (Smt.) Vs. Vikas Gupta] (DB)...*7

हिंदू विवाह अधिनियम (1955 का 25), धारा 28 – भरण-पोषण रकम की बढ़ोत्तरी – अभिनिर्धारित – न्यायिक प्रज्ञान लिया जा सकता है कि वर्तमान समय में शैक्षणिक एवं अन्य सुसंगत खर्च बहुत अधिक हैं और इसलिए ऐसी परिस्थितियों में अंतरिम निर्वाह धन की मात्रा बढ़ायी जा सकती है। (मेघा गुप्ता (श्रीमती) वि. विकास गुप्ता) (DB)...*7

Hindu Succession Act (30 of 1956), Sections 4, 6 & 8 – Suit for partition and possession – Suit property is joint family property – Originally owned by the grand-father of the plaintiff – During life time of plaintiff's father no partition has taken place between plaintiff's father and his brothers – Held – Grand-son is not mentioned as class-I heir in the schedule – After coming into force of the Act grand-son has no birth right in the property of grand-father and he cannot claim partition during life of his father. [Uttam Vs. Saubhag Singh] ...1593

हिन्दू उत्तराधिकार अधिनियम (1956 का 30), धाराएं 4, 6 व 8 – विभाजन और कब्जे के लिए वाद – वाद सम्पत्ति, संयुक्त कुटुम्ब सम्पत्ति है – मूल रूप से वादी के दादा के स्वामित्व की थी – वादी के पिता के जीवनकाल के दौरान, वादी के पिता और उसके भाईयों के बीच विभाजन नहीं हुआ था – अभिनिर्धारित – पौत्र को अनुसूची में श्रेणी-I का वारिस होना उल्लिखित नहीं – अधिनियम के प्रवर्तन पश्चात, पौत्र को दादा की सम्पत्ति में जन्मजात अधिकार नहीं और वह अपने पिता के जीवित रहते विभाजन का दावा नहीं कर सकता। (उत्तम वि. सौभाग सिंह) ...1593

Inaam Inquiry Rules, 1926 Rule 20 – See – Civil Procedure

Code; 1908, Section 100 [Murti Shri Pandharinath Mandir Vs. Collector] ...1061

ईनाम जांच नियम, 1926 नियम 20 - देखें - सिविल प्रक्रिया संहिता, 1908, धारा 100 (मूर्ति श्री पंढरीनाथ मंदिर वि. कलेक्टर) ...1061

Income Tax Act (43 of 1961), Section 132 & Arms Act (54 of 1959), Section 45(b)(ii) - Search & Seizure - Petitioner's licensed pistol and cartridges seized by the officials of Income Tax Department - Whether Authorized Officer and Assistant Commissioner of Income Tax can be prosecuted for violation of provisions of the Arms Act, 1959 - Held - No prosecution, suit or other proceeding shall lie against the Government or any officer of the Government for anything in good faith done or intended to be done under this Act, 1961 - Arms Act, 1959 also provides such immunity - It stipulates that nothing in the Act of 1959 shall apply to acquisition, possession or carrying, the manufacture, repair, conversion, test or proof, the sale or transfer or the import, export or transport of Arms or ammunition by a public servant in the course of his duty as such public servant - Petition dismissed. [Sunil Kapoor (Dr.) Vs. State of M.P.] ...1266

आयकर अधिनियम (1961 का 43), धारा 132 व आयुध अधिनियम (1959 का 54), धारा 45(बी)(ii) - तलाशी एवं जब्ती - याची की अनुज्ञप्ति प्राप्त पिस्टल और कारतूसों को आयकर विभाग के कर्मचारियों द्वारा जब्त किया गया - क्या आयकर के प्राधिकृत अधिकारी एवं सहायक आयुक्त को आयुध अधिनियम, 1959 के उपबंधों के उल्लंघन के लिये अभियोजित किया जा सकता है - अभिनिर्धारित - इस अधिनियम, 1961 के अंतर्गत की गई किसी सद्भाविक कार्यवाही या आशयित कार्यवाही के लिये सरकार या सरकार के किसी अधिकारी के विरुद्ध कोई अभियोजन, वाद या अन्य कार्यवाही नहीं होगी - आयुध अधिनियम, 1959 भी उक्त उन्मुक्ति उपबंधित करता है - यह अनुबंधित करता है कि लोक सेवक अपने उक्त लोक सेवक के कर्तव्यों के अनुक्रम में शस्त्र एवं गोला-बारुद के अर्जन, कब्जा या साथ रखने, उत्पादन, मरम्मत, परिवर्तन, परख या परिसिद्धि, विक्रय या हस्तांतरण या आयात-निर्यात अथवा परिवहन को अधिनियम, 1959 का कोई उपबंध लागू नहीं होगा - याचिका खारिज। (सुनील कपूर (डॉ.) वि. म.प्र. राज्य) ...1266

Income Tax Act (43 of 1961), Sections 143(3), 251, 263 - Limitation - Whether limitation for passing an order u/s 263 of Income Tax Act would be two years from the financial year 1994-95 in which the assessment order dt. 23.11.1994 was passed or shall be two years from the date of financial year 1995-96 in which the appellate order

was given effect to on 04.04.1995 – Held – Limitation of two years, for passing an order u/s 263 shall reckon from original assessment order u/s 143(3) of the Act and not from the order u/s 251 of the Act by which the order passed by the Commissioner, Income Tax (Appeals) was given effect to – Order u/s 263 was barred by limitation – Appeal dismissed. [Commissioner of Income Tax, Jabalpur Vs. Vindhya Talalinks Ltd. Rewa] (DB)...1154

आयकर अधिनियम (1961 का 43), धाराएं 143(3), 251, 263 – परिसीमा – क्या आयकर अधिनियम की धारा 263 के अंतर्गत आदेश पारित करने के लिये परिसीमा, वित्तीय वर्ष 1994-95, जब निर्धारण आदेश दि. 23.11.1994 पारित किया गया था, से दो वर्ष होगी या वित्तीय वर्ष 1995-96 जब अपील आदेश को 04.04.1995 को प्रभावी बनाया गया था, से दो वर्ष होगी – अभिनिर्धारित – धारा 263 के अंतर्गत आदेश पारित करने के लिये परिसीमा के दो वर्ष, अधिनियम की धारा 143(3) के अंतर्गत मूल निर्धारण आदेश से आरंभ होगी और न कि अधिनियम की धारा 251 के अंतर्गत आदेश से, जिसके द्वारा आयकर आयुक्त (अपील) द्वारा पारित आदेश को प्रभावी बनाया गया था – धारा 263 के अंतर्गत आदेश परिसीमा द्वारा वर्जित – अपील खारिज। (कमिश्नर ऑफ़ इनकम टैक्स, जबलपुर वि. विंध्या टेलालिंक्स लि. रीवा) (DB)...1154

Interpretation of Statutes – Harmonious Construction – Para 9 (iv) and (vi) of advertisement – Para 9 (iv) and (vi) of advertisement provided that only those candidates would be called for interview as High Court would decide on the basis of evaluation of their performance in written examination and candidates would be selected on basis of aggregate marks in written examination – Held – Harmonious construction of these provisions mean that only those candidates who secure the qualifying marks in written examination would be called for interview and marks of such candidates would be aggregated to find out their position in merit list. [Mahinder Kumar Vs. High Court of M.P. through Registrar General] (SC)...881

कानूनों का निर्वचन – समन्वयपूर्ण अर्थान्वयन – विज्ञापन की कंडिका 9 (iv) व (vi) – विज्ञापन की कंडिका 9 (iv) व (vi) उपबध्दित करती है कि केवल उन अभ्यर्थियों को साक्षात्कार हेतु बुलाया जाएगा जैसा कि उनके लिखित परीक्षा के प्रदर्शन के मूल्यांकन के आधार पर उच्च न्यायालय निर्णय लेगा और लिखित परीक्षा के कुल अंकों के आधार पर अभ्यर्थियों का चयन किया जायेगा – अभिनिर्धारित – इन उपबध्दों के समन्वयपूर्ण अर्थान्वयन का मतलब है कि केवल उन अभ्यर्थियों को साक्षात्कार हेतु बुलाया जायेगा जिन्होंने लिखित परीक्षा में अर्हक अंक प्राप्त किये

हैं और योग्यता सूची में स्थान पाये जाने के लिये उक्त अभ्यर्थियों के अंकों को कुलयोग बनाया जायेगा। (महिन्दर कुमार वि. हाईकोर्ट ऑफ एम.पी. द्वारा रजिस्ट्रार जनरल) (SC)...881

Juvenile Justice (Care and Protection of Children) Act (56 of 2000), Sections 7A, 49 – See – Penal Code, 1860, Sections 341, 307/34 [Kamlendra Singh @ Pappu Singh Vs. State of M.P.] (SC)...1463

किशोर न्याय (बालकों की देख-रेख और संरक्षण) अधिनियम (2000 का 56), धारा 7ए, 49 – देखें – दण्ड संहिता, 1860, धाराएँ 341, 307/34 (कमलेंद्र सिंह उर्फ पप्पू सिंह वि. म.प्र. राज्य) (SC)...1463

Land Acquisition Act (1 of 1894), Section 18 – See – Civil Procedure Code, 1908, Section 96 [Shailesh Agnihotri Vs. Indore Development Authority] (DB)...1302

भूमि अर्जन अधिनियम (1894 का 1), धारा 18 – देखें – सिविल प्रक्रिया संहिता, 1908, धारा 96 (शैलेश अग्निहोत्री वि. इंदौर डेवेलपमेन्ट अथॉरिटी) (DB)...1302

Land Acquisition Act (1 of 1894), Section 23 – Determination of compensation – Held – The burden of proving inadequacy of the amount is to be discharged by the claimant himself and he has to satisfactorily furnish basis for determining market value of acquired land. [State of M.P. Vs. Ravindra Kumar Sharma] ...1580

भूमि अर्जन अधिनियम (1894 का 1), धारा 23 – प्रतिकर का निर्धारण – अभिनिर्धारित – रकम की अपर्याप्तता साबित करने के भार का निर्वहन, स्वयं दावाकर्ता को करना होगा और उसे संतोषजनक रूप से, अर्जित भूमि का बाजार मूल्य के निर्धारण का आधार प्रस्तुत करना होगा। (म.प्र. राज्य वि. रवीन्द्र कुमार शर्मा) ...1580

Land Revenue Code, M.P. (20 of 1959), Section 115 – See – Civil Procedure Code, 1908, Sections 9, 100 [State of M.P. Vs. Shree Ranchor Teekam Mandir] ...1315

मू. राजस्व संहिता, म.प्र. (1959 का 20), धारा 115 – देखें – सिविल प्रक्रिया संहिता, 1908, धाराएँ 9, 100 (म.प्र. राज्य वि. श्री रणछोड़ टीकम मंदिर)...1315

Land Revenue Code, M.P. (20 of 1959), Section 158 (1)(b) – See – Civil Procedure Code, 1908, Section 100 [Murti Shri Pandharinath Mandir Vs. Collector] ...1061

मू. राजस्व संहिता, म.प्र. (1959 का 20), धारा 158(1)(बी) – देखें – सिविल

प्रक्रिया संहिता, 1908, धारा 100 (मूर्ति श्री पंढरीनाथ मंदिर वि. कलेक्टर) ...1061

Land Revenue Code, M.P. (20 of 1959), Section 168 – See – Civil Procedure Code, 1908, Section 100 [Mahesh Prasad Vs. Rambahadur] ...1321

भू राजस्व संहिता, म.प्र. (1959 का 20), धारा 168 – देखें – सिविल प्रक्रिया संहिता, 1908, धारा 100 (महेश प्रसाद वि. रामबहादुर) ...1321

Limitation Act (36 of 1963), Section 5 – Condonation of delay – Delay of 6 years and 121 days has caused because of officials and due to procedure of obtaining the sanction and in the lack of information regarding status of the case – Held – While dealing with application u/s 5 of Limitation Act and to examine the sufficient cause, court should adopt the lenient view with justice oriented approach, keeping in view the stake of litigation – No proceeding should be thrown away merely on the question of limitation as barred by time – Delay is condoned subject to payment of cost of Rs. 10,000 – As condition precedent. [State of M.P. Vs. Dr. Naresh Grover] ...1574

परिसीमा अधिनियम (1963 का 36), धारा 5 – विलम्ब के लिये माफी – 6 वर्ष और 121 दिनों का विलम्ब, शासकीय अधिकारियों के कारण और मंजूरी अभिप्राप्त करने की प्रक्रिया के कारण तथा प्रकरण की स्थिति से संबंधित जानकारी के अभाव में कारित हुआ – अभिनिर्धारित – परिसीमा अधिनियम की धारा 5 के अंतर्गत आवेदन पर कार्यवाही करते समय और पर्याप्त कारण का परीक्षण करने के लिये न्यायालय को न्यायिक अनुकूलन अभिगामी दृष्टिकोण के साथ, मुकदमे की स्थिति को दृष्टिगत रखते हुए उदार रुख अपनाना चाहिए – किसी कार्यवाही को मात्र परिसीमा के प्रश्न पर, समय वर्जित होने से अस्वीकार नहीं किया जाना चाहिये – रु. 10,000/- खर्च के भुगतान की शर्त पर विलम्ब माफ किया गया – पुरोभाव्य शर्त के रूप में। (म.प्र. राज्य वि. डॉ. नरेश ग्रोवर) ...1574

Limitation Act (36 of 1963), Section 5 – See – Civil Procedure Code, 1908, Order 9 Rule 13 [Ramesh Chandra Jain Vs. State of M.P.] ...1360

परिसीमा अधिनियम (1963 का 36), धारा 5 – देखें – सिविल प्रक्रिया संहिता, 1908, आदेश 9 नियम 13 (रमेश चंद्र जैन वि. म.प्र. राज्य) ...1360

Limitation Act (36 of 1963), Article 20 – See – Civil Procedure Code, 1908, Section 115, Order 7 Rule 11 [Neelam Kumar Bachani Vs. Bhishamlal] ...1632

परिसीमा अधिनियम (1963 का 36), अनुच्छेद 20 - देखें - सविल प्रक्रिया संहिता, 1908, धारा 115, आदेश 7 नियम 11 (नीलम कुमार बछानी वि. भीषमलाल) ...1632

Limitation Act (36 of 1963), Article 65 - Adverse possession - Proof - Plaintiff claiming title over suit land by adverse possession - Plaintiffs had raised the plea that they were in possession of the suit land by virtue of unregistered/oral sale - Held - Plaintiffs were in hostile and continuous possession and had perfected their title by way of adverse possession. [Satnam Singh Vs. Hukum Singh] ...1083

परिसीमा अधिनियम (1963 का 36), अनुच्छेद 65 - प्रतिकूल कब्जा - सबूत - वादी, प्रतिकूल कब्जा द्वारा वाद भूमि पर हक का दावा करता है - वादीगण ने अभिवाक् किया कि वाद भूमि, अपंजीकृत/मौखिक विक्रय द्वारा उनके कब्जे में थी - अभिनिर्धारित - वादीगण, विरोधी एवं निरंतर कब्जा धारक थे तथा प्रतिकूल कब्जा के जरिए अपना हक पूर्ण कर लिया है। (सतनाम सिंह वि. हुकुम सिंह) ...1083

Lokayukt Evam Up-Lokayukt Adhiniyam, M.P. (37 of 1981), Sections 2 & 9 to 12 - Recovery of the amount - Petitioner was appointed as Chairman of the M.P. Rajya Beej Avam Farm Vikas Nigam - He has been given the status of a Cabinet Minister - He is entitled to get all the facilities which are provided to a Cabinet Minister - Petitioner has taken certain facilities at the cost of the corporation expenses without any authority and thereby has caused financial loss to the corporation - Held - If the Corporation has earlier resolved to grant certain facilities to the Chairman of the Corporation and in view of such a decision any facility was obtained by the petitioner, it cannot be said that such a facility was obtained by abuse of his position by the petitioner - Nothing has been placed on record to indicate that such a fact was found proved even remotely - Such direction was issued to make recovery from the petitioner, is wholly unjustified - Petition allowed. [Mahendra Singh Yadav Vs. State of M.P.] ...985

लोकायुक्त एवं उप-लोकायुक्त अधिनियम, म.प्र. (1981 का 37), धाराएं 2 व 9 से 12 - रकम की वसूली - याची को म.प्र. राज्य बीज एवं फार्म विकास निगम का अध्यक्ष/चेयरमैन नियुक्त किया गया था - उसे मंत्रिमंडल सदस्य का दर्जा दिया गया है - वह उन सभी सुविधाओं को प्राप्त करने का हकदार है जो मंत्रिमंडल सदस्य को प्रदान की जाती हैं - याची ने निगम के खर्चों से कतिपय सुविधाएं बिना प्राधिकारिता के ली हैं और इससे निगम को वित्तीय हानि कारित हुई है - अभिनिर्धारित - यदि निगम ने पूर्व में संकल्प पारित किया था कि निगम के अध्यक्ष को कतिपय सुविधाएं प्रदान की जायेगी और उक्त निर्णय को दृष्टिगत रखते हुए

याची द्वारा किसी सुविधा को प्राप्त किया गया था, यह नहीं कहा जा सकता कि याची द्वारा उक्त सुविधा को अपने पद के दुरुपयोग से प्राप्त किया गया था — अभिलेख पर यह दर्शाने के लिये कुछ नहीं कि उक्त तथ्य को लेशमात्र भी साबित पाया गया — याची से वसूली करने के लिये जारी किया गया उक्त निदेश पूर्णतः अनुचित — याचिका मंजूर। (महेन्द्र सिंह यादव वि. म.प्र. राज्य) ...985

Minor Mineral Rules, M.P. 1996 – Environmental Clearance – Whether necessary – Direction issued by the Supreme Court in Deepak Kumar's case cannot be restricted to mean that it applies only to fresh grant or renewal – In all cases where no mining activities are being carried out for any reason, environmental clearance is necessary before granting permission – Appeal dismissed. [Ravi Shankar Nayak Vs. Raja Bhaiya Patel] (DB)...1233

गौण खनिज नियम, म.प्र. 1996 – पर्यावरण अनापत्ति – क्या आवश्यक है – उच्चतम न्यायालय द्वारा दीपक कुमार के प्रकरण में जारी किये गये निदेशों को इस अर्थ तक सीमित नहीं किया जा सकता कि वह केवल पुनः प्रदान करने के लिये या नवीनीकरण के लिये लागू होते हैं – उन सभी मामलों में जहाँ किसी कारणवश खनन कार्यवाहियाँ नहीं की जा रही हैं, अनुमति प्रदान किये जाने से पूर्व पर्यावरण अनापत्ति आवश्यक है – अपील खारिज। (रवि शंकर नायक वि. राजा भैया पटेल) (DB)...1233

Mohammedan Law, Rule 85 – Prompt Dower – Suit for declaration and injunction by respondent – On the ground that the suit plot was given to her on account of prompt dower – Respondent tried to exhibit the 'Nikahnama' which contains recital – Admissibility of the document was challenged on the ground that it requires payment of stamp duty – Held – Suit plot was assigned by bridegroom to bride in lieu of 'Mahr' at the time of marriage and the document on which reliance is placed is marriage certificate – It is simple 'Hiba' – Neither a sale nor a hiba-bil-iwaz – Document does not attract any stamp duty and is admissible in evidence. [Habib Khan Vs. Shahjad Bi] ...1517

मुस्लिम विधि, नियम 85 – मेहर-ए-मुसज्जल – प्रत्यर्थी द्वारा घोषणा एवं व्यादेश हेतु वाद – इस आधार पर कि वादग्रस्त प्लॉट उसे मेहर-ए-मुसज्जल के कारण दिया गया था – प्रत्यर्थी ने 'निकाहनामा' प्रदर्शित करने का प्रयास किया जिसमें उपकथन अंतर्विष्ट है – दस्तावेज की ग्राह्यता को इस आधार पर चुनौती दी गई कि उस पर स्टाम्प शुल्क का भुगतान अपेक्षित है – अभिनिर्धारित – वादग्रस्त प्लॉट को पति द्वारा पत्नी को विवाह के समय मेहर की एवज में सौंपा गया था और जिस दस्तावेज पर विश्वास किया गया है, वह विवाह प्रमाण पत्र है – यह साधारण हिवः है – न तो विक्रय है और न ही हिवः-बिल-एवज – दस्तावेज पर

कोई स्टाम्प शुल्क आकर्षित नहीं होता और साक्ष्य में ग्राह्य है। (हबीब खान वि. शहजाद बी) ...1517

Motor Vehicles Act (59 of 1988), Sections 147, 173 – Liability – Jeep in which deceased was travelling dashed against a stationary truck which was not in a position to move due to mechanical failure – Spot map shows that where truck was standing sufficient space was there for passing of other vehicles – Tribunal rightly exonerated the driver, owner and Insurance Company of truck – Appeal dismissed. [ICICI Lombard General Insurance Co. Ltd. Vs. Gopal Khatri] ...1038

मोटर यान अधिनियम (1988 का 59), धाराएं 147, 173 – उत्तरदायित्व – जीप, जिसमें मृतक यात्रा कर रहा था, खड़े ट्रक से टकराई जो तकनीकी खराबी के कारण हिलने की स्थिति में नहीं था – घटनास्थल नक्शा दर्शाता है कि जहां ट्रक खड़ा था, वहां अन्य वाहनों को आने-जाने के लिये पर्याप्त जगह थी – अधिकरण ने उचित रूप से ट्रक के वाहन चालक, स्वामी और बीमा कम्पनी को विमुक्त किया – अपील खारिज। (आई.सी.आई.सी.आई. लोम्बार्ड जनरल इश्योरेंस कं. लि. वि. गोपाल खत्री) ...1038

Motor Vehicles Act (59 of 1988), Section 149 – Liability of Insurer – Whether due to dishonour of cheque delivered for premium by the insured and cancellation of the insurance policy for want of premium, the insurance company could be liable to indemnify the liability of the insured for the payment of compensation award to a third party – Held – The liability subsists and the insurer has to satisfy the award of compensation, unless the policy of the insurance is cancelled by the authorized insurer and intimation of cancellation has reached the insured before the accident – Insurer can initiate proceedings for recovery of amount from insured. [Shashi Mohan Dwivedi Vs. Ganesh] ...1568

मोटर यान अधिनियम (1988 का 59), धारा 149 – बीमाकर्ता का दायित्व – क्या बीमित द्वारा प्रीमियम के लिये दिया गया चेक अनादृत होने के कारण और प्रीमियम के अभाव में बीमा पॉलिसी के निरस्तीकरण के कारण बीमा कम्पनी, को तृतीय पक्षकार को प्रतिकर अवार्ड का भुगतान करने के दायित्व से बीमित को संरक्षण देने के लिये दायी हो सकती है – अभिनिर्धारित – दायित्व बना रहेगा और बीमाकर्ता को प्रतिकर के अवार्ड की संतुष्टि करनी होगी जब तक कि प्राधिकृत बीमाकर्ता द्वारा बीमा पॉलिसी को निरस्त नहीं किया जाता और दुर्घटना से पहले, बीमित को निरस्तीकरण की सूचना न पहुंच चुकी हो – बीमाकर्ता, बीमित से रकम की वसूली की कार्यवाही आरंभ कर सकता है। (शाशि मोहन द्विवेदी वि. गणेश) ...1568

Motor Vehicles Act (59 of 1988), Section 163-A – Whether the LR's of the deceased cum owner cum driver can claim compensation under this Section – It appeared that the accident was the result of the acts of the deceased himself and claimants also could not prove that the deceased was not himself responsible for the accident – Vehicle involved was insured for a third party and own damages under certain conditions – Claimants have also failed to prove that the deceased was covered under the policy – Held – When the deceased had stepped into the shoes of the owner of the vehicle, provisions of Section 163-A of the Act shall have no application, wherein owner of the vehicle himself is involved – Hence, LR's of the deceased could not have claimed compensation under this Section. [Deependra Kumar Vs. Oriental Insurance Co. Ltd.] ...1562

मोटर यान अधिनियम (1988 का 59), धारा 163-ए – क्या मृतक जो कि स्वामी एवं चालक भी है, के विधिक प्रतिनिधिगण, इस धारा के अंतर्गत प्रतिकर का दावा कर सकते हैं – यह प्रतीत होता है कि मृतक के कृत्यों के परिणामस्वरूप दुर्घटना घटी और दावाकर्ता यह भी साबित नहीं कर सके हैं कि दुर्घटना के लिये मृतक स्वयं जिम्मेदार नहीं था – अंतर्गस्त वाहन, तृतीय पक्षकार एवं स्वयं के नुकसान के लिये कतिपय शर्तों के अधीन बीमित था – दावाकर्ता यह साबित करने में भी असफल रहे हैं कि पॉलिसी के अंतर्गत मृतक रक्षित था – अभिनिर्धारित – जब मृतक ने वाहन का स्वामित्व धारण किया, तब अधिनियम की धारा 163-ए के उपबंध लागू नहीं होते, जहाँ वाहन का स्वामी स्वयं शामिल है – अतः, इस धारा के अंतर्गत मृतक के विधिक प्रतिनिधि प्रतिकर का दावा नहीं कर सकते थे। (दीपेन्द्र कुमार वि. ऑरिएण्टल इश्योरेंस कं. लि.) ...1562

Motor Vehicles Act (59 of 1988), Sections 168 & 171 – Deceased aged 34 to 35 years – Earning Rs. 3,000/- per month – 1/3rd towards personal expenses deducted – Multiplier of 16 applicable – Total compensation of Rs. 4,04,000/- awarded with interest. [Sudhar Soni (Smt.) Vs. Smt. Rinku Singh] ...*12

मोटर यान अधिनियम (1988 का 59), धाराएँ 168 व 171 – मृतक की आयु 34 से 35 वर्ष – रु. 3,000/- प्रतिमाह अर्जन – व्यक्तिगत खर्च की ओर 1/3 घटाया गया – 16 का गुणक लागू होगा – कुल प्रतिकर रु. 4,04,000/- ब्याज सहित अवार्ड किया गया। (सुधार सोनी (श्रीमती) वि. श्रीमती रिंकू सिंह) ...*12

Motor Vehicles Act (59 of 1988), Section 173 – Cross-objection – Cross objection for enhancement of compensation filed without payment of court fee – No case for enhancement is made out. [ICICI

Lombard General Insurance Co. Ltd. Vs. Gopal Khatri] ...1038

मोटर यान अधिनियम (1988 का 59), धारा 173 - प्रत्याक्षेप - न्यायालय फीस का भुगतान किये बिना, प्रतिकर बढ़ाये जाने हेतु प्रत्याक्षेप प्रस्तुत किया गया - प्रतिकर बढ़ाये जाने का प्रकरण नहीं बनता। (आई.सी.आई.सी.आई. लोम्बार्ड जनरल इश्योरेंस कं. लि. वि. गोपाल खत्री) ...1038

Motor Vehicles Act (59 of 1988), Section 173 - Enhancement - Tribunal has rightly determined the income - Therefore, no enhancement of compensation on that count - However, there is no mention of future prospects in the award and the age of the deceased was 35 years - Future prospect are added for the purpose of compensation @ 30% of the assessed income - Thus, the amount of compensation is enhanced by Rs. 1,08,000/- with 7.5% interest from today. [Sonia Bai Gond (Smt.) Vs. Alok Panika] ...1546

मोटर यान अधिनियम (1988 का 59), धारा 173 - बढ़ाया जाना - अधिकरण ने उचित रूप से आय का निर्धारण किया - इसलिए, इस आधार पर प्रतिकर की बढ़ोत्तरी नहीं - किन्तु, अवार्ड में भविष्य की संभावनाओं का उल्लेख नहीं और मृतक की आयु 35 वर्ष थी - प्रतिकर हेतु, भविष्य की संभावनाओं को निर्धारित आय के 30 प्रतिशत की दर पर जोड़ा गया - अतः प्रतिकर की रकम बढ़ाकर रु. 1,08,000/- की गयी, आज से 7.5 प्रतिशत ब्याज के साथ। (सोनिया बाई गोंड (श्रीमती) वि. अलोक पनिका) ...1546

Motor Vehicles Act (59 of 1988), Section 173 - Exoneration of Insurance Company - Motor Accident Claims Tribunal has to decide the case on the basis of strict liability even if it is proved that the vehicle was being used by the owner contrary to the terms and conditions of the policy - Since the deceased was not travelling in the tractor at the time of accident, Insurance Company is liable to compensate the third person - Appeal filed by the Insurance Company is dismissed. [Sonia Bai Gond (Smt.) Vs. Alok Panika] ...1546

मोटर यान अधिनियम (1988 का 59), धारा 173 - बीमा कम्पनी की उत्तरदायित्व से मुक्ति - यदि यह साबित भी किया जाता है कि स्वामी द्वारा पॉलिसी की शर्तों एवं निर्बंधन का उल्लंघन करते हुए वाहन का उपयोग किया जा रहा था तब भी मोटर दुर्घटना दावा अधिकरण को कठोर दायित्व के आधार पर प्रकरण निराकृत करना चाहिये - चूंकि मृतक दुर्घटना के समय ट्रेक्टर में यात्रा नहीं कर रहा था, बीमा कंपनी का तीसरे व्यक्ति की क्षतिपूर्ति का दायित्व - बीमा कंपनी द्वारा दायर अपील खारिज। (सोनिया बाई गोंड (श्रीमती) वि. अलोक पनिका) ...1546

Motor Vehicles Act, (59 of 1988), Section 173 – Liability of Insurance Company – Non-payment of Insurance Premium – Insurance policy was issued subject to encashment of cheque given towards premium – Cheque was dishonored – Intimation of the same was given to the owner by the Insurance Company – In spite of that premium of Insurance Policy was not paid by the owner till happening the accident or thereafter at any point of time – Held – Unless the premium is received by Insurance Company, it could not be deemed that any risk of the vehicle was covered under policy issued – Insurance Company is exonerated – Appeal allowed. [National Insurance Company Ltd. Vs. Halkai] ...1309

मोटर यान अधिनियम (1988 का 59), धारा 173 – बीमा कम्पनी का दायित्व – बीमा प्रीमियम का भुगतान नहीं किया जाना – प्रीमियम के लिये दिया गया चेक भुनाने की शर्त पर बीमा पॉलिसी जारी की गयी – चेक अनादृत – बीमा कम्पनी द्वारा इसकी सूचना स्वामी को दी गयी – इसके बावजूद स्वामी द्वारा दुर्घटना होने तक या उसके बाद किसी समय बीमा पॉलिसी के प्रीमियम का भुगतान नहीं किया गया – अभिनिर्धारित – जब तक कि बीमा कम्पनी को प्रीमियम प्राप्त नहीं होता, यह नहीं माना जा सकता कि जारी की गयी पॉलिसी के अंतर्गत वाहन का कोई जोखिम आच्छादित था – बीमा कम्पनी दायित्वमुक्त – अपील मंजूर। (नेशनल इश्योरेंस कंपनी लि. वि. हल्कई) ...1309

Municipal Corporation Act, M.P. (23 of 1956), Sections 132, 135 & 138 – Property Tax – “Whether the residential blocks situated within the precincts of the petitioner University to house the teachers and staff of the University would be subject to property tax u/s 132 & 135 of the M.P. Municipal Corporation Act, 1956” – Held – Property being transferred by the State Government in favour of the petitioner vide sub-section (1) of Section 55 of 1963 Act is for achieving the object for which the University has been brought into existence – Thus, there is no vesting in title as would create any ownership of property in favour of the petitioner – The ownership continues with the State which leads to a necessary corollary that being a property owned by State, it is exempted from Property Tax as per Section 136(a)(ii) of 1956 Act – For this reason also the respondents are not justified in imposing the impugned property Tax – Petition allowed. [Jawahar Lal Nehru Krishi Vishwa Vidyalaya Vs. Municipal Corporation, Jabalpur] ...998

नगरपालिक निगम अधिनियम, म.प्र. (1956 का 23), धाराएं 132, 135 व 138

— सम्पत्ति कर — “क्या विश्वविद्यालय के शिक्षकों और कर्मचारियों को रहने के लिये याची विश्वविद्यालय की सीमा के भीतर स्थित निवासीय ब्लॉक, म.प्र. नगरपालिक निगम अधिनियम, 1956 की धारा 132 व 135 के अंतर्गत सम्पत्ति कर के अधीन होंगे — अभिनिर्धारित — अधिनियम 1963 की धारा 55 की उपधारा (1) द्वारा याची के पक्ष में राज्य सरकार द्वारा सम्पत्ति का अंतरण, उस उद्देश्य को प्राप्त करने के लिये किया गया है, जिसके लिये विश्वविद्यालय को अस्तित्व में लाया गया है — अतः, कोई हक निहित नहीं होता जो याची के पक्ष में सम्पत्ति के किसी स्वामित्व को सृजित करता हो — स्वामित्व, राज्य के पास निरंतर है, जो इस आवश्यक निष्कर्ष की ओर ले जाता है कि सम्पत्ति का स्वामी राज्य होने के नाते वह अधिनियम 1956 की धारा 136(ए)(ii) के अनुसार सम्पत्ति कर से मुक्त है — इस कारण भी प्रत्यर्थांगण द्वारा आक्षेपित सम्पत्ति कर अधिरोपित करना न्यायोचित नहीं — याचिका मंजूर। (जवाहर लाल नेहरू कृषि विश्वविद्यालय वि. म्यूनिसिपल कारपोरेशन, जबलपुर) ...998

Narcotic Drugs and Psychotropic Substances Act (61 of 1985), Section 8/19 & 26 — See — Criminal Procedure Code, 1973, Section 374 [Raju Vs. Central Bureau of Narcotics] ...1102

स्वापक औषधि और मनःप्रभावी पदार्थ अधिनियम (1985 का 61), धाराएं 8/19 व 26 — देखें — दण्ड प्रक्रिया संहिता, 1973, धारा 374 (राजू वि. सेन्ट्रल ब्यूरो ऑफ नारकोटिक्स) ...1102

National Security Act (65 of 1980), Section 3(2) — Preventive detention order — The activities of the detenu do not convey to have the effect and potentiality to disturb or dislocate even tempo of life of the community — Hence, such an action of the detenu/petitioner could not be termed as prejudicial to the maintenance of the public order — Order of detention is unjustified, liable to be set aside. [Dhanwan Vs. State of M.P.] (DB)...*10

राष्ट्रीय सुरक्षा अधिनियम (1980 का 65), धारा 3(2) — निवारक निरोध आदेश — बंदी के क्रियाकलाप, समुदाय के जीवन की संयत गति को बाधित एवं विस्थापित करने की संभाव्यता प्रकट नहीं करते — अतः, बंदी/याची के उक्त कार्य को लोक व्यवस्था को बनाये रखने पर प्रतिकूल प्रभाव डालने वाला नहीं कहा जा सकता — निरोध आदेश अनुचित, अपास्त किये जाने योग्य। (धनवान वि. म.प्र. राज्य) (DB)...*10

Negotiable Instruments Act (26 of 1881), Section 138 — Dishonour of cheque for insufficiency etc. — Offence under this section can be said to be committed by the drawer of the cheque on an account maintained by him with the banker but not by any other person. [Alok Vs. Praveen Kumar] ...1112

परक्राम्य लिखत अधिनियम (1881 का 26), धारा 138 – अपर्याप्त इत्यादि होने के आधार पर चेक का अनादरण – इस धारा के अंतर्गत अपराध को चेक के आहर्ता द्वारा बैंकर के साथ उसके खाते पर कारित किया जाना कहा जा सकता है किन्तु किसी अन्य व्यक्ति द्वारा नहीं। (आलोक वि. प्रवीण कुमार) ...1112

Negotiable Instruments Act (26 of 1881), Section 138 – Non-service of demand notice – Notice sent by registered post was returned with the report that the addressee not found, but thereafter the complainant did not make concrete efforts to serve the notice on the accused – No presumption regarding service of demand notice could be drawn – Trial court rightly appreciated the evidence and rightly acquitted the accused. [Satyendra Tiwari @ Sonu Vs. State of M.P.] ...1679

परक्राम्य लिखत अधिनियम (1881 का 26), धारा 138 – मांग पत्र की तामीली न होना – रजिस्टर्ड डाक से प्रेषित नोटिस, इस रिपोर्ट के साथ वापिस कि प्रेष्य नहीं मिला, परन्तु तत्पश्चात् शिकायतकर्ता ने अभियुक्त को नोटिस तामील करने के लिए कोई ठोस प्रयास नहीं किये – मांग पत्र की तामीली के संबंध में कोई उपधारणा नहीं की जा सकती – विचारण न्यायालय ने साक्ष्य का उचित रूप से मूल्यांकन किया और उचित रूप से अभियुक्त को दोषमुक्त किया। (सतेन्द्र तिवारी उर्फ सोनू वि. म.प्र. राज्य) ...1679

Negotiable Instruments Act (26 of 1881), Section 138 – See – Criminal Procedure Code, 1973, Section 482 [Dhanraj Vs. Ashok Kumar] ...1172

परक्राम्य लिखत अधिनियम (1881 का 26), धारा 138 – देखें – दण्ड प्रक्रिया संहिता, 1973, धारा 482 (धनराज वि. अशोक कुमार) ...1172

Negotiable Instruments Act (26 of 1881), Section 141 – See – Prevention of Corruption Act, 1988, Section 13(1)(d) [Ajoy Acharya Vs. State Bureau of Inv. Against Eco. Offence] (SC)...915

परक्राम्य लिखत अधिनियम, (1881 का 26), धारा 141 – देखें – भ्रष्टाचार निवारण अधिनियम, 1988, धारा 13(1)(डी) (अजॉय अचार्या वि. स्टेट ब्यूरो ऑफ इनवैस्टिगेशन अगेंस्ट इकॉनॉमिक ऑफेंस) (SC)...915

Panchayat Raj Evam Gram Swaraj Adhiniyam, M.P. 1993 (1 of 1994), Section 69 – Whether Panchayat Secretary can be placed under suspension by the Collector – Held – Collector is the Appointing Authority of Panchayat Secretary – Sec. 69 is still in the Statute Book – Enabling provision to appoint the Panchayat Secretary by the

Collector is not taken away or deleted – Rules are framed under the Adhiniyam are in aid to the Adhiniyam – Hence, Collector continues to be the Appointing Authority and is empowered to place the petitioner (Panchayat Secretary) under suspension. [Devendra Singh Kirar Vs. State of M.P.] ...1031

पंचायत राज एवं ग्राम स्वराज अधिनियम, म.प्र. 1993 (1994 का 1), धारा 69
– क्या कलेक्टर द्वारा पंचायत सचिव को निलंबन में रखा जा सकता है – अभिनिर्धारित – पंचायत सचिव का नियोक्त प्राधिकारी कलेक्टर है – धारा 69 अभी कानून की किताब में मौजूद है – कलेक्टर द्वारा पंचायत सचिव को नियुक्त करने के सामर्थ्यकारी उपबंध हटाये या निकाले नहीं गये हैं – अधिनियम के अधीन विरचित नियम, अधिनियम को सहायता प्रदान करते हैं – अतः, कलेक्टर नियोक्ता प्राधिकारी बना रहता है और याची (पंचायत सचिव) को निलंबन में रखने के लिये सशक्त है। (देवेन्द्र सिंह किरार वि. म.प्र. राज्य) ...1031

Panchayat Raj Evam Gram Swaraj Adhiniyam, M.P. 1993 (1 of 1994), Sections 107 & 108, Civil Procedure Code (5 of 1908), Order 7 Rule 11, Specific Relief Act (47 of 1963), Section 38 – Maintainability – Suit for declaration and mandatory injunction – Application under Order 7 Rule 11, C.P.C. filed that the Civil Suit is barred looking to the provisions contained in Section 108 of the M.P. Panchayat Raj Avam Gram Swaraj Adhiniyam, 1993 – Held – Provision of Section 108 of Adhiniyam, 1993 and by paying heed to sub-section (3) this court finds that bar would not apply to the suit instituted u/s 38 of the Specific Relief Act – Present suit is of permanent and mandatory injunction only – Bar is not applicable – Revision dismissed. [Shanta Bai (Smt.) Vs. Kundlik] ...1117

पंचायत राज एवं ग्राम स्वराज अधिनियम, म.प्र. 1993 (1994 का 1), धाराएं 107 व 108, सिविल प्रक्रिया संहिता (1908 का 5), आदेश 7 नियम 11, विनिर्दिष्ट अनुतोष अधिनियम (1963 का 47), धारा 38 – पोषणीयता – घोषणा और आज्ञापक व्यादेश हेतु वाद – सि.प्र.सं. के आदेश 7 नियम 11 के अंतर्गत आवेदन प्रस्तुत किया गया कि म. प्र. पंचायत राज एवं ग्राम स्वराज अधिनियम, 1993 की धारा 108 में वर्णित उपबंधों को देखते हुए सिविल वाद वर्जित है – अभिनिर्धारित – अधिनियम, 1993 की धारा 108 का उपबंध और उप धारा (3) का ध्यान रखते हुए यह न्यायालय पाता है कि विनिर्दिष्ट अनुतोष अधिनियम की धारा 38 के अंतर्गत संस्थित वाद पर वर्जन लागू नहीं होगा – वर्तमान वाद केवल स्थायी एवं आज्ञापक व्यादेश का है – वर्जन लागू नहीं होता – पुनरीक्षण खारिज। (शांता बाई (श्रीमती) वि. कुंडलिक) ...1117

Parity in law – Parity in law can be claimed only in respect of

action rightfully executed and not otherwise. [Ajoy Acharya Vs. State Bureau of Inv. Against Eco. Offence] (SC)...915

विधि में समानता — विधि में समानता का दावा केवल उचित रूप से निष्पादित कार्यवाही के संबंध में किया जा सकता है और अन्यथा नहीं। (अजॉय अचार्या वि. स्टेट ब्यूरो ऑफ इनवैस्टिगेशन अगेंस्ट इकॉनोमिक ऑफेंस) (SC)...915

Penal Code (45 of 1860), Sections 104 & 105 – Private defence
 – On the date of incident, land was under the actual possession of appellant – Complainant and his companions were criminal trespassers – Injured had sustained two simple injuries and one splenic tear – Probability of defence that the said injury was received due to fall, cannot be ruled out – Rupture of spleen even assuming to be caused by appellant has not resulted in his death – Held – Appellant was having right of private defence of property u/s 104 & 105 of the IPC – Appeal allowed. [Ganpat Vs. State of M.P.] ...1351

दण्ड संहिता (1860 का 45), धाराएं 104 व 105 – प्राइवेट प्रतिरक्षा – घटना दिनांक को मूझि, अपीलार्थी के वास्तविक कब्जे में थी – शिकायतकर्ता और उसके साथी, आपराधिक अतिचारी थे – आहत को दो साधारण चोटें आयीं और एक प्लीहा की क्षति – बचाव की संभाव्यता कि उक्त चोट गिरने से आयी थी, से इंकार नहीं किया जा सकता – प्लीहा क्षति यदि अपीलार्थी द्वारा कारित की जाने की धारणा की जाये तब भी उसकी मृत्यु का वह कारण नहीं था – अभिनिर्धारित – अपीलार्थी को भा.द.सं. की धारा 104 व 105 के अंतर्गत सम्पत्ति की प्राइवेट रक्षा का अधिकार था – अपील मंजूर। (गनपत वि. म.प्र. राज्य) ...1351

Penal Code (45 of 1860), Section 302 – Murder – Circumstantial evidence – Accused and deceased were husband and wife – Almost all the witnesses are unanimous in their deposition that the relationship between them was cordial – Highly improbable that wife would murder her husband without any reason – Prosecution has not succeeded in showing the circumstances from which an inference of guilt could be drawn. [State of M.P. Vs. Malti Bai] (SC)...1475

दण्ड संहिता (1860 का 45), धारा 302 – हत्या – परिस्थितिजन्य साक्ष्य – अभियुक्त और मृतक, पति-पत्नी थे – लगभग सभी साक्षीगण अपने कथनों में एकमत हैं कि उनके मध्य सौहार्दपूर्ण संबंध थे – अत्यांतिक रूप से असंभाव्य है कि पत्नी बिना किसी कारण के अपने पति की हत्या करेगी – अभियोजन ऐसी परिस्थितियां दर्शाने में सफल नहीं हो सका है जिससे कि दोषी होने का निष्कर्ष निकाला जा सके। (म.प्र. राज्य वि. मालती बाई) (SC)...1475

Penal Code (45 of 1860), Section 302 – Murder – Circumstantial evidence – Cases which rest upon circumstantial evidence, conviction can be permissible only when all links in chain of events are established beyond reasonable doubt and established circumstances are consistent only with hypothesis of guilt of accused and totally inconsistent with his innocence. [Neeraj Vs. State of M.P.] (DB)...1610

दण्ड संहिता (1860 का 45), धारा 302 – हत्या – परिस्थितिजन्य साक्ष्य – जो प्रकरण परिस्थितिजन्य साक्ष्य पर निर्भर होते हैं, दोषसिद्धि केवल तब अनुज्ञेय हो सकती है जब घटनाओं की सभी कड़ियाँ, युक्तियुक्त संदेहों से परे स्थापित होती हैं और स्थापित परिस्थितियाँ केवल अभियुक्त की दोषिता की उपकल्पना के साथ सुसंगत हैं और उसकी निर्दोषिता के साथ पूर्णतः असंगत। (नीरज वि. म.प्र. राज्य) (DB)...1610

Penal Code (45 of 1860), Section 302 – Murder – Circumstantial evidence – The circumstances alleged by the prosecution should be of definite tendency, unerringly pointing towards the guilt of the accused – Should form a chain so complete that there is no escape from the conviction – Circumstances should be consistent with the guilt of the accused – Prosecution has failed to satisfy the various tests in proving the case on circumstantial evidence – Appeal dismissed. [State of M.P. Vs. Malti Bai] (SC)...1475

दण्ड संहिता (1860 का 45), धारा 302 – हत्या – परिस्थितिजन्य साक्ष्य – अभियोजन द्वारा अभिकथित परिस्थितियाँ, निश्चित प्रवृत्ति की, त्रुटिरहित रूप से अभियुक्त की दोषिता की ओर इंगित करने वाली होनी चाहिए – जिससे श्रृंखला इतनी संपूर्ण बननी चाहिए कि वह दोषसिद्धि से बच ना सके – परिस्थितियों को अभियुक्त की दोषिता के साथ सुसंगत होना चाहिए – अभियोजन पक्ष परिस्थितिजन्य साक्ष्य पर प्रकरण साबित करने के विभिन्न परीक्षणों को सिद्ध करने में विफल रहा – अपील खारिज। (म.प्र. राज्य वि. मालती बाई) (SC)...1475

Penal Code (45 of 1860), Section 302 – Murder – Last seen together – If the time gap between the last seen and death of deceased was more, the possibility of entry of third person to commit the murder was there. [Neeraj Vs. State of M.P.] (DB)...1610

दण्ड संहिता (1860 का 45), धारा 302 – हत्या – अंतिम बार एक साथ देखा जाना – यदि अंतिम बार देखे जाने और मृतक की मृत्यु के बीच के समय का अंतर अधिक था, तब हत्या करने के लिये तीसरे व्यक्ति के प्रवेश की संभावना थी। (नीरज वि. म.प्र. राज्य) (DB)...1610

Penal Code (45 of 1860), Section 302 – Murder – Sole accused prosecuted for causing death – Eye witness deposed that appellant inflicted three injuries whereas doctor described 8 injuries – Seizure witness did not support prosecution case – Held – Evidence of PW 1 is fully reliable and trustworthy and cannot be discarded on the basis of minor omission and contradiction as also on the ground that the witnesses of seizure of 'Falia' has turned hostile – Defence set up by appellant has not been proved – Conviction is affirmed. [Gulab Vs. State of M.P.] (DB)...1606

दण्ड संहिता (1860 का 45), धारा 302 – हत्या – एकमात्र अभियुक्त को मृत्युकारित करने के लिये अभियोजित किया गया – चक्षुदर्शी साक्षी का कथन है कि अपीलार्थी ने तीन क्षतियां पहुंचाई, जबकि चिकित्सक ने 8 क्षतियों का वर्णन किया – जब्ती साक्षी ने अभियोजन प्रकरण का समर्थन नहीं किया – अभिनिर्धारित – अ.सा. 1 का साक्ष्य पूर्णतः विश्वसनीय और भरोसेमंद है और गौण लोप एवं विरोधाभास के आधार पर अस्वीकार नहीं किया जा सकता, इस आधार पर भी नहीं कि 'फलिया' की जब्ती के साक्षी पक्षविरोधी हो गये – अपीलार्थी द्वारा प्रस्तुत बचाव साबित नहीं – दोषसिद्धि की पुष्टि की गयी। (गुलाब वि. म.प्र. राज्य) (DB)...1606

Penal Code (45 of 1860), Section 302 – Sentence for murder – Juvenile the convict is found to be of 17 years 6 months and 21 days old i.e. juvenile at the date of incident – Cannot be sent back to jail to suffer remaining part of jail sentence. [Kapil Kumar alais Bobby Vs. State of M.P.] (DB)...1109

दण्ड संहिता (1860 का 45), धारा 302 – हत्या के लिये दण्डादेश – दोषसिद्ध किशोर 17 वर्ष 6 माह एवं 21 दिन की आयु का पाया गया अर्थात् घटना दिनांक को वह किशोर था – कारावास के शेष भाग को भुगतने हेतु वापस जेल नहीं भेजा जा सकता। (कपिल कुमार उर्फ बॉबी वि. म.प्र. राज्य) (DB)...1109

Penal Code (45 of 1860), Sections 302 & 304 Part-I – Murder or culpable homicide not amounting to murder – Held – Deceased tried to intervene in the quarrel of appellant and another person – Appellant dealt three successive blows from the blunt side of the Axe – It is not a case of heat of passion on account of which it can be said that the appellant inflicted blows – Case does not fall under exception of 4 of Section 300 of IPC. [Pisu Vs. State of M.P.] (DB)...1099

दण्ड संहिता (1860 का 45), धाराएं 302 व 304 भाग I – हत्या या हत्या की कोशिश में न आने वाला आपराधिक मानव वध – अभिनिर्धारित – मृतक ने अपीलार्थी और

अन्य व्यक्ति के झगड़े में हस्तक्षेप करने का प्रयास किया - अपीलार्थी ने कुल्हाड़ी के पिछले हिस्से से लगातार तीन वार किये - यह भावनावेग का प्रकरण नहीं जिससे कि यह कहा जा सके कि अपीलार्थी ने क्षतियां पहुंचवाई - प्रकरण भा.द.सं. की धारा 300 के अपवाद 4 के अंतर्गत नहीं आता। (पीसू वि. म.प्र. राज्य) (DB)...1099

Penal Code (45 of 1860), Sections 302, 376(2)(f), 377 - Murder - Rape - Minor child was given in custody of the appellant as he had no child - She was mercilessly beaten by appellant on number of occasions - Number of injuries were found on her body - Postmortem report reveals that she was subjected to both natural and unnatural sexual assault - DNA of appellant matched with vaginal swab, clothes and anal swab of deceased - Chain of circumstances complete - Appellant guilty of committing offence. [In Reference Vs. Rajesh] (DB)...1139

दण्ड संहिता (1860 का 45), धाराएं 302, 376(2)(एफ), 377 - हत्या - बलात्कार - अपीलार्थी को अवयस्क बालिका की अभिरक्षा सौंपी गई क्योंकि उसकी कोई संतान नहीं थी - अपीलार्थी द्वारा उसे कई अवसरों पर बेरहमी से पीटा गया - उसके शरीर पर कई चोटें पायी गई - शव परीक्षण प्रतिवेदन प्रकट करता है कि उस पर नैसर्गिक एवं अनैसर्गिक दोनों प्रकार का लैंगिक हमला किया जाता था - अपीलार्थी के डीएनए का मृतक के वैजाइनल स्वेब, कपड़े और ऐनल स्वेब से मिलान होता है - परिस्थितियों की शृंखला पूर्ण होती है - अपीलार्थी अपराध कारित करने का दोषी। (इन रेफ्रेन्स वि. राजेश) (DB)...1139

Penal Code (45 of 1860), Sections 302, 376(2)(f), 377 & 120B - Death sentence - Rarest of rare case - Circumstantial evidence - When the accused who was close to the family of the deceased to whom the victim used to call "uncle" had committed rape and murdered the innocent hapless girl of 7 years, the motivation of the perpetrator, the vulnerability of the victim, the enormity of the crime, the execution thereof persuade us to hold that this is a "rarest of rare" cases. [In Reference Vs. Rajesh] (DB)...1139

दण्ड संहिता (1860 का 45), धाराएं 302, 376(2)(एफ), 377 व 120बी - मृत्युदण्ड - विरलतम से विरल प्रकरण - परिस्थितिजन्य साक्ष्य - जब अभियुक्त, जो मृतिका के परिवार का करीबी था, जिसे पीड़िता "अंकल" पुकारा करती थी, ने 7 वर्षीय अबोध अभागी बालिका का बलात्कार करके हत्या कारित की, तब अपराधी का उद्देश्य, पीड़िता की मेघता, अपराध पाशविकता और इसका निष्पादन हमें यह धारणा करने के लिये प्रेरित करता है कि यह "विरलतम से विरल" प्रकरण है। (इन रेफ्रेन्स वि. राजेश) (DB)...1139

Penal Code (45 of 1860), Sections 304B & 498A – Cruelty – Appellants No. 2 and 4 did not come forward to participate in settlement of dispute with regard to dowry on the ground that they were from groom's side – Silence on their part does not amount to cruelty – Appellants No. 2 and 4 acquitted – Appeal allowed. [Bharat Bhushan Vs. State of M.P.] (SC)...1199

दण्ड संहिता (1860 का 45), धाराएं 304बी व 498ए – क्रूरता – अपीलार्थी गण क्र. 2 व 4, दहेज संबंधी विवाद के समझौते में सहभाग लेने के लिये आगे नहीं आये, इस आधार पर कि वे दुल्हे के पक्ष से थे – उनकी ओर से खांमोशी, क्रूरता की कोटि में नहीं आती – अपीलार्थी क्र. 2 व 4 दोषमुक्त – अपील मंजूर। (भारत भूषण वि. म.प्र. राज्य) (SC)...1199

Penal Code (45 of 1860), Section 307 – Attempt to murder – No offence was made out u/s 307 of the IPC, but it is a case where conviction could safely be recorded u/s 324 of IPC – Since appellant is prosecuting the legal battle for the last 18 years – Only fine sentence is awarded. [Vishwanath Vs. State of M.P.] ...1603

दण्ड संहिता (1860 का 45), धारा 307 – हत्या का प्रयत्न – मा.द.स. की धारा 307 के अंतर्गत अपराध गठित नहीं हुआ किन्तु यह ऐसा प्रकरण है जहां मा. द.स. की धारा 324 के अंतर्गत दोषसिद्धि सुरक्षित रूप से अभिलिखित की जा सकती है – चूंकि अपीलार्थी पिछले 18 वर्षों से कानूनी लड़ाई लड़ रहा है – केवल अर्थदण्ड का दण्डादेश दिया गया। (विश्वनाथ वि. म.प्र. राज्य) ...1603

Penal Code (45 of 1860), Sections 341, 294, 324 – See – Criminal Procedure Code, 1973, Sections 320(2) [Shamsher Bahadur Singh Chandel @ Golend Singh Vs. State of M.P.] ...1393

दण्ड संहिता (1860 का 45), धाराएं 341, 294, 324 – देखें – दण्ड प्रक्रिया संहिता, 1973, धारा 320(2) (शमशेर बहादुर सिंह चंदेल उर्फ गोलेंद सिंह वि. म. प्र. राज्य) ...1393

Penal Code (45 of 1860), Sections 341, 307/34 & Juvenile Justice (Care and Protection of Children) Act (56 of 2000), Sections 7A, 49 – Juvenile Justice – Appellant convicted u/s 307 of IPC – Plea of appellant being juvenile was neither raised before trial court nor before High Court – To prove the age, High School Board Mark Sheet and admission register were produced – State was directed to verify – Addl. S.P. after verifying, reported that the documents are genuine – Held – As per document appellant was juvenile on the date of incident – Conviction

and sentence awarded is set aside – Case record is directed to be placed before the concerned Juvenile Board for awarding proper sentence. [Kamlendra Singh @ Pappu Singh Vs. State of M.P.] (SC)...1463

दण्ड संहिता (1860 का 45), धाराएं 341, 307/34, एवं किशोर न्याय (बालकों की देख-रेख और संरक्षण) अधिनियम (2000 का 56), धारा 7ए, 49 – किशोर न्याय – अपीलार्थी को भा.द.सं. की धारा 307 के अंतर्गत दोषसिद्ध किया गया – अपीलार्थी के किशोर होने का अभिवाक् न तो विचारण न्यायालय के समक्ष उठाया गया और न ही उच्च न्यायालय के समक्ष – वय साबित करने के लिये, उच्च विद्यालय बोर्ड की अंक सूची तथा प्रवेश पंजी प्रस्तुत की गई – राज्य को सत्यापित करने के लिये निदेशित किया गया – जांच प्रश्नात अति पुलिस अधीक्षक ने प्रतिवेदन दिया कि दस्तावेज प्रामाणिक हैं – अभिनिर्धारित – दस्तावेजों के अनुसार, अपीलार्थी घटना दिनांक को किशोर था – दोषसिद्धि और दिया गया दण्डादेश अपास्त – प्रकरण अभिलेख को संबंधित किशोर बोर्ड के समक्ष उचित दण्डादेश दिये जाने हेतु प्रस्तुत करने के लिये निदेशित किया गया। (कमलेन्द्र सिंह उर्फ पप्पू सिंह वि. म.प्र. राज्य) (SC)...1463

Penal Code (45 of 1860), Section 354 – To outrage modesty – Since there is not even an iota of evidence on record to infer that any attempt was made to outrage the modesty, conviction u/s 354 of the IPC, cannot be sustained. [Vishwanathi Vs. State of M.P.] ...1603

दण्ड संहिता (1860 का 45), धारा 354 – लज्जा भंग करना – चूंकि अभिलेख पर किंचित भी साक्ष्य नहीं यह निष्कर्ष निकालने के लिये कि लज्जा भंग करने का कोई प्रयास किया गया था, भा.द.सं. की धारा 354 के अंतर्गत दोषसिद्धि पोषणीय नहीं। (विश्वनाथ वि. म.प्र. राज्य) ...1603

Penal Code (45 of 1860), Section 376 – Rape – Appellant was known to prosecutrix – She was forcibly taken to sugarcane bush at knife point and was subjected to sexual intercourse – Act was revealed by her to P.W. 5 – Prosecutrix admittedly washed herself in the well therefore, absence of sperm or blood not material – Doctor also stated that hymen of prosecutrix was torn and ruptured – Except simply denying the offence, no evidence was led by appellant – Conviction upheld – Appeal dismissed. [Swaroop Singh Vs. State of M.P.] (SC)...1202

दण्ड संहिता (1860 का 45), धारा 376 – बलात्कार – अपीलार्थी को अभियोक्त्री जानती थी – उसे चाकू की नोक पर गन्ने की झाड़ियों में बलपूर्वक ले जाया गया और लैंगिक समागम किया गया – कृत्य को उसके द्वारा अ.सा.5 को प्रकट किया गया – अभियोक्त्री ने स्वीकृत रूप से कुएं पर स्वयं को साफ किया इसलिए, वीर्य या रक्त की

अनुपस्थिति तात्त्विक नहीं — चिकित्सक ने भी कथन किया कि अभियोक्त्री का योनिच्छद फटा हुआ एवं क्षतिग्रस्त था — अपीलार्थी द्वारा साधारण रूप से अपराध अस्वीकार करने के अलावा किसी साक्ष्य को प्रस्तुत नहीं किया गया — दोषसिद्धि अभिपुष्ट — अपील खारिज। (स्वरूप सिंह वि. म.प्र. राज्य) (SC)...1202

Penal Code (45 of 1860), Section 376 – Rape – Method of Investigation – Guidelines should be issued by D.G. Police and Home Department to different authorities as how to deal with rape cases – Certain care has to be taken by Doctor who medically examine the victim of rape and should generally be examined by a female Doctor – Victim should also be provided the help of some psychiatric – Medical report should be prepared expeditiously and Doctor should give his/her opinion with all possible angle e.g. opinion regarding age taking into consideration the number of teeth, secondary sex characters, radiological test etc. – I.O. must ensure that victim should be handled carefully by lady police officer depending upon the availability – Victim should be sent for medical examination at the earliest and her statement should be recorded in presence of her family members – Investigation should be completed at the earliest to avoid bail to the accused on technicalities like u/s 167 of Cr.P.C. and final report be submitted at the earliest – Chief Secretary requested to examine the observations and issue comprehensive guidelines – Appeal dismissed. [Dilip Vs. State of M.P.] (SC)...1465

दण्ड संहिता (1860 का 45), धारा 376 – बलात्कार – अन्वेषण की विधि – पुलिस महानिदेशक तथा गृह विभाग द्वारा विभिन्न प्राधिकारियों को मार्गदर्शन जारी किये जाने चाहिए कि बलात्कार के प्रकरणों में कार्यवाही कैसे की जावे – बलात्कार पीड़िता के चिकित्सीय परीक्षण में चिकित्सक द्वारा कतिपय सावधानियां बरतनी चाहिये और साधारणतः महिला चिकित्सक द्वारा परीक्षण किया जाना चाहिये – पीड़िता को किसी मनोवैज्ञानिक की सहायता भी प्रदान की जानी चाहिये – चिकित्सा प्रतिवेदन शीघ्रातिशीघ्र तैयार किया जाना चाहिये और चिकित्सक को सभी संभावित दृष्टिकोणों के साथ अपना अभिमत देना चाहिये उदाहरणार्थ, दांतों की संख्या, द्वितीयक यौन विशेषताएँ, विकिरण विज्ञान संबंधी जाँच इत्यादि को विचार में लेकर आयु के संबंध में अभिमत – जांचकर्ता अधिकारी को सुनिश्चित करना चाहिए कि उपलब्धता पर निर्भर रहते हुये, महिला पुलिस अधिकारी द्वारा पीड़िता को सावधानीपूर्वक संभाला जाना चाहिये – पीड़िता को चिकित्सीय परीक्षण हेतु तुरंत भेजा जाना चाहिए और उसका कथन उसके परिवार के सदस्यों की उपस्थिति में अभिलिखित किया जाना चाहिए – द.प्र.सं. की धारा 167 के अंतर्गत जैसी तकनीकियों के आधार पर अभियुक्त को जमानत से वंचित करने के लिये अन्वेषण को शीघ्रता से पूरा किया जाना चाहिए

और अंतिम प्रतिवेदन शीघ्रता से प्रस्तुत किया जाना चाहिए — टिप्पणीयों का परीक्षण कर व्यापक मार्गदर्शन जारी करने के लिये मुख्य सचिव को निवेदन किया गया — अपील खारिज। (दिलीप वि. म.प्र. राज्य) (SC)...1465

Penal Code (45 of 1860), Section 376 – Rape – Prosecutrix appears to be consenting party as she remained with appellant for about 6 days – Appellant was already acquitted by trial court for offences u/s 363, 366 of IPC – Prosecuting could have raised hue and cry while she was allegedly kept in a room by appellant – Prosecutrix also suppressed the story of her coming back to her mother house – As per medical documents, prosecutrix must be above 18 years of age – As prosecutrix was consenting party no offence was committed by appellant – Appeal allowed. [Ramesh @ Dabbu Vs. State of M.P.] ...1355

दण्ड संहिता (1860 का 45), धारा 376 – बलात्कार – अभियोक्त्री सम्मत पक्षकार प्रतीत होती है क्योंकि वह अपीलार्थी के साथ करीब 6 दिनों तक रही – अपीलार्थी को विचारण न्यायालय द्वारा पहले ही भा.द.सं. की धारा 363, 366 के अंतर्गत अपराधों के लिये दोषमुक्त किया गया है – अभियोक्त्री शोर मचा सकती थी जब उसे अभिकथित रूप से अपीलार्थी द्वारा कमरे में रखा गया था – अभियोक्त्री ने अपनी मां के घर खुद के लौटने की कहानी का भी छिपाव किया है – चिकित्सीय दस्तावेजों के अनुसार अभियोक्त्री की वय 18 वर्ष से अधिक होना चाहिए – चूंकि अभियोक्त्री सम्मत पक्षकार थी, अपीलार्थी द्वारा कोई अपराध कारित नहीं किया गया – अपील मंजूर। (रमेश उर्फ डबू वि. म.प्र. राज्य) ...1355

Penal Code (45 of 1860), Sections 406, 409 & 420, Criminal Procedure Code, 1973 (2 of 1974), Section 227 – Framing of charge – Complainant entered into an agreement to purchase house with M.P. Housing Board – Complainant paid entire installments – Housing Board was under obligation to execute sale deed in favour of complainant – However, on the basis of affidavit in some Civil Proceedings Housing Board issued NOC in favour of another accused – Held – Housing Board at the best could have executed sale deed in favour of complainant – Complainant had also cancelled the agreement with another accused – Housing Board could not have issued NOC in favour of another accused – Charge rightly framed as NOC was fabricated against Rules and Regulations to extend benefit to another accused – Revision dismissed. [Daulat Singh Vishwakarma Vs. State of M.P.] ...1123

दण्ड संहिता (1860 का 45), धाराएं 406, 409 व 420, दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 227 – आरोप विरचित किये जाना – शिकायतकर्ता ने मकान

क्रय करने के लिये म.प्र. हाउसिंग बोर्ड के साथ करार किया — शिकायतकर्ता ने संपूर्ण किश्तों का भुगतान किया — शिकायतकर्ता के पक्ष में विक्रय विलेख निष्पादित करने के लिये हाउसिंग बोर्ड बाध्यताधीन था — किन्तु, किसी सिविल कार्यवाही में शपथ पत्र के आधार पर हाउसिंग बोर्ड ने एन.ओ.सी. अन्य अभियुक्त के पक्ष में जारी की — अभिनिर्धारित — हाउसिंग बोर्ड अधिक से अधिक शिकायतकर्ता के पक्ष में विक्रय विलेख निष्पादित कर सकता था — शिकायतकर्ता ने अन्य अभियुक्त के साथ का करार भी निरस्त किया था — हाउसिंग बोर्ड अन्य अभियुक्त के पक्ष में एन.ओ.सी. जारी नहीं कर सकता था — आरोप उचित रूप से विरचित क्योंकि अन्य अभियुक्त को लाभ प्रदान करने के लिये नियमों एवं विनियमन के विरुद्ध एन.ओ.सी. मिथ्यागदंत है — पुनरीक्षण खारिज। (दौलत सिंह विश्वकर्मा वि. म.प्र. राज्य) ...1123

Penal Code (45 of 1860), Sections 406, 420 & Criminal Procedure Code, 1973 (2 of 1974), Section 482 – Quashing of trial proceeding – Applicants, who were the office bearers of the Samiti alleged to have sold the plots – Mortgaged with Municipal Corporation without getting their redemption – Neither any loss was caused to the Municipal Corporation nor to the purchaser – Sale deed were also executed and possession was also handed over to them – Plots were also redeemed subsequently – It was also not shown that the plots were sold in lesser amount – Held – Applicants had no dishonest intention – As they got the plots redeemed subsequently – If a cheating was intended by the applicants, then there must be some unlawful gain to the applicants and some unlawful loss to any one involved in the transaction – Prima facie no offence u/s 420 is made out – Since by the transaction no loss was caused to the Samiti and the plots were obtained by the members of the society by sale – Then prima facie it cannot be said that the applicants committed any misappropriation of the property entrusted to them – No offence of breach of trust is made out – Petition is accepted. [M.L. Gaur Vs. State of M.P.] ...1455

दण्ड संहिता (1860 का 45), धाराएं 406 व 420 व दण्ड प्रक्रिया संहिता, 1973, (1974 का 2), धारा 482 – विचारण कार्यवाही को अभिखंडित किया जाना – आवेदकगण जो कि समिति के पदाधिकारी थे, ने कथित रूप से भूखंडों का विक्रय किया – उसका मोचन किये बिना नगरपालिका निगम के साथ बंधक किया – न तो नगरपालिका निगम को कोई हानि कारित हुई और न ही क्रेता को – विक्रय विलेख भी निष्पादित किया गया और उन्हें कब्जा भी सौंपा गया – तत्पश्चात भूखंडों का मोचन भी किया गया – यह भी नहीं दर्शाया गया कि भूखंडों को कम रकम पर विक्रय किया गया – अभिनिर्धारित – आवेदकगण का बेईमानी का आशय नहीं था – जैसा कि उन्होंने तत्पश्चात भूखंडों को मोचन कराया था – यदि आवेदकगण का आशय छल करना था

तब आवेदकगण को विधिविरुद्ध कोई लाम होना चाहिए और संव्यवहार में शामिल किसी को विधिविरुद्ध कोई हानि होनी चाहिए — प्रथम दृष्ट्या धारा 420 के अंतर्गत अपराध गठित नहीं होता — चूंकि संव्यवहार द्वारा समिति को कोई हानि नहीं हुई है और विक्रय द्वारा सोसायटी के सदस्यों ने मूखंड अभिप्राप्त किये हैं — तब प्रथम दृष्ट्या यह नहीं कहा जा सकता कि आवेदकगण ने उन्हें सौंपी गयी सम्पत्ति का कोई दुर्विनियोग कारित किया — न्यास मंग का अपराध गठित नहीं होता — याचिका स्वीकार की गई। (एम.एल. गौर वि. म.प्र. राज्य) ...1455

Penal Code (45 of 1860), Sections 419, 320, 467, 468, 471 & 120-B – See – Recognised Examination Act, M.P., 1937, Section 4 [Bal Kumar Kaushik Vs. State of M.P.] (DB)...1673

दण्ड संहिता (1860 का 45), धाराएं 419, 320, 467, 468, 471 व 120बी – देखें – मान्यताप्राप्त परीक्षा अधिनियम, म.प्र., 1937, धारा 4 (बाल कुमार कौशिक वि. म.प्र. राज्य) (DB)...1673

Penal Code (45 of 1860), Section 420 – Quashing of charge – There is sufficient evidence against the applicant to show the prima facie ingredients of the alleged offence defined u/s 415 and made punishable u/s 420 of IPC – Held – At the stage of framing the charge the court has to consider only the prima facie circumstances and the same is available in the matter – Impugned order is hereby affirmed. [Rajendra Agrawal Vs. Smt. Suman Agrawal] ...1432

दण्ड संहिता (1860 का 45), धारा 420 – आरोप अभिखंडित किया जाना – भा.द.सं. की धारा 415 के अंतर्गत परिभाषित तथा धारा 420 के अंतर्गत दण्डनीय बनाये गये अभिकथित अपराध के प्रथम दृष्ट्या घटक दर्शाने के लिये आवेदक के विरुद्ध पर्याप्त साक्ष्य है – अभिनिर्धारित – आरोप विरचित किये जाने के प्रक्रम पर न्यायालय को केवल प्रथम दृष्ट्या परिस्थितियों को विचार में लेना चाहिए और मामलों में यह उपलब्ध है – आक्षेपित आदेश एतद् द्वारा अभिपृष्ट। (राजेन्द्र अग्रवाल वि. श्रीमती सुमन अग्रवाल) ...1432

Penal Code (45 of 1860), Sections 420, 120B & 411 – Cheating – Amount transferred to the accounts of applicants No. 1 to 4 – Nothing on record that they had ever met with other co-accused persons – However, they are in possession of stolen property – Discharged for offence u/s 420, 120B, but charge u/s 411 affirmed. [Rabia Ahmad Khan (Smt.) Vs. State of M.P.] ...1388

दण्ड संहिता (1860 का 45), धाराएं 420, 120बी व 411 – छल – आवेदक क्र. 1 से 4 तक के खातों में रकम अंतरित की गई – अभिलेख पर कुछ नहीं कि वे कभी

भी अन्य सह अभियुक्तगण से मिले थे - किन्तु उनके कब्जे में चुराई गई सम्पत्ति है - धारा 420, 120बी के अंतर्गत अपराध से आरोपमुक्त परन्तु धारा 411 के अंतर्गत आरोप की पुष्टि। (राबिया अहमद खान (श्रीमती) वि. म.प्र. राज्य) ...1388

Penal Code (45 of 1860), Sections 420, 120B & 411, Criminal Procedure Code, 1973 (2 of 1974), Section 482 - Cheating - Quashing - Amount of Rs. 50 crores was mis-appropriated and was deposited in one fictitious account - Several drafts were prepared in the names of different persons out of the amount of Rs. 50 Crores - Amount so deposited in the account of applicant No. 5 was withdrawn by him - Strong prima facie evidence of his involvement in conspiracy with other co-accused persons - Charges u/s 420/120B, 411 of I.P.C. rightly framed. [Rabia Ahmad Khan (Smt.) Vs. State of M.P.] ...1388

दण्ड संहिता (1860 का 45), धाराएं 420, 120बी व 411, दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 482 - छल - अभिखंडित किया जाना - रु. 50 करोड़ की रकम का दुर्विनियोग और एक फर्जी खाते में जमा - रु. 50 करोड़ की रकम में से विभिन्न व्यक्तियों के नाम से कई ड्राफ्ट तैयार किये गये - आवेदक क्र. 5 के खाते में इस तरह जमा रकम को उसके द्वारा निकाला गया - षडयंत्र में अन्य सह अभियुक्तों के साथ उसके शामिल होने का प्रबल प्रथम दृष्ट्या साक्ष्य है - मा. द.सं. की धारा 420/120बी, 411 के अंतर्गत आरोपों को उचित रूप से विरचित किया गया। (राबिया अहमद खान (श्रीमती) वि. म.प्र. राज्य) ...1388

Penal Code (45 of 1860), Sections 450, 376 & 323 - Rape - No opinion could be given by the Doctor that the prosecutrix had been subjected to rape recently - She did not try to resist the attempt of the appellant - Did not raise any hue and cry - Held - Prosecutrix was a consenting party and it was perhaps when the appellant and prosecutrix were caught red handed, the story of rape had been cooked up - Conviction u/s 450 & 376 set aside - Conviction u/s 323 is affirmed - However, custodial sentence is altered to fine sentence. [Suresh Kumar Vs. State of M.P.] ...1600

दण्ड संहिता (1860 का 45), धाराएं 450, 376 व 323 - बलात्कार - चिकित्सक द्वारा कोई अभिमत नहीं दिया जा सका कि अभियोक्त्री के साथ थोड़े समय पूर्व बलात्कार किया गया था - उसने अपीलार्थी के प्रयत्न का प्रतिकार करने की कोशिश नहीं की - कोई शोर नहीं मचाया - अभिनिर्धारित - अभियोक्त्री सम्मत पक्षकार थी और संभवतः जब अपीलार्थी और अभियोक्त्री को रंगे हाथ पकड़ा गया, बलात्कार की कहानी गढ़ी गयी - धारा 450 व 376 के अंतर्गत दोषसिद्धि अपास्त - धारा 323 के अंतर्गत दोषसिद्धि की पुष्टि - किन्तु, अभिरक्षा के दण्डादेश को अर्थदण्ड के दण्डादेश में परिवर्तित किया

गया। (सुरेश कुमार वि. म.प्र. राज्य) ...1600

Penal Code (45 of 1860), Sections 498-A, 204 & 506/34 – See – Criminal Procedure Code, 1973, Sections 177, 482 [Jayesh Tiwari Vs. State of M.P.] ...1652

दण्ड संहिता (1860 का 45), धाराएं 498ए, 204 व 506/34 – देखें – दण्ड प्रक्रिया संहिता, 1973, धाराएं 177, 482 (जयेश तिवारी वि. म.प्र. राज्य) ...1652

Penal Code (45 of 1860), Sections 498-A, 294, 506, 34 – See – Criminal Procedure Code, 1973, Section 482 [Jitendra Singh Vs. State of M.P.] ...1451

दण्ड संहिता (1860 का 45), धाराएं 498-ए, 294, 506, 34 – देखें – दण्ड प्रक्रिया संहिता, 1973, धारा 482 (जितेन्द्र सिंह वि. म.प्र. राज्य) ...1451

Pre-conception and Pre-natal diagnostic Techniques (Prohibition of Sex Selection), Adhiniyam, (57 of 1994), Section 28 – See – Criminal Procedure Code, 1973, Section 482 [Manvinder Singh Gill (Dr.) Vs. State of M.P.] ...1176

गर्भधारण पूर्व और प्रसवपूर्व निदान तकनीक (लिंग चयन का प्रतिषेध) अधिनियम (1994 का 57), धारा 28-देखें – दण्ड प्रक्रिया संहिता, 1973, धारा 482 (मानविंदर सिंह गिल (डॉ.) वि. म.प्र. राज्य) ...1176

Prevention of Corruption Act (49 of 1988), Section 13(1)(d) – Misuse of Office – Whether the appellant had adopted corrupt or illegal means or had abused his position as public servant to obtain any valuable thing or pecuniary advantage, either for himself or for the industries to whom MPSIDC extended short term loans is a mixed question of fact and law and determination of issue would be possible only after rival parties have adduced evidence to establish their respective claims – Appeal dismissed. [Ajoy Acharya Vs. State Bureau of Inv. Against Eco. Offence] (SC)...915

श्रष्टाचार निवारण अधिनियम (1988 का 49), धारा 13(1)(डी) – पद का दुरुपयोग – क्या अपीलार्थी ने या तो स्वयं के लिये या उन उद्योगों के लिये जिन्हें एम.पी.एस.आई.डी.सी. ने अल्पावधि ऋण दिया है, किसी मूल्यवान वस्तु या धन संबंधी फायदा अभिप्राप्त करने के लिये श्रष्ट या अवैध जरिया अपनाया या अपने लोक सेवक के रूप में पद का दुरुपयोग किया, यह तथ्य एवं विधि का मिश्रित प्रश्न है और विवादक का निर्धारण केवल परस्पर विरोधी पक्षकारों द्वारा अपने अपने दावों को स्थापित करने के लिये साक्ष्य पेश किये जाने के पश्चात संभव होगा – अपील

खारिज। (अजॉय अचार्या वि. स्टेट ब्यूरो ऑफ इनवैस्टिगेशन अगेंस्ट इकॉनोमिक औफेंस) (SC)...915

Prevention of Corruption Act (49 of 1988), Section 13(1)(d), Negotiable Instruments Act (26 of 1881), Section 141— Appellant had attended the meeting in which the resolution dated 19.04.1995 was passed contrary to the decision taken by the Cabinet—As the appellant allowed the Board of Directors to pass the resolution in spite of the earlier decisions at the hands of the Cabinet Review Committee, culpability of appellant would emerge from Section 141(2) of N.I. Act. [Ajoy Acharya Vs. State Bureau of Inv. Against Eco. Offence] (SC)...915

अष्टाचार निवारण अधिनियम (1988, का 49), धारा 13(1)(डी), परक्राम्य लिखत अधिनियम, (1881 का 26), धारा 141 — अपीलार्थी उस समा में उपस्थित था जिसमें मंत्रिमंडल द्वारा लिये गये निर्णय के विपरीत संकल्प दि. 19.04.1995 पारित किया गया था — चूंकि अपीलार्थी ने मंत्रिमंडल पुनर्विलोकन समिति के पूर्वतर निर्णय के बावजूद निदेशक मंडल को संकल्प पारित करने की अनुमति दी, अपीलार्थी की दोषिता, परक्राम्य लिखत अधिनियम की धारा 141(2) से उत्पन्न होगी। (अजॉय अचार्या वि. स्टेट ब्यूरो ऑफ इनवैस्टिगेशन अगेंस्ट इकॉनोमिक औफेंस) (SC)...915

Prevention of Corruption Act (49 of 1988), Section 19—Sanction — Appellant holding the post of Industries Commissioner being a member of IAS Cadre—He was also nominated as Director of MPSIDC by notification issued by Governor — Nomination of appellant as Director was not by virtue of his posting as Industries Commissioner—Governor is the competent authority and not the President of India as the post of Industries Commissioner was not misused but the post of nominee Director was misused. [Ajoy Acharya Vs. State Bureau of Inv. Against Eco. Offence] (SC)...915

अष्टाचार निवारण अधिनियम (1988 का 49), धारा 19 — मंजूरी — अपीलार्थी, आई.ए.एस. कैडर का सदस्य होने के नाते औद्योगिक आयुक्त के पद पर कार्यरत था — उसे राज्यपाल द्वारा जारी की गयी अधिसूचना से एम.पी.एस.आई.डी.सी. के निदेशक के रूप में भी नामनिर्दिष्ट किया गया था — अपीलार्थी का निदेशक के रूप में नामांकन, उसके औद्योगिक आयुक्त के रूप में पदस्थ होने के कारण से नहीं किया गया था — राज्यपाल सक्षम प्राधिकारी है और न कि राष्ट्रपति क्योंकि औद्योगिक आयुक्त के पद का दुरुपयोग नहीं किया गया था बल्कि नामनिर्दिष्टित निदेशक के पद का दुरुपयोग किया गया। (अजॉय अचार्या वि. स्टेट ब्यूरो ऑफ इनवैस्टिगेशन अगेंस्ट इकॉनोमिक औफेंस) (SC)...915

Prevention of Corruption Act (49 of 1988), Section 19 – Sanction – Competent Authority – Law Department – The power to sanction for prosecution has been given under the Business Allocation Rules to the Law and Legislative Department – Even if the sanction has been refused by the appointing/disciplinary authority i.e. Parent Department of the petitioner, the same is of no consequence – The opinion of the Parent Department, appointing and disciplinary authority is not binding on the Law and Legislative Department who is the competent authority for grant of sanction while considering the case for grant of sanction – Petition dismissed. [B.S. Bisoria Vs. State of M.P.] (DB)...1264

अष्टाचार निवारण अधिनियम (1988 का 49), धारा 19 – मंजूरी – सक्षम प्राधिकारी – विधि विभाग – कार्य-आवंटन नियमों के अधीन विधि एवं विधायी कार्य विभाग को अभियोजन हेतु मंजूरी की शक्ति दी गयी है – यदि नियोक्ता/अनुशासनिक प्राधिकारी अर्थात् याची के पैतृक विभाग द्वारा मंजूरी को अस्वीकार भी किया गया है तब भी इसका कोई परिणाम नहीं होगा – पैतृक विभाग, नियोक्ता एवं अनुशासनिक प्राधिकारी का मत, विधि एवं विधायी कार्य विभाग पर बंधनकारी नहीं, जो कि मंजूरी प्रदान करने के प्रकरण पर विचार करते समय मंजूरी प्रदान करने के लिये सक्षम प्राधिकारी है – याचिका खारिज। (बी.एस. बिसोरिया वि. म.प्र. राज्य) (DB)...1264

Prevention of Corruption Act (49 of 1988), Section 19 – Sanction – Competent Authority – Plurality of offices – Where an accused holds a plurality of offices, sanction is essential only at the hands of competent authority of the office which has been allegedly misused – Other public offices held by accused where an accused holds a plurality of offices are irrelevant for purposes of obtaining sanction. [Ajoy Acharya Vs. State Bureau of Inv. Against Eco. Offence] (SC)...915

अष्टाचार निवारण अधिनियम (1988 का 49), धारा 19 – मंजूरी – सक्षम प्राधिकारी – एक से अधिक पद – जब अभियुक्त एक से अधिक पद धारक है, मंजूरी केवल उसी कार्यालय के सक्षम प्राधिकारी के हाथों आवश्यक है जिसका अभिकथित रूप से दुरुपयोग किया गया – जब अभियुक्त एक से अधिक पद धारक है, मंजूरी अभिप्राप्त करने के प्रयोजन हेतु अन्य लोक कार्यालय असंगत है। (अजय अचार्या वि. स्टेट ब्यूरो ऑफ इनवैस्टिगेशन अगेस्ट इकॉनॉमिक ऑफेंस) (SC)...915

Prevention of Corruption Act (49 of 1988), Section 19 – Sanction – Necessity – Appellant not holding the post of nominee Director as he had already relinquished the charge of office which he is alleged to have misused – No need to obtain sanction under Section 19 of Prevention of Corruption Act, 1988. [Ajoy Acharya Vs. State Bureau

of Inv. Against Eco. Offence]

(SC)...915

घ्रष्टाचार निवारण अधिनियम (1988 का 49), धारा 19 – मंजूरी – आवश्यकता – अपीलार्थी नामनिर्दिष्ट निदेशक के पद पर नहीं जैसा कि उसने पहले ही उस पदमार का त्याग कर दिया था जिसका अभिकथित रूप से दुरुपयोग किया गया था – घ्रष्टाचार निवारण अधिनियम 1988 की धारा 19 के अंतर्गत मंजूरी अभिप्राप्त करने की आवश्यकता नहीं। (अजॉय अचार्या वि. स्टेट ब्यूरो ऑफ इनवैस्टिगेशन अगेंस्ट इकॉनोमिक औफेंस) (SC)...915

Prevention of Food Adulteration Act (37 of 1954), Section 7(i) r/w Section 16(1)(a)(i) – Analyst report – Readings of the analysis of the sample were marginally away from the standard fixed by the rules could be caused due to improper stirring of oil because if the sample is taken without churning the oil the thickness of the oil differs from layer to layer – It cannot be said that the sample taken from the applicant was adulterated – Revision is accepted. [Ramesh Chandra Vs. State of M.P.] ...1396

खाद्य अपमिश्रण निवारण अधिनियम (1954 का 37), धारा 7(1) सहपठित धारा 16(1)(ए)(1) – विश्लेषक प्रतिवेदन – नमूने के विश्लेषण के अंकों का, नियमों द्वारा निर्धारित मानक से उपांतिक रूप से हटकर पाया जाना, तेल के अनुचित विलोडन के कारण कारित हो सकता है क्योंकि यदि बिना मंथन किये तेल का नमूना निकाला जाता है, तेल का गाढ़ापन परत दर परत भिन्न होगा – यह नहीं कहा जा सकता कि आवेदक से लिया गया नमूना, अपमिश्रित था – पुनरीक्षण स्वीकार किया गया। (रमेश चन्द्र वि. म.प्र. राज्य) ...1396

Prevention of Food Adulteration Act (37 of 1954), Section 13 (2) & Criminal Procedure Code, 1973 (2 of 1974), Section 482 – Quashment of criminal complaint – Delay in trial – Held – Complaint was filed after one year and no progress has taken place for about 14 years, since filing of the complaint – No evidence has been recorded, accused also deprived of his rights u/s 13(2) of Act, 1954 – Proceedings are liable to be quashed on the point of delay. [Shri Mahila Grih Udyog Lijjat Papad, Jabalpur Vs. State of M.P.] ...1641

खाद्य अपमिश्रण निवारण अधिनियम (1954 का 37), धारा 13(2) व दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 482 – दाण्डिक शिकायत को अभिखंडित किया जाना – विचारण में विलम्ब – अभिनिर्धारित – शिकायत को एक वर्ष पश्चात प्रस्तुत किया गया और शिकायत प्रस्तुत किये जाने के बाद से करीब 14 वर्षों तक कोई प्रगति नहीं हुई है – कोई साक्ष्य अभिलिखित नहीं किया गया है; अभियुक्त

को अधिनियम 1954 की धारा 13(2) के अंतर्गत उसके अधिकार से भी वंचित किया गया – विलम्ब के बिन्दू पर कार्यवाही अभिखंडित किये जाने योग्य। (श्री महिला गृह उद्योग लिज्जत पापड़, जबलपुर वि. म.प्र. राज्य) ...1641

Prevention of Food Adulteration Act (37 of 1954), Section 16 – Reduction of sentence – If the minimum sentence is prescribed in the particular statute it cannot be reduced by any of the criminal court including the High Court – The mandate of Section 433 of the Cr.P.C. enables the Government in an appropriate case to commute the sentence of a convict and to prematurely order his release before expiry of the sentence. [Ramesh Chandra Vs. State of M.P.] ...1396

खाद्य अपमिश्रण निवारण अधिनियम (1954 का 37), धारा 16 – दण्डादेश को घटाया जाना – यदि किसी विशिष्ट कानून में न्यूनतम दण्डादेश विहित है, उसे किसी भी दण्डिक न्यायालय द्वारा, जिसमें उच्च न्यायालय भी शामिल है, घटाया नहीं जा सकता – द.प्र.सं. की धारा 433 की आज्ञा, समुचित प्रकरण में सरकार को किसी सिद्धदोष का दण्डादेश घटाने एवं दण्डादेश की समाप्ति से पूर्व उसे समयपूर्व मुक्त करने का आदेश करने के लिये सक्षम बनाती है। (रमेश चन्द्र वि. म.प्र. राज्य) ...1396

Principle of Res-judicata – Is not applicable to criminal proceedings including the proceedings u/s 125 of Cr.P.C. [Kamlesh Kumar Patel Vs. Smt. Madhulata] ...1445

पूर्व न्याय का सिद्धांत – दण्डिक कार्यवाहियों में लागू नहीं होता और इसमें द.प्र.सं. की धारा 125 के अंतर्गत कार्यवाहियां समाविष्ट हैं। (कमलेश कुमार पटेल वि. श्रीमती मधुलता) ...1445

Probation of Offenders Act, (20 of 1958), Section 3 – Powers of court to release certain offenders after admonition – Petitioners convicted u/s 294 IPC and sentenced to pay fine of Rs. 200/- each by the trial court – No previous conviction proved – Entitled to be admitted to the benefit of Section 3 of the Act. [Surendra Vs. State of M.P.] ...1134

अपराधी परिवीक्षा अधिनियम (1958 का 20), धारा 3 – चेतावनी के बाद कुछ अपराधियों को मुक्त करने की न्यायालय की शक्तियां – विचारण न्यायालय ने याचिकाओं को भारतीय दंड संहिता की धारा 294 के अंतर्गत दोषसिद्ध करते हुए प्रत्येक को 200/- रु. जुर्माना अदा करने हेतु दंडादिष्ट किया – पूर्व की दोषसिद्धि साबित नहीं – अधिनियम की धारा 3 का लाभ पाने के हकदार। (सुरेन्द्र वि. म.प्र. राज्य) ...1134

Protection of Children from Sexual Offences Act, (32 of 2012),

Section 7/8 – Applicant is alleged to have caught hold the hand of the complainant and put his hand around her waist – Person who does “any other act with sexual intent which involves physical contact without penetration is said to commit sexual assault” cannot be marginalised under the circumstances and it cannot be said that the act did not amount to sexual assault as per Section 7 of the said Act. [Farhan Khan Vs. State of M.P.] ...1381

लैंगिक अपराधों से बालकों का संरक्षण अधिनियम, (2012 का 32), धारा 7/8 – आवेदक ने अभिकथित रूप से शिकायतकर्ता का हाथ पकड़ लिया और अपने हाथ से उसकी कमर को घेर लिया – व्यक्ति जो “लैंगिक आशय से कोई अन्य कृत्य करता है जिसमें बिना प्रवेशन के शारीरिक सम्पर्क समाविष्ट है, लैंगिक हमला कारित करना कहा जायेगा” इसे परिस्थितियों के अधीन गौण नहीं बनाया जा सकता और यह नहीं कहा जा सकता कि उक्त कृत्य, अधिनियम की धारा 7 के अनुसार लैंगिक हमला की कोटि में नहीं आता। (फरहान खान वि. म.प्र. राज्य) ...1381

Public Service (Promotion) Rules, M.P. 2002, Rule 7(9) – Service Law – Promotion – Petitioner’s ACRs were degraded by DPC after assigning reasons – He was put in select list according to marks obtained by him strictly in accordance with seniority – Promotion could not be granted due to non availability of vacancy – No junior was promoted – Fundamental right of consideration for promotion was not denied in arbitrary manner – Petition dismissed. [Brajesh Sharan Shukla Vs. State of M.P.] ...1240

लोक सेवा (पदोन्नति) नियम, म.प्र. 2002, नियम 7(9) – सेवा विधि – पदोन्नति – याची के वार्षिक गोपनीय प्रतिवेदनों को डी.पी.सी द्वारा कारण दर्शाने के पश्चात अवनत श्रेणीबद्ध किया गया – उसके द्वारा प्राप्त अंकों के अनुसार उसे चयन सूची में सम्यक् रूप से वरिष्ठता के अनुसार रखा गया – रिक्ति की अनपलब्धता के कारण पदोन्नति प्रदान नहीं की जा सकी – किसी कनिष्ठ को पदोन्नत नहीं किया गया – पदोन्नति हेतु विचार में लिये जाने के मूलभूत अधिकार को मनमाने ढंग से वंचित नहीं किया गया था – याचिका खारिज। (ब्रजेश शरण शुक्ला वि. म.प्र. राज्य) ...1240

Public Trusts Act, M.P. (30 of 1951), Section 14 – Application filed by petitioner u/s 14 for modification or clarification of order – Application dismissed on the ground that respondent No. 2 has no powers u/s 14 of the Act to review an earlier order passed by him – Held – Respondent No. 2 is not correct in holding that he has no power to modify or review the condition earlier imposed by him – Section

clearly states that only the conditions or restrictions, contained in the instrument of trust or in the order of any court cannot be modified by him – He only has to see whether sanction of transaction for which an application is made will be beneficial to the interests of the public trust – Impugned order quashed – Matter is remanded back to decide the petitioner's application afresh on merits. [Shri Jagdish Mandir Ganesh Mandir Public Trust, Jabalpur Vs. State of M.P.] ...1255

लोक न्यास अधिनियम, म.प्र. (1951 का 30), धारा 14 – याची द्वारा आदेश के आशोधन या स्पष्टीकरण हेतु धारा 14 के अंतर्गत आवेदन प्रस्तुत किया गया – आवेदन को इस आधार पर खारिज किया गया कि प्रत्यर्थी क्र. 2 को उसके द्वारा पूर्व में पारित किये गये आदेश का पुनर्विलोकन करने की अधिनियम की धारा 14 के अंतर्गत कोई शक्ति नहीं – अग्निनिर्धारित – यह धारणा करने में प्रत्यर्थी क्र. 2 सही नहीं था कि उसके द्वारा पूर्व में अधिरोपित शर्त का आशोधन या पुनर्विलोकन करने की उसे शक्ति नहीं – धारा स्पष्ट रूप से उल्लिखित करती है कि केवल न्यास के लिखत में अथवा किसी न्यायालय के आदेश में अंतर्विष्ट शर्त या निर्बन्धन को उसके द्वारा आशोधित नहीं किया जा सकता – उसे केवल यह देखना है कि संव्यवहार की मंजूरी, जिसके लिये आवेदन किया गया है, क्या लोक न्यास के हितों के लिये लाभदायक होगी – आक्षेपित आदेश अभिखंडित – याची का आवेदन गुणदोषों पर पुनः निर्णित किये जाने के लिये मामला प्रतिप्रेषित। (श्री जगदीश मंदिर गणेश मंदिर पब्लिक ट्रस्ट, जबलपुर वि. म.प्र. राज्य) ...1255

Recognised Examination Act, M.P. (10 of 1937), Section 4, Penal Code (45 of 1860), Sections 419, 320, 467, 468, 471 & 120-B & Criminal Procedure Code, 1973 (2 of 1974), Sections 4, 5, 438/439 – Bail – Offence allegedly committed by the applicant is covered by the provisions of the M.P. Recognised Examination Act, 1937 – Whether applicant can be tried for the offences punishable under the provisions of I.P.C. – Held – It is premature for the applicant to pursue this contention for the simple reason that, admittedly, investigation of the case is still pending – This can be pursued only after the evidence is collated by the Investigating Officer and presented alongwith the challan before the appropriate court – This contention cannot be the basis to grant bail to the applicant. [Bal Kumar Kaushik Vs. State of M.P.] (DB)...1673

मान्यताप्राप्त परीक्षा अधिनियम, म.प्र. (1937 का 10), धारा 4, दण्ड संहिता (1860 का 45), धाराएं 419, 320, 467, 468, 471 व 120बी व दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धाराएं 4, 5, 438/439 – जमानत – अभिकथित रूप से

आवेदक द्वारा कारित अपराध, म.प्र. मान्यताप्राप्त परीक्षा अधिनियम, 1937 के उपबंधों द्वारा आवृत्त है — क्या आवेदक को भा.द.सं. के उपबंधों के अंतर्गत दण्डनीय अपराधों के लिये अभियोजित किया जा सकता है — अभिनिर्धारित — इस तर्क को पेश करना आवेदक के लिये अपरिपक्व है, इस साधारण कारण से कि स्वीकृत रूप से प्रकरण का अन्वेषण अभी तक लंबित है — इस तर्क को केवल, अन्वेषणकर्ता अधिकारी द्वारा साक्ष्य एकत्रित किये जाने के पश्चात् और समुचित न्यायालय के समक्ष चालान के साथ प्रस्तुत किये जाने पर पेश किया जा सकता है — आवेदक को जमानत प्रदान करने के लिये यह तर्क आधार नहीं हो सकता। (बाल कुमार कौशिक वि. म.प्र. राज्य) (DB)...1673

Rewa Registration Act, 1917, Section 1 – Registration – No material on record to show that the property in question was yielding income of Rs. 25/- per annum – Held – Document is not required to be registered – Document was executed in the year 1946 and the Registration Act, 1908 and Indian Stamp Act, 1899 were made applicable to Vindhya Pradesh Region w.e.f. 16.04.50 – The same neither required registration nor payment of Stamp duty. [Mahesh Prasad Vs. Rambahadur] ...1321

रीवा पंजीकरण अधिनियम, 1917, धारा 1 – पंजीकरण – अभिलेख पर यह दर्शाने के लिये कोई सामग्री नहीं कि प्रश्नगत सम्पत्ति की रु. 25/- प्रतिवर्ष उपज से आय थी – अभिनिर्धारित – दस्तावेज का पंजीकरण अपेक्षित नहीं – दस्तावेज को वर्ष 1946 में निष्पादित किया गया है और पंजीकरण अधिनियम, 1908 व भारतीय स्टाम्प अधिनियम, 1899 को विंध्य प्रदेश क्षेत्र के लिये 16.04.50 से प्रभावी बनाया गया था – उक्त का न तो पंजीकरण अपेक्षित है और न ही स्टाम्प शुल्क का भुगतान। (महेश प्रसाद वि. रामबहादुर) ...1321

Rewa Registration Act, 1917, Section 21 – See – Civil Procedure Code, 1908, Section 100 [Mahesh Prasad Vs. Rambahadur] 1321

रीवा पंजीकरण अधिनियम, 1917, धारा 21 – देखें – सिविल प्रक्रिया संहिता, 1908, धारा 100 (महेश प्रसाद वि. रामबहादुर) ...1321

Right to Information Act (22 of 2005), Section 6 – Answer Sheets – Petitioners have a right to get their answer sheets under the Act, 2005 – After obtaining they can always say as to what was the answer given by them, the material based on which they say that their answer is correct and demonstrate as to how the evaluation is not correct – Petitioners may take recourse to remedy of obtaining the answer sheets under Act, 2005 and thereafter may make fresh claim – Petition

disposed off. [Dheeraj Pandey Vs. State of M.P.] (DB)...1027

सूचना का अधिकार अधिनियम (2005 का 22), धारा 6 – उत्तरपुस्तिकाएँ – अधिनियम 2005 के अंतर्गत अपनी उत्तर पुस्तिकाएँ प्राप्त करने का याचीगण को अधिकार है – अभिप्राप्ति पश्चात वे निश्चित रूप से कह सकते हैं कि उनके द्वारा दिया गया उत्तर क्या था, आधारित सामग्री जिसके आधार पर वे कहते हैं कि उनका उत्तर सही है और दर्शा सकते हैं कि कैसे मूल्यांकन सही नहीं – याचीगण, अधिनियम 2005 के अंतर्गत उत्तर पुस्तिकाएँ अभिप्राप्त करने के उपचार का अवलंब ले सकते हैं और तत्पश्चात नया दावा कर सकते हैं – याचिका का निपटारा किया गया। (धीरज पांडे वि. म.प्र. राज्य) (DB)...1027

Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act (33 of 1989), Section 3(i)(x) – See – Criminal Procedure Code, 1973, Sections 320(2) [Shamsher Bahadur Singh Chandel @ Golend Singh Vs. State of M.P.] ...1393

अनुसूचित जाति और अनुसूचित जनजाति (अत्याचार निवारण) अधिनियम (1989 का 33), धारा 3(i)(x) – देखें – दण्ड प्रक्रिया संहिता, 1973, धारा 320(2) (शमशेर बहादुर सिंह चंदेल उर्फ गोलेंद सिंह वि. म.प्र. राज्य) ...1393

Service Law – Admission – Dismissal – Petitioner who was working as clerk admitted that bonafidely he had added certain lines in the order – If an employee, working in the establishment of a subordinate court for a long period of 18 years was unaware of the fact that he was not required to add anything in the order sheet of the court on his own without the permission of the Presiding Judge and if he has done so, which fact he has admitted in his reply, it cannot be said that it would not amount to admission of the guilt including the misconduct – Petition dismissed. [Ramakant Gautam Vs. State of M.P.] ...974

सेवा विधि – स्वीकृति – बर्खास्तगी – याची जो क्लर्क के रूप में कार्यरत था, ने स्वीकार किया कि उसने आदेश में सद्भावनापूर्वक कतिपय पंक्तियाँ जोड़ी थीं – यदि कोई कर्मचारी जिसने 18 वर्ष की लंबी अवधि तक अधीनस्थ न्यायालय की स्थापना में कार्य किया है, वह इस तथ्य से अवगत नहीं था कि उसे न्यायालय की आदेश पत्रिका में, पीठासीन न्यायाधीश की अनुमति के बिना स्वयं से कुछ भी जोड़ना अपेक्षित नहीं और यदि उसने ऐसा किया, जिस तथ्य को उसने अपने जवाब में स्वीकार किया है; यह नहीं कहा जा सकता कि यह अपराध की स्वीकृति, जिसमें अवचार समाविष्ट है, की कोटि में नहीं आयेगा – याचिका खारिज। (रमाकान्त गौतम वि. म.प्र. राज्य) ...974

Service Law – Central Civil Services (Temporary Service),

Rules, 1965, Rule 5(1) – Termination – Service of petitioner was terminated and his name was struck from the strength of group centre, C.R.P.F., on the ground that the petitioner concealed the vital fact in respect of involvement in criminal case prior to entering into service – Held – Wherein an employment is sought by concealing vital facts which will have a bearing on the employment sought, it is open for the employer to dispense with the service of such incumbent who had chosen not to disclose the antecedents. [Diwakar Prasad Tiwari Vs. Union of India] ...1503

सेवा विधि – केन्द्रीय सिविल सेवा (अस्थाई सेवा), नियम, 1965, नियम 5(1) – सेवा समाप्ति – याची की सेवा समाप्त की गई और ग्रुप सेन्टर, सी.आर.पी.एफ. के दल से उसका नाम हटाया गया, इस आधार पर कि याची ने सेवा में प्रवेश से पूर्व, आपराधिक प्रकरण में संलिप्तता के संबंध में आवश्यक तथ्यों को छिपाया – अभिनिर्धारित – जहां आवश्यक तथ्यों को छिपाकर नियोजन चाहा गया, जिसका चाहे गये नियोजन पर प्रभाव पड़ता हो तब नियोक्ता ऐसे पदधारी की सेवा समाप्त कर सकता है, जिसने पूर्ववृत्त प्रकट नहीं करना पसंद किया। (दिवाकर प्रसाद तिवारी वि. यूनियन ऑफ इंडिया) ...1503

Service Law – Date of birth – Implementation instruction No. 76(B) – Petition filed for treating the date of birth of the petitioner to be 01.02.1955 instead of 01.09.1952 on the strength of Sirdar's certificate issued by the Board of Mining Examination which has not been certified by the Manager – Held – Birth certificate issued by the Boards/ Universities/Institutions would be treated as valid provided they are issued prior to the date of employment – Clause B'(i)(b) of the implementation instruction No. 76 provides that Mining Sirdarship, Winding Engine or similar certificate would be treated as authentic only where the Manager has certified the date of birth – Certificate produced by the petitioner cannot be held to be authentic and binding – Disposed of with direction to Age Determination Committee, to decide the matter after giving due opportunity of hearing to the respondent/petitioner within one month from 25.05.2014. [Western Coal Fields Ltd. Vs. Faggu Lal] (DB)...1483

सेवा विधि – जन्मतिथि – कार्यान्वयन अनुदेश क्र. 76(बी) – खनन परीक्षण बोर्ड द्वारा जारी सिरदार का प्रमाण पत्र जो प्रबंधक द्वारा प्रमाणित नहीं किया गया था, के आधार पर याची की जन्मतिथि दि. 01.09.1952 की बजाए 01.02.1955 माने जाने हेतु याचिका – अभिनिर्धारित – बोर्ड/विश्वविद्यालय/संस्था द्वारा जारी किये

गये जन्म प्रमाण पत्र को वैध माना जायेगा बशर्ते कि उन्हें नियोजन की तिथि से पूर्व जारी किया गया हो - कार्यान्वयन अनुदेश क्र. 76 का खंड बी(i)(b) उपबंधित करता है कि खनन सिरदारी, वाईडिंग, इंजन या समान प्रमाण पत्रों को केवल तब अधिप्रमाणित माना जायेगा, जब प्रबंधक ने जन्मतिथि को प्रमाणित किया हो - याची द्वारा प्रस्तुत प्रमाणपत्र को अधिप्रमाणित और बंधनकारक होना अभिनिर्धारित नहीं किया जा सकता - आयु निर्धारण समिति को प्रकरण का विनिश्चय, 25.05.2014 से एक माह के भीतर, याची/प्रत्यर्थी को सुनवाई का सम्यक् अवसर देने के पश्चात, करने का निर्देश देते हुए याचिका का निपटारा किया गया। (वेस्टर्न कोल फील्ड्स लि. वि. फगूलाल) (DB)...1483

Service Law – Educational Services (Collegiate Branch) Rules, M.P. 1990, Rule 8, Schedule III – Appointment – Qualification – Experience in private institution – Teaching experience of 10 years has to be counted from the date on incumbent acquires Ph.D. and not from the date prior thereto – Since the petitioner did not had to her credit ten years teaching experience in graduate/post graduate class – She was rightly not found suitable for candidature for appointment as Professor – Experience gained in private institution is not recognized in view of Government letter dated 29.04.2010. [Ankita Bohare (Dr.) (Smt.) Vs. M.P. Public Service Commission] ...1276

सेवा विधि – शैक्षणिक सेवा (महाविद्यालयीन शाखा), नियम, म.प्र. 1990, नियम 8, अनुसूची III – नियुक्ति – अर्हता – प्राइवेट संस्था में अनुभव – पदधारी द्वारा पी.एच.डी. अर्जित करने की तिथि से 10 वर्षों के अध्यापन अनुभव की गणना की जानी चाहिए और न कि उसके पूर्व की तिथि से – चूंकि याची के पास स्नातक/स्नातकोत्तर कक्षा में दस वर्ष का अध्यापन अनुभव नहीं था – प्रोफेसर के रूप में नियुक्ति हेतु अभ्यर्थिता के लिये उसे योग्य नहीं पाया जाना सही था – सरकारी पत्र दि. 29.04.2010 को दृष्टिगत रखते हुए, प्राइवेट संस्था में प्राप्त किये गये अनुभव को मान्यता नहीं है। (अकिता बोहरे (डॉ.)(श्रीमती) वि. एम.पी. पब्लिक सर्विस कमीशन) ...1276

Service Law – Judiciary – Interview Committee – Bona fides of members of committee not doubted – No Court, can venture to go behind assessment made by expert committee and substitute its own views by laying down different criterion by altering or fixing any benchmark. [Mahinder Kumar Vs. High Court of M.P. through Registrar General] (SC)...881

सेवा विधि – न्यायपालिका – साक्षात्कार समिति – समिति के सदस्यों की सद्भाविकता पर कोई संदेह नहीं – विशेषज्ञ समिति द्वारा किये गये निर्धारण में कोई

न्यायालय मध्यक्षेप नहीं कर सकता और किसी स्थिरबिन्दु में परिवर्तन करके या निश्चित करके भिन्न मापदंड प्रतिपादित करते हुए स्वयं का दृष्टिकोण प्रतिस्थापित नहीं कर सकता। (महिन्दर कुमार वि. हाईकोर्ट ऑफ एम.पी. द्वारा रजिस्ट्रार जनरल) (SC)...881

Service Law – Judiciary – Recruitment – Powers of High Court –
In absence of challenge to Rule 7 or without any serious infirmity in said Rule, High Court is fully empowered to evolve its own procedure of selection for Direct recruitment and promotion in respect of entry level District Judge and can also specify such procedure depending on exigencies from time to time in terms of Rule 7 of Rules, 1994. [Mahinder Kumar Vs. High Court of M.P. through Registrar General] (SC)...881

सेवा विधि – न्यायपालिका – भर्ती – उच्च न्यायालय की शक्तियाँ – नियम 7 को चुनौती की अनुपस्थिति में या उक्त नियम में किसी गंभीर कमी के बिना, उच्च न्यायालय, प्रवेश स्तर जिला न्यायाधीश के संबंध में सीधी भर्ती एवं पदोन्नति हेतु स्वयं की चयन प्रक्रिया विकसित करने के लिये पूर्ण रूप से सशक्त है और नियम 1994 के नियम 7 की शर्तोंनुसार समय-समय पर आवश्यकतानुसार उक्त प्रक्रिया विनिर्दिष्टित भी कर सकता है। (महिन्दर कुमार वि. हाईकोर्ट ऑफ एम.पी. द्वारा रजिस्ट्रार जनरल) (SC)...881

Service Law – Judiciary– Shetty Commission –
Recommendations by Shetty Commission are guidelines only which High Court should keep in mind while making selection for Higher Judicial Service. [Mahinder Kumar Vs. High Court of M.P. through Registrar General] (SC)...881

सेवा विधि – न्यायपालिका – शेट्टी कमीशन – शेट्टी कमीशन की सिफारिशें केवल दिशा निर्देश हैं जिसे उच्च न्यायालय को उच्चतर न्यायिक सेवा के लिये चयन करते समय ध्यान में रखना चाहिए। (महिन्दर कुमार वि. हाईकोर्ट ऑफ एम.पी. द्वारा रजिस्ट्रार जनरल) (SC)...881

Service law – National Coal Wage Agreement – Chapter VI –
Compassionate appointment – Denied on the ground of delay and that the petitioner happened to be the third wife – Succession certificate was not relied to acknowledge the petitioner being a dependent to deceased employee although no other contender came forward for claiming compassionate appointment – Held – National Coal Wage Agreement is binding on the employer – They are not justified in rejecting the claim on the ground of delay – Question of status of petitioner has been duly acknowledged by the succession court being

that of widow of employee – Action of respondent neither fair nor reasonable nor bonafide – Impugned order is set aside – Respondents are directed to offer appointment to the petitioner on a suitable post within a period of 8 weeks. [Samalwati Bai (Smt.) Vs. W.C.L.] ...1510

सेवा विधि – राष्ट्रीय कोयला वेतन समझौता – अध्याय VI – अनुकम्पा नियुक्ति – विलम्ब के आधार पर तथा याची तृतीय पत्नी होने के आधार पर अस्वीकार की गयी – याची, मृतक कर्मचारी की आश्रित होना अभिस्वीकृत करने के लिये उत्तराधिकार प्रमाण पत्र पर विश्वास नहीं किया गया यद्यपि अनुकम्पा नियुक्ति का दावा करने हेतु कोई अन्य दावेदार सामने नहीं आया – अभिनिर्धारित – राष्ट्रीय कोयला वेतन समझौता नियुक्ता पर बाध्यकारी है – विलम्ब के आधार पर दावा अस्वीकार करना उनके लिये न्यायोचित नहीं है – याची की हैसियत के प्रश्न को सम्यक् रूप से उत्तराधिकार न्यायालय द्वारा अभिस्वीकृत किया गया कि वह कर्मचारी की विधवा है – प्रत्यर्थी की कार्यवाही न तो उचित है और न ही युक्तियुक्त या सम्भाविक है – आक्षेपित आदेश अपास्त – याची को 8 सप्ताह की अवधि के भीतर, योग्य पद पर नियुक्ति प्रस्तावित करने के लिये प्रत्यर्थीगण को निदेशित किया गया। (समलवती बाई (श्रीमती) वि. डब्लू.सी.एल.) ...1510

Service Law – Promotion – On successfully passing trade training petitioner's name was brought in the fit list for promotion – In terms of GOP which was in vogue he was not required to appear in the trade test once again – In the year 1995 GOP was amended providing that person who were placed in the fit list but have not been promoted are required to take part in the Trade Test once again – There is nothing to disclose that the petitioner was informed about a change in GOP – Twice suspension of the petitioner was also held illegal by Higher Authority – Held – Petitioner was not offered full opportunity to take part in the Trade Test – Trade Test be conducted for him separately and after passing of the test his name be included in the fit list for the year in which the juniors were brought in the fit list for promotion – In case petitioner found fit, necessary orders with all consequential benefit be issued within 6 months – Petition allowed. [Hari Narayan Sharma Vs. State of M.P.] ...965

सेवा विधि – पदोन्नति – ट्रेड प्रशिक्षण सफलतापूर्वक पूर्ण करने पर याची के नाम को पदोन्नति हेतु योग्यता सूची में रखा गया – जीओपी की विद्यमान शर्तोंनुसार उसे पुनः ट्रेड परीक्षा में उपस्थित होना अपेक्षित नहीं था – वर्ष 1995 में जीओपी में संशोधन किया गया कि वे व्यक्ति जिन्हें योग्यता सूची में रखा गया था किन्तु पदोन्नत नहीं किया गया था, उन्हें पुनः ट्रेड परीक्षा में हिस्सा लेना अपेक्षित है – यह प्रकट करने के लिये कुछ नहीं कि जीओपी में बदलाव की

जानकारी याची को दी गयी थी - याची का दो बार निलंबन भी उच्चतर प्राधिकारी द्वारा अवैध ठहराया गया था - अभिनिर्धारित - याची को ट्रेड परीक्षा में हिस्सा लेने का पूर्व अवसर प्रस्तावित नहीं किया गया था - उसके लिये पृथक से ट्रेड परीक्षा करायी जावे तथा परीक्षा उत्तीर्ण करने पर उसका नाम उस वर्ष की योग्यता सूची में शामिल किया जावे, जिस वर्ष पदोन्नति हेतु कनिष्ठ व्यक्तियों को योग्यता सूची में रखा गया था - यदि याची योग्य प्राया जाता है, सभी परिणामिक लाभ सहित आवश्यक आदेश 6 माह के भीतर जारी किये जावें - याचिका मंजूर। (हरी नारायण शर्मा वि. म.प्र. राज्य) ...965

Service Law - Recovery - Although petitioner attained the age of superannuation on 31.07.2007 but he was allowed to continue up to 10.03.2008 - Excess amount paid to petitioner by way of salary for the said period was ordered to be recovered - Held - If the beneficiary had retired, order of recovery was not in accordance with the provision of law - Since the petitioner had worked for 8 months, he would be entitled to the salary for the said period - Amount recovered is directed to be refunded with interests @ 9.5% p.a. till payment is made to the petitioner. [Shabbir Mohammad Vs. State of M.P.] ...1537

सेवा विधि - वसूली - यद्यपि याची ने 31.07.2007 को अधिवार्षिकी आयु प्राप्त कर ली थी, परन्तु उसे 10.03.2008 तक बने रहने की मंजूरी दी गई थी - उक्त अवधि में याची को वेतन के रूप में भुगतान की गई अतिरिक्त राशि वसूलने का आदेश दिया गया - अभिनिर्धारित - यदि लाभग्राही सेवानिवृत्त हो गया है, वसूली का आदेश, विधि के उपबंध के अनुसरण में नहीं था - चूंकि याची ने 8 माह कार्य किया, वह उक्त अवधि के वेतन का हकदार होगा - वसूल की गयी रकम को याची को अदा किये जाने तक 9.5 प्रतिशत प्रतिवर्ष की दर से ब्याज के साथ वापस करने के लिये निदेशित किया गया। (शब्बीर मोहम्मद वि. म.प्र. राज्य) ...1537

Service Law - Selection list - Once a final selection list was published, without modification/cancellation of the said list, appellant cannot be deprived from the Patwari training - Respondent No. 5 who was not possessing the requisite qualification has been sent for training by subsequent orders to which no show cause was issued and no opportunity of hearing was furnished to him, however, the action of respondents not to send the appellant for Patwari training and to send respondent No. 5 in the Patwari training is arbitrary and discriminatory - Held - It is appropriate to direct the respondents to give a show cause notice to the appellant - In case respondents find that respondent No. 5 is more meritorious than the appellant, so as to deprive the appellant from the place in the selection list, after hearing him, will

pass a speaking order within a period of two weeks thereafter, deciding as to whether the appellant or the respondent No. 5 is more meritorious. [Jagdish Chandra Vs. State of M.P.] (DB)...1226

सेवा विधि - चयन सूची - एक बार अंतिम सूची को, उक्त सूची में कोई सधार/निरस्त किये बिना प्रकाशित किये जाने पर, अपीलार्थी को पटवारी के प्रशिक्षण से वंचित नहीं रखा जा सकता - प्रत्यर्थी क्र. 5 जो अपेक्षित अर्हता धारक नहीं था, को पश्चात्तवर्ती आदेश द्वारा प्रशिक्षण के लिये भेजा गया, जिसके लिये कोई कारण बताओ नोटिस जारी नहीं किया गया और उसे सुनवाई का अवसर प्रदान नहीं किया गया, अपितु, प्रत्यर्थीगण द्वारा अपीलार्थी को पटवारी प्रशिक्षण के लिये नहीं भेजने की कार्यवाही और प्रत्यर्थी क्र. 5 को भेजने की कार्यवाही मनमानी एवं भेदभावपूर्ण है - अभिनिर्धारित - अपीलार्थी को कारण बताओ नोटिस देने के लिये प्रत्यर्थीगण को निदेश देना उचित है - यदि प्रत्यर्थीगण पाते हैं कि प्रत्यर्थी क्र. 5, अपीलार्थी से अधिक गुणवत्ताधारक है जिससे कि चयन सूची में स्थान पाने से अपीलार्थी वंचित होगा, उसे सुनने के पश्चात्, इसके दो सप्ताह की अवधि के भीतर सकारण आदेश पारित करेगा, यह निर्णित करते हुए कि क्या अपीलार्थी अधिक गुणवत्ताधारक है अथवा प्रत्यर्थी क्र 5। (जगदीश चंद्रा वि. म.प्र. राज्य) (DB)...1226

Service Law - Seniority - Petitioner was duly selected and was appointed as Assistant Professor (Zoology) vide order dated 27.06.2005 - The probation period came to an end on 09.07.2008 after extension - Fresh appointment order has been issued to the petitioner - Held - Seniority of the petitioner has to be counted from the date of appointment and not from the date of confirmation - Petitioner is entitled to get the benefit of service rendered by him w.e.f. 09.07.2005 when the petitioner joined the service. [Anita Kanash (Solanki) (Dr.) (Smt.) Vs. State of M.P.] ...972

सेवा विधि - वरिष्ठता - याची को सम्यक् रूप से चयनित किया गया और सहायक प्रोफेसर (जूलॉजी) के रूप में आदेश दिनांक 27.06.2005 द्वारा नियुक्त किया गया - परीक्षा अवधि, बढ़ाये जाने के पश्चात् 09.7.2008 को समाप्त हो गयी - याची को नया नियुक्ति आदेश जारी किया गया - अभिनिर्धारित - याची की वरिष्ठता की गणना नियुक्ति की तिथि से की जानी चाहिए और न कि स्थाईकरण की तिथि से - याची, उसके द्वारा दी गयी सेवा का लाभ 09.07.2005 से प्रभावी रूप से प्राप्त करने का हकदार है जबसे उसने पदभार ग्रहण किया। (अनीता कनाश (सोलंकी) (डॉ.) (श्रीमती) वि. म.प्र. राज्य) ...972

Service Law - Termination of service - Petitioner was appointed on the post of District Programme Officer on contractual basis - Without giving any opportunity of hearing and without holding any

departmental enquiry as per clause 6 of agreement services of the petitioner were terminated – Held – No enquiry at all was conducted in the present case and also no decision was taken by the State Health Committee, Bhopal who was party to the agreement – Order passed by CMHO is without jurisdiction – Petition allowed. [Rahul Jain Vs. State of M.P.] ...982

सेवा विधि – सेवा समाप्ति – याची को जिला प्रोग्राम अधिकारी के पद पर, संविदा आधार पर नियुक्त किया गया – करार के खंड 6 के अनुसार सुनवाई का अवसर दिये बिना और विभागीय जांच किये बिना, याची की सेवा समाप्त की गयी – अभिनिर्धारित – वर्तमान प्रकरण में कोई जांच संचालित नहीं की गयी और न ही राज्य स्वास्थ्य समिति भोपाल द्वारा कोई निर्णय लिया गया जो करार का पक्षकार था – सीएमएचओ द्वारा पारित आदेश बिना अधिकारिता के है – याचिका मंजूर। (राहुल जैन वि. म.प्र. राज्य) ...982

Sick Industrial Companies (Special Provisions) Act, 1985 (1 of 1986), Section 22(1) – Scope of protection of guarantors u/s 22(1) of the SICA – Held – Proceedings can be initiated against the guarantors for recovery even if company being registered under SICA and pending before Board for Industrial and Financial Reconstruction (BIFR). [Radico Khaitan (M/s.) Vs. M.P. State Industrial Development Corporation Ltd.] ...1488

रुग्ण औद्योगिक कम्पनी (विशेष उपबंध) अधिनियम, 1985 (1986 का 1), धारा 22(1) – रुग्ण औद्योगिक कम्पनी अधिनियम की धारा 22(1) के अंतर्गत गारंटीकर्ता के संरक्षण की व्याप्ति – अभिनिर्धारित – गारंटीकर्ताओं के विरुद्ध वसूली के लिये कार्यवाही आरंभ की जा सकती है यद्यपि कम्पनी, रुग्ण औद्योगिक कम्पनी अधिनियम के अधीन पंजीकृत है एवं औद्योगिक और वित्तीय पुनर्निर्माण के लिए बोर्ड (बी.आई.एफ.आर.) के समक्ष लंबित है। (रेडिको खेतान (मे.) वि. एम.पी. स्टेट इंडस्ट्रियल डेवलपमेन्ट कारपोरेशन लि.) ...1488

Sick Industrial Companies (Special Provisions) Act, 1985 (1 of 1986), Section 22(1) – State Subsidy – That barring the amount towards State Subsidy the respondent is at liberty to recover other amount as mentioned in the Revenue Recovery Certificate. [Radico Khaitan (M/s.) Vs. M.P. State Industrial Development Corporation Ltd.] ...1488

रुग्ण औद्योगिक कम्पनी (विशेष उपबंध) अधिनियम, 1985 (1986 का 1), धारा 22(1) – राज्य सहायता – राज्य सहायता की ओर की रकम छोड़कर, प्रत्यर्थी अन्य रकम जैसे कि राजस्व वसूली प्रमाण पत्र में उल्लिखित है, को वसूल करने के

लिए स्वतंत्र है। (रेडिको खेतान (मे.) वि. एम.पी. स्टेट इंडस्ट्रियल डव्हेलपमेन्ट कारपोरेशन लि.) ...1488

Specific Relief Act (47 of 1963), Section 38 – See – Panchayat Raj Evam Gram Swaraj Adhiniyam, M.P. 1993, Sections 107 & 108 [Shanta Bai (Smt.) Vs. Kundlik] ...1117

विनिर्दिष्ट अनुतोष अधिनियम (1963 का 47), धारा 38 – देखें – पंचायत राज एवं ग्राम स्वराज अधिनियम, म.प्र. 1993, धाराएँ 107 व 108 (शांता बाई (श्रीमती) वि. कुंडलिक) ...1117

Stamp Act (2 of 1899), Section 2(14), Entry 1-A(e) – Instrument – Agreement to sale – Term “instrument” is wide enough to cover a document by which any right or liability is either created or purported to be created, transferred, limited, extended, extinguished or recorded – It covers any “instrument” which is related to the sale of immovable property – Words “relating to the sale of immovable property” are very wide than “Agreement to sale” – Document would fall under entry 1-A(e) of the Act, 1899 and not under 1-A(g) – Court directed to impound the document and send it to Collector for adjudication – Petition allowed. [Rajendra Syal Vs. Hari Prasad Agrawal] ...1296

स्टाम्प अधिनियम (1899 का 2), धारा 2 (14), प्रविष्टि 1-ए(इ) – लिखत – विक्रय करार – शब्द ‘लिखत’ इतना व्यापक है जिसमें कोई दस्तावेज, जिसके द्वारा किसी अधिकार या दायित्व का या तो सृजन होता है अथवा उसे सृजित, अंतरित, सीमित, विस्तारित, समाप्त या अभिलिखित किया जाना तात्पर्यित है, का समावेश होता है – यह किसी भी “लिखत” को आच्छादित करता है जो अचल सम्पत्ति के विक्रय से संबंधित है – “अचल सम्पत्ति के विक्रय से संबंधित” शब्द, “विक्रय का करार” से बहुत ज्यादा व्यापक है – दस्तावेज, अधिनियम 1899 की प्रविष्टि 1-ए(इ) के अंतर्गत आयेगा और न कि 1-ए(जी) के अंतर्गत – न्यायालय ने दस्तावेज परिवद्ध करने और कलेक्टर को न्यायनिर्णित करने हेतु भेजने के लिये निदेशित किया – याचिका मंजूर। (राजेन्द्र स्याल वि. हरिप्रसाद अग्रवाल) ...1296

State Services Examination Rules, M.P. 2008, Rule 16(9) – Petitioner who appeared in examination was alleged to have taken the answer sheet with her and was debarred to appear in the examination for a period of three years – Statements of departmental witnesses were not given nor any opportunity to cross examine them was given – Enquiry report was also not supplied – Opportunity of hearing was not given on the question of punishment – Petition allowed. [Minal Patidar]

(Smt.) Vs. Chairman M.P. Public Service Commission] ...*11

राज्य सेवा परीक्षा नियम, म.प्र. 2008, नियम 16(9) – याची जो परीक्षा में बैठी थी, वह अभिकथित रूप से उत्तरपुस्तिका अपने साथ ले गयी और उसे तीन वर्ष तक की अवधि के लिए परीक्षा में बैठने से विवर्जित किया गया – विभागीय साक्षियों के कथन नहीं दिये गये और न ही उनको प्रतिपरीक्षण का कोई अवसर दिया गया – जांच प्रतिवेदन भी प्रदाय नहीं किया गया – दण्ड के प्रश्न पर सुनवाई का अवसर नहीं दिया गया – याचिका मंजूर। (मीनल पाटीदार (श्रीमती) वि. चेयस्मेन एम.पी. पब्लिक सर्विस कमीशन) ...*11

Succession Act (39 of 1925), Section 63(c) – See – Evidence Act, 1872, Section 90 [Mahaprasad Vs. Badi Bai] ...1079

उत्तराधिकार अधिनियम (1925 का 39), धारा 63(सी) – देखें – साक्ष्य अधिनियम (1872 का 1), धारा 90 (महाप्रसाद वि. बड़ी बाई) ...1079

Van Upaj Vyapar (Viniyaman) Adhiniyam, M.P. (9 of 1969), Section 15(6) – See – Constitution – Article 227 [State of M.P. Vs. Ankit Rathore] ...1015

वन उपज व्यापार (विनियमन) अधिनियम, म.प्र. (1969 का 9), धारा 15(6) – देखें – संविधान – अनुच्छेद 227 (म.प्र. राज्य वि. अंकित राठौर) ...1015

Work Charged and Contingency Paid Employees Pension Rules M.P. 1979, Rule 2(C) – Proviso (As amended by notification dated 08.02.1980) – Benefit of the amendment could be availed by employees who were in service as on 01.04.1981 and had completed 10 years of service on or after 01.01.1974 – Respondent/employee having retired on 31.05.1974, is not entitled to the benefit of the amended Rule. [State of M.P. Vs. Motilal] (DB)...1222

कार्य भारित व आकस्मिकता भागी कर्मचारी पेंशन नियम म.प्र. 1979, नियम 2(सी) – परन्तुक (अधिसूचना दिनांक 08.02.1980 द्वारा यथा संशोधित) – संशोधन के लाभ का अवलम्ब वे कर्मचारी ले सकते जो 01.04.1981 को सेवा में थे और उन्होंने 01.01.1974 को या उसके पश्चात 10 वर्ष की सेवा पूर्ण की थी – प्रत्यर्थी/कर्मचारी, 31.05.1974 को सेवानिवृत्त हो जाने के कारण संशोधित नियम के लाभ का हकदार नहीं। (म.प्र. राज्य वि. मोतीलाल) (DB)...1222

THE INDIAN LAW REPORTS M.P. SERIES, 2014
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JOURNAL SECTION

APPOINTMENT TO THE MADHYA PRADESH HIGH COURT

We congratulate Hon'ble Mr. Justice Alok Verma on his appointment as Additional Judge of the High Court of Madhya Pradesh. Hon'ble Mr. Justice Alok Verma took oath of the High Office on 30.06.2014.



HON'BLE MR. JUSTICE ALOK VERMA

Born on November 28, 1955 at Chhindwara, Madhya Pradesh. After completing B.Sc., M.A., LL.B., LL.M, joined State Judicial Service on September 22, 1981 as Civil Judge Class-II. Was confirmed as Civil Judge on May 5, 1985. Was posted on deputation as Law Officer in Housing Board, Bhopal in the year 1987. Was appointed as Civil Judge Class-I in the year 1988. Was appointed as A.C.J.M. on November 1, 1991. Was posted as Chief Judicial Magistrate, Narsinghpur on June 25, 1994. Promoted as Offg. District Judge in Higher Judicial Service on September 5, 1994 and was posted as ADJ-II, at Sehore. Was posted as Deputy Secretary, Law Department, Bhopal in the year 1997. Was confirmed as District Judge in Higher Judicial Service w.e.f. 4.10.1997. Was posted as Deputy Registrar, National Judicial Academy, Bhopal in the year 2000. Was granted Selection Grade Scale w.e.f. 8.7.2000. Was posted as President, District Consumer Forum, Seoni in the year 2004. Was posted as District & Sessions Judge, Sheopur in the year 2006. Was posted as Commissioner, Departmental Enquiry, (GAD) in the year 2006 at Bhopal. Was granted Super Time Scale w.e.f. 1.4.2008. Was posted as

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District & Sessions Judge, Satna in the year 2010. Was posted as Director, Public Prosecution, Bhopal from June 25, 2013 till elevation.

Elevated as Additional Judge of the High Court of Madhya Pradesh and took oath on 30.06.2014.

We wish Hon'ble Mr. Justice Alok Verma, a successful tenure on the Bench.

**OVATION TO HON'BLE MR. JUSTICE ALOK VERMA,
GIVEN ON 30.06.2014, IN THE CONFERENCE HALL OF THE HIGH
COURT OF M.P. AT JABALPUR**

Shri Purushaindra Kaurav, Addl. Advocate General, while felicitating the new Judge, said:-

I extend hearty welcome to Hon'ble Shri Justice Alok Verma on his elevation as an Additional Judge of this Hon'ble Court. I consider it a privilege to offer respectful felicitation to your Lordship on behalf of the Law Officers of the State of Madhya Pradesh and on my own behalf.

Hon'ble Shri Justice Alok Verma is well known to all of us as my Lord's home district is Jabalpur. Hon'ble Shri Justice Alok Verma was born on 28 November 1955. My Lord is highly educated and has the distinction of acquiring a degree of science as well as a Masters Degree in Arts and subsequently LL.B and LL.M.

My Lord, after acquiring the Degree of Laws was appointed as Civil Judge Class-I on 15th July 1988, thereafter, he was appointed as Chief Judicial Magistrate w.e.f. 1st November 1991 and then he was promoted as District Judge on 5th September 2008. While he worked as a Judge in the Lower Judiciary in different capacities he remained posted at various places in the State of MP and has acquired vast experience. Quality is not an act, it is a habit. My Lord has also served as Director, Public Prosecution for the State of MP from 25th June 2013. Today he is adorning the high office of an Addl. Judge of this Hon'ble High Court and looking at his vast experience in the Lower Judiciary, I am confident that My Lord will take the right approach in dispensing justice with his intrinsic ability, magnanimity and understanding and shall deliver justice while upholding the dignity and decorum of this Hon'ble Court.

My Lord's elevation of Shri Alok Verma as an Additional Judge of this Hon'ble High Court will certainly be great step towards reaching the lofty

goal of speedy justice.

My Lords, I on behalf of the Advocate General, the State Govt, the Law Officers of the State & on my own behalf, once again congratulate Justice Alok Verma on his elevation and wish him a successful tenure as Judge of this Court.

Shri Adarsh Muni Trivedi, President, M.P. High Court Bar Association, said :-

My Lord Shri Justice Alok Verma, who have today joined the celestial galaxy of stars in high Judiciary entailing a milky way of 'light' synonymous to your own name 'Alok'.

The holy Bible says:- 'The joy cometh in morning' and this morning is really joyful for all of us, when we have assembled here to welcome you as a Judge of this High Court. We mark here our enshrined feelings towards Your Lordship. Your Lordship are welcome back to your own old hometown Jabalpur, now sitting on the golden chariot of Administration of Justice. The high waves of river mother Narmada for evocating you are clapping the banks and bursting out sweet singing to celebrate this auspicious occasion.

This is a cloudy day of 'Ashadh' with no rains anywhere, but your elevation as a Judge comes to us as sweet shower of drops of rain sprayed as a kiss on the dry cheeks of earth.

Lord Buddha says 'अप्प दीपो भव'. Become your own light. You have enlightened yourself with your own efforts. Your Lordship were born on 28th November 1955 at Jabalpur, and did your degrees of B.Sc., M.A., LL.B. and LL.M. with flying colours. Your Lordship joined the State Judicial Services as a Civil Judge, Class-II on 22nd September, 1981, as Civil Judge Class-I with effect from 15th July 1988 and as Chief Judicial Magistrate w.e.f. 1st November 1991. Thereafter, you were promoted as Officiating District Judge w.e.f. 5th September 1994; granted Selection-Grade Scale w.e.f. 8th July 2000 and Super Time Scale w.e.f. 1st April 2008. Your Lordship remained posted in different capacities at Bhopal, Nasrullaganj, Mhow, Narsinghpur, Sehore, Ujjain, Seoni, Sheopur, Satna and lastly before your elevation as Director, Public Prosecution at Bhopal w.e.f. 25th June 2013.

Your Lordship's life of about 33 years in sub-ordinate Judiciary has been infallibly and inextricably woven with the law and Justice delivery system. Your Lordship have been outstanding and capable of visualizing the things in

wide spectrums because of greatness of your character as a Judge and because of your spiritual abilities lying behind your patience to here the cases silently. It has been your energetic personality that you paved your way with your own inner-light, emerging from your own self, and deep insight. An achievement is a bondage. It obliges you to a higher achievement.

Your past achievements have convinced the Bar of your standing and strength to turn the tides in your coming future. Your Lordship deserve all reverence and lend a luster to this high office of a Judge of this Court.

This task of dispensing Justice is like the famous web of Penelope, the heroin of great epic 'Odysseus' by Greek writer Homer, a web ever in hand but never finished. Dispensing Justice is like drilling a tunnel through a mountain, which has its own obstacles of hard rocks relating to realities of life. A Judgment may have a long-lasting effect on the lives of others, and therefore, it requires a vision to see into the future, the vision of Judge who delivers it, out of the depths of his knowledge and experience. It is why the life of a Judge is assumed as a rigged journey on sharp edge of a sword, but the wisdom of a Judge is mightier than the sword.

Albert Camus in his essay 'Resistance' says :-

"A free Judiciary can, of course, be good or bad, but most certainly without, the Judiciary will never be anything but bad."

Let us remember simultaneously that Bar is always Judge of the Judges.

At this juncture, I express the enshrined feelings of entire M.P. High Court Bar Association towards Your Lordship Hon'ble the Chief Justice for your great efforts to bring the system of Administration of Justice steam-rolled and stealing the show. It is a welcome move. But I must say that in a good system, the process ought to be simpliciter, easy-going and not to be hyper-technical and burdensome and I can say that Your Lordship have always appreciated the suggestions of the Bar and I hope that in near future the things will turn to take shapes for a better and more easy-going as well as simpliciter technical process of presentation, listing and disposing of the cases smoothly. A good beginning always makes a good ending. The famous writer Graham Greene says :-

"There is always one moment, when the door opens and lets the future in."

Your Lordship, Hon'ble the Chief Justice have opened the door to let

the future in, as a fresh breeze to the system of Administration of Justice, an Innovator, Your Lordship have injected a new life and elements to decaying innards. It is better to light a candle than curse the darkness.

Poetess Julia Caracy says :-

"Little drops of water,
Little grains of sand,
Make the mighty ocean
And the pleasant land.
So the little minutes,
Humble though they be,
Make the mighty ages
Of eternity."

Akbar Allahabadi says :-

"उस मय से नहीं मतलब, दिल जिस से है बेगाना।
मकसूद है उस मय से, दिल ही में जो खिंचती है।।

I on behalf of all the members of M.P. High Court Bar Association and my own behalf, wish Your Lordship Shri Justice Alok Verma a great forensic tenure as a Judge of this High Court.

"अज्ञान का तिमिर गहन है
कंटक मय है मार्ग नया।
फिर भी बढ़ना है इस पथ पर
अन्तः के आलोक से ।।"
असतो मा सद्गमयः।
तमसो मा ज्योतिर्गमयः।।

Shri Rameshwar Neekhra, Chairman, State Bar Council of Madhya Pradesh, said :-

आज हम सभी के लिए अत्यंत हर्ष का विषय है कि इस प्रदेश के न्याय मंदिर में माननीय श्री जस्टिस आलोक वर्मा जी न्यायाधिपति के रूप में पदभार ग्रहण करने के इन क्षणों में हम उनका स्वागत कर रहे हैं।

माननीय श्री जस्टिस आलोक वर्मा जी

मैं मध्य प्रदेश राज्य अधिवक्ता परिषद की ओर से, प्रदेश के अधिवक्ताओं की ओर से एवं स्वयं अपनी ओर से आपको न्यायाधिपति के रूप में पदभार ग्रहण करने की मंगलबेला पर आपका हार्दिक अभिनंदन करता हूँ।

आपका जन्म 28 नवम्बर 1955 को जबलपुर में हुआ विधि स्नातक होने के पश्चात् आपने 15 जुलाई 1988 से प्रदेश की न्यायिक सेवाओं में अपनी सेवाएं देना प्रारंभ किया एवं न्यायिक अधिकारी के रूप में आपका एक लंबा अनुभव रहा है जिसमें आपने भोपाल, नसरुल्लागंज, महु, नरसिंहपुर, सीहोर, उज्जैन, सिवनी, श्योपुर, सतना सहित अनेक महत्वपूर्ण स्थानों में न्यायिक दंडाधिकारी, अतिरिक्त जिला एवं सत्र न्यायाधीश, डिप्टी सेक्रेटरी विधि विभाग, डिप्टी रजिस्ट्रार नेशनल ज्यूडिशियल एकेडमी भोपाल, अध्यक्ष जिला उपभोक्ता फोरम, कमिशनर विभागीय जांच एवं निदेशक, लोक अभियोजक के रूप में अपनी बहुमूल्य सेवाएं दी हैं। प्रदेश के छोटे स्थानों से लेकर बड़े स्थानों तक में हमारी न्यायिक व्यवस्था में जो समस्याएं हैं, जो कमियां हैं उनसे आप भलिभांति परिचित हैं। न्यायदान के इस महायज्ञ में जहां आप प्रकरणों का शीघ्र निराकरण कर लम्बे समय से न्याय की प्रतीक्षा में बांटजोह रहें लोगों के लिये अपने न्याय निर्णयों से राहत प्रदान करेंगे वही दूसरी ओर प्रदेश के अभिभाषकों और अधिवक्ता संघों की समस्याओं के निराकरण में भी अपना महान योगदान देंगे, इस हेतु मैं आशान्वित हूं।

तेजी से बदलती हुई हमारी सामाजिक परिस्थितियों में जवाबदेही की परिधि में समाज का हर अंग आ रहा है और हमारा न्यायतंत्र भी इससे अछूता नहीं है। मेरा यह निश्चित मत है कि हमारे देश का न्यायतंत्र आम आदमी के विश्वास को कायम रखने की अंतिम कड़ी है और संभवतः इसी चिंतन पर विचार करते हुए सर्वोच्च न्यायालय में माननीय प्रधान न्यायाधिपति जी ने 365 दिन न्याय के दरवाजे खुले रखने की आवश्यकता महसूस की है। मैं अपेक्षा करता हूँ कि मध्यप्रदेश के न्यायाधिपति के रूप में आपका कार्यकाल सुखद अनुभूतियों के साथ सफलताओं से परिपूर्ण रहेगा।

मैं पुनः एक बार फिर अपनी ओर से मध्य प्रदेश राज्य अधिवक्ता परिषद की ओर से एवं प्रदेश की अधिवक्ताओं की ओर से आपको हार्दिक शुभकामनाएं देता हूँ।

जय हिन्द,

Shri R.P Agrawal, High Court Advocates' Bar Association, Jabalpur, said :-

I, on behalf of the High Court Advocates' Bar Association and my own behalf hereby congratulate Hon'ble Shri Justice Alok Verma on his assuming office as a Judge of this court.

My lord has a very long judicial experience which is manifest from the Bio-data. referred to by the learned Speakers. His elevation to the bench is thus well merited.

Institution of cases in large number is indicative of the faith of the common men in judiciary. This faith has to be further nurtured.

High court is practically the last court and therefore the litigants legitimately expect patient hearing in their cases so that nothing is left out of consideration.

I assure on behalf of the High Court Advocates' Bar to My Lord full

cooperation in the dispensation of justice.

I, on behalf of High Court Advocates' Bar Association and my own behalf wish My Lord a happy and successful tenure.

Shri R.S. Siddiqui, Asstt. Solicitor General, said :-

It gives me immense pleasure to extend hearty welcome to Hon'ble Shri Justice Alok Verma on your Lordship's appointment as Judge of this Hon'ble Court.

My Lords all judges decide cases to the best of their ability. But the nobility of a Judge springs from the manner in which he hears the cases impartially and with an open mind. The best Judge is one who can keep at an arms length his own predilections and prejudices and then approach the matter and try the case before him with stern judicial frame of mind and without bias of any kind. To this he is compelled by his oath, upbringing and training. In this sense your Lordship will, we hope, make mark as a distinguished Judge of this Hon'ble Court.

You're Lordship's rich and varied experiences in the subordinate judiciary and the depth of insight and breadth possessed by yourself have fully qualified you to grace this high office. Your Lordship have achieved this distinction by sheer dint of your merit which has brought your goodself to this high office.

Your Lordship's achievements, virtues and values have been elaborately mentioned by my previous speakers to which I entirely agree by saying in two words "I agree" and I need not repeat the same. I, on behalf of Union of India, my colleagues who represent union of India and my own behalf welcome your Lordship's and wish a successful tenure as Judges of this Hon'ble High Court with the assurance of our optimum cooperation to my Lord in dispensation of justice.

Shri M.L. Jaiswal, President, Senior Advocates' Council, said :-

I have great pleasure in congratulating My Lord Justice Alok Verma on his elevation as an Additional Judge of this High Court. My Lord has a wide experience of more than 25 years in the field of law and was required to deal with complex problems of fact and law which will stand in stood stead while dealing with the complicated questions arising in the High Court.

Justice Frank Furter an eminent Judge of the Supreme Court of USA once said and I quote

"There have sometimes been martinets upon the Bench as there have been pompous wielders of authority who have used the paraphernalia of power in support of what they called their dignity. Therefore, the judges must be kept mindful of their limitations and their ultimate public responsibility by a vigorous stream of criticism expressed with condour however blunt" (unquote)

It is the joint effort of judges and lawyers which can reduce the backlog of cases which is threatening to sweep away the present system of administration of justice.

I, on my own behalf and on behalf of Senior Advocates Council extend your Lordship a warm welcome and wish you well.

Reply to ovation, by Hon'ble Mr. Justice Alok Verma :-

I quote George Herbert,

"God's mill grinds slow but sure"

At the very outset, I respectfully bow my head in prayer to Almighty the God, "Ma Sharda Devi" the presiding deity of Mâihar Shrine, "Lord Mahakaal" of Ujjain, "Lord Ganesha" of Ranthambore Fort and "Hazarat Pir Fatah Shah Baba" of Raisen, in all of whom I place immense faith, for showing me the righteous path, treading on which, I have reached this solemn juncture, where I find myself at the threshold of this noble Institution where I shall be serving as Judge from now onwards.

I am deeply obliged to My Lord the Chief Justice of this High Court and Hon'ble members of collegium for recommending my name for appointment as Judge of this court. I am also very thankful to Hon'ble judges of the collegium at the Supreme Court of India for approving my name for the appointment. I am also thankful to Judges of this court for their blessings and good wishes.

Today, I am feeling highly nostalgic as I look back and recall many people who have contributed to my career and personality. To begin with, I remember with reverence my father Late Shri Shyam Narayan Verma, whom we lost very young at the age of 45. My mother Late Smt. Kanti Verma, as a young widow, brought me up while working as Producer for women's and children's programmes at Akashwani, Bhopal. She was a graduate before she got married to my father in 1949, and later she obtained the degree of M.A in Sanskrit in late Fifties. Her educational background and her command over Hindi, English and Sanskrit, her methodical and practical approach to life, made great impact on my career in

Nineteen Seventies. She was highly influenced by her father, Late Shri Justice Tara Chand Shrivastava, who served this court till 1962 and was a judge of wide recognition of his time. My mother and grand father were the main driving force behind my joining this service.

State Judicial Service in those days was not a preferred job. Many Judges who were selected for State Civil Service also left Judiciary to join more glamorous job of Deputy Collector. But my mother was firm in her conviction and took me to Shri G.C. Saxena and Shri S.V.H. Pagare, Senior District Judge and Hon'ble Shri Justice S.M.N. Raina for guidance. Later on, the advice given Hon'ble Shri Justice R.C. Mishra, who recently retired from this Court dispelled my doubts and I continued to work with devotion and hard work. I am unfortunate that both my parents are not here to witness this glorious movement but their blessings have always been with me throughout.

To fill the void created by the absence of my parents, I thank my maternal uncle Shri Umesh Chandra Shrivastava, my maternal aunt Smt. Maya Verma, brothers Shri Pradeep Verma and Shri Praveen Shrivastava, my father-in-law Shri Prem Narayan Verma and mother-in-law Smt. Sushila Verma, to bless me. I am grateful to my uncles-in-law Shri Prakash Verma and Shri Jagdish Verma who traveled all the way to attend the ceremony. I am also thankful to my sister Smt. Maneesha Verma and brother-in-law Shri Upendra Verma, retired DGP, Kerala, for their good wishes. They are on a foreign visit hence could not attend this ceremony. I thank my sisters-in-law Smt. Arumina Verma, Smt. Sarika Vivek, co-brother Shri Aseem Vivek, brothers-in-law Shri Ashok Verma and Shri Ajay Verma and their wives Smt. Shikha Verma and Smt. Mona Verma and all other relatives, friends and colleagues for their good wishes. I am also thankful to my uncles-in-law Hon'ble Shri Justice Brijesh Kumar, retired Judge of the Supreme Court of India, Hon'ble Shri Justice O.P. Shrivastava, who retired from the High Court of Allahabad and Shri Satya Prakash Shrivastava a leading civil lawyer of Kanpur for their constant guidance and blessings.

During my career as a judicial officer, I have been helped and guided by many Judicial officer. Shri R.L. Sanghani, Shri L.J. Mandlik, Shri C.K. Tondon, Shri V.D. Bajpai who were my district Judges in early days. I am obliged to them for their guidance and support. There are many judges under whom I worked, who were subsequently elevated as Judges of this court. Shri Justice N.K. Jain deserves special mention, under whom I worked in M.P. Housing Board and then as President, DCDRF, Seoni. His guidance in service law and consumer law proved very useful to me. I am also thankful to Shri Justice S.S. Saraf and Shri

Justice Chandresh Bhushan for introducing me to National Judicial Academy. Also, I am grateful to Shri Justice R.C. Mishra with whom I worked as deputy registrar, NJA, Bhopal. I am also thankful to Shri S.M. Shrivastava, Shri Sharad Shrivastava, Shri Praveen Shah, Shri R.B.S. Baghel, Shri Rajeev Saxena, Shri R.P. Verma, Shri S.N. Dwivedi, Sushri Sushma Khosla, Shri H.K. Dube, Shri S.D. Dube who remained my well wishers throughout my life.

I also recall with deep gratitude, Hon'ble Shri Justice B.C. Verma, Hon'ble Shri Justice S.S. Sharma, Hon'ble Shri Justice M.S.A. Siddiqui, Hon'ble Shri Justice S.A. Naqvi, Hon'ble Shri Justice S.K. Pandey, Hon'ble Shri Justice A.K. Saxena, Hon'ble Shri Justice W.A. Shah, Hon'ble Shri Justice S.C. Sinho, Hon'ble Shri Justice M.A. Siddiqui, Hon'ble Shri Justice Rakesh Saxena, Hon'ble Smt. Justice Vimla Jain and my batch mates who are now judges of this court especially Hon'ble Shri Justices J.K. Jain and Susheel Palo, who had been very kind to me and helped me on various occasions. The list is not exhaustive, I am indebted to all other judicial officers, Junior and Senior to me, for their support and good wishes.

I avail this occasion to express my deep gratitude to my wife Dr. Smt. Madhu Verma, whom I always found standing by my side in all the vicissitudes of life. I thank my children, daughter Mallika and son Eshan for their love, affection and faith they reposed on me. They also worked very hard and have achieved desired positions in their lives. I am proud of them.

I am also thankful to staff members who worked with me sincerely and faithfully to help me perform my official duties and tasks successfully.

I am deeply touched by the kind words spoken about me here. I am highly conscious of my short comings, yet I thank the speakers for expressing their feelings about me. Bar is the Judge of the Judges. What is said here, I take, as your expectations from me. I quote the famous philosopher 'Socrates',

"Four things belong to a Judge, to hear courteously, to answer wisely, to consider soberly and to decide impartially."

I assure that I will follow these principles while working here as a judge. I request you to please judge me in the strictest possible manner and guide me, if you find me lacking.

I thank you all. May God give me strength and courage to perform my duties faithfully, honestly and sincerely.

FAREWELL



HON'BLE SMT. JUSTICE VIMLA JAIN

Born on June 11, 1952 in Village Vidwas (Surkhi) District Sagar, M.P. Took primary education in her village and higher secondary education in Sagar. Was married in the year 1968. After marriage, obtained degrees of M.A., L.L.B. and B.Ed. from Vikram University, Ujjain. Joined MP State Judicial Service as Civil Judge, Class-II at Indore, on August 12, 1978. Posted as Chief Judicial Magistrate in the year 1989 and as officiating District Judge in the year 1991. Worked as Additional District & Sessions Judge at Bhopal, Dewas and Shivpuri. Worked as Additional Commissioner Gas Relief, Bhopal. Was posted as District & Sessions Judge at Datia, Sehore and Tikamgarh. Worked as Special Judge, Raisen and as Principal Judge, Family Court, Gwalior. Confirmed as District Judge in Higher Judicial Service in the year 1996. Was granted Selection grade on 17.11.1997 and super time scale on 23.02.2005. Was posted as District and Sessions Judge, Rajgarh from the year 2009 till elevation.

Elevated as Additional Judge of the High Court of Madhya Pradesh on September 13, 2010, appointed as Judge on September 10, 2012 and demitted office on June 11, 2014.

We wish Hon'ble Smt. Justice Vimla Jain, a healthy, happy and prosperous life.

FAREWELL OVATION TO HON'BLE SMT. JUSTICE VIMLA JAIN, GIVEN ON 16.05.2014, IN THE CONFERENCE HALL OF THE HIGH COURT OF M.P. AT JABALPUR

Hon'ble Mr. Justice A.M. Khanwilkar, Chief Justice, bids farewell to the demitting Judge :-

We have assembled here to bid farewell to Hon'ble Smt. Justice Vimla Jain, who will be demitting office on 11.06.2014, in the midst of Summer Vacation, on attaining the age of superannuation after successful tenure for more than three and half years as a Judge of this High Court.

Smt. Justice Vimla Jain was born on 11.06.1952, in Village Vidwas (Surkhi), District Sagar. She took her primary education in her native village and higher secondary education at Sagar . After her marriage in the year 1968, Smt. Justice Jain joined Vikram University, Ujjain for higher studies and obtained degrees of M.A., LL.B. and B.Ed.

Smt. Justice Jain started her judicial career in 1978 as Civil Judge Class II in M.P. State Judicial Services. In year 1984 she got promoted to the post of Civil Judge Class I. Smt. Justice Jain entered Higher Judicial Services on 22.10.1991. She worked as Additional District Judge at Bhopal, Shivpuri and Raisen. In 2003 she was posted as District Judge, Datia and thereafter at Sehore, Tikamgarh and Rajgarh. Meanwhile, she also worked as Principal Judge, Family Court, Gwalior from 23 .07.2007 to 12.03.2009.

In view of her vast experience, she was elevated as an Additional Judge of the High Court of Madhya Pradesh on 13th September, 2010. She was appointed as permanent Judge. on 10th September, 2012. She has served the judiciary in various capacities for around 36 years.

Apart from making valuable contribution on judicial side, Smt. Justice Jain has also contributed in academic field .She has co-authored books on **Environmental Laws in India, M.P. Town Development Laws Manual and M.P. Educational Laws Manual**, with her husband Mr. Suresh Jain, a former IAS Officer of Madhya Pradesh Cadre.

Justice Smt. Vimla Jain is a soft spoken, ever smiling and polite individual. I am sure, her vast experience will be useful in future also and she will continue to render her valuable services to the legal fraternity and society.

With these words, I on behalf of my brother Judges, wish Smt. Justice Vimla Jain & Mr. Suresh Jain the best of health, happiness and prosperity in life.

Shri R.D. Jain, Advocate General of Madhya Pradesh, bids farewell :-

We have assembled here to bid farewell to Justice Smt. Vimla Jain who is demitting the office after a distinguished career as a Judge of the MP High Court.

Your Lordship had assumed the office as a judge of the High Court 13th of September 2010. Your Lordship's elevation as a judge of the MP High Court brought an era of sincerity, devotion to work and dedication. Today is a parting moment as far as the office as a Judge is concerned.

Hon'ble Justice Smt. Vimla Jain was born on 11th June, 1952. She joined judicial service as Civil Judge Class II, on 12-8-1978, promoted as Civil Judge Class I, on 24th November, 1984, as Chief Judicial Magistrate on 5th July, 1989 and as officiating District Judge on 22-10-1991.

Your Lordship was granted selection grade on 17-11-1997 and super-time scale on 23-2-2005. Your Lordship worked in different capacities at Indore, Bhopal, Dewas, Shivpuri, Raisen, Datia, Sehore, Tikamgarh and Gwalior and before elevation posted as District and Sessions Judge, Rajgarh.

As we know that every judge has his own working method and Your Lordship with the vast experience of working as a judge has served the legal system in different capacities in an upright manner.

Your lordship were quick in understanding and in my estimation the atmosphere of Court has always been smiling. Your Lordships' fairness as a judge was deeply impressive.

Uprightness of Your Lordship's conduct and strict adherence to high morals were some of the qualities which you never gave up, even amidst toughest of the time. While sitting on the Bench Your Lordship treated all members of the Bar alike. Though firm and devoted to the cause of justice yet Your Lordship never lost temperament while hearing cases.

It was laid down by Chief Justice Rangnath Mishra that "Trial judge is the kingpin in the hierarchical system of administration of justice. He directly comes in contract with the litigant. On him lies responsibility of building up cases appropriately. The personalities, knowledge, judicial restraint, capacity to maintain dignity are the aspects which go in making the court's functioning successful."

I have had the occasion to see the working method of Justice Mrs. Vimla Jain when she was a part of higher judiciary and I found her beyond any controversy. She believed in right to speedy trial and while working as session judge it was usually said by accused persons when their bail applications were rejected that there is no problem since the whole case will be decided within 2-3 months. This confidence in public was the hallmark of her working method.

According to Mr. Justice Thomas there are two key issues which must be addressed while considering the concept of judicial ethics i.e. (i) the identification of standard to which members of judiciary must be held; and (ii) a mechanism to ensure that their standards are adhered to. It consists of or relate to moral action, conduct, motive or character of judges. It consists of values as belong to the realm of judiciary without regard to time or place and are referable to justice dispensation. Considering this principle when I take stock of the work done by Justice Mrs. Vimla Jain she has always been applauded as a vigilant judge whether as a member of lower judiciary or as judge of High Court.

Though My Lord is retiring today from the Office of High Court Judge but Your Lordship has still to serve the legal world and I hope that you will provide services in this direction in the years to come and by the great treasure of your knowledge My Lord will be a guide and philosopher for newcomers.

Retirement is inevitable. This has always remained un-understable to me as to why one should retire on a given morning merely because the office holder has reached a particular age. As per Mr. V.P.Raman -

"Youth is not a physical affair at all, but an affair of the soul. You may be spiritually bald-headed at twenty five but natural decline of physical powers leaves the healthy spirit untouched"

and this is true about Your Lordship.

We don't know about your plans in future but I am sure that Your Lordship will take a decision which will enable the legal fraternity to avail the benefit of your experience & knowledge and the new lawyers and public at large will use it in times to come.

On behalf of the Government of Madhya Pradesh and Law officers of the State and on my own behalf I wish my Lord prosperous, healthy and long life.

Shri Adarsh Muni Trivedi, President, M.P. High Court Bar Association, bids farewell :-

We all have congregated here to bid a cordial farewell to Your Lordship Smt. Justice Vimla Jain on your demitting the office of a Judge of this Hon'ble High Court on 11th of June 2014, in the midst of Summer Vacation. Your Lordship have fulfilled your great mission to carry forward the pious journey of imparting Justice during your forensic tenure as a Judge of this Court. At the core of philosophy of your life bridging self-reflection and progress, lies a deep insight and a wisdom born of experience, by which you attained a certain degree of self-discipline and accumulated a great stock of knowledge, with your keen understanding of the laws of truth.

In Indian Philosophy 'VIMLA' is regarded as greatest of Ten 'Maha-Vidyas' [Super knowledges]. It is said :-

“वार्ता च कौतुकवती, विमला च विद्या
लोकोत्तर : परिमल : कुरङ्गनाभे :।
तैलस्य बिन्दुरिव वारिणि दुर्निवारम्
एतत् त्रयं प्रसरति स्वायमेव लोके ।।”

[The curious talk, knowledge having status that of 'Vimla' and the aroma of umbilicus of a deer; are those three things, which spread easily like the drops of oil on surface of water.]

In Sanskrit the word 'Vimla' stands for purity, it is why the great river 'Ganga' is also called as 'Vimla':-

“वेद हिमाद्रे चिरम वहन्ति।
विमला गंगा कल्याणी ।।”

'Vimla' also stands for pleasant gestures :-

“मुखं प्रसन्नं विमला च दृष्टिः।
कथानुरागो मधुरा च वाणी ।।”

The great Sanskrit Book 'Hitopadesh' admires the characteristics of a happy-face (मुखं प्रसन्नं), a pleasant gaze [विमला च दृष्टिः], interest in conversation [कथानुरागो] and sweet-speech [मधुरा च वाणी]. It is the great name which symbolizes the 'Goddess of knowledge' Saraswati. 'Vimla' is one of 100 names of 'Goddess Saraswati' :-

"महाकाली महाकाशा, महाकारा महाङ्कुशा ।
सीता च विमला विश्वा विद्युन्माला च वैष्णवी ॥"

[Sarasvatyashtottar shatnam stotram]

The Goddess mother Durga is also regarded as 'Vimla'. The 'Vimla shakti-Peeth' is situated in State of Orissa. It is said that in Puri the food dedicated to Lord Jagannath is at first tasted by Goddess Vimla. It was Vimla Devi, who dedicated as sword to Chhatrapati Shivaji for defending the nation. Thus, Vimla stands for PURITY, KNOWLEDGE and POWER as well as for Pleasant feelings. It is also said that Goddess Vimla destroys all forms of impurities.

In 'Mahayan' sect of Bouddha religion 'Vimla' is one of the ten names of 'Arya Bhoomi', that is India. It is why 'Bharat Mata' is also called as 'Mother Vimla'. The highest stage of 'Yoga' is also known as 'Vimla'.

William Shakespeare says :-

'What is in a name ?'

On the Contrary I say that a name 'encompasses the characteristics and deep inner qualities of a person, and it is what Your Lordship have shown to us by your words, deeds and mostly by your silence. Mahatma Gandhi has said :-

"Silence is more powerful than the words spoken"

Silence is not a weak-ness, but this great power can only be attained through transcendence of great height. Your Lordship have attained such a height of values and wisdom, by observing deep silence, which has enabled you to see your own inner depths.

Your Lordship were born on 11th of June 1952, in village- Vidwas (Surkhi), Distt.-Sagar, M.P. The month of June is rated as a rare month. It is a season of swelling colours of burning Sun, the fiery red flooding into magnetta, the glorious orange mixing with deep violet and pink, all of it moving, changing, rearranging itself to its down design. The burnt Mother Earth absorbs great heat into itself only in order to invite showers from dense black clouds to sustain the life. It is why the month of June stands for a great courage and this quality imprints the character of those who took birth in that month of June, immaculately with immanence. James Russel Lowell says :-

"What is so rare as a day in June ?

Then, if ever, come perfect days."

And in real sense, after your birth in a small village in such hot weather

of June; the perfection was showered on each and every day of your life by your courage, hard efforts, values, visions and knowledge, which have paved your way to credentials upto this high seat in Temple of Justice. You took your primary education in your village and higher secondary education in Sagar. You were married in year 1968. Life can be compared to a long tunnel that is being drilled through a mountain and one may come across the obstacles created by hard rocks. But marriage was no obstacle for you, rather it flourishes your life, and after marriage Your Lordship continued studies and obtained degrees of M.A., LL.B. and B.Ed. from Vikram University, Ujjain. Your credentials paved the way to excellence and you joined M.P. State Judicial Services on 12th August 1978 as Civil Judge, Class-II, Indore, promoted later on as Chief Judicial Magistrate and then to Higher Judicial Service from 22nd October 1991. Your Lordship also functioned as Additional Commissioner Bhopal Gas Tragedy Victims as Additional District Judge Shivpuri, as Special Judge at Raisen and thereafter on promotion functioned as District and Sessions Judge in different districts like Datia, Sehore and Tikamgarh and then as Principal Judge Family Court at Gwalior and District and Sessions Judge at Rajgarh upto 12th September 2010.

Your Lordship were elevated as an Additional Judge of the High Court of Madhya Pradesh on 13th September 2010 and appointed as a permanent Judge on 10th September 2012. And now these hot waves draped with dreary and searing current of winds in month of May, which has brought with it the demission of Your Lordship from this high office and has made the members of Bar down-hearted because of fare-well of a Judge who have kept the resolutions for securing and serving the cause of humanity by imparting substantial Justice with due diligence and honesty, by showing higher levels of performance and efficiency coloured with vivid experience. Your Lordship have always been cheerful with a smiling face but observing a graceful silence and patience of hearing.

" मुझे आता है खुद को किस तरह साबित किया जाए।
मेरी खुदारियों ने हाथ फैलाना नहीं सीखा ।। "

Your Lordship have got, what you deserve due to your qualities, virtues and visions, and efforts to the core.

We all the Members of M.P. High Court Bar Association wish Your Lordship a great success in your future-life for serving the society and nation

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by dedicating your rich knowledge, experience and wisdom as an enlightened personality. Particularly the women-folk have much expectations from you for their empowerment. You have such power to turn the tides of their fortune and to break their shackles of rotten customs. We pray to God :-

" जीवेद शरदः शतम् ।। "

[Long live encompassing the age of one-hundred years.]

We again wish you very happy and prosperous life.

I dedicate a few lines on behalf of the Bar in honour of Your Lordship :-

"विस्तृत होगी और धवल छवि ।

रंग भरेगा जीवन में रवि ।।

चले तूलिका नये फलक पर ।

नव दिगन्त में नया सृजन कर ।।

सरस गीत निर्भर बन सरला ।

नव विहान अब लायें विमला ।।"

We shall wait for a new dawn with new shades of colour.

Shri Manoj Sharma, Vice President, High Court, Advocates' Bar Association Jabalpur, bids farewell :-

Hon'ble Smt. Justice Vimla Jain, was Born on 11th June 1952 in Sagar. Joined as Civil Judge-II in Madhya Pradesh Judicial Service on 12th August 1978. Worked as Principal Judge Family Court Gwalior and District & Sessions Judge at Raigarh. Joined as Addl. Judge High Court of M.P. on 13th September 2010. As Permanent Judge on 10th September 2012. Will be demitting office on 11th June 2010.

We wish My Lord, God speed and I convey our best wishes.

Shri Shivendra Upadhyay, Chairman, State Bar Council of Madhya Pradesh, bids farewell :-

आज हम माननीया श्रीमती जस्टिस विमला जैन जी के विदाई के उपलक्ष्य में आयोजित समारोह में उपस्थित हुए हैं। न्यायमूर्ति माननीया श्रीमती जस्टिस विमला जैन एक गांव में पैदा हुई थी और ग्रामीण परिवेश में शिक्षा-दीक्षा के बाद आपने विक्रम विश्वविद्यालय उज्जैन से एम.ए., एल.एल.बी. की उपाधि प्राप्त की व वर्ष 1978 से व्यवहार न्यायधीश वर्ग-2 के रूप में न्यायिक सफर शुरू किया व मध्यप्रदेश के विभिन्न न्यायालयों में न्यायदान करने के बाद वे वर्ष 2010 में मध्य प्रदेश उच्च न्यायालय

के न्यायाधिपति के रूप में नियुक्त हुई। आपने 36 साल का न्यायिक सफर सफलतापूर्वक तय किया, इसके लिए आप बंधाई की पात्र हैं।

न्यायमूर्ति श्रीमती विमला जैन मृदुभाषी स्वभाव की हैं। आपने कभी भी न्यायिक कार्य में जल्दबाजी नहीं दिखाई व आपका गरिमामय व्यवहार व मृदुभाषी स्वभाव मध्य प्रदेश उच्च न्यायालय में हमेशा याद किया जायेगा। व आपका यह स्वभाव न्यायजगत के लिए हमेशा न्याय कार्य के समय अथवा व्यवहारिक जीवन में मार्गदर्शक होगा।

मैं अपनी ओर से, राज्य अधिवक्ता परिषद की ओर से एवं प्रदेश के अधिवक्ताओं की ओर से न्यायमूर्ति श्रीमती विमला जैन जी एवं श्री सुरेश जैन के उज्ज्वल भविष्य की कामना करता हूँ।

जय हिन्द, जय भारत

Shri O.P. Namdeo, Representative of the Union of India, for Shri R.S. Siddiqui, Asstt. Solicitor General, bids farewell :-

Today's assembly is to bid farewell to one of our eminent Judge Justice Smt. Vimla Jain on her last working day at Jabalpur High Court. Your lordship was born on 11 June 1952 at Village - Vidwas, and completed higher secondary education at District - Sagar (MP). After marriage, your lordship acquired the degree of MA, LLB and B.Ed. from Vikram University, Ujjain (MP). Your lordship joined MP State Judicial Service as Civil Judge, Class II on 12 Aug 1978 at Indore and was posted in that capacity till 14 June 1983. Your lordship was promoted as Civil Judge, Class I and was posted at Indore from 24 November 1984 to 08 June 1987.

Thereafter, your lordship was posted as Additional Chief Judicial Magistrate and Chief Judicial Magistrate from July 1989 to Aug 1991, then your lordship was promoted as Additional District and Session Judge and was posted in that capacity from 22 October 1991 to 13 June 1994 at Bhopal and thereafter at District - Dewas (MP). Your lordship has also functioned as Additional Commissioner, Bhopal Gas Victims from August 1995 till June 1998, thereafter also served as A.D.J. Shivpuri from 08 June 1998 till 30 May 1999. Further your lordship was posted at Raisen as Special Judge from 31 May 1999 to 04 April 2003.

Thereafter, your lordship has adorned the post of District and Session Judge at Datia, Sehore and Teekamgarh during the period from 01 August 2003 to 23 April 2007. Your lordship has also functioned as Principal Judge, at Gwalior from 23 July 2007 to March 2009. Your lordship has also worked as District and Session Judge Rajgarh.

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Your lordship was elevated as an Additional Judge of this Hon'ble High Court on 13 September 2010 and appointed as permanent Judge on 10 September 2012.

Your lordship is a courteous judge and known for your intelligence, hard work and punctuality.

Your Lordship has become an ideal in your own way, several controversial issues were solved by your Lordship's judgments. On every subject your Lordship interpreted the law in such a manner that the purpose and object of law maker is not frustrated. Your Lordship's performance in the arena of judiciary is par excellence and commendable.

My previous speakers have already spoken about the qualities and virtues of your lordship; So instead of repeating the same, I wish all the best for your Lordship's post retirement life.

I on behalf of Government of India, Asstt. Solicitor General, all the Law Officers of Central Government and on my own behalf, express our best wishes for good health, happiness and peace for the days ahead.

Shri M.L. Jaiswal, President, Senior Advocates' Council bids farewell :-

My Lord Justice Vimla Jain is laying down the office of Judge of the High Court today after completing a period of about 36 years of judicial service. In reply to the Ovation accorded to her by the High Court Bar, she recited a part of daily prayer that God may give her strength not to deviate from the right path of justice and discharge her duty without fear and favour. This was also the oath my Lord took at the time of elevation. My Lord stood to it steadfastly and has always been kind considerate and respectful to one and all. Though My Lords tenure was short but your Lordship always maintained your poise and performed the judicial duties with dignity and decorum.

I on behalf of Senior Advocates Council and on my own behalf wish your Lordship a very happy, peaceful and healthy life.

Farewell speech delivered by Hon'ble Smt. Justice Vimla Jain :-

At the outset, I thank all of you for the generosity in expressing your sentiments about me. I am honoured by such kind words. I really do not

know if I deserve so. I am grateful for the magnanimity of the learned speakers.

I believe that the legal profession is firmly based on values and ethics and the real power of the judiciary is based on good will and confidence of people. I also believe that the real duty of a Judge is to ensure that justice is administered without fear, favour, affection or ill will. I am happy that I firmly stood by these beliefs.

By the grace of God and blessings of saints, I have completed a long journey of 36 years of my judicial career. One of the very important chapter of my life is over. I enjoyed my tenure at Jabalpur with the feelings of complete satisfaction and achievement. I am grateful to all members of the legal fraternity and other officials, who assisted and co-operated with me in discharging my official functions during this long span of time.

I am happy to mention that I always enjoyed the confidence and co-operation of all the Judges of this Court in my past and present.

I express my gratitude to Hon'ble Justice Shri A.K. Patnaik, Judge of Apex Court, who had been the Chief Justice of Madhya Pradesh. I am highly obliged to the former Chief Justice Hon'ble Shri S.R. Alam, Hon'ble Justice Shri Sushil Harkauli and Hon'ble Justice Shri Krishn Kumar Lahoti.

I am grateful from the bottom of my heart to Hon'ble Chief justice Shri A.M.Khanwilkar. I am thankful to Hon'ble justice Shri Ajit Singh, Administrative Judge. I am grateful to honourable brother and sister judges at all the three Benches of this Court for extending their whole hearted co-operation.

I am extremely happy that my family always stood with me. I have received constant support from my life partner Shri Suresh jain, former IAS Officer. Without his support and co-operation, I could not have completed this long journey as a Judge. I would also like to express my deep sense of gratitude to all my family members, relatives and friends.

I express my heartiest thanks to my sons Vikas and Vidhan and daughters-in-law Dr. Veenu and Nidhi and my daughters Vidyut and Vidhi and sons in-law Nitin and Rajesh. They always provided their physical as well as emotional support to me.

I specially thank my elder son Vikas who came on this occasion from London.

I bow to my father late Shri Sundarlal Jain, who had been a great

source of inspiration to me. He had been a very kind, pious, simple, industrious and religious person. He used to tell me that a Judge should work hard and should be sincere, honest, impartial and fearless. I always follow his guidance in letter and spirit. I am very happy that my mother Smt. Sumati Rani saw me working as a Judge of High Court. I am very lucky to have her blessings.

I could reach to this height with the co-operation of all my associates. I am grateful to them for their co-operation and good wishes.

I am grateful to learned senior advocates for their greatness and affection showered on me. Their arguments enlightened me and contributed to my judgments. Many young advocates of this Court have tremendous moral and professional potential which shall equip them with inner strength for their bright future. My heartiest thanks to all the learned members of the bar.

I thank Shri Ved Prakash Sharma, Registrar General and all officers of the Registry. I also thank Judges of subordinate Judiciary, who had been my colleagues, for their co-operation and well wishes. I thank all members of my personal staff Pushpendra Jain, Amit Jain, Manju Chouksey and Mahendra Kumar Dixit. I also thank my PSOs Ram Pratap Mishra, Brij Vilas Tiwari, Driver Rajjan and Jamadar Sudarshan. I also thank Arvind Rai and other protocol officers and other officials of various sections of the High Court for rendering their sincere assistance to me from time to time. My special thanks to Dr. A.C. Sonkar for his ever willing medical advice and assistance during my stay at Jabalpur.

I thank you all for your participation in my farewell ovation ceremony. I am greatly touched by your generosity and good wishes. I extend my warmest greetings to all of you. I wish you all good health, peace and prosperity. I conclude my address with the prayer which I recite daily :-

मैत्री भाव जगत में मेरा
सब जीवों से नित्य रहे ।
दीन दुखी जीवों पर मेरे
उर से करुणा स्रोत बहे ॥
होउ नहीं कृतघ्न कभी मैं
द्रोह न मेरे उर आवे ।
गुण ग्रहण का भाव रहे नित
दृष्टि न दोषों पर जावे ॥

Thank you. Jai Hind

Short Note

***(10) (DB)**

Before Mr. Justice S.K. Gangele & Mr. Justice B.D. Rath

W.P. No. 513/2014 (Gwalior) decided on 23 April, 2014

DHANWAN

... Petitioner

Vs.

STATE OF M.P. & ors.

.....Respondents

National Security Act (65 of 1980), Section 3(2) – Preventive detention order – The activities of the detenu do not convey to have the effect and potentiality to disturb or dislocate even tempo of life of the community – Hence, such an action of the detenu/petitioner could not be termed as prejudicial to the maintenance of the public order – Order of detention is unjustified, liable to be set aside.

राष्ट्रीय सुरक्षा अधिनियम (1980 का 65), धारा 3(2) – निवारक निरोध आदेश – बंदी के क्रियाकलाप, समुदाय के जीवन की संयत गति को बाधित एवं विस्थापित करने की संभाव्यता प्रकट नहीं करते – अतः, बंदी/याची के उक्त कार्य को लोक व्यवस्था को बनाये रखने पर प्रतिकूल प्रभाव डालने वाला नहीं कहा जा सकता – निरोध आदेश अनुचित, अपास्त किये जाने योग्य।

The order of the Court was delivered by : **B.D. RATHI, J.**

Cases referred :

1995 JIJ 545, 2013(1) MPLJ (Cri) 565, AIR 1966 SC 740, AIR 1988 SC 208.

R.K.S. Kushwaha, for the petitioner.

Vivek Khedkar, Dy. A.G. for the respondents/State.

Short Note

***(11)**

Before Mr. Justice N.K. Mody

W.P. No. 10755/2012 (Indore) decided on 5 July, 2013

MINAL PATIDAR (SMT.)

...Petitioner

Vs.

CHAIRMAN, M.P. PUBLIC SERVICE COMMISSION. & Ors. ...Respondents

State Services Examination Rules, M.P. 2008, Rule 16(9) – Petitioner who appeared in examination was alleged to have taken the answer sheet with her and was debarred to appear in the examination for a period of three years – Statements of departmental witnesses

were not given nor any opportunity to cross examine them was given – Enquiry report was also not supplied – Opportunity of hearing was not given on the question of punishment. – Petition allowed:

राज्य सेवा परीक्षा नियम, म.प्र. 2008, नियम 16(9) – याची जो परीक्षा में बैठी थी, वह अभिकथित रूप से उत्तरपुस्तिका अपने साथ ले गयी और उसे तीन वर्ष तक की अवधि के लिए परीक्षा में बैठने से विवर्जित किया गया – विभागीय साक्षियों के कथन नहीं दिये गये और न ही उनको प्रतिपरीक्षण का कोई अवसर दिया गया – जांच प्रतिवेदन भी प्रदाय नहीं किया गया – दण्ड के प्रश्न पर सुनवाई का अवसर नहीं दिया गया – याचिका मंजूर।

Case referred :

(1992) 2 SCC 206.

Seema Sharma, for the petitioner.

V.P. Khare, for the respondents.

Short Note

***(12)**

Before Mr. Justice U.C. Maheshwari

M.A.No. 826/2010 (Jabalpur) decided on 5 April, 2013

SUDHAR SONI (SMT.) & anr.

...Appellants

Vs.

SMT. RINKU SINGH & ors.

...Respondents

(and M.A. No. 1702/2010)

Motor Vehicles Act (59 of 1988), Sections 168 & 171 - Deceased aged 34 to 35 years - Earning Rs. 3,000/- per month - 1/3rd towards personal expenses deducted - Multiplier of 16 applicable - Total compensation of Rs. 4,04,000/- awarded with interest.

मोटर यान अधिनियम (1988 का 59), धाराएं 168 व 171 – मृतक की आयु 34 से 35 वर्ष – रु. 3,000/- प्रतिमाह अर्जन – व्यक्तिगत खर्च की ओर 1/3 घटाया गया – 16 का गुणक लागू होगा – कुल प्रतिकर रु. 4,04,000/- ब्याज सहित अवार्ड किया गया।

Case referred :

2009 (6) SCC 121.

Y.M. Tiwari, for the appellants.

Hari Bahadur Goutam, for the respondents.

I.L.R. [2014] M.P., 1463

SUPREME COURT OF INDIA

Before Mr. Justice K.S. Radhakrishnan & Mr. Justice Dipak Misra

Cr.A. No. 451/2013 decided on 15 March, 2013

KAMLENDRA SINGH @ PAPPU SINGH

...Appellant

Vs.

STATE OF M.P.

...Respondent

Penal Code (45 of 1860), Sections 341, 307/34 & Juvenile Justice (Care and Protection of Children) Act (56 of 2000); Sections 7A, 49 - Juvenile Justice - Appellant convicted u/s 307 of IPC - Plea of appellant being juvenile was neither raised before trial court nor before High Court - To prove the age, High School Board Mark Sheet and admission register were produced - State was directed to verify - Addl. S.P. after verifying, reported that the documents are genuine - Held - As per document appellant was juvenile on the date of incident - Conviction and sentence awarded is set aside - Case record is directed to be placed before the concerned Juvenile Board for awarding proper sentence. (Para 7)

दण्ड संहिता (1860 का 45), धाराएं 341, 307/34, एवं किशोर न्याय (बालकों की देख-रेख और संरक्षण) अधिनियम (2000 का 56), धारा 7ए, 49 - किशोर न्याय - अपीलार्थी को भा.द.सं. की धारा 307 के अंतर्गत दोषसिद्ध किया गया - अपीलार्थी के किशोर होने का अभिवाक् न तो विचारण न्यायालय के समक्ष उठाया गया और न ही उच्च न्यायालय के समक्ष - वय साबित करने के लिये, उच्च विद्यालय बोर्ड की अंक सूची तथा प्रवेश पंजी प्रस्तुत की गई - राज्य को सत्यापित करने के लिये निदेशित किया गया - जांच पश्चात अति. पुलिस अधीक्षक ने प्रतिवेदन दिया कि दस्तावेज प्रमाणिक है - अभिनिर्धारित - दस्तावेजों के अनुसार, अपीलार्थी घटना दिनांक को किशोर था - दोषसिद्धि और दिया गया दण्डादेश अपास्त - प्रकरण अभिलेख को संबंधित किशोर बोर्ड के समक्ष उचित दण्डादेश दिये जाने हेतु प्रस्तुत करने के लिये निदेशित किया गया।

Case referred :

(2012) 9 SCC 750.

J U D G M E N T

The Judgment of the Court was delivered by :
K.S. RADHAKRISHNAN, J. :-

1. Leave granted.
2. The appellant, along with two others, were charge sheeted for offences punishable under Sections 341, 294, 307 read with Section 34 IPC for conspiring to murder of one Atul Mishra on 27.8.1993 in Rewa at Allahabad Road, near Kalewa Hotel. For the said purpose, the appellant accused gave a country made pistol to the accused Raj Kumar Singh and exhorted him to shoot Atul Mishra. Raj Kumar Singh fired at Atul Mishra with the said country made pistol and he succumbed to his injuries.
3. The trial Court convicted him under Sections 341, 307 read with Section 34 IPC, but acquitted him of the charges under Section 294 IPC. For the offence under Section 341 IPC, he was sentenced to undergo rigorous imprisonment for one month and for the offence under Section 307 IPC, he was sentenced to rigorous imprisonment for one year along with a fine of Rs.500/-. Both the sentences were directed to run concurrently.
4. On appeal, the High Court set aside the conviction and sentence for the offence punishable under Section 341 IPC, but the conviction as well as the sentence awarded for offence punishable under Section 307 IPC was maintained, against which this appeal has been preferred.
5. Shri S.K. Dubey, learned senior counsel appearing for the appellant, submitted that the appellant was a juvenile on the date of the incident i.e. 27.8.1993, though the claim of juvenility was not raised either before the trial Court or the High Court. In order to establish the date of birth of the accused, the High School Board Mark-sheet /Certificate and a copy of the admission register were produced before this Court. Those documents would indicate that on the date of the incident, the date of birth of the accused is 25.2.1977. If that be so, the age of the accused on the date of the incident was 16 years 6 months and 2 days.
6. When the matter came up for hearing on 9.11.2012, this Court directed the State of Madhya Pradesh to find out whether the appellant was a juvenile on the date of the incident and the veracity of the documents mentioned above. The State Government got those documents verified through the Additional

Superintendent of Police and reported that the documents are genuine.

7. Going by those documents, evidently, the date of birth of the appellant is 25.2.1977. If that be so, the appellant was a juvenile on the date of the incident. We have extensively examined the provisions of the Juvenile of Justice (Care and Protection of Children) Act, 2000 in *Ashwani Kumar Saxena v. State of M.P.* (2012) 9 SCC 750 and we are of the view that the principle laid down in the above judgment squarely applies to the facts of the present case. Under such circumstances, we are inclined to set aside the sentence awarded by the trial Court, confirmed by the High Court and the case records are directed to be placed before the concerned Juvenile Justice Board for awarding the appropriate sentence. Ordered accordingly.

8. The appeal is allowed as above.

Appeal allowed.

I.L.R. [2014] M.P., 1465

SUPREME COURT OF INDIA

Before Mr. Justice Dr. B.S. Chauhan &

Mr. Justice Fakkir Mohamed Ibrahim Kalifulla

Cr.A. No. 1156/2010 decided on 16 April, 2013

DILIP

Vs.

STATE OF MADHYA PRADESH

...Appellant

...Respondent

Penal Code (45 of 1860), Section 376 - Rape - Method of Investigation - Guidelines should be issued by D.G. Police and Home Department to different authorities as how to deal with rape cases - Certain care has to be taken by Doctor who medically examine the victim of rape and should generally be examined by a female Doctor - Victim should also be provided the help of some psychiatric - Medical report should be prepared expeditiously and Doctor should give his/her opinion with all possible angle e.g. opinion regarding age taking into consideration the number of teeth, secondary sex characters, radiological test etc. - I.O. must ensure that victim should be handled carefully by lady police officer depending upon the availability - Victim should be sent for medical examination at the earliest and her statement should be recorded in presence of her family members - Investigation should be completed at the earliest to avoid bail to the accused on technicalities like u/s 167 of

Cr.P.C. and final report be submitted at the earliest - Chief Secretary requested to examine the observations and issue comprehensive guidelines - Appeal dismissed. (Paras 17 & 18)

दण्ड संहिता (1860 का 45), धारा 376 - बलात्कार - अन्वेषण की विधि - पुलिस महानिदेशक तथा गृह विभाग द्वारा विभिन्न प्राधिकारियों को मार्गदर्शन जारी किये जाने चाहिए कि बलात्कार के प्रकरणों में कार्यवाही कैसे की जावे - बलात्कार पीड़िता के चिकित्सीय परीक्षण में चिकित्सक द्वारा कतिपय सावधानियां बरतनी चाहिये और साधारणतः महिला चिकित्सक द्वारा परीक्षण किया जाना चाहिये - पीड़िता को किसी मनोवैज्ञानिक की सहायता भी प्रदान की जानी चाहिये - चिकित्सा प्रतिवेदन शीघ्रातिशीघ्र तैयार किया जाना चाहिये और चिकित्सक को सभी संग्राहित दृष्टिकोणों के साथ अपना अभिमत देना चाहिये उदाहरणार्थ, दांतों की संख्या, द्वितीयक यौन विशेषताएँ, विकिरण विज्ञान संबंधी जांच इत्यादि को विचार में लेकर आयु के संबंध में अभिमत - जांचकर्ता अधिकारी को सुनिश्चित करना चाहिए कि उपलब्धता पर निर्भर रहते हुये, महिला पुलिस अधिकारी द्वारा पीड़िता को सावधानीपूर्वक संग्राला जाना चाहिये - पीड़िता को चिकित्सीय परीक्षण हेतु तुरंत भेजा जाना चाहिए और उसका कथन उसके परिवार के सदस्यों की उपस्थिति में अभिलिखित किया जाना चाहिए - द.प्र.सं. की धारा 167 के अंतर्गत जैसी तकनीकियों के आधार पर अभियुक्त को जमानत से वंचित करने के लिये अन्वेषण को शीघ्रता से पूरा किया जाना चाहिए और अंतिम प्रतिवेदन शीघ्रता से प्रस्तुत किया जाना चाहिए - टिप्पणीयों का परीक्षण कर व्यापक मार्गदर्शन जारी करने के लिये मुख्य सचिव को निवेदन किया गया - अपील खारिज।

Cases referred :

AIR 1981 SC 39, Cr.A. No. 1962/2010, decided on 10.04.2013, AIR 2000 SC 2798, AIR 2003 SC 1639, AIR 2007 SC 3059, (1995) 1 SCC 14.

ORDER

1. This appeal has been preferred against the impugned judgment and order dated 4.11.2006 in Criminal Appeal No.1228 of 1992 of the High Court of Madhya Pradesh at Jabalpur, by way of which it reversed the judgment and order of the Sessions Judge, Seoni, Madhya Pradesh dated 16.7.1992 in Sessions Trial No.82 of 1990, by which the appellant stood acquitted of the charges punishable under Sections 376 and 450 of the Indian Penal Code, 1860 (hereinafter referred to as 'IPC').

2. Facts and circumstances giving rise to this appeal are that :-

A. The appellant is younger brother of the brother-in-law of the

prosecutrix-Diplesh. The appellant came to the house of the prosecutrix on 13.6.1990. Her parents and elder brother left for the market leaving the prosecutrix and her younger brother in the house. The appellant found the prosecutrix alone as her brother was merely a child and raped her. The prosecutrix fainted and on regaining her consciousness, the prosecutrix narrated the incident to her father who lodged the FIR with the police on the same day.

B. The appellant was arrested on 15.6.1990 and after investigation, the prosecution filed chargesheet against the appellant under Sections 376 and 450 IPC.

C. The Sessions Court in Sessions Trial No. 82 of 1990 acquitted the appellant vide judgment dated 16.7.1992, on the ground that the prosecution failed to prove that prosecutrix was below 16 years of age, and secondly that she had consented for having sexual intercourse with the appellant.

D. Aggrieved, the State preferred Criminal Appeal No.1228 of 1992, before the High Court. The High Court reversed the judgment of the Sessions Court, convicted the appellant for the said offences and awarded punishment of 7 years on both counts. The State appeal has been allowed.

Hence, this appeal.

3. Shri Ashok Mahajan and Shri B. Sridhar, learned Amicus Curiae have submitted that there is nothing on record to show that at the relevant time, the prosecutrix was below 16 years of age. The trial Court had rightly come to conclusion that it was a case of consent and such a finding was based on evidence on record. There was no occasion for the High Court to reverse the said finding as there was no perversity in it. Hence, the appeal deserves to be allowed.

4. Per contra, Ms. Vibha Datta Makhija, learned Standing counsel for the State has submitted that the trial Court erred in understanding the meaning of consent and reached a wrong conclusion that the prosecutrix was not below 16 years of age. The High Court has considered the case in correct perspective and reached the correct conclusion that the prosecutrix was below 16 years of age. Thus, the consent, even if it was so, loses its significance. Thus, the appeal is liable to be dismissed.

5. We have considered the rival submissions made by the learned counsel for the parties and perused the record.

6. Sawan Lal (PW-2), father of the prosecutrix while lodging an FIR stated that the prosecutrix was 15 years of age. The Investigating Officer inspected the place of occurrence and found bangles and also recovered blood stained underwear, saree and petikot of the prosecutrix and also the blood stained earth and plain earth. Dr. Kiran Katre (PW-8) examined the prosecutrix medically and opined that the prosecutrix was about 14-15 years of age. According to Dr. Katre, it was difficult even to put the little finger in the vagina of the prosecutrix. She was referred to the Radiologist, however, no such report was made available. The prosecutrix was examined in the Court on 12.11.1991 as PW-1 and the learned Sessions Judge assessed her age on the basis of her appearance as about 14 years. In addition thereto, one Kabir Das (PW-4) who was a Teacher in the night school where the prosecutrix was studying, deposed that according to the school register, her date of birth was 7.3.1975 and thus, her age was about 14 years. The said date of birth had been recorded several years prior to the incident. It was in view thereof that Kabir Das (PW-4) had issued a Certificate, Exh.P/5, and he proved the said Certificate in the Court.

7. The trial Court came to the conclusion that the prosecutrix was not less than 16 years at the relevant time, on the ground that Dr. Katre (PW-8) had referred her for Radiologist test and she had not been examined by the Radiologist. Withholding such an evidence would give rise to draw an adverse inference against the prosecution. Secondly, the school certificate could not be relied upon as it was not a strong and material evidence. More so, such an entry had been made in the school register on the basis of the information furnished by Sawan Lal (PW-2), father of the prosecutrix who deposed in the court that such an entry was based on an entry made in her horoscope which stood destroyed in the fire.

8. In view of the above, the trial Court examined the second issue in respect of consent. The court found certain discrepancies and contradictions in the statement of the prosecutrix made under Section 161 of the Code of Criminal Procedure, 1973 (hereinafter referred to as 'Cr.P.C.'), and her deposition recorded in court. In her statement before the police she had told that the appellant had threatened to kill her if she shouted. In court, she deposed that the appellant had filled the cloth in her mouth, thus, it was not possible for her to shout.

The trial Court further observed that when her saree, petikot and even

her panty were removed, she did not resist with full force as it was not possible for the accused to remove her panty unless she extended her cooperation. In case she had not given the consent she could have resisted the same with her full power. But, she has not deposed in court that she resisted with full power when her panty was being removed. The prosecutrix was supposed to attack the appellant like a wild animal, but she did not even resist. Thus, her conduct suggested only and only, her consent and will.

The court further held that as per the medical evidence even asingle finger went inside her vagina with difficulty then it was bound to be some injury in her vagina by forcible intercourse, but the Doctor did not find any injury on the person of the prosecutrix apart from certain injuries mentioned in the medical report. Therefore, there could not be any question of forcible intercourse.

9. The trial Court while recording such finding had taken note of the fact that because of the sexual intercourse lot of blood oozed out of her vagina and as a result of the same she became unconscious.

10. The High Court re-appreciated the entire evidence on record and particularly, the medical report which contained the following features:-

- (a) Her gait was painful.
- (b) There was also blood clot near her vagina.
- (c) Her forcet had a tear of 1/2cm x 1/2cm.
- (d) There was also an abrasion of 1/2cm above urethra.
- (e) Her hymen tear was in 3-9 'o' clock position.
- (f) Even small finger could not be admitted in her vagina without pain to her.
- (g) Her posterior fornix also had a tear of 1cm and blood clot was also present.

11. Medical report as well as Dr. Katre (PW-8) opined that it could be a case of rape. The FSL report Exh.P/12 revealed that underwear, petikot and saree of the prosecutrix were having blood stained and human spermatozoa. Similarly, in the slides as well as in the underwear of accused-appellant, the blood stains and human spermatozoa were found. The said clothes had been seized from the prosecutrix and the appellant soon after the occurrence. So

far as the issue of determining the age is concerned, in the instant case Doctor has found that prosecutrix was having only 28 teeths, 14 in each jaw. Such an issue was considered by this Court in *Bishnudayal v. State of Bihar*, AIR 1981 SC 39, wherein the court appreciated the evidence as under:

“8. The evidence with regard to the age of the girl was given by the prosecutrix (P.W.9), and her father. Jagarnath (P.W.4) and Dr. Asha Prasad (P.W. 14). P.W.9 and P.W.4 both stated that Sumitra (P.W.9) was 13-14 years of age at the time of occurrence. Dr. Asha Prasad opined that the girl was only 13 or 14 years of age on July 6, 1967 when the witness examined her. The Doctor based this opinion on physical facts, namely, that the examinee (P.W.9) **had 28 teeth, 14 in each jaw**, smooth pubic hair and axillary hair, which means the hair, according to the opinion of the Doctor, had just started appearing at **the age of 14.**”

(Emphasis added)

Similar view has been reiterated by this Court while deciding Criminal Appeal No.1962 of 2010, *Kailash @ Tanti Banjara v. State of M.P.*, vide judgment and order dated 10.4.2013, wherein relying upon several other factors for determining the age, this very Bench has taken a view that as the prosecutrix therein had only 28 teeths considering the other sexual character, she was only 14 years of age. Therefore, in view of the above, we do not find any fault with the finding recorded by the High Court so far as the issue of age is concerned.

12/13. In case, the prosecutrix was below 16 years of age at the relevant time, the issue of consent becomes totally irrelevant. Even the issue of consent is no more *res integra* even in a case where the prosecutrix was above 16 years of age.

In *State of H.P. v. Mange Ram*, AIR 2000 SC 2798, this Court, while dealing with the issue held:

"Submission of the body under the fear or terror cannot be construed as a consented sexual act. Consent for the purpose of Section 375 requires voluntary participation **not only after the exercise of intelligence based on the knowledge of the significance and moral quality of the act but after having fully exercised the choice between resistance and**

assent. Whether there was consent or not, is to be ascertained only on a careful study of all relevant circumstances." (Emphasis added)

14. In *Uday v. State of Karnataka*, AIR 2003 SC 1639, a similar view has been reiterated by this Court observing :

"..... We are inclined to agree with this view that there is no strait jacket formula for determining whether consent given by the prosecutrix to sexual intercourse is voluntary, or whether it is given under a misconception of fact. In the ultimate analysis, the tests laid down by the Courts provide at best guidance to the judicial mind while considering a question of consent, but the Court must, in each case, consider the evidence before it and the surrounding circumstances, before reaching a conclusion, because each case has its own peculiar facts which may have a bearing on the question whether the consent was voluntary, or was given under a misconception of fact. It must also weigh the evidence keeping in view the fact that the burden is on the prosecution to prove each and every ingredient of the offence, absence of consent being one of them."

15. In *Pradeep Kumar Verma v. State of Bihar & Anr*, AIR 2007 SC 3059, this Court held as under:

"9.The crucial expression in Section 375 which defines rape as against her will. It seems to connote that the offending act was despite resistance and opposition of the woman. IPC does not define consent in positive terms. But what cannot be regarded as consent is explained by Section 90 which reads as follows:

"consent given firstly under fear of injury and secondly under a misconception of fact is not consent at all."

That is what is explained in first part of Section 90. There are two grounds specified in Section 90 which are analogous to coercion and mistake of fact which are the familiar grounds that can vitiate a transaction under the jurisprudence of our country as well as other countries. The factors set out in first part of Section 90 are from the point of view of the victim and second part of Section

90 enacts the corresponding provision from the point of view of the accused. It envisages that the accused has knowledge or has reason to believe that the consent was given by the victim in consequence of fear of injury or misconception of fact. Thus the second part lays emphasis on the knowledge or reasonable belief of the person who obtains the tainted consent. The requirements of both the parts should be cumulatively satisfied. In other words, the Court has to see whether the person giving the consent has given it under fear or misconception of fact and the court should also be satisfied that the person doing the act i.e. the alleged offender is conscious of the fact or should have reason to think that but for the fear or misconception, the consent would not have been given. This is the scheme of Section 90 which is couched in negative terminology. As observed by this Court in *Deelip Singh @ Dilip Kumar v. State of Bihar* (2005 (1) SCC 88), Section 90 cannot be considered as an exhaustive definition of consent for the purposes of IPC. The normal connotation and concept of consent is not intended to be excluded.

10. In most of the decisions in which the meaning of the expression consent under the IPC was discussed, reference was made to the passages occurring in Strouds Judicial Dictionary, Jowitts Dictionary on English Law, Words and Phrases, Permanent Edn. and other legal dictionaries. Stroud defines consent "as an act of reason, accompanied with deliberation, the mind weighing, as in a balance, the good and evil on each side". Jowitt, while employing the same language added the following:

"Consent supposes three things a physical power, a mental power and a free and serious use of them. Hence it is that if consent be obtained by intimidation, force, meditated imposition, circumvention, surprise, or undue influence, it is to be treated as a delusion, and not as a deliberate and free act of the mind."

11. In Words and Phrases, Permanent Edn., Vol. 8-A, the following passages culled out from certain old decisions of the American courts are found:

"...adult females understanding of nature and consequences of sexual act must be intelligent understanding to constitute consent."

Consent within penal law, defining rape, requires exercise of intelligence based on knowledge of its significance and moral quality and there must be a choice between resistance and assent..."

16. In view of the above, we do not find fault with the impugned judgment and order. The appeal is liable to be dismissed and is accordingly dismissed.

17. Before parting with the case, we would like to express our anguish that the prosecution could have been more careful and the trial Court could have shown more sensitivity towards the case considering its facts and circumstances.

In *Delhi Domestic Working Women's Forum v. Union of India & Ors.*, (1995) 1 SCC 14, this Court found that in the cases of rape, the investigating agency as well as the Subordinate courts some times adopt totally a indifferent attitude towards the prosecutrix and therefore, this court issued following directions in order to render assistance to the victims of rape:

"(1) The complainants of sexual assault cases should be provided with legal representation. It is important to have someone who is well-acquainted with the criminal justice system. The role of the victim's advocate would not only be to explain to the victim the nature of the proceedings, to prepare her for the case and to assist her in the police station and in court but to provide her with guidance as to how she might obtain help of a different nature from other agencies, for example, mind counselling or medical assistance. It is important to secure continuity of assistance by ensuring that the same person who looked after the complainant's interests in the police station represent her till the end of the case.

(2) Legal assistance will have to be provided at the police station since the victim of sexual assault might very well be in a distressed state upon arrival at the police station, the guidance and support of a lawyer at this stage and whilst she was being questioned would be of great assistance to her.

(3) The police should be under a duty to inform the victim of her right to representation before any questions were asked of her and that the police report should state that the victim was so informed.

(4) A list of advocates willing to act in these cases should be kept at the police station for victims who did not have a particular lawyer in mind or whose own lawyer was unavailable.

(5) The advocate shall be appointed by the court, upon application by the police at the earliest convenient moment, but in order to ensure that victims were questioned without undue delay, advocates would be authorised to act at the police station before leave of the court was sought or obtained.

(6) In all rape trials anonymity of the victim must be maintained, as far as necessary.

(7) It is necessary, having regard to the Directive Principles contained under Article 38(1) of the Constitution of India to set up Criminal Injuries Compensation Board. Rape victims frequently incur substantial financial loss. Some, for example, are too traumatised to continue in employment.

(8) Compensation for victims shall be awarded by the court on conviction of the offender and by the Criminal Injuries Compensation Board whether or not a conviction has taken place. The Board will take into account pain, suffering and shock as well as loss of earnings due to pregnancy and the expenses of child birth if this occurred as a result of the rape."

18. Undoubtedly, any direction issued by this Court is binding on all the courts and all civil authorities within the territory of India.

In addition thereto, it is an obligation on the part of the State authorities and particularly, the Director General of Police and Home Ministry of the State to issue proper guidelines and instructions to the other authorities as how to deal with such cases and what kind of treatment is to be given to the prosecutrix, as a victim of sexual assault requires a totally different kind of treatment not only from the society but also from the State authorities. Certain care has to be taken by the Doctor who medically examine the victim of rape. The victim of rape should

generally be examined by a female doctor. Simultaneously, she should be provided the help of some psychiatric. The medical report should be prepared expeditiously and the Doctor should examine the victim of rape thoroughly and give his/her opinion with all possible angle e.g. opinion regarding the age taking into consideration the number of teeths, secondary sex characters, and radiological test, etc. The Investigating Officer must ensure that the victim of rape should be handled carefully by lady police official/officer, depending upon the availability of such official/officer. The victim should be sent for medical examination at the earliest and her statement should be recorded by the I.O. in the presence of her family members making the victim comfortable except in incest cases. Investigation should be completed at the earliest to avoid the bail to the accused on technicalities as provided under Section 167 Cr.P.C. and final report should be submitted under Section 173 Cr.P.C., at the earliest.

We request the learned Chief Secretary of the State of M.P. to examine the aforesaid observations made by us and issue comprehensive guidelines in these regards, at the earliest.

A copy of this judgment be sent to the learned Chief Secretary, M.P. through Ms. Vibha Datta Makhija, learned Standing counsel for the State.

Appeal dismissed.

I.L.R. [2014] M.P., 1475

SUPREME COURT OF INDIA

Before Mr. Justice K.S. Radhakrishnan & Mr. Justice Dipak Misra

Cr.A. No. 929/2007 decided on 3 May, 2013

STATE OF MADHYA PRADESH

...Appellant

Vs.

MALTI BAI

...Respondent

A. Penal Code (45 of 1860), Section 302 - Murder - Circumstantial evidence - Accused and deceased were husband and wife - Almost all the witnesses are unanimous in their deposition that the relationship between them was cordial - Highly improbable that wife would murder her husband without any reason - Prosecution has not succeeded in showing the circumstances from which an inference of guilt could be drawn. (Paras 17,23, & 25)

क. दण्ड संहिता (1860 का 45), धारा 302 - हत्या - परिस्थितिजन्य साक्ष्य - अभियुक्त और मृतक, पति-पत्नी थे - लगभग सभी साक्षीगण अपने कथनों में एकमत हैं कि उनके मध्य सौहार्दपूर्ण संबंध थे - अत्यांतिक रूप से असंभाव्य है कि पत्नी बिना किसी कारण के अपने पति की हत्या करेगी - अभियोजन ऐसी परिस्थितियां दर्शाने में सफल नहीं हो सका है जिससे कि दोषी होने का निष्कर्ष निकाला जा सके।

B. Penal Code (45 of 1860), Section 302 - Murder - Circumstantial evidence - The circumstances alleged by the prosecution should be of definite tendency, unerringly pointing towards the guilt of the accused - Should form a chain so complete that there is no escape from the conviction - Circumstances should be consistent with the guilt of the accused - Prosecution has failed to satisfy the various tests in proving the case on circumstantial evidence - Appeal dismissed.

(Paras 25 & 27)

ख. दण्ड संहिता (1860 का 45), धारा 302 - हत्या - परिस्थितिजन्य साक्ष्य - अभियोजन द्वारा अभिकथित परिस्थितियां, निश्चित प्रवृत्ति की, त्रुटिरहित रूप से अभियुक्त की दोषिता की ओर इंगित करने वाली होनी चाहिए - जिससे श्रृंखला इतनी संपूर्ण बननी चाहिए कि वह दोषसिद्धि से बच ना सके - परिस्थितियों को अभियुक्त की दोषिता के साथ सुसंगत होना चाहिए - अभियोजन पक्ष परिस्थितिजन्य साक्ष्य पर प्रकरण साबित करने के विभिन्न परीक्षणों को सिद्ध करने में विफल रहा - अपील खारिज।

Cases referred :

(2001) 9 SCC 277, (1969) 3 SCC 896, (1994) 3 Supp. SCC 367, (1987) 3 SCC 227, (1989) Supp. (1) SCC 161, AIR 1995 SC 946, (2001) 4 SCC 9, (2011) 4 SCC 786.

ORDER

1. We are confronted with an extraordinary case where the allegation is that the wife had murdered the husband on the intervening night of March 02-03, 1994, while they were sleeping in a room in their house. The trial court accepted the prosecution version and convicted the respondent-wife, Malti Bai, under section 302 of the Indian Penal Code, 1860, and imposed life sentence. On appeal, the High Court reversed the judgment of the trial court, against which this appeal has been preferred by the State.

2. The prosecution case is as follows:

Hiralal (deceased) was the husband of Malti Bai (the accused). In between the night of March 02-03, 1994, the deceased and Malti Bai were sleeping inside the room of their house. In the morning at about 7.00-8.00 a.m., when Chammu (PW-1), father of the deceased, came back from his field, he was informed by his elder daughter-in-law that Hiralal was not opening the door. Later, PW-1 went to nearby house to get milk where he was informed that the deceased and the respondent had not woken up. PW-1 came back and entered the room where he found the deceased lying dead with an injury on the neck and blood was oozing from the wounds. Malti Bai was not seen there, but later found in a kothi. On hearing the hue and cry, Kotwar Miththu, Mukaddam Ram Kumar and Ishwar Prasad arrived at the spot. PW-1, along with Kotwar Miththu went to lodge a report with the Police Station at Bankhedi.

3. After completing investigation, charge was framed against the respondent-wife for the offence under Section 302 IPC, which was denied by the respondent who requested for a trial.

4. Prosecution examined 15 witnesses and placed Exhibits P-1 to P-22 in support of its case. There was no evidence from the side of the defence.

5. We notice that there is no eye witness to the occurrence and the entire case rests upon circumstantial evidence. The principle that has to be applied in such circumstances has been laid down in this Court in *K. V. Chacko @ Kunju v. State of Kerala*, (2001) 9 SCC 277, wherein this Court has held as under:

"5. The law regarding basing a conviction by the courts on circumstantial evidence is well settled. When a case rests upon circumstantial evidence, such evidence must satisfy three tests:

(1) the circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established; (2) those circumstances should be of a definite tendency unerringly pointing towards the guilt of the accused; (3) the circumstances, taken cumulatively, should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else. The circumstantial evidence in order to sustain conviction must also be complete and incapable of explanation of any

other hypothesis than that of the guilt of the accused. The circumstantial evidence should not only be consistent with the guilt of the accused but should be inconsistent with his innocence."

6. This Court in *State of Andhra Pradesh v. I.B.S. Prasada Rao*, (1969) 3 SCC 896 pointed out that it is trite law that before conviction can be based solely on circumstantial evidence, it must be proved that the circumstances were such as to be conclusive of the guilt of the accused that were incapable of explanation on any hypothesis consistent with the innocence of the accused.

7. We notice that the trial court, while finding the respondent guilty, laid considerable reliance on the following circumstances:

"(i) in in (sic) between the night of 2nd and 3rd March, 1994, the appellant slept with the deceased inside the room;

(ii) a false story has been thrust by appellant that she slept in 'varaanda';

(iii) her hands and legs were loosely tied;

(iv) the defence put forth by accused that she was in her menses has not been proved by her and, therefore, she was sleeping in the 'varaanda' separately from her husband (the deceased), is not proved;

(v) accused/appellant in dramatic manner presented herself that she was unconscious at the time when she was taken out from the kothi."

8. We have to examine whether the circumstances narrated above satisfy the test laid down by this Court in the rulings noted above.

9. PW-1, the author of the FIR (Exhibit P-20), deposed that the respondent and the deceased were sleeping together in their room and in the morning on the date of incident, his elder daughter-in-law informed that they had not woken up. Later, when he entered the room, he found the deceased dead with injuries on his neck. Initially, he was under the impression that both the deceased as well as the respondent were dead. But the respondent was later found in a portion of the kothi with her hands tied by a blouse and legs were tied by a rope. Her upper parts of the body were totally exposed and

she was not wearing anything on the upper parts of the body. PW-1 has categorically stated in his evidence that the relationship between the deceased and the respondent was cordial, though in the FIR it was stated that the relationship was not good.

10. PW-2, Ishwar Prasad Rai, is a witness of the spot map (Exhibit P-3), seizure memo of blood stained blouse and rope (Exhibit P-4), seizure of panchnama of the dead body of the deceased (Exhibit P-5). PW-3 was also the witness of the seizure memo of axe (Exhibit P-6) and the confessional statement under Section 27 of the Indian Evidence Act, 1872 (Exhibit P-7). This witness has stated that he saw the respondent in the kothi and with the help of the inhabitants in the village, the Police took her out from the kothi. It was seen that her hands were tied by a blouse by loose knot. He had also stated that when the axe was recovered, the respondent was not present, which would show that the same was not recovered at the instance of the respondent accused. Therefore, no credence can be laid on the seizure memo of the axe (Exhibit P-6).

11. PW-3, Ram Kumar, another witness to the seizure of the axe, stated that the axe was not seized from the respondent, but the same was brought by the wife of Jangli (PW-4).

12. PW-4, Jangli, who is the uncle of the deceased, had stated that he found the respondent lying in the kothi and after the approval of the Police, she was taken out from that place and her hands were found tied by a blouse and legs were tied with the rope and the upper portion of her body was totally exposed and she was not wearing anything on the upper part of the body. This witness had also stated that the relationship between the deceased and the respondent were cordial.

13. PW-5, Sukai Bai, is the sister-in-law of the respondent. She had stated that the deceased and the respondent used to sleep in their room and the respondent did not make any complaint about her relationship with her deceased husband, nor made any complaint about any ill-treatment by him. She was later declared hostile.

14. PW-6, Chhoti Bai, is the wife of Jangli (PW-4). She is also the aunt-in-law of the respondent, who resides in a separate portion of the same house where the respondent and the deceased used to reside. She had also deposed that both the respondent and the deceased were sleeping in the same room

and the relationship between them was cordial. This witness was also declared hostile.

15. PW-7, Sukhram, is the son of PW-6, who deposed that he found the respondent in the kothi with her hands tied by a blouse and legs by a rope. This witness has also deposed that the relationship between the deceased and the respondent was cordial. This witness was also declared hostile.

16. PW-8, Phulia Bai, was also declared hostile. She has also stated the relationship between the deceased and the respondent was cordial. PW-9, Munni Bai, is the elder daughter-in-law of PW-1. She had also deposed that the relationship between the deceased and the respondent was cordial.

17. We notice that almost all the witnesses are unanimous in their deposition that the relationship between the deceased and the accused was cordial. There is nothing to show that there was any matrimonial discord or bitter relationship between them. No evidence is forthcoming to that effect.

18. PW-10, Dr. M. K. Chandel, is the autopsy surgeon who has proved the post-mortem report (Exhibit PW-13). He stated that the deceased sustained one lacerated wound 6x3x3 cm.; an abrasion 3x1 cm.; and one incised wound 7x2x0.2 cm. obliquely placed; and one penetrating wound 5x3x4 cm., all on the left side of the neck. He had opined that the injuries could have been caused by the axe, which was recovered, but the fact remains that the recovery was not proved.

19. We have also gone through the evidence of other witnesses as well, but nothing could be brought out by the prosecution regarding the involvement of the respondent in the incident which happened on the intervening night of March 02-03, 1994.

20. It is trite law that motive is not the criteria if there is direct evidence. This Court in *Tarseem Kumar v. The Delhi Administration*, (1994) 3 Supp. SCC 367, held as under:

"8. Normally, there is a motive behind every criminal act and that is why investigating agency as well as the Court while examining the complicity of an accused try to ascertain as to what was the motive on the part of the accused to commit the crime in question. It has been repeatedly pointed out by this Court that where the case of the prosecution has been proved

beyond all reasonable doubts on basis of the materials produced before the Court, the motive loses its importance. But in a case which is based on circumstantial evidence, motive for committing the crime on the part of the accused assumes greater importance. Of course, if each of the circumstances proved on behalf of the prosecution is accepted by the Court for purpose of recording a finding that it was the accused who committed the crime in question, even in absence of proof of a motive for commission of such a crime, the accused can be convicted. But the investigating agency as well as the court should ascertain as far as possible as to what was the immediate impelling motive on the part of the accused which led him to commit the crime in question. In the present case, no motive on the part of the appellant to commit the murder of Gulshan, has been suggested or established on behalf of the prosecution."

21. We have noticed that all the prosecution witnesses are consistent in their version that the relationship between the deceased and the respondent was cordial and, therefore, no motive was proved by the prosecution as to what prompted the respondent wife to kill her husband.

22. We may add, in Indian Society, rarely we come across cases where the wife strangulating the husband to death. Often, it is vice versa. But, we may refer to few cases where this Court had occasions to deal with cases where the wife was involved in the murder of her husband. In *Smt. Basanti w/o. Prabhu v. State of Himachal Pradesh*, (1987) 3 SCC 227, the wife was charged with the murder of husband and causing disappearance of the dead body. It was a case where the deceased, who was aged 40 years, was married to one Basanti of the age of 47 years. It was alleged that the co-accused Asso, who was aged about 70 years, who was the servant of the deceased, was her paramour and having an affair with her. The prosecution had led evidence showing that the deceased Prabhu Ram intended to take a second wife and, therefore, both the accused conspired to commit his murder by striking a blow on the neck while he was asleep in furtherance of their common intention and caused disappearance of the dead body by concealing it in a maize field behind the cattle shed of the house of the deceased. The prosecution was successful in establishing the involvement of wife Basanti and she was convicted and sentenced to undergo imprisonment for life, which was affirmed by this Court. In *Manguli Dai v. State of Orissa*, (1989) Supp

(1) SCC 161, the wife, Manguli Dai along with Nilamoni Patra, brother of the deceased assaulted Rathia Patra, husband of the appellant, as a result of which Rathia Patra succumbed to injuries. The wife along with Nilamoni Patra was charged under Sections 302 read with 34 IPC for committing the murder of her husband. The High Court convicted the wife and sentenced her to undergo imprisonment for life, which was affirmed by this Court. In *T. Anjanamma v. State of Andhra Pradesh*, AIR 1995 SC 946, the accused wife was alleged to have killed her husband by burning. The trial court convicted the wife under Section 302 IPC. However, the High Court scaled down the offence to one under Section 304 Part I IPC, which was affirmed by this Court. In *Dhananjaya Reddy v. State of Karnataka*, (2001) 4 SCC 9, the deceased was murdered in the bedroom of his rented house in Bangalore. The deceased's wife (A-I) was found gagged and her hands and legs were found tied with a rope. The wife was convicted by the trial court for an offence punishable under Section 302 IPC. The High Court upheld the conviction. On appeal, this Court acquitted the wife by giving her the benefit of doubt. In *State of Madhya Pradesh v. Ramesh & Anr.*, (2011) 4 SCC 786, the wife, along with her paramour, was charge-sheeted for the murder of her husband. The trial court convicted both the accused persons. But, on appeal, the High Court acquitted both the accused persons. This Court, however, reversed the judgment of the High Court and restored that of the trial court.

23. In all the above mentioned cases, we find the involvement of a third party. So far as the present case is concerned, there is nothing to show the involvement of any third party and it is highly improbable that the wife would murder her husband without any reason whatsoever.

24. There is nothing to show that the accused is a mentally deranged person. Prosecution witnesses, as already indicated above, have categorically stated that their relationship was cordial and prosecution did not adduce any evidence to show as to what prompted the wife to murder her husband.

25. We already indicated that there is no eye witness in the case and it is to be decided only on circumstantial evidence. The prosecution, in our view, has not succeeded in showing the circumstances from which an inference of guilt could be drawn. The circumstances alleged by the prosecution should be of definite tendency, unerringly pointing towards the guilt of the accused. The circumstances projected by the prosecution, taken cumulatively, should form a chain so complete that there is no escape from the conviction that within all

human probability the crime was committed by the respondent and none else. The circumstantial evidence adduced by the prosecution should not only be consistent with the guilt of the accused, but should be inconsistent with her innocence.

26. We find in the instant case, the accused wife was found in a kothi with her hands tied by a blouse and the legs were tied by a rope. Prosecution version evidently is that she might have done herself to confuse the investigating team. But, the fact remains that her upper parts of the body were totally exposed with no clothes. It is hard to believe that a lady will go to that extent to mislead everybody at home and the police. No explanation is forthcoming on the very unusual conduct of a lady. Involvement of external forces in murder of Hiralal, therefore, cannot be ruled out, which the prosecution could not find out.

27. We, therefore, hold that the prosecution has failed to satisfy the various tests laid down by this Court in proving the case on circumstantial evidence.

28. In the circumstances, we see no reason to interfere with the judgment of the High Court. The appeal is, accordingly, dismissed.

Appeal dismissed.

I.L.R. [2014] M.P., 1483

WRIT APPEAL

Before Mr. Justice R.S. Jha & Mr. Justice S.K. Gupta

W.A. No. 676/2013 (Jabalpur) decided on 15 May, 2014

WESTERN COALFIELDS LTD. & anr.

...Appellants

Vs.

FAGGULAL

...Respondent

Service Law - Date of birth - Implementation instruction No. 76(B) - Petition filed for treating the date of birth of the petitioner to be 01.02.1955 instead of 01.09.1952 on the strength of Sirdar's certificate issued by the Board of Mining Examination which has not been certified by the Manager - Held - Birth certificate issued by the Boards/ Universities/Institutions would be treated as valid provided they are issued prior to the date of employment - Clause B (i)(b) of the implementation instruction No. 76 provides that Mining Sirdarship, Winding Engine or similar certificate would be treated as authentic

only where the Manager has certified the date of birth - Certificate produced by the petitioner cannot be held to be authentic and binding - Disposed of with direction to Age Determination Committee, to decide the matter after giving due opportunity of hearing to the respondent/petitioner within one month from 25.05.2014. (Paras 8, 9 & 12)

सेवा विधि - जन्मतिथि - कार्यान्वयन अनुदेश क्र. 76(बी) - खनन परीक्षण बोर्ड द्वारा जारी सिरदार का प्रमाण पत्र जो प्रबंधक द्वारा प्रमाणित नहीं किया गया था, के आधार पर याची की जन्मतिथि दि. 01.09.1952 की बजाए 01.02.1955 माने जाने हेतु याचिका - अभिनिर्धारित - बोर्ड/विश्वविद्यालय/संस्था द्वारा जारी किये गये जन्म प्रमाण पत्र को वैध माना जायेगा बशर्ते कि उन्हें नियोजन की तिथि से पूर्व जारी किया गया हो - कार्यान्वयन अनुदेश क्र. 76 का खंड बी(i)(b) उपबंधित करता है कि खनन सिरदारी, वाईडिंग इंजन या समान प्रमाण पत्रों को केवल तब अधिप्रमाणित माना जायेगा, जब प्रबंधक ने जन्मतिथि को प्रमाणित किया हो - याची द्वारा प्रस्तुत प्रमाणपत्र को अधिप्रमाणित और बंधनकारक होना अभिनिर्धारित नहीं किया जा सकता - आयु निर्धारण समिति को प्रकरण का विनिश्चय, 25.05.2014 से एक माह के भीतर, याची/प्रत्यर्थी को सुनवाई का सम्यक् अवसर देने के पश्चात, करने का निदेश देते हुए याचिका का निपटारा किया गया।

Rajas Pohankar, for the appellants.

Subodh Kathar, for the respondent.

ORDER

The Order of the Court was delivered by :
R.S. JUA, J. :- The appellants have filed this appeal being aggrieved by the order dated 7.5.2013 passed by the learned Single Judge in W.P.No 10609/2012 whereby the petition filed by the respondent/petitioner for treating his date of birth to be 1.2.1955 instead of 1.9.1952 has been allowed on the ground that the impugned order has been passed without considering the mandatory Implementation Instruction no.76. It is submitted that the impugned order has been passed allowing the petition simply on the basis of a report submitted by the Directorate General of Mines safety, dated 16.1.2013.

2. The learned counsel appearing for the appellants/respondents submits that at the time of inducting the petitioner/respondent in the employment in the year 1975, the date of birth of the petitioner/respondent in the service records of the appellants/respondents was recorded as 1.9.1952. However, subsequently the petitioner/respondent filed its matriculation certificate as well as in the Sirdar's certificate in the year 1984, in which his date of birth was mentioned as 1.2.1955. The respondent thereafter filed a representation for

change of his date of birth and during its pendency, the petitioner has filed this writ petition after his superannuation from service on 31.8.2012.

3. It is submitted that the learned single Judge on the basis of a report of the Directorate General of Mines Safety wherein it has been stated that as per their records, the date of birth of the respondent was 1.2.1955, has allowed the petition treating the same to be binding in view of the Implementation Instruction No.76. It is submitted that the learned single Judge has failed to take note of the fact that Clause(B) (ii) of the Implementation Instruction No.76 clearly stipulates that the Mining Sirdarship, Winding Engine or similar other statutory certificates would be treated authentic where the Manager has certified the date of birth. It is submitted that a perusal of the Mining Sirdarship certificate submitted by the respondent/petitioner Annexure P/4 along with the petition clearly establishes that the certificate was not certified by the Manager and therefore, the same could not have been treated as authentic under Clause (B) (ii) of Implementation Instruction No. 76.

4. It is further submitted that under clause B(i) of the Implementation Instruction No. 76, matriculation certificate or Higher Secondary Certificate issued by the recognized universities or Board etc. would be treated authentic, provided they are issued prior to the date of employment, whereas in the instant case the certificate of matriculation relied upon by the respondent / petitioner has been issued subsequent to his employment. It is submitted that in such circumstances, the matter should have been referred for adjudication before the Age Determination Committee as there were no admitted facts or binding statutory certificate on record. It is submitted that the learned single while allowing the petition has failed to take into consideration the aforesaid two clauses of the Implementation Instruction No. 76 and therefore, the impugned order be set aside.

5. The learned counsel appearing for the respondent/petitioner, per contra submits that in view of the dispute regarding the date of birth of the respondent/petitioner, the learned single Judge by order dated 18.12.2012 had directed the respondents to conduct an inquiry, pursuant to which the Directorate General of mines Safety had submitted its report on 16.1.2013 which clearly states that as per their records the date of birth of the respondent/petitioner was 1.2.1955. It is submitted that the learned single Judge, on the basis of the aforesaid record, has held that the authenticity of the Sirdar's certificate can not be doubted and therefore, under Implementation Instruction No. 76, it is binding on the respondents. It is further submitted that in the aforesaid

circumstances, no fault can be found in the impugned order passed by the learned single Judge.

6. Having heard the learned counsel for the parties, it is observed that Clause (B) of the Implementation Instruction No. 76 indicates as follows:-

"(B) Review/determination of date of birth in respect of existing employee

i) (a) In the case of the existing employees matriculation certificate or Higher Secondary Certificate issued by the recognized universities or Board or Middle Pass Certificate Pass Certificate issued by the Board of Education and / or Department of Public Instruction and admit cards issued by the aforesaid Boards, should be treated as correct provided they were issued by the said Universities/ Boards/Institutions prior to the date of employment.

i) (b) Similarly, Mining Sirdarship, Winding Engine or similar other statutory certificates where the Manager has to certify the date of birth will be treated as authentic.

Provided that where both documents mentioned in (i) (a) and (i) (b) above are available, the date of birth rerecorded in (i)(a) will be treated as authentic.

ii) Wherever there is no variation in records, such cases will not be reopened unless there is a very glaring and apparent wrong entry brought to the notice of the management. The management after being satisfied on the merits of the appropriate action for correction for Age Determination Committee/ Medical Board."

7. A perusal of the aforesaid clause makes it apparently clear that matriculation certificate or Higher Secondary Certificate issued by the recognized universities or Board or Middle Pass Certificate issued by the Board of Education or Department of Public Instruction and admit cards issued by the aforesaid Boards, would be treated as valid, provided they are issued by the said Universities/Boards/Institutions prior to the date of employment. Clause (B) (i) (b) further provides that Mining Sirdarship, Winding Engine or similar certificate would be treated as authentic only where the

Manager has certified the date of birth.

8. From a perusal of document annexure P/4 filed by the respondent/petitioner alongwith the petition, which is the Sirdar's certificate issued by the Board of Mining Examination, it is clear that the said certified has not been certified by the Manager. It is further clear that the marksheet and certificate annexure P/3 with the petitioner have been issued by the board in the year 1984 after the respondent/petitioner was employed and therefore, the same can not be treated to be binding under Clause B(i) of the Implementation Instruction No. 76. It is also apparent from a perusal of the record that on the directions issued by this Court, a report has been submitted by the Directorate General of Mines Safety and in this report also it has not been stated that the Sirdar certificate issued by them has been certified by the Manager. The Report simply states that the date of birth of the respondent/petitioner that is mentioned in their records is 1.2.1955.

9. In view of the aforesaid, we are of the considered opinion that the matter should have been referred to the Age Determination Committee as there was no admitted fact on record and the aforesaid certificates cannot be held to be authentic and binding for the reasons stated above and the same were required to be examined in view of the above quoted clauses of Implementation Instruction No. 76. It is also apparent that in view of the facts stated above, the question of determination of date of birth is a seriously disputed question of fact and could not have been decided in writ proceedings.

10. In the circumstances, the appeal filed by the appellants/respondents is allowed to the extent that while the impugned direction for reinstating the petitioner/respondent is set aside, the matter is directed to be remanded back to the age Determination Committee for adjudication in accordance with law.

11. The learned counsel for the appellants submits that the Age Determination Committee shall conclude the proceedings within a period of one month from 25.5.2014 after giving due opportunity of hearing to the respondent/petitioner.

12. In view of the aforesaid undertaking, the appeal filed by the appellants/respondents is disposed of with a direction to the Age Determination Committee to decide the matter after giving due opportunity of hearing to the respondent/petitioner within one month from 25.5.2014. It is made clear that in case the Age Determination Committee finds substance in the claim of the respondent,

it shall take immediate steps to grant all benefits to the respondent/petitioner by reinsating him and in case the respondent/petitioner is reinstated he would be entitled to full benefits as if he had continued in service without any break.

13 With the aforesaid observations the appeal stands allowed.

Appeal allowed.

I.L.R. [2014] M.P., 1488

WRIT PETITION

Before Mr. Justice Sanjay Yadav

W.P. No. 3550/2007 (Jabalpur) decided on 5 September, 2013

RADICO KHAITAN (M/S) & anr.

...Petitioners

Vs.

M.P. STATE INDUSTRIAL DEVELOPMENT

CORPORATION LTD. & ors.

... Respondents

A. Sick Industrial Companies (Special Provisions) Act, 1985 (1 of 1986), Section 22(1) - Scope of protection of guarantors u/s 22(1) of the SICA - Held - Proceedings can be initiated against the guarantors for recovery even if company being registered under SICA and pending before Board for Industrial and Financial Reconstruction (BIFR).

(Paras 10 & 11)

क. रुग्ण औद्योगिक कम्पनी (विशेष उपबंध) अधिनियम, 1985 (1986 का 1), धारा 22(1) - रुग्ण औद्योगिक कम्पनी अधिनियम की धारा 22(1) के अंतर्गत गारंटीकर्ता के संरक्षण की व्याप्ति - अभिनिर्धारित - गारंटीकर्ताओं के विरुद्ध वसूली के लिये कार्यवाही आरंभ की जा सकती है यद्यपि कम्पनी, रुग्ण औद्योगिक कम्पनी अधिनियम के अधीन पंजीकृत है एवं औद्योगिक और वित्तीय पुनर्निर्माण के लिए बोर्ड (बी.आई.एफ.आर.) के समक्ष लंबित है।

B. Sick Industrial Companies (Special Provisions) Act, 1985 (1 of 1986), Section 22(1) - State Subsidy - That barring the amount towards State Subsidy the respondent is at liberty to recover other amount as mentioned in the Revenue Recovery Certificate. (Para 13)

ख. रुग्ण औद्योगिक कम्पनी (विशेष उपबंध) अधिनियम, 1985 (1986 का 1), धारा 22(1) - राज्य सहायता - राज्य सहायता की ओर की रकम छोड़कर, प्रत्यर्थी अन्य रकम जैसे कि राजस्व वसूली प्रमाण पत्र में उल्लिखित है, को वसूल करने के लिए स्वतंत्र है।

Case referred :

(2003) 4 SCC 305.

Sanjay Sanyal, for the petitioners:

Anurag Dubey, for the respondent No. 1.

Amit Seth, for the respondent No. 4.

S.S. Bisen, for the respondent No.2.

ORDER

Sanjay Yadav, J. :- Heard

1. With consent of learned counsel for parties, heard.
2. Revenue Recovery Certificate dated 24.1.2007 for recovery of Rs. 2,25,22,294/- issued by Collector, Bhopal at the instance of Madhya Pradesh State Industrial Development Corporation Ltd. (MPSIDC in short) first respondent is being assailed vide this Writ Petition.
3. The recovery is in lieu of subsidy of Rs. 15,00,000/- plus interest payable to MPSIDC of Rs. 1,90,459/- plus interest payable to government of Rs. 40,99,007/- and amount of equity shares of Rs. 13,00,000/- plus interest payable to MPSIDC of Rs.1,54,32,828/-.
4. The facts giving rise to the case briefly are that on 14.5.1984 the petitioner No.1 and MPSIDC (previously known as Madhya Pradesh Audyogik Vikas Nigam, a company incorporated under Companies Act, 1956) entered into a direct subscription agreement in lieu of loan of Rs. 80 lakhs advanced to the petitioner No. 1. The MPAKVN also agreed to participate in the equity of petitioner No. 1 company to the extent of Rs. 13 lakhs by subscribing Rs.1,30,000/- equity shares of Rs.10 each. To identify the loss in equity shares, respondent No. 2 along with one Shri Kamesh Khaitan executed an Indemnity Bond in favour of MPAKVN, indemnifying against any loss that it might suffer by virtue of selling the said shares.

The guarantors agreed that:

- (1) If the MPAVN sells Equity shares of the Company of Rs.13 lacs which, the MPAVB has agreed to subscribe, at any time, after four years from the date of allotment of such shares, but not earlier than six years from the such date, the

Guarantors and each of them will pay to the MPAVN on demand at Bhopal the amount of loss to be ascertained as hereinafter provided together with interest, expenses and other charges which the MPAVN may incur by disposing of the said shares and will indemnify and keep indemnified the MPAVN against all such losses and together expenses that the MPAVB may incur by reason of the sale of the said shares as aforesaid.

(2) The MPAVN will have the fullest liberty without in any way affecting this guarantee indemnity and discharging the Guarantors from his or their liability hereunder to postpone for any time or from time to time the exercise of the powers to sell the said shares and to exercise the same at any time and in any manner, the MPAVB may think fit and the Guarantors shall not be released by any exercise by the MPAVN of its liberty with reference to matters aforesaid or any of them and will not relieve the Guarantors of their obligations.

(3) The Guarantee / Indemnity herein contained shall not be determined or affected by the death or retirement of any of the Guarantors but shall in all respect and for all the purposes be binding and operative upon the survivor of them and the heirs executors and administrators, of the deceased Guarantors until repayment of all moneys due to the MPAVN as aforesaid.

(4) The Guarantee / Indemnity herein contained shall not be determined, or affected or in any way prejudiced by any absorption or amalgamation or reconstitution or alteration in the Constitution of the MPAVB but shall ensure for the benefit of and be available for any by the absorbing or amalgamate or reconstituted or altered body or authority.

5. It was also agreed by the guarantors vide clause (5) of the indemnity bond that: The cost price of the shares will be highest of the price that may be arrived at under any of the following provisions:

(a) Break up value of the Equity shares of the Company on the basis of proforma and / or audited accounts, if available for the proceeding quarter ended within at least 120 days from the date of such demand by the Company for the sale of shares.

(b) Capitalised price of shares on the basis of 16 times, the average dividend declared and paid by the Company during the immediately preceding 3 years;

(c) The price calculated at paid up value of shares plus premium at 15.0 % per annum from the date of subscription less dividends that may be received during the period of such holding by the MPAVN.

(d) The highest average market price of the Equity shares for any quarter in the last 3 (three years).

(e) (i) Out of sale proceeds of the Equity shares, all the costs, charges and expenses incurred by the MPAVB in the sale of equity shares will be deducted out of the sale proceeds in the first instance and thereafter the cost price of the share to be arrived at in accordance with the provisions of Clause 5 shall be decided.

(ii) If the sale proceeds are insufficient to pay the cost price of the shares, as arrived at under Clause 5 hereof, the Guarantors will pay to the MPAVN the said loss.

6. It is revealed from the pleadings and material on record that the MPAVN issued notice on 18.1.1990, 10.5.1990 and 12.9.1990 to the promoters / guarantors of the petitioner company to buy back the equity shares, after expiry of prescribed period of 4 years. They having failed to buy back despite of the assurance given in a meeting held on 29.9. 1994 led the MPAVN to hold back the shares, as per clause (2) of the Indemnity Bond of having fullest liberty without in any way affecting the guarantee indemnity and discharging the petitioners from his or their liability under the bond to postpone for any time or from time to time the exercise of the powers to sell the said shares and to exercise the same at any time and in any manner, the MPAVN may think fit to the guarantors shall not be released by any exercise by the MPAVN of its liberty without reference to matters stipulated in indemnity bond and will not relieve the guarantors of their obligations, sold the bonds in open market on 2.9.2005 and released the total sum of Rs. 93,39,460/-.

7. That by applying cost price factor 5 (C) of the indemnity Bond which provides for calculation of price at paid up value of shares plus premium at 15. % per annum from the date of subscription less dividends that may be

received during the period of such holding by the MPAVN, the amount required towards equity liability was ascertained at Rs. 1,67,32,828.14/-. The breakup whereof finds mention in paragraph 14 of the return by respondents No. 4 and 5 as under:

Equity investment bond Rs.13,00,000

Premium bond at fixed rate of Rs. 2,48,21,688.14 interest @ 15% per annum upto 31/3/2006

Total Amount Rs. 2,61,21,688.14

(-) amount received from sale of Rs.93,39,46,000
shares

Total Rs.1,67,82,228.14

(-) Dividend received Rs.49,400.00

Total recoverable amount Rs. 1,67,32,828.14

8. Though two fold submissions have been made on behalf of the petitioner that the guarantors were not liable to Indemnity after expiry of the locking period of 6 years from 14.5.1984 within which the MPAVN were under obligation to sell the equity shares if not purchased back. And the option having not exercised dis-entitle the respondents 4 and 5 for any loss said to have incurred after selling the shares on 2.9.2005. This submission is based on clause (1) of the Indemnity Bond. Learned counsel, however, ignores clause (2) which entitled the MPAVN in case the shares are not bought back when offered for within the locking period "to postpone for any time or from time to time the exercise of the powers to sell the said shares and to exercise the same at any time and in any manner". There is, therefore, no force in the contentions that with the expiry of locking period of six years the company and the guarantors are relieved of their liability.

9. The second submission that the company having being subject to BIFR being sick industrial unit would relieve the guarantors of their personal liability is also of no avail to the petitioner because the indemnification is personal besides being collective, and is not covered by the exemption clause contained under Section 22 of Sick Industrial Companies (Special Provisions) Act, 1985 (SICA for short).

10. *In Kailash Nath Agarwal and others v. Pradeshiya Industrial and*

Investment Corporation of U.P. Ltd. (2003) 4 SCC 305, dwelling upon an issue as to scope of protection of guarantors under Section 22 (1) of the SICA, it has been held by Supreme Court that the liability of guarantors being joint and several under Section 128 of the Contract Act and the bar created vide Section 22 of the SICA is only in respect of that no suit for recovery of money or for enforcement of any security against the industrial company or of any guarantee in respect of any loans or advance granted to industrial company, it was held:

20. There is an apparent distinction between the expressions 'proceeding' and 'suit' used in Section 22(1). While it is true that two different words may be used in the same statute to convey the same meaning, that is the exception rather than the rule. The general rule is that when two different words are used by the same statute, prima facie one has to construe these different words as carrying different meanings. In *Kanhaiyalal Vishnidas Gidwani* (supra) this Court found that words 'subscribed' and 'signed' had been used in the Representation of People Act, 1951 interchangeably and, therefore, in that context the Court came to the conclusion that when the Legislature used the word 'subscribed' it did not intend anything more than 'signing'. The words 'suit' and 'proceeding' have not been used interchangeably in SICA. Therefore, the reasons which persuaded this Court to give the same meaning to two different words in a statute cannot be applied here.

26. Apart from the semantic difference between the words 'suit' and 'proceeding' there is the absence of expansive words 'or the like' which appear after the expression 'proceedings', after the word 'suit'. The exclusion of such 'omnibus expression' after the word 'suit' must be given some weight in interpreting the word. As held by this Court in *LIC V. Escorts Ltd.* (supra):

"The distinction made by Parliament in the several provisions of the same Act cannot be ignored or strained to be explained away by us. That is not the way to interpret statutes. The proper way is to give due weight to the use as well as the omission to use the qualifying words in different provisions of the Act. The

significance of the use of the qualifying word in one provision and its non-use in another provision may not be disregarded".

27. Since the Legislature has expressly chosen to make a distinction between the suits for recovery of the money and enforcement of guarantees and proceedings for the recovery of money, that must be given effect to.

30. We have been unable to find a corresponding reason for widening the scope of the word 'suit' so as to cover proceedings against the guarantor of an industrial company. The object for enacting the SICA and for introducing the 1994 amendment was to facilitate the rehabilitation or the winding up of sick industrial companies. It is not the stated object of the Act to protect any other person or body. If the creditor enforces the guarantee in respect of the loan granted to the industrial company, we do not see how the provisions of the Act would be rendered nugatory or in any way affected. All that could happen would be that the guarantor would step into the shoes of the creditor vis--vis the company to the extent of the liability met.

32. This is in keeping with the well established principle of statutory interpretation that where the language of the provision is explicit the language of the statute must prevail.

35. Finally, the phrase introduced by the 1994 amendment relates to the pre-decretal stage because recovery proceedings by way of execution is already covered under the first half of sub-section (1) of Section 22. If the procedure under the U.P. Act is covered under the word 'proceeding' in the first limb of Section 22(1) of SICA, which it is according to Maharashtra Tubes, it is not a 'suit' for recovery under the second limb of that Section. As rightly contended by learned counsel appearing for PICUP, the proceedings under the U.P. Act are really recovery proceedings within the meaning of the word 'proceeding' as defined in Maharashtra Tubes. Since Section 22(1) only prohibits recovery against the industrial company, there is no protection afforded to guarantors against recovery

proceedings under the U.P. Act.

11. In view of above the contention raised on behalf of the petitioner that with the case of the Company being registered under SICA and pending before Board for Industrial and Financial Reconstruction (BIFR) no proceeding ought to have been initiated against the guarantor has no force and is accordingly rejected.

12. Regarding state investment subsidy of Rs. 15 lacs taking into consideration the fact as borne out from the return that with production of certificate required under the scheme of continuous production of 5 years from the date of start of production the demand of state investment subsidy having been recalled and only Rs. 75,801/- was charged and having been paid by the petitioner vide Demand Draft dated 30.5.2007, the demand of Rs. 57,89,466/- does not survive.

13. In view whereof the petition is disposed of with a direction that barring the amount towards State Subsidy the respondent is at liberty to recover other amount as mentioned in the Revenue Recovery Certificate.

Petition disposed of.

I.L.R. [2014] M.P., 1495

WRIT PETITION

Before Mr. Justice Shantanu Kemkar & Mrs. Justice S.R. Waghmare

W.P. No. 10843/2013 (Indore) decided on 16 September, 2013

ADVANTAGE EQUI FUND PRIVATE LIMITED

COMPANY (M/S)

...Petitioner

Vs.

M.P. RURAL ROAD DEVELOPMENT AUTHORITY & anr. ...Respondents

Contract - Encashment of Bank Guarantee - Petitioner alleges that respondents are not adhering to the conditions of the contract and not releasing the payment, are playing fraud, by getting bank guarantee encashed - Held - Mere non-release of the amount claimed to be due and on the other hand encashing the Bank Guarantee will not amount to be a 'fraud' - Petitioner having furnished unconditional Bank Guarantee as performance security, the invocation of Bank Guarantee cannot be said to be illegal. (Paras 1 & 7)

संविदा - बैंक गारंटी को मुनाना - याची का अभिकथन है कि प्रत्यर्थीगण,

1496 Advantage E. Fund Pri. Ltd. Vs. M.P. R.Road Dev. Auth.(DB) I.L.R.[2014]M.P.

संविदा की शर्तों का पालन नहीं कर रहे हैं और भुगतान को मुक्त नहीं कर रहे हैं, बैंक गारंटी भुनवाकर कपट कर रहे हैं – अभिनिर्धारित – मात्र दावा की गयी रकम को मुक्त नहीं किया जाना और दूसरी ओर बैंक गारंटी भुनाना, 'कपट' की कोटि में नहीं आयेगा – याची द्वारा संपादन प्रतिभूति के रूप में बिना शर्त बैंक गारंटी पेश की गयी, अतः बैंक गारंटी का अवलंबन अवैध नहीं कहा जा सकता।

Case referred :

(2011) 8 SCC 613.

Aniket Naik, for the petitioner.

ORDER

The Order of the Court was delivered by :
SHANTANU KEMKAR, J. :- Heard on the question of admission.

1. By filing this petition under Article 226 of the Constitution of India, the petitioner is seeking quashment of the letter dated 06.09.2013 (Annexure P/14) issued by the respondents to the Bank of India for encashing the Performance Bank Guarantee furnished by the petitioner, as security deposit for the due fulfillment of the terms and conditions of the contract regarding maintenance of the road constructed by the petitioner allotted to it vide Package No.MP-02-26 PMGSY 2008-09 dated 09.07.2008.

2. The case of the petitioner is that it had entered into works contract with the respondents on 09.07.2008 for construction and maintenance of rural roads under the said package and routine maintenance work for five years for the contract price of Rs.25,84,83,566/-. According to the petitioner, the Performance Bank Guarantee was furnished by it on 09.07.2008 for the said work. The routine maintenance is scheduled to end on 04.06.2017 as the work has been completed on 04.06.2012.

3. It is alleged that the respondents are not making payment of routine maintenance work to be done after completion of the work. It is also alleged that for no fault of the petitioner, its due amount is not being released and as such, as the requisite and adequate funds are not made available to the petitioner, the petitioner is not able to do the routine maintenance work, for which the Performance Bank Guarantee has been furnished.

4. According to the petitioner, the action of encashment of the Performance Bank Guarantee at one end and not releasing its due on the

other end, is an attempt on the part of the respondents to act fraudulently, and therefore, on account of fraud being played by the respondents, this Court has jurisdiction to interfere into the matter, which though relates to encashment of the bank guarantee. In support of his contention, learned counsel for the petitioner placed reliance on a judgment passed by the Supreme Court in the case of *Ramesh Kumar and another v. Furu Ram and another* (2011) 8 SCC 613. He argued that the respondents by not adhering to the conditions of the contract and not releasing the payment, are playing fraud.

5. Having considered the submissions of the learned counsel for the petitioner, we find no merit in the same.

6. The facts of the case in *Ramesh Kumar & another v. Furu Ram and another* (supra) are altogether different. In that case civil suits were filed and the orders passed under the Arbitration Act, 1940 were sought to be declared null and void, as they were vitiated by fraud and misrepresentation. It was not a case of invocation of Bank Guarantee. Whereas through the present writ petition, the petitioner is alleging that by not making its due payment and on the other hand, by proceeding for encashing the Bank Guarantee, the respondents are practicing 'fraud'. This Court in the case of *M/s. ANS Construction v. State of MP & others* vide order dated 20.10.2010, after considering the somewhat identical situation and after taking into consideration the law laid down in the matter of jurisdiction of the Court to interfere in the case of encashment of bank guarantee has held: -

“In the case of unconditional Bank Guarantees the Court will not interfere with the same unless there is fraud and irretrievable damages are involved in the case and fraud has to be an established fraud. If the guarantees furnished by the Bank are unconditional, the employer is the sole judge regarding the question as to whether any breach of contract has occurred and if so, the amount of loss to be recovered. It is not necessary that before invoking the performance guarantee the employer should assess the quantum of loss and damage and mention the ascertained figure, when the Bank Guarantee is unconditional one.”

(Emphasis supplied)

7. From the aforesaid, it is clear that the 'fraud' has to be an “established fraud”. In the present case, even from the averments made in the petition, no inference of 'fraud' can be drawn. Mere non-release of the amount claimed to

be due and on the other hand, action of encashing the Bank Guarantee on the part of the respondents will not amount to be a 'fraud' being practiced by the respondents. There is no adjudication of the claim made by the petitioner by the Competent Authority in terms of the contract document, which provides clause of Dispute Redressal Forum and Arbitration. In the circumstances, the bank guarantee, which is in the form of Performance Bank Guarantee furnished by the petitioner and the Clauses of the bank guarantee (Annexure P/2), which in clear terms shows that the same is an unconditional bank guarantee, in our considered view, it is open for the respondents to encash the same on the ground of breach of the terms regarding maintenance of work on the part of the petitioner. The petitioner having furnished unconditional bank guarantee as performance security, the invocation of bank guarantee cannot be said to be illegal.

8. In the circumstances, no case for interference in the writ petition is made out. The petition fails and is hereby dismissed.

Petition dismissed.

I.L.R. [2014] M.P., 1498

WRIT PETITION

Before Mr. Justice Sanjay Yadav

W.P. No. 16628/2013 (Jabalpur) decided on 30 September, 2013

RAJKUMAR SINGH LODHI

...Petitioner

Vs.

STATE OF M.P. & ors

...Respondents

Gram Rojgar Sahayak Ki Niyukti Se Sambandhit Naveen Disha Nirदेश, Clause 8 Sub clause 6 & 7 - Appointment of Gram Rojgar Sahayak under the Scheme - Despite having more meritorious, respondent No. 4 was not selected for want of I.D. proof not furnished with application form - Collector by impugned order rejected the appointment of the petitioner - Held - In view of sub clause 7 of clause 8, it was not mandatory for any candidate to have enclosed the document - Sub clause only prohibits receiving of application after the last date - Since respondent No. 4 is the resident of the concerned Gram Panchayat having his name registered in the voter list and more meritorious - Conclusion arrived at by the Collector cannot be faulted with - Petition is dismissed.

(Paras 4, 11 & 12)

ग्राम रोजगार सहायक की नियुक्ति से संबंधित नवीन दिशा निर्देश, खंड 8 उप खंड 6 व 7 - योजना के अंतर्गत ग्राम रोजगार सहायक की नियुक्ति - अधिक गुणवत्ता धारक होने के बावजूद, प्रत्यर्थी क्र. 4 को, आवेदन पत्र के साथ पहचान प्रमाण प्रस्तुत नहीं करने के अभाव में, चयनित नहीं किया गया - आक्षेपित आदेश द्वारा कलेक्टर ने याची की नियुक्ति अस्वीकार की - अभिनिर्धारित - खंड 8 के उपखंड 7 को दृष्टिगत रखते हुए, किसी अभ्यर्थी को दस्तावेज संलग्न करना बाध्यकर नहीं था - उपखंड केवल अंतिम तिथि के पश्चात आवेदन स्वीकार करने को प्रतिषिद्ध करता है - चूंकि प्रत्यर्थी क्र. 4, संबंधित ग्राम पंचायत का निवासी है, जिसका नाम मतदाता सूची में पंजीबद्ध है और वह अधिक गुणवत्ता धारक है - कलेक्टर के निष्कर्ष में त्रुटि नहीं पायी जा सकती - याचिका खारिज।

Z.M. Shah, for the petitioner.

Vivek Sharma, P.L. for the respondents No. 1 & 2.

Saurabh Singh, for the respondent No. 4.

ORDER

SANJAY YADAV, J. :- Since the affected parties are represented, the matter is heard finally.

2. Order dated 7.8.2013 passed by respondent No.2, Collector Damoh is being assailed vide this petition, whereby appointment of the petitioner on the post of Gram Rojgar Sahayak, Gram Panchayat Bijoura, Janpad Panchayat Jabera District Damoh has been cancelled and respondent No. 4 has been directed to be appointed.

3. That, in pursuance to communication No. 5335/NREGS-MP/Stha/NR-2/12 dated 2.6.12 by Madhya Pradesh Rojgar Guarantee Parishad, a body constituted under Panchayat and Rural Development Department, Government of Madhya Pradesh, steps were taken for appointment of Gram Rojgar Sahayak, Gram Panchayat Bijoura, Janpad Panchayat Jabera wherein out of 17 candidates, respondent No.4 got 123.40 marks and the petitioner 123.22 marks.

4. That despite of having higher marks respondent No. 4 was not selected for want of I.D. proof not furnished with application form. The petitioner was recommended for appointment.

5. The objection raised by respondent No.4 before the Programme Officer, MGNREGS, Janpad Panchayat Javera was turned down by order

dated 23.1.2013 on the ground that it being mandatory under clause 8(7) of the Scheme of Appointment to annex the documents alongwith the application and the same having not been done by respondent No.4 costed him the appointment, though subsequently, he furnished the document at the stage of objection.

6. Aggrieved, respondent No.4 preferred an appeal before Collector Damoh. The Appellate Authority on a finding that the respondent No. 4 is a resident of Village Bijoura having his name registered in the voter list and having voter Identity Card issued by the Election Commission of India and that Clause 8(7) of the Scheme of appointment was not properly construed by the Programme Officer, amended the order rejecting the petitioner's objection. And, having found petitioner more meritorious directed for his appointment by rejecting the appointment of the petitioner, by impugned order.

7. In the backdrop of these facts the solitary issue which arises for consideration is whether it was mandatory to have filed all the documents alongwith the application form and whether the documents tendered later could be accepted. In other words whether the defect was curable.

8. The Scheme which governs the appointment of Gram Rojgar Sahayak is brought on record as Annexure P-2 and is titled as "Gram Rojgar Sahayak Ki Niyukti Se Sambandhit Naveen Disha Nirdesh".

9. Clause 4 (अ) and (ब) of the Scheme respectively lays down the essential and desired qualification as follows :-

"4. अर्हताएं -

(अ) अनिवार्य अर्हताएं -

1. म.प्र. माध्यमिक शिक्षा मण्डल की हायर सेकेण्डरी परीक्षा (10+2) उत्तीर्ण या केन्द्रीय माध्यमिक शिक्षा मण्डल की हायर सेकेण्डरी परीक्षा (10+2) या म.प्र. शासन/केन्द्र शासन से मान्यत प्राप्त बोर्ड जैसे - संस्कृत बोर्ड, ओपन बोर्ड से हायर सेकेण्डरी परीक्षा (10+2) उत्तीर्ण या समकक्ष शैक्षणिक योग्यता।

2. नियुक्त किये जाने वाले कैलेण्डर वर्ष के एक जनवरी को न्यूनतम आयु 18 वर्ष एवं अधिकतम आयु 35 वर्ष होनी चाहिए।

3. अभ्यर्थी का आवेदित ग्राम पंचायत का स्थानीय निवासी होना चाहिए।

स्थानीय निवासी हेतु आवेदक का नाम उस ग्राम पंचायत की भारत निर्वाचन की मतदाता सूची में पंजीबद्ध होना अनिवार्य एवं पर्याप्त है। किसी ग्राम पंचायत में 03 से कम स्थानीय निवासी अभ्यर्थी द्वारा आवेदन दिये जाने की स्थिति में संबंधित ग्राम पंचायत की सीमा से लगे ग्राम पंचायतों के स्थानीय निवासी के आवेदनों को भी विचार क्षेत्र में लिया जावेगा।

(ब) वांछित योग्ताए -

1) सामान्य प्रशासन विभाग ज्ञाप क्र. सी/ 3-11/08/2/एक, भोपाल दिनांक 12.6.2009 में उल्लेखित निम्न संस्थाओं में से किसी एक संस्था से कम्प्यूटर परीक्षा उत्तीर्ण।

i) Diploma from all Universities recognized by UGC.

ii) Diploma from all Open Universities recognized by UGC.

iii) Diploma level examination from DOEACC. (स्थानीय रूप से DOEACC is Affiliated/Accredited संस्थाओं के डिप्लोमा मान्य नहीं।)

iv) Modern Office Management Course from Govt. Polytechnic College.

2) औद्योगिक प्रशिक्षण संस्था (ITI) द्वारा रोजगारोन्मुखी व्यावसायिक प्रशिक्षण योजना अन्तर्गत एकाउन्टेन्सी, कम्प्यूटर एप्लीकेशन, डाटा एन्ट्री ऑपरेटर, आर्किटेक्ट, असिस्टेंट में 06 माह कोर्स में प्रशिक्षण प्राप्त।

3) राष्ट्रीय ग्रामीण रोजगार गारंटी योजना के अन्तर्गत संविदा पद पर न्यूनतम 01 वित्तीय वर्ष का कार्य अनुभव अथवा सीआईडीसी से मेट प्रशिक्षण प्राप्त अभ्यर्थी।

4) औद्योगिक प्रशिक्षण संस्था (ITI) द्वारा ग्रामीण इंजीनियर योजना में 110 कार्य दिवस का मेसन/प्लम्बर व्यवसाय में प्रशिक्षित या औद्योगिक प्रशिक्षण संस्था (ITI) से ड्राफ्ट्समेन सर्वेयर का दो वर्षीय प्रशिक्षण।

5) विश्वविद्यालय अनुदान आयोग से मान्यता प्राप्त संस्थाओं से बी.काम. परीक्षा उत्तीर्ण।

10. Thus, as per Clause 4(अ)(3), it is essential that the candidate seeking appointment as Gram Rojgar Sahayak must be a local resident of the concerned Gram Panchayat having his name registered in the Voter list issued by the Election Commission of India.

11. Clause 8 of the Scheme lays down the procedure for selection. Sub-Clause (6) of the Clause 8 lays down that the application for appointment would be in the format prescribed by the Parishad. Sub-Clause (7) of Clause 8 stipulates that no application will be received after the expiry of last date. For ready reference Sub-Clause (6) and (7) of clause 8 are reproduced hereunder:

“6. परिषद द्वारा निर्धारित प्रारूप में ही आवेदकों से आवेदन पत्र प्राप्त किये जावेंगे एवं परिषद द्वारा निर्धारित प्रारूप में ही, आवेदन पत्र प्राप्त करने की पावती जनपद पंचायत द्वारा संबंधित आवेदक को अनिवार्य रूप से आवेदन प्रस्तुत करते समय ही प्रदत्त की जावेगी।

7. आवेदन पत्र प्राप्त करने की अंतिम तिथि के पश्चात् कोई भी आवेदन जनपद पंचायत द्वारा स्वीकार नहीं किया जावेगा। अंतिम तिथि के तत्काल बाद प्राप्त आवेदानों की सूची मुख्य कार्यपालन अधिकारी जिला पंचायत को प्रेषित की जावेगी एवं जनपद पंचायत के नोटिस बोर्ड पर भी लगाई जावेगी।

12. Prescribed format wherein application for appointment is preferred has not been brought on record as would have helped in ascertaining as to whether there exist any mandatory stipulation therein that the relevant document should be attached with it. In absence whereof it cannot be held that it was mandatory for respondent No.4 or for that any other candidate to have enclosed the documents. Sub-Clause (7), reliance whereon has been placed by the programme officer as also by the petitioner, is of no help in construing that mandatory it was to have enclosed the documents alongwith application in prescribed format, the sub-Clause only prohibits receiving of application after the last date, it does not specifically prohibits receiving the documents at later stage. It is not a case that essential qualification has been acquired after the last date of accepting the application form. It is also not the case that the information regarding residence of Gram Panchayat Bijoura was not furnished by respondent No. 4 in the application form. Since respondent No.4 has to his credit voter identity card issued prior to cut of date, the conclusion arrived at by the Collector that he being more meritorious should be preferred for appointment as Gram Rajgar (sic:Rojgar) Sahayak Gram Panchayat Bijoura Janpad Panchayat Jabera cannot be faulted with.

13. In the result petition fails and is dismissed. However, no costs.

Petition dismissed.

I.L.R. [2014] M.P., 1503**WRIT PETITION***Before Mr. Justice Sanjay Yadav*

W.P. No. 1859/2002 (Jabalpur) decided on 22 October, 2013

DIWAKAR PRASAD TIWARI

...Petitioner

Vs.

UNION OF INDIA & ors

...Respondents

Service Law - Central Civil Services (Temporary Service), Rules, 1965, Rule 5(1) - Termination - Service of petitioner was terminated and his name was struck from the strength of group centre, C.R.P.F., on the ground that the petitioner concealed the vital fact in respect of involvement in criminal case prior to entering into service - Held - Wherein an employment is sought by concealing vital facts which will have a bearing on the employment sought, it is open for the employer to dispense with the service of such incumbent who had chosen not to disclose the antecedents.

(Paras 1, 4 & 16)

सेवा विधि - केन्द्रीय सिविल सेवा (अस्थाई सेवा), नियम, 1965, नियम 5(1) - सेवा समाप्ति - याची की सेवा समाप्त की गई और ग्रुप सेन्टर, सी.आर.पी.एफ. के दल से उसका नाम हटाया गया, इस आधार पर कि याची ने सेवा में प्रवेश से पूर्व, आपराधिक प्रकरण में संलिप्तता के संबंध में आवश्यक तथ्यों को छिपाया - अभिनिर्धारित - जहां आवश्यक तथ्यों को छिपाकर नियोजन चाहा गया, जिसका चाहे गये नियोजन पर प्रभाव पड़ता हो तब नियोक्ता ऐसे पदधारी की सेवा समाप्त कर सकता है, जिसने पूर्ववृत्त प्रकट नहीं करना पसंद किया।

Cases referred :

AIR 2011 SCC 3601, AIR 2011 SC 2903, W.P. No. 8854/2012 decided on 21.08.2012, Civil Appeal No. 1155/2006 decided on 29.07.2013, (2012) 8 SCC 748.

O.P. Sharma, for the petitioner.

Kanaklata Goharwar, for the respondents.

ORDER**SANJAY YADAV, J. :-** With consent, heard finally.

1. Order dated 22.10.2001 is being assailed, whereby the services of the petitioner, a constable/GD in Central Reserve Police Force, has been

terminated forthwith. The order is purportedly passed under Rule 5 of the Central Civil Services (Temporary Service) Rules, 1965. Petitioner also assails the order dated 24.10.2001 whereby in pursuance to order dated 22.10.2001, petitioner's name has been struck off from the strength of Group Centre, CRPF, Shivpuri.

2. The appointment of the petitioner as constable/GD was in pursuant to the recruitment held between 10.6.2000 to 16.6.2000 which led to issuance of appointment order dated 20.6.2000, appointing the petitioner as constable/GD in grade Rs.3050-75-3950-80-4598. The petitioner reported for duty on 3.7.2000.

3. That, while posted at Group Centre, CRPF, Shivpuri services of the petitioner was terminated by impugned order. Since the order of termination did not disclose any reason leading to termination, petitioner filed an appeal which was also dismissed by the Inspector General of Police, by order dated 17.1.2002 which led the petitioner to file present writ petition calling in question the order of termination.

4. The respondents on being noticed have responded whereon while taking the defence that the services of the petitioner having been terminated during probation period and the termination being simplicitor; has however disclosed by facts which led the termination of the services. It is disclosed that in the verification against column No. 12 the petitioner concealed the vital facts in respect of involvement in criminal case prior to entering into service as revealed from the police verification. That a criminal case No. 78/98 under Sections 294, 323 and 324/34 of IPC was registered against the petitioners at P.S. Gurh District Rewa on 2.5.1998 wherefor he was arrested on 4.5.1998 and Challan was produced before Court on 4.5.1998 in which he was acquitted on 5.5.2000.

5. Thus, the concealment of fact of registration of criminal case in column 12 of verification roll has led to termination of service of the petitioner as is evident from the return filed by respondents who have taken recourse to the provision of sub-Rule (1) of Rule 5 of 1965 Rules.

6. Verification Roll filled by the petitioner is on record. Column No. 12 whereof provides :-

“12. (क) क्या आप किसी अपराध के लिए गिरफ्तार हुए हैं, या आप पर मुकदमा चलाया गया है या आपको हिरासत में रखा गया है या आपको जमानत

पर छोड़ा गया है या किसी अदालत द्वारा आप पर जुर्माना किया गया है या दोष सिद्ध किया गया है या आपको किसी लोक सेवा आयोग द्वारा उस किसी परीक्षा प्रकरण में वंचित/अपात्र ठहराया गया है या क्या किसी विश्वविद्यालय या शिक्षा प्राधिकार संस्था द्वारा किसी परीक्षा से वंचित किया गया /निकाला गया है ?

(a) Have you ever been arrested, prosecuted, kept under detention or bound down/fined, convicted, by a court of law for any offence or debarred/disqualified by any Public Service Commission from appearing at its examination/selections, or debarred from taking any examination/rusticated by any University or any other education authority/Institution ?

(ब) इस सत्यापन चिट्ठे को भरते समय क्या आपके विरुद्ध किसी अदालत में या विश्वविद्यालय में या किसी शिक्षा प्राधिकार/संस्था में कोई केस चल रहा है ? यदि (क) या (ख) का उत्तर 'हाँ' हो तो मुकदमा, गिरफ्तारी, हिरासत, जुर्माना, दोष, सिद्ध दण्ड आदि का ब्यौरा दें और बताएं कि यह फार्म भरते समय अदालत/ विश्वविद्यालय/शिक्षा प्राधिकारी के पास किस प्रकार का केस चल रहा है।

(b) Is any case pending against you in any court of law, University or any other education authority/Institution at the time of filing up this Verification Roll? If answer to (a) or (b) is 'Yes' then give details of prosecution, detention, fine, conviction, and punishment etc. and state about the case pending with the court/University/education authority at the time of filling in this form."

7. Petitioner did not enclose any information against column No. 12. This has been treated as concealment of facts.

8. Relying upon the decision in *Commissioner of Police and others V. Sandeep Kumar*: 2011 AIR SCC 3601, *Ram Kumar V. State of M.P. and others* AIR 2011 SC 2903 and Division Bench Judgment of this Court in *Rakesh Kumar Patel V. Union of India and others* : W.P. No. 8854/2012 decided on 21.8.2012, it is submitted by learned counsel for the petitioner the offences registered against the petitioner were minor in nature and that being falsely implicated has led to acquittal of the petitioner of the criminal charges much before entering into services ought not to have led the respondents to terminate his service, to which he was selected on merit.

9. The respondents, on the other hand, have placed reliance on the later decision in *Devendra Kumar V. State of Uttaranchal and others* ; Civil Appeal No. 1155/2006 decided on 29.7.2013 and *Jainendra Singh V. State of Uttar Pradesh* : (2012) 8 SCC 748 to bring home the submission that being an aspirant to be a member of disciplined force, incumbent it was on the part of the petitioner to have made an honest declaration which was specifically sought for as regard to his antecedents. Having not disclosed the same, petitioner exposed himself for the consequential action as stipulated in the appointment letter. It is urged that had the petitioner disclosed the antecedents it would have afforded an opportunity to the employer to have exercised their discretion to adjudge the petitioner's suitability for the disciplined force. It is urged that it is the petitioner who has to blame himself that by not disclosing the facts of having prosecuted has led to termination of service.

10. Considered rival submissions :-

In the case of *Commissioner of Police* (supra) the candidate had failed to disclose his true antecedents in the application form for appointment regarding his prosecution in a criminal case as a result of which his candidature was cancelled. The criminal case against the candidate was admittedly compromised and he was acquitted of the charges. Aggrieved, the candidate filed a petition before the Tribunal which was dismissed. He then filed a writ petition before the Delhi High Court. The Delhi High Court allowed the writ petition and quashed the order of cancellation of selection of the candidate.

11. In an appeal the Supreme Court condoned the act of a candidate of not mentioning in the application form about his involvement in a criminal case under section 325/34 of the Indian Penal Code by holding that he might have done so out of fear of getting disqualified automatically.

12. In the case of *Ram Kumar* (supra) the appointment of a candidate on the post of police constable was cancelled on the sole ground of his making a false declaration that no criminal case was registered against him irrespective of the fact that he was acquitted of the charges under sections 324, 323, 323 and 504 of the Indian Penal Code. The candidate having lost in the High Court of Allahabad approached the Supreme Court. The Supreme Court disapproved the action of the senior Superintendent of Police because he, without going into the question as to whether the candidate was suitable for appointment to service or to the post of a constable, cancelled the same merely on the ground that the candidate did not furnish information about the registration of criminal case against him.

13. However in later decisions different view than in *Commissioner of Police and Ram Kumar* (supra) has been taken.

14. In *Devendra Kumar* (supra) in the context of non-disclosure of the information in the verification Roll, it is held:

“11. It is a settled proposition of law that where an applicant gets an office by misrepresenting the facts or by playing fraud upon the competent authority, such an order cannot be sustained in the eyes of law. “Fraud avoids all judicial acts, ecclesiastical or temporal.” (Vide: *S.P. Chengalvaraya Naidu (Dead) by LRs. v. Jagannath (Dead) by LRs. & Ors.*, AIR 1994 SC 853. In *Lazarus Estate Ltd. v. Besalay*, 1956 All E.R. 349, the Court observed without equivocation that “no judgment of a Court, no order of a Minister can be allowed to stand if it has been obtained by fraud, for fraud unravels everything.

22. In the instant case, the High Court has placed reliance on the Govt. Order dated April 28, 1958 relating to verification of the character of a Government servant, upon first appointment, wherein the individual is required to furnish information about criminal antecedents of the new appointees and if the incumbent is found to have made a false statement in this regard, he is liable to be discharged forthwith without prejudice to any other action as may be considered necessary by the competent authority.

The purpose of seeking such information is not to find out the nature or gravity of the offence or the ultimate result of a criminal case, rather such information is sought with a view to judge the character and antecedents of the job seeker or suitability to continue in service. Withholding such material information or making false representation itself amounts to moral turpitude and is a separate and distinct matter altogether than what is involved in the criminal case.

23. More so, if the initial action is not in consonance with law, the subsequent conduct of a party cannot sanctify the same. “Subla Fundamento cedit opus”- a foundation being removed, the superstructure falls. A person having done wrong cannot

take advantage of his own wrong and plead bar of any law to frustrate the lawful trial by a competent Court. In such a case the legal maxim *Nullus Commodum Capere Potest De Injuria Sua Propria* applies. The persons violating the law cannot be permitted to urge that their offence cannot be subjected to inquiry, trial or investigation. (Vide: *Union of India v. Maj. Gen. Madan Lal Yadav*, AIR 1996 SC 1340; and *Lily Thomas v. Union of India & Ors.*, AIR 2000 SC 1650).

Nor can a person claim any right arising out of his own wrong doing. (*Juri Ex Injuria Non Oritur*)."

15. Similarly in the case of *Jainendra Singh* (supra) it is held :-

"29. As noted by us, all the above decisions were rendered by a Division Bench of this Court consisting of two-Judges and having bestowed our serious consideration to the issue, we consider that while dealing with such an issue, the Court will have to bear in mind the various cardinal principles before granting any relief to the aggrieved party, namely:

29.1. Fraudulently obtained orders of appointment could be legitimately treated as voidable at the option of the employer or could be recalled by the employer and in such cases merely because the respondent employee has continued in service for a number of years, on the basis of such fraudulently obtained employment, cannot get any equity in his favour or any estoppel against the employer.

29.2. Verification of the character and antecedents is one of the important criteria to test whether the selected candidate is suitable to the post under the State and on account of his antecedents the appointing authority if find not desirable to appoint a person to a disciplined force can it be said to be unwarranted.

29.3. When appointment was procured by a person on the basis of forged documents, it would amount to misrepresentation and fraud on the employer and, therefore, it would create no equity in his favour or any estoppel against the employer while resorting to termination without holding any inquiry.

29.4. A candidate having suppressed material information and/or giving false information cannot claim right to continue in service and the employer, having regard to the nature of employment as well as other aspects, has the discretion to terminate his services.

29.5. The Purpose of calling for information regarding involvement in any criminal case or detention or conviction is for the purpose of verification of the character/antecedents at the time of recruitment and suppression of such material information will have clear bearing on the character and antecedents of the candidate in relation to his continuity in service.

29.6. The person who suppressed the material information and/or gives false information cannot claim any right for appointment or continuity in service.

29.7. The standard expected of a person intended to serve in uniformed service is quite distinct from other services and, therefore, any deliberate statement or omission regarding a vital information can be seriously viewed and the ultimate decision of the appointing authority cannot be faulted.

29.8. An employee on probation can be discharged from service or may be refused employment on the ground of suppression of material information or making false statement relating to his involvement in the criminal case, conviction or detention, even if ultimately he was acquitted of the said case, inasmuch as such a situation would make a person undesirable or unsuitable for the post.

29.9. An employee in the uniformed service pre-supposes a higher level of integrity as such a person is expected to uphold the law and on the contrary such a service born in deceit and subterfuge cannot be tolerated.

29.10. The authorities entrusted with the responsibility of appointing Constables, are under duty to verify the antecedents of a candidate to find out whether he is suitable for the post of a Constable and so long as the candidate has not been acquitted

in the criminal case, he cannot be held to be suitable for appointment to the post of Constable.

30. When we consider the above principles laid down in the majority of the decisions, the question that looms large before us is when considering such claim by the candidates who deliberately suppressed information at the time of recruitment, can there be different yardsticks applied in the matter of grant of relief.”

16. True it is that the matter has been referred to a larger Bench vide decision in *Jainendra Singh* (supra). The law however as laid down therein and in *Devendra Kumar* (supra) and other decision therein lays down the ratio that wherein an employment is sought by concealing vital facts which will have a bearing on the employment sought, it is open for the employer to dispense with the service of such incumbent who had chosen not to disclose the antecedents.

17. In the case at hand, the petitioner knowing well that he was involved in a criminal case and was tried for an offence under Sections 294, 323 and 324/34 of IPC, though acquitted, still concealed the fact, which when came to the knowledge of respondents, led to the impugned termination, which in the given facts, cannot be faulted with.

18. In the result, petition fails and is dismissed. No costs.

Petition dismissed.

I.L.R. [2014] M.P., 1510

WRIT PETITION

Before Mr. Justice Sanjay Yadav

W.P. No. 8860/2010 (Jabalpur) decided on 22 October, 2013

SAMALWATI BAI (SMT.)

...Petitioner

Vs.

W.C.L. & ors.

...Respondents

Service law - National Coal Wage Agreement - Chapter VI - Compassionate appointment - Denied on the ground of delay and that the petitioner happened to be the third wife - Succession certificate was not relied to acknowledge the petitioner being a dependent to deceased employee although no other contender came forward for claiming compassionate appointment - Held - National Coal Wage

Agreement is binding on the employer - They are not justified in rejecting the claim on the ground of delay - Question of status of petitioner has been duly acknowledged by the succession court being that of widow of employee - Action of respondent neither fair nor reasonable nor bonafide - Impugned order is set aside - Respondents are directed to offer appointment to the petitioner on a suitable post within a period of 8 weeks.
(Paras 5,11,12 & 13)

सेवा विधि - राष्ट्रीय कोयला वेतन समझौता - अध्याय VI - अनुकम्पा नियुक्ति - विलम्ब के आधार पर तथा याची तृतीय पत्नी होने के आधार पर अस्वीकार की गयी - याची, मृतक कर्मचारी की आश्रित होना अभिस्वीकृत करने के लिये उत्तराधिकार प्रमाण पत्र पर विश्वास नहीं किया गया यद्यपि अनुकम्पा नियुक्ति का दावा करने हेतु कोई अन्य दावेदार सामने नहीं आया - अभिनिर्धारित - राष्ट्रीय कोयला वेतन समझौता नियुक्ता पर बाध्यकारी है - विलम्ब के आधार पर दावा अस्वीकार करना उनके लिये न्यायोचित नहीं है - याची की हैसियत के प्रश्न को सम्यक् रूप से उत्तराधिकार न्यायालय द्वारा अभिस्वीकृत किया गया कि वह कर्मचारी की विधवा है - प्रत्यर्थी की कार्यवाही न तो उचित है और न ही युक्तियुक्त या सम्भाविक है - आक्षेपित आदेश अपास्त - याची को 8 सप्ताह की अवधि के भीतर, योग्य पद पर नियुक्ति प्रस्तावित करने के लिये प्रत्यर्थीगण को निदेशित किया गया।

Case referred :

(2007) 8 SCC 549,

S.K. Dubey, for the petitioner.

Greeshm Jain, for the respondents.

ORDER

SANJAY YADAV, J. :- With consent the petition is heard finally.

1. Order dated 14.8.2012 is being assailed vide this petition; whereby, claim of the petitioner for appointment on compassionate ground in lieu of death of her husband employed with the respondent as Dresser in Mathni Underground Mines, Western Coal Fields Ltd. Pench Area, who died in harness on 25.12.2003.

2. Petitioner under the provisions of National Coal Wage Agreement applied for appointment on compassionate ground. When the application filed by the petitioner did not reap any benefit, she preferred a Writ Petition No. 8860/2012. The writ petition was disposed of on 13.7.2011 directing

the respondents to consider the claim of the petitioner for appointment on compassionate ground in lieu of death of her husband while in service by constituting a committee.

3. The committee was constituted, which furnished the report in the following terms:

“कमेटी का निष्कर्ष —

बिन्दु क्रमांक 1 — भूतपूर्व कामगार स्व. शिवराम की तीन पत्नियों थी श्रीमति समलवती उर्फ सामना बाई का विवाह 12/06/90 को शिवराम से हुई।

कुसुमाबाई की शादी दिनांक उपलब्ध नहीं है, कुसुमाबाई की मृत्यु दिनांक 17/04/1990 है। उपमा बाई की शादी एवं मृत्यु दिनांक उपलब्ध नहीं है एवं मृत्यु की पुष्टि श्रीमति समलवती द्वारा प्राप्त उत्तराधिकारी प्रमाण पत्र में वर्णित है।

बिन्दु क्रमांक 2 — श्रीमति समलवती बाई उर्फ सामनाबाई द्वारा प्राप्त उत्तराधिकारी प्रमाण पत्र जो साक्ष्य एवं तथ्यों के आधार पर माननीय न्यायालय द्वारा जारी है में वर्णित अनुसार श्रीमति समलवती की राजेश पुत्र, कु. बबिता पुत्री, एवं कु. सविता नाम के तीन संतान है एवं स्व उपमाबाई की कु. दुर्गा बाई एवं कुमारी सविता नाम के दो संतान है। उपरोक्त तथ्यों के आधार पर कमेटी इस निर्णय पर पहुंची है कि स्व. कुसुमाबाई को कोई संतान नहीं है।

बिन्दु क्रमांक 3 — प्रस्ताव प्रबंधक द्वारा दिनांक 09/04/2004 को उपक्षेत्रीय प्रबंधक द्वारा क्षेत्रीय कार्मिक प्रबंधक को भेजने हेतु कालरी से प्रेषित किया गया (संलग्न छायाप्रति)“

4. That, instead of extending the benefit to the petitioner under National Coal Wage Agreement of appointing her on compassionate ground the claim was rejected by impugned order dated 14.8.2012, which is in following terms:

“उपरोक्त विषयान्तर्गत माननीय उच्च न्यायालय, जबलपुर द्वारा उक्त प्रकरण में पारित आदेश दिनांक 13/07/2011 के सम्बन्ध में आपके प्रकरण का परीक्षण कर आपको अवगत कराया जाता है कि—

1. माननीय उच्च न्यायालय जबलपुर में आपके द्वारा स्व. शिवराम की आश्रित पत्नि के रूप में रोजगार पाने हेतु रिट पिटिसन क्रमांक 8860/10 दायर किया गया था जिसमें माननीय उच्च न्यायालय, द्वारा पारित आदेश दिनांक 13/07/2011 के अनुसार आपके प्रकरण में विवाद होने के कारण प्रतिवादीगण द्वारा वांछित जाँच कर रिपोर्ट प्रस्तुत करने को कहा गया है।

2. आपके प्रकरण की जॉच हेतु क्षेत्रीय स्तर पर एक समिति दिनांक 17/01/2012 को गठित की गई थी। समिति द्वारा आपके प्रकरण से सम्बंधित समस्त कार्यालयीन दस्तावेज एवं आपके द्वारा प्रस्तुत दस्तावेजों का अवलोकन किया गया साथ ही स्व. शिवराम के कार्यालयीन दस्तावेजों में वर्णित आश्रितों के बयान भी दर्ज किये गये जिसके आधार पर उक्त समिति द्वारा प्रतिवेदन प्रस्तुत किया गया है।

3. उक्त समिति के प्रतिवेदन अनुसार कम्पनी के रिकार्ड जैसे सर्विस फाईल, एलटीसी आप्सन फार्म एवं पी.एस.-3, पी.एस.-4 में आपका नाम दर्ज नहीं है।

4. कार्यालयीन रिकार्ड के अनुसार स्व. शिवराम की दो पत्नियाँ थी। पूर्व की दो पत्नियाँ श्रीमती कुसुमा बाई एवं श्रीमती उपमा बाई थी जिनका स्वर्गवास हो चुका है। आपके द्वारा दावा प्रस्तुत किया गया है कि आप स्व. शिवराम की तृतीय पत्नि है।

5. आपके द्वारा सक्सेशन प्र.क. 19/05 में पारित आदेश दिनांक 24.06.2005 की छायाप्रति माथनी कालरी में प्रस्तुत की गई थी। इस सम्बन्ध में आपको अवगत कराया जाता है कि उत्तराधिकार प्रमाण पत्र स्वर्गीय कामगार के देयको से सम्बंधित होता है एवं उसका आश्रित के स्थान पर रोजगार से किसी भी प्रकार का सम्बन्ध नहीं होता है।

6. स्व. शिवराम का निधन दिनांक 25/12/2003 को हुआ था एवं आप इतने वर्षों से स्वयं अपनी जीविका चला रही है अनुकम्पा नियुक्ति कर्मचारी के निधन होने पर उनके आश्रितों को तुरंत राहत पहुंचाने के लिये होती है बाद से देने के लिये नहीं। इससे स्पष्ट होता है कि आप अपना जीवन यापन करने में समक्ष है और आपको रोजगार की आवश्यकता नहीं है। आपके द्वारा अपने आवेदन पत्र में कोई भी ऐसी परिस्थिति नहीं बतलाई कि आप अपने परिवार का पालन पोषण करने में सक्षम नहीं है। जो यह सिद्ध करता है कि आपके पास जीविका के पर्याप्त संसाधन उपलब्ध है अतः आपके प्रकरण में संविधान के अनुच्छेद 14 के विपरीत रोजगार प्रदान किया जाना संभव नहीं है।

7. चूंकि आप स्व. शिवराम की तृतीय पत्नी है एवं रोजगार के दावेदार अन्य दो पत्नियों के बारे में आपसे बार-बार स्पष्टीकरण मांगने के बाद भी आपके द्वारा कोई उचित जवाब नहीं दिया गया जिससे आपका केस संदेहास्पद हो गया। अतः आपके रोजगार प्रकरण पर कार्यवाही नहीं की जा सकती एवं आपका प्रकरण निरस्त किया जाता है।”

5. Apparent it is from the rejection order that primarily the case of the petitioner was rejected on the ground of delay and that the petitioner happened to be the third wife of deceased Shivram and the succession certificate issued in favour of the petitioner acknowledging her being the widow of late Shivram

was not considered for grant of compassionate appointment.

6. The decision is being criticized by the petitioner on the ground that the respondents de hors the stipulations under National Coal Wage Agreement had declined to extend the benefit to the petitioner on the wrong premise of delay and that succession certificate cannot be relied on to acknowledge the petitioner being a dependent of deceased employee.

7. Respondents on their turn have justified their action in rejecting the request of the petitioner for employment on compassionate ground.

8. Relevant scheme, which is applicable in respect of employment to dependent is under National Coal Wage Agreement-VII effective from 1.7.2001 to 30.6.2006 which covers all category of employees in Coal Fields who are covered under National Coal Wage Agreement I to VI and also employees of those establishment which are functioning and may be functioning in Coal Companies. Chapter IX of National Coal Wage Agreement VII provides for Social Security whereunder clause 9.3.0 deals with provision of employment to dependent. The relevant provisions of N.C.W.A VI which is being made applicable by virtue of clause 9.2.0 (i) which stipulates "the clauses 9.3.0, 9.4.0 & 9.5.0 of NCWA-VI will be operative in NCWA-VII till a revised scheme is jointly prepared keeping in view the various verdicts of Hon'ble Supreme Court at the earliest."

9. Clause 9.3.0 under Chapter IX of NCWA-VI makes a provision regarding employment of dependents. It provides for:-

"9.3.1 Employment would be provided to one dependant of workers who are disabled permanently and also those who die while in service. The provision will be implemented as follows.

9.3.2 Employment to one dependant of the worker who dies while in service

In so far as female dependants are concerned, their employment/payment of monetary compensation would be governed by para 9.5.0

9.3.3 the dependant for this purpose means the wife/ husband as the case may be, unmarried daughter, son and legally adopted son. If no such direct dependant is available

for employment, brother, widowed daughter/widowed daughter-in-law or son-in-law residing with the deceased and almost wholly dependant on the earnings of the deceased may be considered to be the dependant of the deceased.

- 9.3.4 the dependants to be considered for employment should be physically fit and suitable for employment and aged not more than 35 years provided that the age limit in case of employment of female spouse would be 45 years as given in Clause 9.5.0. In so far as male spouse is concerned, there would be no age limit regarding provision of employment."

10. It is not disputed by respondents that the terms of National Coal Wage Agreement are binding on the respondents and rightly so. In this context reference can be had of decision of Supreme Court in *Mohan Mahto v. Central Coal Fields Ltd.* (2007) 8 SCC 549; wherein it is observed:

"10. A settlement within the meaning of Sub-section (3) of Section 18 of the Industrial Disputes Act is binding on both the parties and continues to remain in force unless the same is altered, modified or substituted by another settlement. No period of limitation was provided in the settlement. We would assume that the respondent had jurisdiction to issue such circular prescribing a period of limitation for filing application for grant of appointment on compassionate ground. But, such circular was not only required to be strictly complied with but also was required to be read keeping in view the settlement entered into by and between the parties. The expanding definition of workman as contained in Section 2(s) of the Industrial Disputes Act would confer a right upon the appellant to obtain appointment on compassionate ground, subject, of course, to compliance of the conditions precedent contained therein.

11. The right to obtain appointment on compassionate grounds emanates from the settlement. Settlement is defined in Section 2(p) of the Industrial Disputes Act to mean

"a settlement arrived at in the course of conciliation proceeding and includes a written agreement between the employer and workmen arrived at otherwise than in the course of conciliation proceeding where such agreement has been signed by the parties thereto in such manner as may be prescribed and a copy thereof has been sent to an officer authorized in this behalf by the appropriate Government and the conciliation officer".

12. Even in regard to prescription of a period of limitation, the respondent ought to have kept in view the spirit thereof."

11. Be it noted that Chapter IX of National Coal Wage Agreement deals with the aspect of Social Security and appointment to the dependent of the deceased worker is one of the social security measure to alleviate the family from financial penury. It being binding on the employer, they are not justified in rejecting the claim on the ground of delay when an application for appointment on compassionate ground was filed; nor does it lie with the respondents to question the status of petitioner which has been duly acknowledged by the succession Court being that of widow of late Shivram; more so, when no other contender come forward for claiming compassionate appointment in lieu of death of late Shivram.

12. It has been observed in *Mohan Mahto* (supra) "17....We expect a public sector undertaking which is a 'State' within the meaning of Article 12 of the Constitution of India not only to act fairly but also reasonably and bona fide. In this case, we are satisfied that the action of the respondent is neither fair nor reasonable nor bona fide". What has been observed in *Mohan Mahto* (supra) applies on all fours in the case at hand wherein the petitioner has been deprived of her legal right of compassionate appointment in lieu of death of her husband Shivram on technicalities.

13. Therefore, while setting aside the impugned order dated 14.8.2012 the respondents are directed to offer appointment to the petitioner on a suitable post within a period of eight weeks from the date of communication of this order.

14. In the result petition is allowed to the extent above. There shall be no costs.

C.c. as per rules.

Petition allowed.

I.L.R. [2014] M.P., 1517

WRIT PETITION

Before Mr. Justice N.K. Mody

W.P. No. 989/2010 (Indore) decided on 30 October, 2013

HABIB KHAN

...Petitioner

Vs.

SHAHJAD BI

...Respondent

Mohammedan Law, Rule 85 - Prompt Dower - Suit for declaration and injunction by respondent - On the ground that the suit plot was given to her on account of prompt dower - Respondent tried to exhibit the 'Nikahnama' which contains recital - Admissibility of the document was challenged on the ground that it requires payment of stamp duty - Held - Suit plot was assigned by bridegroom to bride in lieu of 'Mahr' at the time of marriage and the document on which reliance is placed is marriage certificate - It is simple 'Hiba' - Neither a sale nor a hiba-bil-iwaz - Document does not attract any stamp duty and is admissible in evidence.

(Paras 4, 6 & 9)

मुस्लिम विधि, नियम 85 - मेहर-ए-मुसज्जल - प्रत्यर्थी द्वारा घोषणा एवं व्यादेश हेतु वाद - इस आधार पर कि वादग्रस्त प्लॉट उसे मेहर-ए-मुसज्जल के कारण दिया गया था - प्रत्यर्थी ने 'निकाहनामा' प्रदर्शित करने का प्रयास किया जिसमें उपकथन अंतर्विष्ट है - दस्तावेज की ग्राह्यता को इस आधार पर चुनौती दी गई कि उस पर स्टाम्प शुल्क का भुगतान अपेक्षित है - अभिनिर्धारित - वादग्रस्त प्लॉट को पति द्वारा पत्नी को विवाह के समय मेहर की एवज में सौंपा गया था और जिस दस्तावेज पर विश्वास किया गया है, वह विवाह प्रमाण पत्र है - यह साधारण हिवः है - न तो विक्रय है और न ही हिवः-बिल-एवज - दस्तावेज पर कोई स्टाम्प शुल्क आकर्षित नहीं होता और साक्ष्य में ग्राह्य है।

Cases referred :

AIR 1933 Patna 281, AIR (36) 1949 Patna 237, 1981 II MPWN 10, AIR 1952 Madras 671(1), 2009(I) MPLJ 176, 2009 (I) Supreme 58, 2010(2) MPLJ 140, AIR (35) 1948 Bombay 114, 1959 JLJ 51.

Amit Agrawal, for the petitioner.*Maqbool Ahmed*, for the respondent.

ORDER

N.K. Mody, J. :- The prayer in the petition is for quashment of order dated 01/01/10 passed by Civil Judge, Class-II, Khachrod Distt. Ujjain in Civil Suit No.6-A/08 whereby objection raised by the petitioner regarding admissibility of the document was turned down.

2. Short facts of the case are that the respondent filed a suit for permanent injunction on 14/01/08 alleging that a piece of land bearing house No.5 situated at Sumangali, Khachrod is owned by the respondent. It was alleged that the suit property was received by the respondent from her husband in prompt dower. It was alleged that after her marriage husband of the respondent married to other woman and is living at Indore. It was alleged that the husband of the respondent tried to sale the suit land in the year 1990. In the circumstances respondent filed a suit for injunction which was numbered as 62-A/90 and interim injunction was granted in favour of respondent vide order dated 16/04/91, but respondent could not pursue the suit because of paucity of funds. It was alleged that since the suit plot was given to the respondent on account of prompt dower, therefore, since then the respondent is in occupation of the suit land. It was alleged that since the respondent is trying to take possession of the suit plot forcibly, therefore, it be declared that respondent is owner and petitioner be restrained to interfere into the possession of respondent.

3. The suit was contested by petitioner on various grounds. It was denied that respondent is owner of suit plot on the basis of dowry given by her husband. It was alleged that the suit property is immovable property and in absence of registered document respondent is not owner of the suit property. It was alleged that the suit which was filed by the respondent on 16/07/90 was numbered as Civil Suit No.62-A/90 and was dismissed on 13/12/95. It was alleged that the application filed by the respondent for restoration of suit was also dismissed on 26/05/05. It was prayed that the suit be dismissed.

4. On the basis of pleadings of parties learned trial Court framed the issues and fixed the case for evidence. Respondent examined Kazi Guljar Moinuddin as PW/3. In his statement respondent tried to exhibit the Nikahnama which contains recitals of suit property, which was alleged to have been given to the respondent in prompt dower. Admissibility of the said document was objected by the petitioner. After hearing the parties learned trial Court turned down the objection raised by the petitioner, against which present petition has been filed.

5. Learned counsel for the petitioner argued at length and submits that the impugned order passed by the learned Court below is illegal, incorrect and deserves to be set aside. It is submitted that the document Ex.P/4 is not amounting to prompt dower rather it shows that it is a deferred dower. It is submitted that the learned trial Court committed error in holding that the endorsement regarding dowry in the document Ex.P/4 amounts to prompt dower and the title passed away in her favour on 06/06/61. It is submitted that the learned Court below committed error of law in ignoring the pleadings and further erred in passing the impugned order holding that the document does not envisage prompt dower, therefore, it does neither require payment of stamp duty nor requires registration. Learned counsel placed reliance on a decision in the matter of *Mahadeo Lal Jwala Prasad Vs. Mt. Bibi Maniran*, AIR 1933 Patna 281 wherein Division Bench of Patna High Court held that a dower the payment of which may be postponed until demanded by the wife would be classed as prompt dower. Further reliance is placed on a decision in the matter of *Mohammad Usman Khan Vs. Amir Main*, AIR (36) 1949 Patna 237 wherein Division Bench of Patna High Court held that oral gift by husband of immovable property in lieu of, is sale and not hiba-bil-ewaz and does not pass title. Reliance is also placed on a decision of this Court in the matter of *Ibrahim Khan Vs. Mst. Imaman Bi*, 1981-II, MPWN, Note-10 wherein this Court held that transfer of immovable property in lieu of dower amounts to sale and requires registration. Further reliance is placed on a decision in the matter of *Masum Vali Saheb Vs. Illuri Modin Sahib*, AIR 1952 Madras 671(1) wherein a Division Bench of Madras High Court held that transfer of immovable property by Mohammadan husband in favour of his wife for her dower debt does not involve two reciprocal gifts but is only one contract. The hiba bil ewaz so called in India is a sale within the meaning of Section 54 and unless made by a written instrument, duly registered, will not convey title to the person, in whose favour such a conveyance is made. Consequently an oral conveyance of immovable property worth more than Rs.100 by a Muhammadan husband in favour of his wife in lieu of her dower is not valid. Learned counsel further submits that since the document was not properly stamped, therefore, also learned Court below was not justified in holding that the document is admissible in evidence. For this contention reliance is placed on a decision in the matter of *Narbada Prasad Agrawal Vs. Tarun Bhawasari*, 2009(1) MPLJ 176 wherein this Court has held that unless a duty is paid on an instrument it shall not be admitted in evidence for any purpose, which will include a collateral purpose. Reliance is also placed on a decision in the matter of *Avinash Kumar Chauhan Vs. Vijay Krishna Mishra*, 2009 (1) Supreme 58 wherein Hon'ble Apex Court

has held that document so tendered should be duly stamped or should comply with requirements of Section 35 of Stamp Act, if not stamped as a document cannot be received in evidence even for collateral purpose unless it is duly stamped. Lastly the reliance is placed on a decision in the matter of *Mansingh Vs. Smt. Sumranbai*, 2010(2) MPLJ 140 wherein Division Bench of this Court held that document would be admissible on the basis of the recitals made in the document and not on basis of the pleadings raised by the parties. It was further held that if in a document certain recitals are made, then the Court would decide the admissibility of the document on the strength of such recitals and not otherwise. On the strength of aforesaid position of law learned counsel submits that the petition filed by the petitioner be allowed and impugned order passed by the learned Court below be set aside holding that the document tendered in evidence is inadmissible in evidence.

6. Learned counsel for the respondent supports the impugned order and submits that the learned Court below has rightly turned down the objection raised by the petitioner. Learned counsel placed reliance on a decision in the matter of *Jaitunbi Fatrubhai Vs. Fatrubhai Kasambhai*, AIR (35) 1948 Bombay 114 wherein the land was assigned by bridegroom to bride in lieu of mahr at the time of marriage, Bombay High Court has held that when at the time of the marriage, a land is assigned by the bridegroom to the bride in lieu of mahr, the assignment is a simple gift (hiba), and neither a sale nor a hiba-bil-iwaz. No writing is necessary for the validity of such a gift, since Section 129, T.P. Act, exempts a gift by a Mohamedan from the provisions of that Act, but such a gift is subject to the doctrine of Mushaa, and the gift would not be complete and valid without delivery of such possession as the subject of the gift is susceptible of. On the strength of aforesaid position of law learned counsel submits that the petition filed by the petitioner be dismissed.

7. The law of Dower (Mahr) is uncodified law. Dower (Mahr) is defined in Rule 79 of Mohammadans Law. Rule 81 deals with subject of dower (Mahr). Rule 83 deals with types of dower. Rule 85 deals with prompt dower and deferred dower. These Rules are reproduced as under :-

Rule 79. Dower (Mahr) Defined Dower(mahr) is something which has some value in the terms of money and the wife is entitled to receive it as a gift from her husband for entering into a contract of marriage.

Rule 81. Subject of Dower (Mahr)-A fixed sum of money or anything in the category of property in existence having value

form the subject of dower.

Rule 83. Types of Dower-Dower may be of two types-specified Dower (Mahr-i-Musamma or Mahr-i-Tafweez) and Proper Dower (Mahr-i-Misl or Mahrul-Mithl).

Rule 85. Prompt Dower (Mahr-i-Musjjal) and Deferred Dower (Mahr-Muajjal) specified Dower may be divided into two parts-Prompt Dower and Deferred Dower :-

- (i) Prompt Dower (Mahr-Muajjal) is payable to wife immediately after marriage or on her demand at any time.
- (ii) Deferred Dower (Mahr-Muajjal) is payable to wife on the expiry of Specified period or on the happening of such contingency to which it is deferred. On the dissolution of the marriage, either by divorce or death of either party, it is payable immediately in every other case.
- (iii) The parties to marriage are free to postpone the payment of Dower either prompt or Deferred,
- (iv) The amount payable to wife by way of prompt Dower and deferred dower is fixed at the time of making the contract of Dower.
- (v) Where at the time of marriage, it is not specified which part of the Specified Dower is Prompt and which part is deferred, the shias regard the whole of Specified Dower as Prompt. But the Sunnis regard one-half part as prompt and the other half as deferred.

8. The learned trial Court has rejected the objection filed by the petitioner because of Article 52 of Indian Stamp Act which has nothing to do with the deed of Dower as it deals with Proxy. Article 58 of Indian Stamp Act, 1894 deals with statement As per clause (a) of Article 58 deed of dower executed on the occasion of marriage between Mohamadans is exempted from payment of stamp duty. In the matter of *Rasool Mohammad Vs. Kulsumbi* 1959 J LJ 51 this Court held that among the Shias the dower must be presumed to be prompt unless payment of the whole or any part of the dower is expressly postponed. It was further held that so far as the Sunnis of the Madhya Pradesh are concerned, the presumption does not apply and the court should fix a

reasonable part of the dower debt to be payable promptly.

9. Undisputedly the document on which reliance is placed is a marriage certificate and keeping in view the endorsement made about the suit property in the marriage certificate and the law laid down in the matter of *Jaitoon Bi* (Supra), this Court finds that prima facie the document tendered by the respondent does not attract any stamp duty and is admissible in evidence.

10. In view of this, petition filed by the petitioner has no merits and the same stands dismissed. No order as to costs.

Petition dismissed.

I.L.R. [2014] M.P., 1522

WRIT PETITION

Before Mr. Justice N.K. Mody

W.P. No. 13263/2013 (Indore) decided on 26 November, 2013

MATHIAS

...Petitioner

Vs.

STATE OF M.P. & ors.

...Respondents

Constitution - Articles 226, 324 & 329 (b) - Rejection of nomination paper - Maintainability of writ petition - The term 'election' may be taken to embrace the whole procedure which consists of several stages and embraces many steps, whereby an "elected member" is returned, whether or not it be found necessary to take poll - It is not used in narrow sense - Since the election is in process, the only remedy available to the petitioner is to file election petition. (Paras 6 & 7)

संविधान - अनुच्छेद 226, 324 व 329(बी) - नामांकन पत्र की अस्वीकृति - रिट याचिका की पोषणीयता - 'निर्वाचन' शब्द के अर्थ में संपूर्ण प्रक्रिया जिसमें विभिन्न प्रक्रम और कई कार्यवाहियों के साथ समावेश है, जिसके द्वारा एक "चुने गये सदस्य" को निर्वाचित किया जाता है भले ही मतदान कराया जाना आवश्यक प्राया जाये अथवा नहीं - इसे संकुचित भाव से उपयोग नहीं किया गया है - चूंकि, निर्वाचन प्रक्रिया अभी चल रही है, याची को केवल निर्वाचन याचिका प्रस्तुत करने का उपचार उपलब्ध है।

Cases referred :

2010(3) MPLJ 407, AIR, (39) 1952 SC 64.

Rishi Tiwari, for the petitioner.

Vinita Phaye, G.A. for the respondents.

ORDER

N.K. Mody, J. :- The prayer in the petition is that the order dated 09/11/2013 passed by Returning Officer respondent No.4 whereby nomination form submitted by the petitioner through proposer, was rejected, be quashed.

2. In the petition it is submitted that petitioner is resident of Jhabua. Petitioner was intending to contest election from constituency No.194, Thandla district Jhabua. Since the petitioner was externed under Section 5 of M.P. Rajya Suraksha Adhiniyam, vide order dated 12/09/2013, therefore, the petitioner submitted nomination form through proposer on 08/11/2013 at 2.40 P.M.. Since the petitioner was externed, therefore, petitioner approached Returning Officer and was informed vide order dated 05/11/2013 that the form can be submitted through proposer. It is submitted that upon scrutiny the form of the petitioner has been rejected on the ground that form submitted by the petitioner is through proposer.

3. Learned counsel submits that copy of the order dated 09/11/2013 has not been supplied, but since the matter is urgent, therefore, petitioner is left with no option except to file the petition.

4. Learned counsel for the respondents submit that upon scrutiny, the form was rejected on various grounds mentioned in the order. Learned counsel submits that at the time of scrutiny, wife of the petitioner was present and the order whereby the nomination form of the petitioner was rejected was communicated to her and she has signed the same. Learned counsel submits that the nomination form submitted by the petitioner is not rejected on the ground that the nomination form is submitted by the petitioner through proposer, but has been dismissed on various other grounds. Learned counsel further submits that the petition itself is not maintainable as the election is in process. For this contention reliance is placed on Article 329 (sic:329) of Constitution of India, which reads as under:

329. Bar to interference by courts in electoral matters..- Notwithstanding anything in this Constitution.

(a) the validity of any law relating to the delimitation of constituencies or the allotment of seats to such constituencies, made or purporting to be made under article 327 or article 328, shall not be called in question in any Court;

(b) no election to either House of Parliament or to the

House or either House of the Legislature of a State shall be called in question except by an election petition presented to such authority and in such manner as may be provided for by or under any law made by the appropriate Legislature.

5. Learned counsel for the petitioner submits that in a election petition rejection of nomination form cannot be questioned. It is submitted that since it is only nomination form which has been rejected, therefore, the remedy available to the petitioner is to approach this Court. Learned counsel submits that election petition can be filed under Section 100 of Representation of Peoples Act, 1951 on the ground mentioned therein. Learned counsel submits that in the circumstances, if the petition is not entertained then petitioner is remedyless. Learned counsel placed reliance on a decision in the matter of *Ghanshyam Tiwari Vs. State of M.P.*, 2010 (3) MPLJ 407 wherein in a election of Primary Agriculture Credit Co-operative Society number of persons denied right to contest the election by fraudulent measures by the Returning Officer, Division Bench of this Court held that for issuance of a writ of certiorari the availability of alternate remedy is no bar. It is submitted that the preliminary objection raised by the counsel for respondents has no force and the same be dismissed.

6. In the matter of *N.P. Ponnuswami Vs. The Returning Officer*, AIR (39) 1952 SC 64 Hon'ble Apex Court had an occasion to take into consideration Article 329(b) of Constitution of India wherein the word 'selection' is used and held that rejection or acceptance of nomination paper is included in the term. Hon'ble Apex Court has further observed that the word 'election' has been used in Part XV of the Constitution in the wide sense, that is to say, to connote the entire procedure to be gone through to return a candidate to the legislature (sic:legislature). The use of the expression "conduct of election" in Art.324 specifically points to the wide meaning, and that meaning can also be read consistently into the other provisions which occur in Part XV including Art. 329(b). The term 'election' may be taken to embrace the whole procedure which consists of several stages and embraces many steps, whereby an 'elected member' is returned, whether or not is be found necessary to take poll. It is not used in a narrow sense.

7. Keeping in view the aforesaid position of law this Court (sic: Court) finds that since the election is in process, the only remedy available to the petitioner is to file election petition and in view of Article 329(b) of Constitution of India petition has no merits and the same stands dismissed.

Petition dismissed.

I.L.R. [2014] M.P., 1525

WRIT PETITION

Before Mr. Justice N.K. Mody

W.P. No. 6588/2006 (Indore) decided on 26 November, 2013

SUJATA BHARGAVA (DR.)(SMT.)

...Petitioner

Vs.

STATE OF M.P.

...Respondent

Civil Services (Pension) Rules, M.P. 1976, Rules 42 & 79 - Period of Service - Petitioner had not completed 20 years of service, therefore, she was not found entitled for pension - Case of the petitioner was recommended by authorities to condone short fall of 21 days in view of Rule 79 to avoid undue hardship - Held - Since concerned department recommended the case in favour of petitioner after recording the reasons, that rules are causing undue hardship - There was no justification on the part of Finance Department in not giving the concurrence without assigning any reason - Respondents directed to do the needful so that petitioner can get pension. (Paras 2, 4, 12 & 13)

सिविल सेवा (पेंशन) नियम, म.प्र. 1976, नियम 42 व 79 - सेवा की अवधि - याची ने 20 वर्ष की सेवा पूर्ण नहीं की इसलिए, उसे पेंशन का हकदार नहीं पाया गया - याची के प्रकरण की अनुशंसा प्राधिकारियों द्वारा नियम 79 को दृष्टिगत रखते हुए, असम्यक कठिनाई से बचने के लिये 21 दिनों की सेवा की कमी की माफी के लिये की गयी - अभिनिर्धारित - चूंकि संबंधित विभाग ने कारण अभिलिखित करने के पश्चात याची के पक्ष में प्रकरण की अनुशंसा की कि नियम असम्यक कठिनाई कारित कर रहे हैं - वित्त विभाग की ओर से, बिना कोई कारण दर्शाये, सहमति नहीं दिये जाने का कोई न्यायोचित्य नहीं - प्रत्यर्थागण को आवश्यक कार्यवाही करने के लिये निदेशित किया गया जिससे कि याची को पेंशन प्राप्त हो सके।

Case referred :

2002(1) MPHT 235.

S.C. Bagadia with D.K. Chhabra, for the petitioner.

C.R. Karnik, G.A. for the respondent.

ORDER

N.K. Mody, J. :- The prayer in the petition is for quashment of order Annexure P/1 dated 01/02/06 whereby representation filed by petitioner

was dismissed.

2. Undisputed facts of the case are that petitioner who is Doctor by profession was in job and worked as intern in MGM Medical College, Indore w.e.f. 01/03/77 to 20/03/78. Thereafter petitioner worked as Resident House Surgeon w.e.f. 01/04/78 to 15/05/79. Thereafter petitioner was appointed as Demonstrator and worked w.e.f. 16/05/79 to 11/06/81 and thereafter petitioner was appointed as Assistant Surgeon in Employees State Insurance Corporation from June, 1981 to January, 1998. On 14/01/98 petitioner submitted the resignation which was duly accepted and the petitioner was relieved on 14/01/98. Since the petitioner was refused for pension on the ground that in view of Rule 42 of Pension Rules petitioner has not completed 20 years of services, therefore, petitioner is not entitled for pension. Petitioner approached this Court in WP.No.642/05, which was disposed of by this Court vide order dated 25/02/05 with a direction that petitioner shall submit a detailed representation before competent authority alongwith the order passed by this Court in the matter of *Ex.Cpl.H.J.Warren Vs. Union of India*, 2002(1) MPHT 235 and competent authority shall dispose of the representation within a period of two months. Further case of the petitioner is that in compliance of that representation was submitted, which was dismissed, hence this petition.

3. Learned counsel for the petitioner argued at length and submits that impugned order passed by respondents is illegal, incorrect and deserves to be set aside. It is submitted that the respondent has erred in holding that the period spent by the petitioner in the capacity of intern / resident house surgeon / demonstrator cannot be added to her services. It is submitted that the post of Demonstrator is a regular post under the service rules as per gazette dated 3/06/1988. It is submitted that since the petitioner was full time in employment with the respondent and received the pay, therefore, there was no justification on the part of respondent in dismissing the representation submitted by the petitioner. It is submitted that since the case of the petitioner was recommended by all the authorities, therefore, there was no justification on the part of Finance Department for rejecting the claim of the petitioner without assigning any reason. It is submitted that the petition be allowed and impugned order be set aside and respondent be directed to grant pension for which petitioner is entitled.

4. Learned counsel for respondent submits that the period of service as intern cannot be counted for her pensionary services. It is submitted that even all the services rendered by the petitioner is taken into consideration, then

too, petitioner has not completed qualified service of 20 years. It is submitted that as per Rule 79 of Rules it is the sole discretion of the State Government either to regularized the said period after taking the approval of the Finance Department or to reject the claim. It is submitted that since the proposal of the respondent was rejected by the Finance Department, therefore, in writ jurisdiction such powers cannot be exercised by this Court. Learned counsel placed reliance on Rule 13, 14, 15 & 42 of Pension Rules. It is submitted that the petition filed by the petitioner has no merits and the same be dismissed.

5. Rule 13 of Pension Rule deals with conditions subject to which service qualifies. Sub-Rule (1) of Rule (13) lays down that the service of a Government servant shall not qualify unless his duties and pay are regulated by the Government, or under conditions determined by the Government. Sub-Rule (2) of Rule 13 of the Rules lays down that for the purpose of sub-rule (1) the expression 'service' means service against a post under the Government and paid by the Government from the consolidated fund of the State which has not been declared as non-pensionable.

6. Rule 14 of the Rules deals with counting of service on probation. Rule 15 of the Rules deals with counting of service as apprentice, according to which services as an apprentice shall not qualify, except in cases where it qualifies under the pension rules applicable at the time when the service was rendered. Rule 42 of the Rules deals with retirement on completion of 20/25 years qualifying service.

7. In the present case after the orders passed by this Court the representation was submitted by the petitioner, which was taken into consideration by the State Government and the matter was directed to be placed before Cabinet vide order dated 31/07/05. Para Nos.5, 6, 6.1, 6.2, 7, 8 & 9 of the recommendation made by the State Government when the matter was placed before the Cabinet are relevant for just disposal of petition, which read as under:-

5/ पेंशन नियम 79 में राज्य शासन को यह अधिकार है कि वह वित्त विभाग के परामर्श से किसी नियम के कियान्वयन में किसी विशेष प्रकरण में कोई अवरोध उत्पन्न होता है तो लेखबद्ध किए जाने वाले कारणों से उस नियम की अपेक्षाओं को शिथिल किया जा सकता है।

6/ निर्विवादित रूप से एक चिकित्सक किसी भी सेवा में आने के लिए उसी समय अर्ह हो पाता है जब उसके पास में एमबीबीएस की उपाधि हो।

एमबीबीएस की उपाधि इंटरनशिप के उपरांत प्राप्त होती है। आशय स्पष्ट है कि इंटरनशिप किए बगैर एमबीबीएस की उपाधि प्राप्त नहीं हो सकती है।

6.1 जहां तक हाउस जॉब एवं डिमोंस्ट्रेटर के रूप में की गई सेवा को अर्हकारी मानने का प्रश्न है वित्त विभाग का मत यह रहा है कि नियत वेतन पर की गई सेवा को पेंशन प्रयोजनों के लिए मान्य नहीं किया जा सकता है। इस अवधि में अभ्यावेदिका को नियत वेतन प्राप्त होने का तथ्य निर्विवादित है। उनका यह कहना सही है कि डिमोंस्ट्रेटर का पद मध्यप्रदेश चिकित्सा शिक्षा सेवा नियम अनुसूची एक में रांजपत्रित पद के रूप में शामिल है। इसी प्रकार रेजीडेंट मेडिकल ऑफीसर की गोपनीय चरित्रावली लिखे जाने का प्रावधान बुक सर्कुलर में है। निश्चित रूप से किसी पद के लिए गोपनीय चरित्रावली लिखे जाने की व्यवस्था यह प्रमाणित करती है कि वह पद लोक सेवक के रूप में विद्यमान है। अतः उस पर कार्य करने की अवधि को शासकीय सेवा माना जाना चाहिए।

6.2 यही स्थिति डिमोंस्ट्रेटर के पद के लिए है। डिमोंस्ट्रेटर को मध्य प्रदेश चिकित्सा सेवा की प्रथम अनुसूची में शामिल किया गया है। चिकित्सा सेवा के भर्ती नियम संविधान के अनुच्छेद 309 के अंतर्गत बने हुए है जो लोक सेवकों के लिए प्रभावशील होते हैं। अतः मेरे मत में डिमोंस्ट्रेटर का पद भी लोक सेवक की श्रेणी का है।

7. अभिलेखों से यह भी स्पष्ट है कि अभ्यावेदिका के सेवा अभिलेख में 55 दिवस का अवकाश उपलब्ध है। उच्च न्यायालय द्वारा प्रश्नाधीन याचिका में पारित आदेश में जिस न्यायिक दृष्टांत (प्रकरण कमांक 2002 (1) एएमपीएचपी-235) का उल्लेख किया गया है उसकी परिस्थितियां यद्यपि इस प्रकरण में लागू नहीं होती है (संदर्भित प्रकरण में याचिकाकर्ता एचजे. वॉरेन, सेवा निवृत्त कारपोरल द्वारा वायुसेना से त्यागपत्र नहीं दिया गया था, जबकि इस प्रकरण में डॉ. सुजाता भार्गव द्वारा त्यागपत्र दिया गया है) किन्तु इस प्रकरण में यह निर्धारित किया गया है कि यदि कर्मचारी के खाते में अर्जित अवकाश उपलब्ध है तो उतने दिनों का लाभ पेंशन के लिए अर्हकारी सेवा हेतु दिया जाना चाहिए और यदि उसके बाद भी अर्हकारी सेवा में कुछ कमी है तो उसे condone किया जा सकता है।

8. उपर्युक्त तथ्यों पर यदि विचार किया जाता है तो डॉ. सुजाता भार्गव द्वारा श्रम विभाग में की गई सेवा (16 वर्ष 7 माह 2 दिन), हाउस जॉब के रूप में की गई सेवा (1 वर्ष 1 माह 15 दिन) तथा डिमोंस्ट्रेटर के रूप में की गई सेवा (2 वर्ष 0 माह 27 दिन) अर्जित अवकाश का शेष (1 माह 25 दिन) को अर्हकारी सेवा के लिए मान्य किया जाता है तो यह अवधि 19 वर्ष 11 माह 09 दिन होती है जो अर्हकारी सेवा में मात्र 21 दिन कम है। डॉ. सुजाता भार्गव ने 16 वर्ष से अधिक विभाग में सेवाएं प्रदान की हैं अतः उनकी अभ्यावेदन पर सहानुभूतिपूर्वक विचार करते हुए अभ्यावेदन स्वीकार किया जा सकता है।

9. पेंशन नियम 79 की व्यवस्था राज्य शासन को आपवादिक स्वरूप प्रकरणों में नियम शिथिल करने की शक्ति प्रदान करती है। चूंकि इस प्रकरण में वित्त विभाग अपनी असहमति पूर्व में व्यक्त कर चुका है और मंत्रिपरिषद द्वारा भी इस प्रकरण को दिनांक 4/8/2003 को अमान्य किया गया है। इसलिए अभ्यावेदन मान्य करने की स्थिति में पुनः मंत्रिपरिषद आदेश प्राप्त करना आवश्यक होंगे।

8. Thereafter again Chief Secretary, Labour vide order dated 24/11/05 made recommendations, of which para Nos. 4 & 5 are relevant, which reads as under:-

4/ प्रकरण में यह निर्विवादित है कि पेंशन नियम के अनुसार तत्समय 20 वर्ष की अर्हकारी सेवा के आधार पर ही पेंशन की पात्रता बनती है। पेंशन नियम 79 में राज्य सरकार को नियमों को शिथिल करने की शक्तियां प्रदान की गई है।

जहां तक उक्त न्यायिक दृष्टांत का प्रश्न है यह दृष्टांत पी-24-27/सी पर अवलोकनीय हैं। पेंशन की अर्हताकारी सेवा पूर्ण करने के लिए उच्च न्यायालय द्वारा याचिकाकर्ता के लेखे में उपलब्ध छुट्टी की अवधि को शामिल करने और उसके बाद भी अवधि पूरी न होने पर उस अवधि को माफ करने का निर्णय दिया गया है। इस प्रकरण में डॉ. भार्गव की हाउस जॉब, डिमॉस्ट्रेटर तथा अर्जित अवकाश के शेष को अगर अकाउंट फ़ार किया जाता है तो यह अवधि 19 वर्ष 11 माह 9 दिन होती है।

5/ डॉ. भार्गव की ओर से डॉ. अग्रवाल दिनांक 30/9/2005 को उपस्थित हुए थे और उन्होंने प्रकरण में उपर्युक्त तथ्यों के आधार पर ही निर्णय लेने का अनुरोध किया है। उन्होंने पुनः यह अनुरोध किया है कि 21 दिन के शार्ट फाल को माफ किया जाना चाहिए। उन्होंने यह भी उल्लेख किया कि जिस प्रकार से अन्य सेवाओं में प्रशिक्षण अवधि को भी सेवा में माना जाता है इसी आधार पर डॉ. भार्गव की प्रशिक्षण की अवधि (इन्टर्नशिप) को ध्यान में रखा जाना चाहिए और यदि इन्टर्नशिप को भी ध्यान में रखा जाता है तो उनका कुल सेवाकाल 20 वर्ष से अधिक का होता है।

डॉ. सुजाता भार्गव ने इस बीच एक आवेदनपत्र प्रस्तुत कर समक्ष में सुनवाई का अनुरोध किया था। किन्तु अब वे अन्य कोई पक्ष प्रस्तुत नहीं करना चाहती है।

9. Thereafter the matter was placed before the Finance Department whereby representation submitted by the petitioner was rejected on the ground that the law laid down in the matter of *Ex. Cpl. H.J. Warren Vs. Union of India*, 2002(1) MPHT 235 is not applicable, hence petitioner is not entitled for pension.

Rule 79 of Rules reads as under:-

79. Power to relax.- Where any department of the Government is satisfied that the operation of any of these rules causes undue hardship in any particular case, the State Government may by order of reasons to be recorded in writing, dispense with or relax the requirements of the rule to such extent and subject to such exceptions and conditions as it may consider necessary for dealing with the case in a just and equitable manner:

Provided that no such order shall be made except with the concurrence of the Finance Department.

10. From perusal of record, it appears that upon the representation submitted by the petitioner in compliance of the order dated 25/02/2005 passed in W.P. No.642/2005 case of the petitioner was considered by the concerned department and it was found that if the period of internship is taken into consideration, then the period of service rendered by the petitioner is more than 20 years. It was also observed by the Secretary, Labour Department that total length of service of petitioner is of 19 years, 11 months and 9 days, thus, there is a short fall of 21 days for entitlement of the petitioner for pension. It was also recommended by the Labour Department that after considering the case of the petitioner sympathetically the short fall can be condoned. Since the case of the petitioner was rejected earlier, therefore, vide order dated 30/07/2005 case of the petitioner was again recommended to the Cabinet.

11. As per Rule 79 of Civil Services Pension Rules where any department of the Government is satisfied that the operation of any of these rules causes undue hardship in any particular case, the State Government may by order of reasons to be recorded in writing, dispense with or relax the requirements of the rule.

12. In the present case concerned department recommended the case in favour of petitioner after recording the reasons to the effect that pension rules are causing undue hardship to the petitioner. The matter was sent to the Finance Department for concurrence. No reason has been assigned by the Finance Department for not giving the concurrence. Once the reasons were recorded by the concerned department, therefore, there was no justification on the part of Finance Department in not giving the concurrence without assigning any reason.

13. In the facts and circumstances of the case, petition filed by the petitioner is

allowed and the impugned order Annexure-P/1 is set-aside holding that after counting the service of the petitioner including intern/resident house surgeon as counted by the concerned department of the State where the petitioner rendered her services petitioner has completed qualifying (sic:qualifying) service and the petitioner is entitled for pension. Respondents are directed to do the needful so that the petitioner can get the pension. Needful be done within three months.

With the aforesaid observations, petition stands disposed of. C.C. as per rules.

Petition allowed.

I.L.R. [2014] M.P., 1531

WRIT PETITION

Before Mr. Justice Alok Aradhe

W.P. No. 3876/2014 (Jabalpur) decided on 27 March, 2014

RAJENDRA RAI

...Petitioner

Vs.

STATE OF M.P. & ors.

...Respondents

Contract - Rejection of bid - Owing to non-attestation - Petition challenging acceptance of single offer for grant of licence to sell country and foreign liquor - Since the petitioner had not made an attestation in the documents annexed in Part-I of his bid as required under clauses 16.14 & 20, treated the same to be incomplete Part-II bid was not opened, although the same was on higher side - Held - Clause 16.14 and 20 of the notice inviting tender are not the essential condition but are collateral ones, as the consequence of non-compliance thereof is not provided - Same should have been got corrected and the bid of the petitioner which is higher, should be opened in the interest of revenue - District Committee is directed to get attestation of documents and to accept the bid of the petitioner. (Paras 9 & 10)

संविदा - बोली की अस्वीकृति - साक्ष्यांकन नहीं किये जाने के कारण - देशी और विदेशी मदिरा के विक्रय हेतु अनुमति प्रदान किये जाने के लिये एकल प्रस्थापना की स्वीकृति को चुनौती देते हुए याचिका - चूंकि याची ने अपनी बोली के भाग-I में सलग्न दस्तावेजों पर साक्ष्यांकन नहीं किया था जैसा कि खंड 16.14 व 20 के अंतर्गत अपेक्षित था, उसे अपूर्ण माना गया, बोली का भाग-II नहीं खोला गया, यद्यपि वह उच्चतर थी - अभिनिर्धारित - निविदा आमंत्रण नोटिस के खंड 16.14 व 20 आवश्यक शर्त नहीं है बल्कि सांपर्शिक है क्योंकि उसके अननुपालन के

परिणाम उपबंधित नहीं है – उक्त में सुधार कराया जाना चाहिए था और याची की बोली जो कि उच्चतर है, को राजस्व के हित में खोला जाना चाहिए – जिला समिति को दस्तावेजों का साक्षात्कन करवाकर, याची की बोली स्वीकार करने के लिये निदेशित किया गया।

Cases referred :

W.P. No. 3836/2012 decided on 03.04.2012, AIR 2005 SC 2821, 2007 (3) MPLJ 300, (1990) 2 SCC 488, (1991) 3 SCC 273, (2002) 6 SCC 315.

Kishore Shrivastava with Ashok Agrawal, for the petitioner.

Swapnil Ganguly, Dy. G.A. for the respondents No. 1 to 3.

R.N. Singh with Arpan J. Pawar and S.R. Tamrakar, for the respondent No.4.

ORDER

ALOK ARADHE, J. :- In this writ petition the petitioner, *inter alia*, seeks quashment of acceptance of single offer of respondent No.4 for grant of licence to sell country and foreign liquor as well as order dated 10.3.2014 passed by the Deputy Secretary. The petitioner also seeks a direction to respondents No.1 to 3 to open the financial bid of the petitioner to grant licence to him as he is the highest bidder.

2. In order to appreciate the petitioner's grievance, few facts need mention which are stated infra. The petitioner and respondent no.4 submitted their tenders for obtaining licence in respect of country liquor and foreign liquor retail shop situated at Khandali, District Narsinghpur. The petitioner offered a bid of Rs.3,59,00,000/- (Rupees Three Crores Fifty Nine lacs) whereas the respondent No.4 submitted an offer of Rs.3,51,00,000/- (Rupees Three Crores Fifty One lacs). The petitioner alongwith his tender form submitted a demand draft of Rs.43.50 lacs towards earnest money. The bid was submitted in two parts. When the first part of the bid was opened, the petitioner was informed that Part-I of the bid submitted by the petitioner does not contain an endorsement that the documents annexed with Part-I of the tender have been submitted by the petitioner himself. Thereupon, the petitioner raised an objection on 01.3.2014. However, the Collector did not seek any clarification/ instruction from the Commissioner (Excise). The petitioner submitted an application on 01.3.2014 to the Commissioner (Excise) on the ground that on account of inadvertence the petitioner did not mention in Part-I of the bid that

the documents annexed with Part-I of the bid were submitted by the petitioner himself and the same tantamounts to mistake of general or clerical nature. Accordingly, his financial bid be accepted. However, bid of respondent No.4, which was lower, was accepted on 01.3.2014.

3. It appears that the Commissioner (Excise) thereupon referred the matter to the Deputy Commissioner (Excise) and sought clarification from the Collector. The Collector in its report stated that since the petitioner had not made an attestation in the documents annexed in Part-I of his bid as required under Clauses 16.14 and 20 of the notice inviting tender, therefore, Part-I of his bid be treated to be incomplete and Part-II, namely, financial bid be not opened. The Deputy Commissioner, by communication dated 02.3.2014 informed the Commissioner that non-attestation of the document annexed with Part I of the bid submitted by the petitioner amounts to mistake of clerical or general in nature, therefore, the District Committee ought to have got the mistake corrected and should have opened the financial bid of the petitioner. The Commissioner (Excise) agreed with the opinion given by the Deputy Commissioner and suggested that the mistake committed by the petitioner be rectified in terms of clause 16.17 of the notice inviting tender and the financial bid of the petitioner be opened in the interest of revenue. The Commissioner referred the matter for consideration to the State Government. The Principal Secretary of Commercial Tax expressed the opinion that in view of the proposal given by the Commissioner (Excise) no action at this stage is required and, in case, the petitioner is aggrieved he should approach the Court. The Deputy Secretary vide order dated 10.3.2014 rejected the claim of the petitioner. In the aforesaid factual background the petitioner has approached this Court.

4. Learned senior counsel for the petitioner submitted that admittedly the petitioner's bid is higher than the respondent No.4. Under clause 16.17 of the notice inviting tender any clerical mistake of general or clerical nature can be corrected by the District Committee. It is further submitted that clauses 16.8 and 20 of the notice inviting tender are directory in nature as no consequences of their non-compliance are provided. It is further submitted that the Commissioner (Excise) is the final authority to take decision under clause 16.17 of the Notice Inviting Tender and the decision of the Commissioner is binding. It was also urged that the Commissioner's decision was not over-ruled by the State Government and, in case, the financial bid of the petitioner is not opened, there would be loss of Rs.7 lacs to the State

exchequer. In support of aforesaid submission, learned senior counsel has placed reliance on an order passed by a Bench of this Court in *Harpal Singh Bhatia vs. State of M.P. and others*, [Writ Petition No.3836/2012 decided on 03.4.2012].

5. On the other hand, learned Deputy Government Advocate has submitted that the case of the petitioner falls under clause 16.8 and clause 20 of the notice inviting tender which are mandatory in nature and the financial bid of the petitioner has not been opened on account of non-compliance with the mandatory condition. The case of the petitioner does not fall within the purview of clause 16.17 of the notice inviting tender. It is also urged that the condition with regard to attestation of the documents annexed with Part-I of the tender submitted by the petitioner has been incorporated as it was found that in certain cases some of the tenderers who participate in the tender process and quote excessive amount, do not turn up to execute the contract.

6. Learned senior counsel for respondent No.4, on the other hand, submitted that the District Committee had never sought any guidance from the Commissioner. The petitioner submitted the representation directly to the Commissioner and thereupon reference was made to the State Government which has been rejected. It is further submitted that clause 16.8 as well as clause 20 of the notice inviting tender are mandatory in nature and since the petitioner had not complied with the mandatory provision of the Notice Inviting Tender, therefore, the bid of the petitioner has rightly been rejected. In support of his submission learned senior counsel has placed reliance on the decision of Supreme Court in *Ashok Lanka and another vs. Rishi Dixit and others*, AIR 2005 SC 2821 and decision of this Court in *Ramabhilsh Kori vs. State of M.P.* 2007 (3) MPLJ 300.

7. I have considered the respective submissions made by learned counsel for the parties. The authority inviting tender is bound to give effect to every term mentioned in the Notice in meticulous details and is not entitled to waive even a technical irregularity of little or no significance. The requirements in a tender notice can be classified into two categories, those which lay down the essential conditions of eligibility and the others which are merely ancillary or subsidiary with the main object to be achieved by the condition. In the first case, the authority issuing the tender may be required to enforce them rigidly. In the other cases it must be open to the authority to deviate from and not to insist upon the strict literal compliance of the conditions in appropriate cases.

[See: *G.J.Fernandez vs. State Karnataka and others*, (1990) 2 SCC 488 and *Poddar Steel Corporation vs. Ganesh Engineering Works and others*, (1991) 3 SCC 273]. Whether a condition in the Notice Inviting Tender is essential or collateral could be ascertained by reference to the consequence of non-compliance thereto. If non-fulfilment of the requirement results in rejection of the tender, then it would be an essential part of the tender otherwise it is only a collateral term. [See: *Kanhaiyalal Agrawal vs. Union of India and others*, (2002) 6 SCC 315].

8. In the backdrop of well settled legal position the relevant clauses of the Notice Inviting Tender, namely, Clauses 16.8, 16.14, 16.17 and 20 may be noticed, which read as under:

“16.8 टेण्डरदाता द्वारा किसी मदिरा दुकान/एकल समूह के लिए प्रस्तुत किये गये अपने टेण्डर के साथ, अपनी स्वयं की पहचान एवं निवास स्थान के पते के सत्यापन हेतु निम्नांकित कड़िका क्रमांक -20 (1) एवं 20 (2) में उल्लेखित दस्तावेजों में से, किसी एक-एक दस्तावेज की राष्ट्रीयकृत/अधिसूचित/ क्षेत्रीय ग्रामीण बैंक के शाखा प्रबंधक अथवा नोटरी अथवा आयकर अधिकारी अथवा केन्द्रीय /राज्य शासन के राजपत्रित अधिकारी द्वारा प्रमाणित किये गये दस्तावेज को “मेरे द्वारा स्वयं प्रस्तुत किया गया है” अंकित कर, अपने दिनांकित हस्ताक्षर के साथ संलग्न प्रस्तुत करना अनिवार्य होगा।”

“ 16.14 टेण्डर द्वारा निष्पादित की जाने वाली सभी मदिरा दुकानों/एकल समूहों के घोषित आरक्षित मूल्य के अवरोही क्रम में, मदिरा दुकानवार/एकल समूहवार प्रस्तुत टेण्डरों का भाग-एक खोला जा कर, टेण्डरदाता के टेण्डर में भाग लेने कि पात्रता की जांच की जायेगी। साथ ही टेण्डरदाता द्वारा संबंधित मदिरा दुकान/एकल समूह की देय धरोहर राशि की विधिवत पृष्टी/संतुष्टी होने एवं जांच में समस्त अभिलेख पूर्ण होने एवं समाधानकारक पाये जाने के उपरांत ही, जिला समिति द्वारा टेण्डर का आफर, भाग-दो फायनेंशियल बिड को खोला जायेगा। फायनेंशियल बिड के लिफाफे में टेण्डरदाता के आफर के 1/12 भाग के पोस्टडेडेट चेक कि अनुपस्थिति में अथवा उसके तृटिपूर्ण होने कि स्थिति में, टेण्डरदाता द्वारा भाग-दो फायनेंशियल बिड में अंकित ऑफर विचारणीय नहीं होगा।”

“ 16.17 टेण्डर प्रपत्र भाग-एक के अभिलेखों में धरोहर राशि के विधिवत जमा पाये जाने पर, अभिलेखों में लिपिकीय तृटि अथवा सामान्य तृटियों के आधार पर प्राप्त ऑफर (फायनेंशियल बिड) को अमान्य नहीं किया जावेगा। इस प्रकार की तृटियों का सुधार जिला समिति मौके पर करवा सकेगी। लिपिकीय तृटि अथवा सामान्य प्रकार के तृटि के संबंध में शंका - समाधान के लिए, संबंधित कलेक्टर, आवकारी आयुक्त से निर्देश प्राप्त कर सकेंगे। इस संबंध

मे आबकारी आयुक्त द्वारा दिया गया निर्देश अंतिम माना जावेगा।”

“20 टेण्डरदाताओं की पहचान एवं निवास स्थान के पते के प्रमाणिकरण के संबंध में टेण्डर द्वारा मदिरा दुकानों/एकल समूहों के निष्पादन हेतु इच्छुक टेण्डरदाताओं को उनकी व्यक्तिगत पहचान एवं उनके निवास स्थान के पते के प्रमाणिकरण के संबंध में, निम्न दस्तावेजों में से किसी एक-एक दस्तावेज की किसी राष्ट्रीयकृत/अधिसूचित/क्षेत्रीय ग्रामीण बैंक के शाखा प्रबंधक अथवा नोटरी अथवा आयकर अधिकारी अथवा केन्द्रीय/राज्य शासन के राजपत्रित अधिकारी द्वारा प्रमाणित की गयी छाया प्रति को “मेरे द्वारा स्वयं प्रस्तुत किया गया है” ऐसा अंकित कर, अपने दिनांकित हस्ताक्षर के साथ संलग्न प्रस्तुत करना अनिवार्य होगा”

9. From the close scrutiny of the aforesaid clauses of the Notice Inviting Tender it is evident that tenderer is required to put attestation on the documents annexed with the Part-I of the tender that the documents have been presented by him, in view of clauses 16.8 and 20 of the Notice Inviting Tender. However clause 16.17 provides that in case if appropriate earnest money is deposited alongwith the Part-I of the bid, then the financial bid submitted by the tenderer should not be rejected merely on the ground of clerical or general error. Such an error can be got corrected by the District Committee and in case of any doubt, the Collector can seek instructions from the Commissioner (Excise). If Clauses 16.14 and 16.17 are read together, it is evident that in case the tenderer deposits requisite earnest money with Part-I of the bid, his financial bid should not be rejected merely on the basis of an error which may be of clerical or general in nature. It is not in dispute that petitioner has deposited requisite earnest money with Part I of the bid. An interpretation that if tenderer fails to attest the documents annexed with the Part-I of the bid, then in such a case his financial bid shall not be opened, would render clauses 16.17 of the Notice Inviting Tender redundant and otiose. Apart from this, Clause 16.14 and Clause 20 of the Notice Inviting Tender are not the essential condition of the Notice Inviting Tender but are collateral ones, as the consequence of non-compliance thereof are not provided in the Notice Inviting Tender and the consequences of noncompliance with clauses 16.14 and 20 do not result in rejection of the tender. The Deputy Commissioner as well as the Commissioner (Excise) have opined that mistake committed by the petitioner with regard to non-attestation of the documents submitted alongwith Part-I of the bid is of clerical/general in nature and the same should have been got corrected by the District Committee and the bid of the petitioner, which is higher, should be opened in the interest of revenue. It is also pertinent to mention here that the State Government has not disagreed with the view taken by the Commissioner (Excise). The decision

of an executive authority must be informed by reason and should be in public interest. The action of District Committee in not opening the financial bid of the petitioner, which admittedly is higher, cannot be sustained in the eye of law. The decision relied upon by the learned senior counsel for respondent No.4 in the case of *Ashok Lanka* (supra) is of no assistance to him as the non-compliance of the conditions in the aforesaid case debars a person from filing an application. Similarly, a Bench of this Court in *Ramabhilsh Kori* (supra) has held that re-auction cannot be ordered in violation of the terms and conditions of the Notice Inviting Tender. The aforesaid decision has also no application to the facts of the case.

10. In view of the preceding analysis, the order of the District Committee accepting the bid of the respondent No.4 dated 01.3.2014 as well as order dated 10.3.2014 passed by the Deputy Secretary, are hereby quashed. The District Committee is directed to get attestation on the documents submitted by the petitioner along with Part I of the bid and to accept the bid of the petitioner, which is highest, and to complete the formalities for grant of licence in respect of shop in question in favour of the petitioner expeditiously.

11. In the result, the writ petition is allowed.

Petition allowed.

I.L.R. [2014] M.P., 1537

WRIT PETITION

Before Smt. Justice S.R. Waghmare

W.P. No. 1182/2012 (Indore) decided on 28 March, 2014

SHABBIR MOHAMMAD

...Petitioner

Vs.

STATE OF M.P. & ors.

...Respondents

Service Law - Recovery - Although petitioner attained the age of superannuation on 31.07.2007 but he was allowed to continue up to 10.03.2008 - Excess amount paid to petitioner by way of salary for the said period was ordered to be recovered - Held - If the beneficiary had retired, order of recovery was not in accordance with the provision of law - Since the petitioner had worked for 8 months, he would be entitled to the salary for the said period - Amount recovered is directed to be refunded with interests @ 9.5% p.a. till payment is made to the petitioner. (Para 6)

सेवा विधि - वसूली - यद्यपि याची ने 31.07.2007 को अधिवार्षिकी आयु प्राप्त कर ली थी, परन्तु उसे 10.03.2008 तक बने रहने की मंजूरी दी गई थी - उक्त अवधि में याची को वेतन के रूप में भुगतान की गई अतिरिक्त राशि वसूलने का आदेश दिया गया - अभिनिर्धारित - यदि लाभग्राही सेवानिवृत्त हो गया है, वसूली का आदेश, विधि के उपबंध के अनुसरण में नहीं था - चूंकि याची ने 8 माह कार्य किया, वह उक्त अवधि के वेतन का हकदार होगा - वसूल की गयी रकम को याची को अदा किये जाने तक 9.5 प्रतिशत प्रतिवर्ष की दर से ब्याज के साथ वापस करने के लिये निदेशित किया गया।

Cases referred :

1994 (I) SCC 521, W.P. No. 1877/2005, decided on 04.10.2010, W.P. 168/2012, AIR 2012 SC 2951.

Shashank Patwari, for the petitioner.

Raghuveer Singh Chouhan, G.A. for the respondents/State.

ORDER

SMT. S.R. WAGHMARE, J. :- By this writ petition under article 226 of the Constitution of India petitioner Shabbir Mohammad has challenged the recovery made against him pursuant to the order dated 10.03.2008.

2. The facts of the case briefly stated are that the petitioner rendered service on the post of Driver in the Department of Tribal Development at Alirajpur. He attained the age of superannuation on 31.07.2007, however, he was allowed to continue into service up to 10.03.2008. He also continued to receive salary for the said period, however, respondent No.3 Assistant Commissioner, Tribal Development, Alirajpur issued an order dated 10.03.2008 and informed the petitioner that since his date of retirement was 31.07.2007 he had to be retired with retrospective effect and the excess amount paid to the petitioner by way of salary etc would have to be recovered from the retiral benefits and the excess amount was declared to be Rs.52646/-.

3. Counsel submitted that the petitioner had submitted all the required papers, forms, applications to the respondents for finalisation of his retiral benefits, despite which respondent No.5 District Treasury Officer, Alirajpur has recovered the alleged excess amount of Rs.52,646/- from his retiral benefits without giving any opportunity of hearing to the petitioner. The recovery had been ordered on the ground that the petitioner had wrongly been paid. Counsel submitted that this High Court as well as the Apex Court had in several cases

held that such a recovery could not be made and the recovery after retirement without any fault on the part of the employee concerned was contrary to the provisions of law. Counsel relied on *Shyambabu Verma vs. Union of India & ors* reported in 1994 (I) SCC 521 whereby the Apex Court held that the higher pay scale erroneously given to the petitioner since 1973 and the pay scale was reduced in the year 1984, the Court had directed that since the petitioner had received the higher pay scale due to no fault of the petitioners; it shall only be just and proper not to recover any excess amount already paid to them. Counsel also submitted that this High Court in the case of *Suryanarayan Shukla Vs. State of M.P. and others* in W.P. No.1877 of 2005 decided on 04.10.2010 held thus:-

“Hon'ble the Apex Court in the matter of *Sahibram Vs. State of Haryana and others* reported in 1995 Supp. (1) SCC 18 has quashed the recovery in respect of an employee who was not responsible in the matter of pay fixation in similar circumstances. The Hon'ble Apex Court in the matter of *Shyambabu Verma Vs. Union of India & ors* reported in 1994 (I) SCC 683, has also held that in case an employee was not at fault and there is no misrepresentation on the part of an employee, no order for recovery in such circumstances in the matter of grant of emoluments in excess to his entitlement, can be passed by the employer.

Resultantly, the present writ petition stands allowed. The Respondents are directed to refund the entire amount of Rs.1,01,350/- to the petitioner along with interest @ 9.5% per annum till payment is made to the petitioner. The aforesaid exercise of making payment shall be concluded within a period of six months from the date of receipt of certified copy of this order.”

4. Further Counsel submitted that Division Bench of this Court recently passed an order in W.P. No.168 of 2012 (*State of MP and others Vs. Omprakash s/o Daulat Singh Pure*) held thus:-

“7. We have gone through the order passed by the Supreme Court in the case of *Chandi Prasad Uniyal and others vs. State of Uttarakhand and others* (2012) 8 SCC 417. We find that the Supreme Court in the said judgment has

observed the directions contained in the case of *Syed Abdul Qadir* (2009) 3 SCC 475 and *Col. B.J. Akkara* (2006) 11 SCC 709 as also in the case of *Shyam Babu Verma* 1994 (2) SCC 521 and *Sahib Ram* 1994(2) SCC 52 wherein the department is restrained from recovery of excess amount keeping in view the peculiar facts and circumstances of the case since the beneficiaries had either retired or were on the verge of retirement and so as to avoid any hardship to them.

8. In the present case also, the benefit extended to the writ petitioner was sought to be recovered on his retirement. In our considered view, this if allowed to stand, would cause great hardship to a retired employee.

9. In the circumstances, we are of the view that no case for interference in the order passed by the learned Single Judge is made out.

10. As a result, the appeal fails and is hereby dismissed.”

and the Division Bench had dismissed the appeal filed by the State against recovery and excess payment ordered by the State.

5. Counsel for the respondent per contra has resisted the claim of the petitioner by stating that the petitioner attained superannuation on 31.07.2007, however knowing fully well he continued in service for period of almost 8 months, and whereas the entry in his service book Annexure P/2 categorically indicates his date of birth and vide Annexure R/3. The petitioner has also given his consent for the recovery, admitting that the mistake had occurred and excess payment had been paid to him and in these circumstances Counsel stated that the petitioner cannot now go back on his admission and claim that the recovery be quashed. Counsel also placed reliance on *Chandi Prasad Uniyal and others v. State of Uttarakhand and others* [AIR 2012 SC 2951] whereby the Apex Court had directed that excess payment made to employees can be recovered and the recovery cannot be limited only to cases of fraud and misrepresentation since non-recovery of the payment would amount unjust enrichment.

6. On considering the above submissions, I find that the short point requires consideration is whether *Chandi Prasad Uniyal* (supra) would be applicable in the case of the present petitioner. I find that the Division Bench

of this Court had considered the question in the matter of *State of M.P. Vs. Omprakash* (supra) and categorically held that if the peculiar facts and circumstances of the case are considered and if the beneficiary had retired then to avoid hardship to a retired employee, the recovery was not in accordance with the provisions of law and was liable to be quashed and should not be ordered. Under the circumstances I find that the petitioner had worked for 8 months and was entitled to the salary on the basic principle that work cannot be taken from the employee without paying him any wages; more so when the petitioner rendered so many years of service without blemish; he would be entitled to the salary for the said period.

7. Resultantly, the present writ petition stands allowed. The Respondents are directed to refund the entire amount of Rs.52646/- to the petitioner along with interest @ 9.5% per annum till payment is made to the petitioner. The aforesaid exercise of making payment shall be concluded within a period of two months from the date of receipt of certified copy of this order.

Costs of Rs.1500/- be paid to the Counsel for the petitioner if certified.

Petition allowed.

I.L.R. [2014] M.P., 1541

APPELLATE CIVIL

Before Mr. Justice R.S. Jha

S.A. No. 373/1999 (Jabalpur) decided on 8 January, 2013

RAMSHANKAR

...Appellant

Vs.

GURU SINGH SABHA

...Respondent

A. Accommodation Control Act, M.P. (41 of 1961), Section 12 - Suit by Public Trust - Suit filed by the Secretary of Public Trust without joining the other trustees - Held - The suit was filed with the consent and approval of the co-trustees - There is nothing on record to indicate any dissent on the part of the trustee who has not signed the resolution - Mere absence of signature of one of the trustees out of ten would not render the suit unmaintainable. (Paras 5 & 7)

क. स्थान नियंत्रण अधिनियम, म.प्र. (1961 का 41), धारा 12 - लोक न्यास द्वारा वाद - लोक न्यास के सचिव द्वारा अन्य न्यासियों को संयोजित किए बिना वाद प्रस्तुत किया गया - अभिनिर्धारित - सह-न्यासियों की सहमति एवं

मंजूरी से वाद प्रस्तुत किया गया था - न्यासी जिसने संकल्प पर हस्ताक्षर नहीं किये, उसकी ओर से कोई असहमति दर्शाने के लिए अभिलेख पर कुछ नहीं - दस में से एक न्यासी के हस्ताक्षर की अनुपस्थिति मात्र से वाद अपोषणीय नहीं बनेगा।

B. Accommodation Control Act, M.P. (41 of 1961), Section 12 - Suit by Public Trust - Whether Plaintiff was required to plead and prove grounds enumerated u/s 12 of Accommodation Control Act, M.P. as it was not automatically exempted on being a religious Public Trust - Held - No objection or pleadings regarding non utilization of the income for the purpose of the trust - Defendants did not raise any plea that the plaintiff is not entitled for the benefit of exemption notification - No legal infirmity in the impugned judgment and decree - Substantial questions as raised do not arise. (Paras 9 & 12)

ख. स्थान नियंत्रण अधिनियम, म.प्र. (1961 का 41), धारा 12 - लोक न्यास द्वारा वाद - क्या वादी को स्थान नियंत्रण अधिनियम, म.प्र. की धारा 12 के अंतर्गत प्रमाणित आधारों का अभिवाक् करना और साबित करना अपेक्षित था, जैसा कि उसे धार्मिक लोक न्यास होने के नाते अपने आप छूट नहीं थी - अभिनिर्धारित - न्यास के प्रयोजन हेतु आय का उपयोग नहीं किये जाने के संबंध में कोई आक्षेप या अभिवचन नहीं - प्रतिवादीगण ने कोई अभिवाक् नहीं उठाया कि वादी, छूट की अधिसूचना के लाभ का हकदार नहीं - आक्षेपित निर्णय एवं डिक्री में कोई विधिक कमी नहीं - सारवान प्रश्न जैसे कि उठाये गये हैं, उत्पन्न नहीं होते।

Cases referred :

1973 MPLJ 842, (2003) 5 SCC 17.

Ashish Shroti, for the appellant.

Imitaz Husain, for the respondent.

ORDER

R.S. JHA, J. :- The appellant has filed this appeal being aggrieved by the judgment and decree dated 12.02.1999 passed in Civil Appeal No.10-A/1995 whereby the judgment and decree dated 06.10.95 passed in Civil Suit No. 99-A/95 by the Civil Judge, Class-II, Harda has been affirmed.

2. The appellant/defendant who is the tenant of the respondent has filed this appeal on the assertion that the following substantial questions of law arises for adjudication in this appeal:-

(1) Whether the suit filed by the Secretary on behalf of the

plaintiff Shri Guru Singh Sabha, a religious and registered public trust, without joining the other trustees as plaintiffs, was maintainable?

(2) Whether the plaintiff-trust was exempted from the provisions of the M.P. Accommodation Control Act automatically it being a religious and a registered public trust, in the absence of any notification issued by the State Government under section 3(2) of the M.P. Accommodation Control Act?

(3) Whether the suit of the plaintiff-Trust is governed by the provisions of Section 106(h) of the Transfer of Property Act or the provisions of the M.P. Accommodation Control Act?

3. It is submitted by the learned counsel appearing for the appellant that the suit was filed on behalf of the trust by the Secretary without joining all other trustees as plaintiffs and therefore, the suit deserves to be dismissed as not maintainable. It is submitted that in view of the decision rendered by this court in the case of *Laxman Prasad Vs. Shrideo Janki Raman* 1973 MPLJ 842 the suit should have been filed by impleading all the trustees or should have been filed by the Secretary by the sanction and approval of co-trustee and in the absence of the same, should have been dismissed as not maintainable, by both the courts below. It is submitted that both the courts below have failed to appreciate this aspect and the judgment and decree of both the courts below deserve to be set aside.

4. I have perused the decision of this court rendered in the case of *Laxman* (Supra).

5. From a perusal of Ex. P/8, it is apparent that the Secretary was authorized by the Trust to file the present suit on its behalf by resolution of the general body in which all the trustees, except one trustee Jagjeet Singh Saluja, were present, as admitted by PW/1 in his statement and therefore, it is not disputed that the suit has been filed by the Secretary with the consent and approval of the co-trustee. From a perusal of the paragraph 8 of the decision rendered in the case of *Laxman* (supra) wherein the conclusions have been summarized, it is clear that the suit by the trust can be brought by all the trustees, or by one of the trustees with the sanction and approval of his co-trustees.

6. The contention of the learned counsel for the appellant to the effect that the words sanction and approval by co-trustee used in the judgment of

this court in the case of *Laxman* (supra) mean each and every one of the trustees cannot be accepted mainly on the ground the aforesaid judgment itself does not say so and that the issue in the aforesaid decision related to the filing of a suit by one of the trustees on his own without there being any sanction or approval of the co-trustee as has been done in the present case by a resolution of the general body of the public trust.

7. Quite apart from the above, it is also clear that the suit filed by the Secretary on the strength of the resolution of the general body on behalf of the trust is neither against the interest of the trust nor is it in respect of any dispute between the trustees and has been filed by and on behalf of the trust for eviction of the appellant/defendant. The appellant has also not placed anything on record to indicate any dissent on the part of the trustee who has not signed the resolution. In such circumstances, I am of the considered opinion that in the peculiar facts and circumstances of this case mere absence of signature of one of the trustees out of ten trustees would not render the suit for eviction of the appellant unmaintainable and the decision relied upon by the learned counsel for the appellant in this regard is distinguishable on the ground that it related to the issue regarding filing of a suit by one of the trustees on his own without sanction or approval of 6 trustees and as the said decision does not categorically state that the authorization has to be made by each and every one of the trustees.

8. The aforesaid conclusion is also in conformity with the law laid down by the Supreme Court in the case of *Ramgopal and another Vs. Balaji Mandir Trust and others* (2003) 5 SCC 17 wherein similar view taken by this court in C.F.A. No. 51/2001 decided on 08.01.2002 has been affirmed in paragraph 7.

9. It is next submitted by the learned counsel for the appellant that the respondent/plaintiff was required to plead and prove the grounds enumerated under section 12 of the M.P. Accommodation Control Act for the purpose of seeking eviction of the appellant as it was not automatically exempted from the purview of the aforesaid act on being a religious and registered public trust. It is submitted that apart from pleading and establishing that it was a registered public trust and the respondent was also required to plead and prove that the income derived by the respondent/Trust, was utilized fully for the purpose of implementing the object of the Trust and on failure on the part of the respondent to do so, the suit should have been dismissed.

10. From a perusal of the impugned judgment and decree available on record

it is clear that the respondent has established the fact that it is a registered public trust. That apart, it is also clear that the appellant did not at any point of time raise the issue regarding that fact that the income from the property in question was not being utilized by the respondent/Trust for the purpose of its aim and object.

11. The supreme Court in the case of *Ramgopal* (supra) has clearly held, that it is for the tenant/appellant to take up this issue in the written statement and join issues regarding the exemption notification as well as the fact that the rental income from the premises was not utilized for the purpose of the trust and on failure on its part to do so, it cannot seek dismissal of the suit, in the following terms:-

“7. As already noticed above, the appellants did not challenge the finding of facts before the High Court except the legal question. In para 2 of the plaint plaintiff averred that it is a religious institution and is registered under the M.P. Public Trust Act. The defendants, while admitting this averment in the written statement only stated that the suit has not been filed by all the trustees, therefore, the suit was not maintainable. The trial court recorded a finding that the suit was maintainable. In the written statement the defendants did not raise any plea that the plaintiffs are not entitled for the benefit of the Exemption Notification, extracted above; it was also not pleaded that the rental income from the premises was not utilized for the purpose of the plaintiff trust; so also they did not challenge the validity of the said notification either before the trial court or before the High Court. In this view the High Court rejected the submission made on behalf of the appellants that in the absence of any pleading and the proof tendered by the plaintiff no benefit of the Exemption Notification in filing the suit and getting the eviction decree could be granted to the plaintiff. In para 11 of the impugned judgment the High Court has held thus: -

“11. In our opinion, therefore, the trial court was perfectly justified in proceeding on the basis that the plaintiff is a religious trust and is entitled to file a suit on the strength of the exemption notification and also claim a decree for eviction of the defendant without taking recourse to Section 12 of the Act. The decision relied on by the learned counsel for the respondent reported in 1998(1) MPWN (113) is distinguishable on facts. In that case parties joined issue on

these facts and hence it had become necessary for the plaintiff to prove the facts. As held supra, such is not the case here."

10. The learned senior counsel for the appellants tried to draw a distinction on the ground that the provision for issuing Exemption Notification in the case of Tamil Nadu is different inasmuch as the whole of the income derived from which is utilized for that institution is not to be found unlike the provision contained in Section 3(2) of the Act. This Court in Betibai case, as already noticed above, has rejected the contention. That apart, when the appellants have not challenged the validity of the notification and when they have failed to plead that whole of the rental income derived from the accommodations in question is not utilized for the purpose of the trust, we do not find any merit in this submission of the learned counsel also."

12. In view of the decision of the supreme court and in the absence of any objection or pleadings on the part of the appellant regarding non utilization of the income from the premises for the purpose of the trust, I find no legal infirmity in the impugned judgment and decree of the courts below. I am of the considered opinion that the substantial questions of law as raised by the appellant in this regard, do not arise for adjudication of the present appeal.

13. The appeal being meritless is accordingly dismissed.

Appeal dismissed.

I.L.R. [2014] M.P., 1546

APPELLATE CIVIL

Before Mr. Justice M.C. Garg

M.A. No. 4745/2010 (Jabalpur) decided on 15 March, 2013

SONIA BAI GOND (SMT.) & ors.

...Appellants

Vs.

ALOK PANIKA & ors.

...Respondents

(and M.A. No. 794/2011)

A. Motor Vehicles Act (59 of 1988), Section 173 - Exoneration of Insurance Company - Motor Accident Claims Tribunal has to decide the case on the basis of strict liability even if it is proved that the vehicle was being used by the owner contrary to the terms and conditions of the

policy - Since the deceased was not travelling in the tractor at the time of accident, Insurance Company is liable to compensate the third person - Appeal filed by the Insurance Company is dismissed. (Paras 14 to 15)

क. मोटर यान अधिनियम (1988 का 59), धारा 173 - बीमा कम्पनी की उत्तरदायित्व से मुक्ति - यदि यह साबित भी किया जाता है कि स्वामी द्वारा पॉलिसी की शर्तों एवं निबंधन का उल्लंघन करते हुए वाहन का उपयोग किया जा रहा था तब भी मोटर दुर्घटना दावा अधिकरण को कठोर दायित्व के आधार पर प्रकरण निराकृत करना चाहिये - चूंकि मृतक दुर्घटना के समय ट्रैक्टर में यात्रा नहीं कर रहा था, बीमा कंपनी का तीसरे व्यक्ति की क्षतिपूर्ति का दायित्व - बीमा कंपनी द्वारा दायर अपील खारिज।

B. *Motor Vehicles Act (59 of 1988), Section 173 - Enhancement* - Tribunal has rightly determined the income - Therefore, no enhancement of compensation on that count - However, there is no mention of future prospects in the award and the age of the deceased was 35 years - Future prospect are added for the purpose of compensation @ 30% of the assessed income - Thus, the amount of compensation is enhanced by Rs. 1,08,000/- with 7.5% interest from today. (Paras 17 & 18)

ख. मोटर यान अधिनियम (1988 का 59), धारा 173 - बढ़ाया जाना - अधिकरण ने उचित रूप से आय का निर्धारण किया - इसलिए, इस आधार पर प्रतिकर की बढ़ोत्तरी नहीं - किन्तु, अवार्ड में भविष्य की संभावनाओं का उल्लेख नहीं और मृतक की आयु 35 वर्ष थी - प्रतिकर हेतु, भविष्य की संभावनाओं को निर्धारित आय के 30 प्रतिशत की दर पर जोड़ा गया - अतः प्रतिकर की रकम बढ़ाकर रु. 1,08,000/- की गयी, आज से 7.5 प्रतिशत ब्याज के साथ।

Cases referred :

2010 ACJ 2749, 2010 ACJ 2680, 2008(1) MPLJ 72, (2001) 2 SCC 9, 2009 ACJ 1298.

Rajendra Pratap Singh, for the appellants.

Ekta Rajput, for the respondent No.2.

Anjali Banerjee, for the respondent No.3.

ORDER

M.C. GARG, J. :- This order shall dispose of the two appeals, one filed on behalf of the claimants/legal heirs of deceased Ramkaran, and another is the appeal filed by the Insurance Company.

2. Both the appeals are filed being aggrieved by the award dated 28/9/10 passed by Addl. Member of III Addl. Motor Accident Claims Tribunal, Beohari, Distt. Shahdol in Claim Case No. 60/09 whereby the learned Tribunal has awarded a sum of Rs. 3,75,000/- on account of death of Ramkaran Singh Gond, to the claimants who are the legal heirs of deceased Ramkaran Singh Gond and fastened the liability to pay the compensation against respondent no.3- Insurance Company.

3. The claimants-legal heirs of the deceased have filed M.A.No.4745/10 for enhancement of compensation, by submitting that the deceased was having daily income of Rs.200/- beside annual agricultural income to the tune of Rs.12,000/-. It is submitted that the amount awarded by the Tribunal is too less, which may be enhanced to Rs. 31,91,000/-

4. So far as the Insurance Company is concerned, it has filed M.A.No.794/11 for its exoneration from the liability to pay the compensation. It has been submitted that the offending tractor was insured for the agricultural purpose, but at the time of accident the same was being used by the owner for the purpose other than the agricultural. Thus, the terms and conditions of the insurance policy have been violated, therefore, the insurance company is not liable to pay the compensation and the liability be fastened against the owner and driver.

5. I have heard the submission of both the parties. Firstly, I would like to deal with the contentions of the insurance company, that in the accident, the tractor was being used for non-agricultural purposes and therefore, the insurance company was not liable. In this case, the Tribunal framed issues.

6. It is not a disputed fact that the vehicle was insured for agricultural purposes. Here the question is as to whether the owner of the tractor was liable to compensate the third party, who were affected by the accident in question. The relevant facts which have been discussed by learned Tribunal in the impugned award are in paragraph 10 to 12, which reads thus:-

"10 एक अन्य आवेदक साक्ष हीरालाल सिंह का परिसाक्ष्य है कि प्रश्नगत समय पर वह भी मृतक रामकरण और अन्य लोगों के साथ प्रतिमा विसर्जन कर वापस आ रहा था वे सभी प्रश्नगत ट्रैक्टर से प्रतिमा विसर्जन के लिए गये थे और उसी ट्रैक्टर की ट्राली पर बैठकर वापस लौट रहे थे लेकिन जब ट्रैक्टर घटना स्थल के निकट पहुँचा तब चालक ने चढ़ाई को देखते हुये ट्रैक्टर में बैठे हुये व्यक्ति को नीचे उतार दिया और चालक ट्रैक्टर को चढ़ाई पर चढ़ाने

लगा लेकिन ट्रेक्टर ट्राली समेत पीछे खिसकने लगा और पैदल चल रहे मृतक रामकरण से ट्रेक्टर की ट्राली टकराई और ट्राली में रामकरण दब गया और उसे गंभीर चोटें आईं और अन्ततः उसकी मृत्यु हो गई उक्त साक्षी हीरा लाल घटना का चक्षुदर्शी साक्षी है और पुलिस प्रलेखों में वह अभियोजन साक्षी के रूप में नामित है और अधिकरण के समक्ष वह दृढ़ता से यह कह रहा है कि जिस समय दुर्घटना घटित हुई उस समय मृतक ट्रेक्टर या ट्राली पर नहीं बैठा था बल्कि चढ़ाई होने के कारण चालक के कहने पर वह नीचे उतर गया था और तब ट्रेक्टर पीछे खिसक आया और दुर्घटना घटित हो गई ।

11. अनावेदक क्र 1 आलोक कुमार ने भी स्वयं को परीक्षित कराया है इसने प्रश्नगत दिनांक समय व स्थान पर प्रश्नगत दुर्घटना के तथ्य को स्वीकार किया है और इस तथ्य को भी स्वीकार किया है कि दुर्घटना के समय वही ट्रेक्टर का चालक था इसने यह भी परिसाक्ष्य में इस तथ्य को प्रकट किया है कि प्रतिमा विर्सजन कर वापस हो रहे थे तब दुर्घटना स्थल पर चढ़ाई होने के कारण उसने सभी को नीचे उतार दिया था और ट्रेक्टर को उपर चढ़ाने लगा लेकिन ट्रेक्टर ट्राली समेत पीछे खिसक आया और दुर्घटना घटित हो गई इसका कहना है कि मृतक अचानक सड़क पार करने लगा और ट्राली से टकरा गया इसने दृढ़ता पूर्वक इसने यह स्वीकार किया है कि दुर्घटना के समय ट्रेक्टर पर कोई व्यक्ति नहीं बैठा था ।

12. आवेदक साक्षी हीरालाल और अनावेदक आलोक कुमार के परिसाक्ष्य को यदि दृष्टिगत रखा जाये तो यह दर्शित होता है कि दुर्घटना के समय मृतक ट्रेक्टर या ट्राली पर नहीं था बल्कि ड्रायवर के कहने पर नीचे उतर गया था और चढ़ाई होने के कारण ट्रेक्टर पीछे खिसका और तब दुर्घटना घटित हुई ।”

7. As far as the plea taken by the Insurance Company is concerned, it has been discussed in para 13 to 16 of the impugned award:-

“13. अनावेदक क्र. 3 बीमा कंपनी की ओर से यह दलील दी गई है कि आवेदक पक्ष की ओर से ही प्रस्तुत प्रश्नगत दुर्घटना से संबंधित प्र.सू.रि. और मर्ग सूचना की प्रतियाँ प्र.पी. 2 और 5 जो कि किसी पक्ष द्वारा विवादित नहीं है और जो दुर्घटना और उसमें रामकरण की मृत्यु का समर्थन करती है को संपूर्ण रूप से देखा जायेगा अर्थात् उक्त प्रलेखों की समस्त अंतरवस्तु को ग्रहण किया जायेगा और ऐसे स्थिति में यह स्पष्ट है कि मृतक ट्रेक्टर की ट्राली में बैठा हुआ था अपनी दलीलों के समर्थन में अनावेदक क्र.3 की ओर से *ओरियंटल इश्योरेन्स कंपनी लिमिटेड बनाम प्रेमलता शुक्ला व अन्य* 2007 (3) टी.ए.सी. 11 सु.को. से संबंधित न्याय दृष्टांत प्रस्तुत किया गया है जिसमें यह सिद्धान्त प्रतिपादित किया गया है कि यदि दस्तावेज उभय पक्ष द्वारा विवादित नहीं हो और उसे साक्ष्य में ग्रहण किया गया है तब किसी भी पक्ष को दस्तावेज

के अंतरवस्तु के एक अंश को ही ग्रहण करने की अनुमति नहीं दी जायेगी और दूसरे अंश को अस्वीकार करने की अनुमति नहीं दी जायेगी बल्कि समस्त अंतरवस्तु को देखा जायेगा ।

14. अनावेदक क.3 की उक्त दलील में उक्त न्याय दृष्टांत में प्रतिपादित सिद्धान्तों के प्रकाश में बल है और इस दृष्टिकोण से उक्त प्र.सू.रि. प्र.पी. 2 और मर्ग सूचना प्र.पी. 5 को यदि देखा जाये तो उनमें यह कही भी उल्लेख नहीं है कि जब दुर्घटना घटित हुई तब मृतक भी ट्रेक्टर की ट्रॉली में बैठा हुआ था बल्कि यह उल्लेख है कि कुछ लोग ट्रेक्टर या ट्रॉली में बैठे थे और कुछ लोग पैदल आ रहे थे और दुर्घटना घटित होने से मृतक को चोटे आई ऐसे स्थिति में यदि उक्त प्रलेखों की समस्त अंतरवस्तु को भी ग्रहण किया जाये तो यह प्रकट नहीं होता है कि मृतक ट्रेक्टर की ट्रॉली में सवार था और दुर्घटना के चक्षुदर्शी साक्षी जिनकी चर्चा पूर्व में की गई है इस तथ्य को स्पष्ट करते हैं कि दुर्घटना के समय मृतक ट्राली से उतरकर पैदल आ रहा था अतः चक्षुदर्शी साक्षियों के परिसाक्ष्य को महत्व दिया जायेगा ।

15. अनावेदक क. 3 की ओर से प्रश्नगत दुर्घटना के संबंध में अनुसंधान के दौरान मृतक रामकरण सहित बहुत से साक्षियों के पुलिस कथनों अंतर्गत धारा (6) दं.प्र.सं. की प्रमाणित प्रतिलिपियों को प्रस्तुत किया गया है और यह तर्क दिया गया है कि दक्त कथनों में यह उल्लेख है कि दुर्घटना के समय मृतक ट्रेक्टर की ट्राली में सवार था लेकिन उक्त कथनों के आधार पर उक्त दलील को कोई बल नहीं दिया जायेगा उक्त कथनों को उसे लेखबद्ध करने वाले पुलिस कर्मचारी के माध्यम से साबित नहीं किया गया है यहाँ तक की उक्त कथन करने वाले व्यक्तियों में से एक हीरालाल जो आवेदक साक्षी के रूप में प्रस्तुत हुआ है के समक्ष उसके कथन धारा (6) दं.प्र.सं. को नहीं रखा गया है और उसके आधार पर कोई प्रतिपरीक्षा नहीं की गई है ।

16. अतः उक्त परिस्थितियों में ऐसा नहीं माना जा सकता है कि दुर्घटना के समय रामकरण ट्रेक्टर या ट्रॉली पर बैठा हुआ था बल्कि यह दर्शित होता है कि दुर्घटना घटित होने के पहले घटना स्थल पर चढ़ाई होने के कारण ट्रेक्टर चालक के कहने पर मृतक नीचे उतर गया था और पीछे पीछे पैदल चला आ रहा था । जब दुर्घटना स्थल पर चढ़ाई थी और ट्रेक्टर चालक को यह लगा की ट्रेक्टर की ट्राली में बैठे हुये व्यक्तियों के बैठे रहने से वाहन चढ़ाई पर नहीं चढ़ सकेगा तब उसने ट्राली में बैठे व्यक्तियों को नीचे उतारा लेकिन उसने ऐसा कोई निर्देश नहीं दिया कि नीचे उतरे हुये व्यक्ति ट्राली से अत्याधिक दूरी बनाकर रहे बल्कि यह स्पष्ट हुआ है कि नीचे उतरे हुये व्यक्ति जिनमें मृतक भी था ट्राली के पीछे-पीछे आ रहे थे और सभी ट्रेक्टर ट्राली समेत पीछे खिसकने लगा और तब ज़ायवर चिल्लाया लेकिन पैदल पीछे आ रहे व्यक्तियों के पास इतना समय नहीं था कि वे अपना बचाव करते और

संभवतः बचाव के लिये ही मृतक सड़क के दूसरे किनारे भागा लेकिन फिर भी बच नहीं सका और ट्राली की चपेट में आ गया इस प्रकार ट्रेक्टर चालक की उपेक्षा और उतावलेपन स्पष्ट रूप से दिखाई देती है और यह दर्शित होता है कि उसकी उपेक्षा और उतावलेपन से दुर्घटना घटित हुई जिससे रामकरण को अपने जीवन से हाथ धोना पड़ा लेकिन मृतक रामकरण की स्वयं कोई उपेक्षा दर्शित नहीं होती इस प्रकार वाद प्रश्न क्रमांक 1 सकारात्मक और वाद प्रश्न क्रमांक 2 नकारात्मक विनिश्चित होते हैं ।”

8. The discussion which appears from the aforesaid paragraphs shows that the finding recorded by the Tribunal is based on the assumption that the deceased was not travelling in the tractor at the time of accident, but was at the backside of the tractor ; at the time when the tractor was coming reverse from high slop to down slop, the driver could not control the speed of it, therefore, the accident occurred and the deceased and injured suffered injuries due to negligence of the driver and held insurance company liable by making following observation in para 17:-

“वाद प्रश्न क्रमांक 3

17. इस वाद प्रश्न को साबित करने का भार बीमा कंपनी अनावेदक क्रमांक 3 पर था बीमा कंपनी की ओर से यह दलील दी गयी थी कि चूंकि मृतक को ट्रेक्टर की ट्राली पर बैठने की अनुमति दी गयी थी और ट्रेक्टर सवारी ढोने के प्रयोजन के लिए बीमाकृत नहीं था बल्कि कृषि कार्य के प्रयोजन के लिए था अतः बीमा पॉलिसी की शर्तों का उल्लंघन हुआ इस संबंध में बीमा कंपनी की ओर से साक्षी जितेन्द्र सिंह को प्रस्तुत किया गया है इनका कहना है कि ट्रेक्टर पर चालक के अतिरिक्त किसी अन्य व्यक्ति का बैठना अनुज्ञेय नहीं है इस साक्षी द्वारा सुसंगत ट्रेक्टर की बीमा पॉलिसी प्र.डी. 1 को प्रस्तुत कर साबित किया गया है बीमा पॉलिसी से उक्त साक्षी के परिसाक्ष्य का समर्थन होता है परन्तु पुरोक्त वाद प्रश्नों के विनिश्चय के समय यह देखा जा चुका है कि मृतक दुर्घटना के समय ट्रेक्टर या ट्राली पर सवार नहीं था बल्कि वह पीछे से पैदल आ रहा था तब दुर्घटना घटित हुई और दुर्घटना में चालक की उपेक्षा और उतावलापन सम्मिलित था ऐसे स्थिति में उक्त आधार पर यह स्वीकार नहीं किया जा सकता है कि बीमा पॉलिसी की शर्तों का उल्लंघन हुआ ऐसी अवस्था में बीमा कंपनी की ओर से प्रस्तुत न्याय दृष्टांत *मिथलेश बनाम बृजेन्द्र सिंह बघेल व अन्य* 2007(1) एम.पी.एल.जे. 315, *यूनाइटेड इंडिया इश्योरेंस कंपनी लिमिटेड बनाम सरजेराव व अन्य* 2008 (1) टी.ए.सी.सु.को. यूनाइटेड इंडिया इश्योरेंस कंपनी लिमिटेड बनाम छनिया व अन्य 2009(1) ए.सी.सी.डी. 227 तथा *इफको टोकियो जनरल इश्योरेंस कंपनी लिमिटेड विरुद्ध शंकरलाल एम.ए.सी.डी.* 2008 (2) एम.पी. 673 में प्रतिपादित सिद्धान्त आगाध श्रद्धा

योग्य होते हुये भी अनावेदक क्रमांक 3 का पक्षसमर्थन करते हुये दिखाई नहीं देता।

9. As far the insurance company is concerned, they are relying upon the following three judgments. Two judgments have been given by Shri Justice S.K. Gangele sitting in Gwalior Bench in the case of *Nathusingh Kushwah and another vs. Narayan Singh and others* (2010 ACJ 2749) & *New India Assurance Co. Ltd. v. Soneram and others* (2010 ACJ 2680). In both these judgments the fact noticed by this Court while fastening the liability to pay the compensation on the Insurance Company, the Court came to a conclusion that at the time of accident the passengers were travelling on the mudguard of the tractor and such travelling was contrary to the insurance policy and its violation, therefore, the insurance company was exonerated. Third judgment which has been cited by the insurance company is given Full Bench of this Court in *Bhav Singh v. Savirani and others* reported in 2008 (1) M.P.L.J. 72 . It would be appropriate to take note of the observation made in the aforesaid judgment in para 5,8 and 12, which reads as under:-

"5. We find on a perusal of the decision of the Full Bench in *Jugal Kishore* (supra) and particularly paragraphs 17 and 18 of the judgment that the Full Bench has taken a view that the expression 'third party' would mean a party other than the contracting parties to the insurance policy and would include everyone, be it a person traveling in another vehicle, one walking on the road or a passenger in the vehicle itself which is the subject matter of the insurance policy.

In a Full Bench judgment delivered by us in *Smt. Sunita Lokhande and others v. The New India Assurance Co.Ltd. and others* I.L.R.(2007) M.P.1145, we have quoted paragraph 17 of the judgment of the Full Bench in *Jugal Kishore* (supra) to hold that the insured who is a party to the insurance is not a third party for the purpose of Chapter XI of the Act, particularly Section 147 thereof.

Thus ,any person other than the insurer and the insured who are parties to the insurance policy is a 'third party'. The insurer,however, would not be liable for any bodily injury or death of a third party in an accident unless the liability is fastened on the insurer under the provisions of Section 147 of the Act

or under the terms and conditions of the policy of insurance. Hence, the mere fact that a passenger is a third-party would not fasten liability on the insurer unless such liability arises under Section 147 of the Act or under the terms and conditions of the insurance policy.

8. Similarly, an employee is a third party inasmuch as he is not a party to the insurance policy. But merely because an employee is a third party, the insurance company would not be liable to compensate in case such employee suffers bodily injury or dies in an accident in which the motor vehicle is involved unless Section 147 of the Act fixes such liability on the insured or unless the terms and conditions of the contract of insurance fixes liability on the insurer. Section 147 (1) (b) of the Act provides that in order to comply with the requirements of Chapter XI of the Act, a policy of insurance must be a policy which insures the person or classes of person specified in the policy to the extent specified in Sub-Section (2) against the liabilities mentioned in Clauses (i) and (ii) thereunder. The Proviso to Sub-section (1) of Section 147 of the Act, however, states that a policy shall not be required to cover liability other than the liability arising under the Workmen's Compensation Act, 1923 in respect of the death of, or bodily injury to any of the three categories of employees mentioned in Sub-clauses (a), (b) and (c) of Clause (i) of the proviso to Sub-section (1) of Section 147 of the Act. Hence, even if an employee is a passenger or a person travelling in a motor vehicle which is insured as per the requirements of Sub-section (1) of Section 147 of the Act, the insurer will not be liable to cover any liability in respect of death or bodily injury of such employee unless such employee falls in one of the categories mentioned in Sub-clauses (a), (b) and (c) of Clause (i) of the Proviso to Sub-section (1) of Section 147 of the Act and further in cases where such employees fall under categories mentioned in Sub-clauses (a), (b) and (c) of Clause (i) of the Proviso to Sub-section (1) of Section 147 of the Act, the insurer is liable only for the liability under the Workmen's Compensation Act, 1923.

12. Regarding the Division Bench Judgment in *Sarvanlal*

and Ors. (supra), we find that the Division Bench has relied on not only the judgment of the Full Bench in *Jugal Kishore* (supra) but also Clause (vii) of Rule 97 of the Motor Vehicles rules, 1994 (for short 'the rules of 1994') made by the State of M.P. So far as the judgment of the Full Bench in *Jugal Kishore* (supra) is concerned, we have already clarified the position of law. Regarding Clause (7) of Rule 97 of the Rules of 1994, we find that the Rules of 1994 have been made by the State of M.P. under Section 96 of the Act and in particular Sub-section (2)(xxxi) which provides that without prejudice to the generality of the foregoing power, rules under Section 96 may be made with respect to the carriage of persons other than the driver in goods carriages. Section 96 is placed in Chapter-V of the Act which relates to 'Control of Transport Vehicles'. Sub-section (1) of Section 96 of the Act states that the State Government may make rules for the purpose of carrying into effect the provisions of Chapter-V. Hence, Rule 97 of the Rules of 1994 has been made by the State Government to give effect to the provisions of Chapter-V of the Act, as we have seen, relates to 'control of transport vehicles'. These rules obviously cannot have a bearing in interpreting the provisions of Chapter-XI of the Act including Sections 145 and 147 of the Act. As we have indicated above, the liability of the insurer to indemnify the insured in respect of death or bodily injury suffered by a passenger or an employee would be covered by the provisions of Section 147 of the Act or the terms and conditions of the insurance policy. Thus, the decision of the Division Bench in *Sarwan Lal* (supra) in so far as it relies on Rule 97 of the Rules of 1994 to hold the insurer liable for death or bodily injury suffered by a passenger does not lay down the correct law".

10. However, the aforesaid judgments are not applicable to this case in view of evidence, which has come on record and as has been discussed by the Tribunal in paragraphs 10, 11, 12, 15, 16 and 17 of the award (supra)

11. In the light of the discussion had above, it can simply be observed that considering the evidence, which has come on record, even if it is presumed

that the tractor was used for the purpose other than agricultural at the time or prior to the incident, it cannot be said that the injuries were caused to the deceased injured while travelling in the tractor. The fact is that when the tractor was coming down to the lower slope from the higher slope the driver could not control the vehicle which resulted in the accident leading to death of Ramkaran .The injuries having being caused to the deceased by used of the tractor, the liability of insurance company would arise.

12. Section 147 of the Motor Vehicles Act is also reproduced herein-below for the sake of reference:-

"147. Requirements of policies and limits of liability.

(1) In order to comply with the requirements of this Chapter, a policy of insurance must be a policy which

(a) is issued by a person who is an authorized insurer; or

(b) insurer the person or classes of persons specified in the policy to the extent specified in Sub-section (2)

(i) against any liability which may be incurred by him in respect of the death of or bodily injury to any person , including owner of the goods or his authorised representative carried in the vehicle or damage to any property of a third party caused by or arising out of the use of the vehicle in a public place;

(ii) against the death of or bodily injury to any passenger of a public service vehicle caused by or arising out of the use of the vehicle in a public place:

Provided that a policy shall not be required

(i) to cover liability in respect of the death, arising out of and in the course of his employment, of the employee of a person insured by the policy or in respect of bodily injury sustained by such an employee arising out of and in the course of his employment other than a liability arising under the Workmen's Compensation Act, 1923 (8 of 1923) in respect of the death of, or bodily injury to, any such employee

(a) engaged in driving the vehicle ,or

(b) if it is a public service vehicle engaged as conductor of the vehicle or in examining tickets on the vehicle, or

(c) if it is a goods carriage, being carried in the vehicle, or

(ii) to cover any contractual liability.

Explanation - For the removal of doubts, it is hereby declared that the death of or bodily injury to any person or damage to any property of a third party shall be deemed to have been caused by or to have arisen out of, the use of a vehicle in a public place notwithstanding that the person who is dead or injured or the property which is damaged was not in a public place at the time of the accident, if the act or omission which led to the accident occurred in a public place".

13. It would not be out of rest to mention that the question regarding third party liability in cases where the accident caused injury arising out of the use of vehicle has been discussed by the Hon'ble Supreme Court in case of *Kaushnuma Begum (Smt.) and others vs. New India Assurance Co. Ltd. and others* reported in (2001)2 Supreme Court Cases 9 where the Apex Court has held that the motor accident claim tribunal has to decide the case on the basis of strict liability. The Court approved this principle in this judgment, the relevant discussion appears in para 11 to 19:-

"It must be noted that the jurisdiction of the Tribunal is not restricted to decide claims arising out of Negligence is only one of the species of the causes of action for making a claim for compensation in respect of accidents arising out of the use of motor vehicles. There are other premises for such cause of action.

Even if there is no negligence on the part of the driver or owner of the motor vehicle, but accident happens while the vehicle was in use, should not the owner be made liable for damages to the person who suffered on account of such accident? This question depends upon how far the Rule in *Rylands vs. Fletcher* (supra) can apply in motor accident cases. The said Rule is summarised by Blackburn, J, thus: The true rule of law is that the person who, for his own purposes, brings on his land, and collects and keeps there anything likely to do mischief

if it escapes, must keep it at his peril, and, if he does not do so, he is prima facie answerable for all the damage which is the natural consequence of its escape. He can excuse himself by showing that the escape was owing to the plaintiffs default, or, perhaps, that the escape was the consequence of vis major, or the act of God; but, as nothing of this sort exists here, it is unnecessary to inquire what excuse would be sufficient.

The House of Lords considered it and upheld the ratio with the following dictum: We think that the true rule of law is that the person who, for his own purposes, brings on his land and collects and keeps there anything likely to do mischief if it escapes, must keep it in at his peril, and, if he does not do so, he is prima facie answerable for all the damage which is the natural consequence of its escape. He can excuse himself by showing that the escape was owing to the plaintiffs default, or, perhaps, that the escape was the consequence of vis major or the act of God; but, as nothing of this sort exists, here it is unnecessary to inquire what excuse would be sufficient. The above Rule eventually gained approval in a large number of decisions rendered by courts in England and abroad. Winfield on Tort has brought out even a chapter on the rule in *Rylands Vs. Fletcher*. At page 543 of the 15th Edn. of the calibrated work the learned author has pointed out that over the years *Rylands v. Fletcher* has been applied to a remarkable variety of things: fire, gas, explosions, electricity, oil, noxious fumes, colliery spoil, rusty wire from a decayed fence, vibrations, poisonous vegetation. He has elaborated seven defences recognized in common law against action brought on the strength of the rule in *Rylands vs. Fletcher*. They are: (1) Consent of the plaintiff i.e. volenti non fit injuria. (2) Common benefit i.e. where the source of the danger is maintained for the common benefit of the plaintiff and the defendant, the defendant is not liable for its escape. (3) Act of stranger i.e. if the escape was caused by the unforeseeable act of a stranger, the rule does not apply. (4) Exercise of statutory authority i.e. the rule will stand excluded either when the act was done under a statutory duty or when a statute provides otherwise. (5) Act

of God or vis major i.e. circumstances which no human foresight can provide against and of which human prudence is not bound to recognize the possibility. (6) Default of the plaintiff i.e. if the damage is caused solely by the act or default of the plaintiff himself, the rule will not apply. (7) Remoteness of consequences i.e. the rule cannot be applied ad infinitum, because even according to the formulation of the rule made by Blackburn, J., the defendant is answerable only for all the damage which is the natural consequence of its escape.

The Rule in *Rylands vs. Fletcher* has been referred to by this Court in a number of decisions. While dealing with the liability of industries engaged in hazardous or dangerous activities P.N. Bhagwati, CJ, speaking for the Constitution Bench in *M.C. Mehta & anr. vs. Union of India and ors.* {1987 (1) SCC 395}, expressed the view that there is no necessity to bank on the Rule in *Rylands vs. Fletcher*. What the learned Judge observed is this: We have to evolve new principles and lay down new norms which would adequately deal with the new problems which arise in a highly industrialized economy. We cannot allow our judicial thinking to be constricted by reference to the law as it prevails in England or for the matter of that in any other foreign country. We no longer need the crutches of a foreign legal order.

It is pertinent to point out that the Constitution Bench did not disapprove the Rule. On the contrary, learned judges further said that we are certainly prepared to receive light from whatever source it comes. It means that the Constitution Bench did not foreclose the application of the Rule as a legal proposition.

In *Charan Lal Sahu vs. Union of India* {1990 (1) SCC 613}, another Constitution Bench of this Court while dealing with Bhopal gas leak disaster cases, made a reference to the earlier decisions in *M.C. Mehta* (supra) but did not take the same view. The rule of strict liability was found favour with. Yet another Constitution Bench in *Union Carbide Corporation and ors. vs. Union of India and ors.* {1991 (4) 5CC 584}

referred to *M.C. Mehtas* decision but did not detract from the Rule in *Rylands vs. Fletcher*.

In *Gujarat State Road Transport Corporation. Ahmedabad vs. Ramanbhai Prabhatbhai* and anr. (1987 (3) SCC 234} the question considered was regarding the application of the Rule in cases arising out of motor accidents. The observation made by ES. Venkataramiah, J. (as he then was) can profitably be extracted here: Today, thanks to the modern civilization, thousands of motor vehicles are put on the road and the largest number of injuries and deaths are taking place on the roads on account of the motor vehicles accidents. In view of the fast and constantly increasing volume of traffic, the motor vehicles upon the roads may be regarded to some extent as coming within the principle of liability defined in *Rylands v. Fletcher*. From the point of view of the pedestrian the roads of this country have been rendered by the use of the motor vehicles highly dangerous. Hit and run cases where the drivers of the motor vehicles who have caused the accidents are not known are increasing in number. Where a pedestrian without negligence on his part is injured or killed by a motorist whether negligently or not, he or his legal representatives as the case may be should be entitled to recover damages if the principle of social justice should have any meaning at all. In order to meet to some extent the responsibility of the society to the deaths and injuries caused in road accidents there has been a continuous agitation throughout the world to make the liability for damages arising out of motor vehicles accidents as a liability without fault.

Like any other common law principle, which is acceptable to our jurisprudence, the Rule in *Rylands vs. Fletcher* can be followed at least until any other new principle which excels the former can be evolved, or until legislation provides differently. Hence, we are disposed to adopt the Rule in claims for compensation made in respect of motor accidents."

14. Applying the principle laid down by the Apex Court clearly rules that in absence of any specific evidence led by the insurer that at the time of causing

injury to third party, i.e. the deceased, the vehicle was being used for any purpose other than the purpose for which the vehicle was insured, which protects the insurance company from compensating the insured. The facts clearly reveals that deceased Ramkaran, who succumbed to the injuries caused to him when the tractor was coming down and he was standing on the backside of the tractor or injury is caused to the 3rd person because of the tractor. Thus, it is sufficient to hold that the owner was responsible for the injuries caused to deceased Ramkaran and consequently, the vehicle being injured, the liability fastened to the insurance company. In this case, the evidence as discussed above by the Tribunal clearly held that when the incident occurred, the insured were on the back side of the vehicle and it is on account of negligence or in having no control the tractor while it was coming down the incident has occurred. This, principle of strict liability would apply as has been rightly applied by the Tribunal.

15. In this case, it is apparent that the injuries to the deceased have been caused by use of the vehicle which resulted in causing fatal injury to Ramkaran, and the insurer on account of the provisions contained in the Act was liable to compensate the third person. The deceased now being represented by the appellant with respect to the death of Ramkaran and therefore, the liability in this case had arisen out of use of the vehicle according to Section 147 of the Act. Thus, the appeal filed by the insurance company does not survive and the same is hereby dismissed.

16. Now coming to the enhancement of compensation, the subject matter of M.A.No.4745/10. It is found that on the basis of income, the Tribunal has discussed the issue of compensation in para 20,21,22 and 23 which reads thus:-

"20. दावे के अभिकथन के अनुसार दुर्घटना के समय मृतक रामकरण की आयु 30 वर्ष थी मृतक की पत्नी सोनिया बाई ने अपने परिसाक्ष्य में इसी आयु का उल्लेख किया है मृतक रामकरण की डॉक्टरों की जांच रिपोर्ट में तथ्यांश सूचन, शव पंचनामा और शव परीक्षण प्रतिवेदन में उसकी आयु 35 वर्ष उल्लेखित है किसी स्पष्ट प्रमाण के अभाव में मृतक की आयु 35 वर्ष ही स्वीकार करना उचित और न्यायपूर्ण है।

21. आवेदक पक्ष के अभिकथन के अनुसार मृतक राज मिस्त्री था और प्रतिदिन उसे 200 रु की आय होती थी मृतक की पत्नी सोनिया बाई ने प्रतिपरीक्षा में इस तथ्य पर दृढ़ता प्रकट किया है कि उसका पति मजदूरी में एक सौ पचास रुपये प्रतिदिन प्राप्त करता था और महीने में कभी बीस दिन कभी तीस दिन

उसे काम मिलता था इसी प्रकार का तथ्य आवेदक साक्षी हीरालाल सिंह ने भी स्वीकार किया है यदि आवेदक पक्ष के मृतक रामकरण को श्रमिक भी माना जाये तो वर्तमान परिस्थितियों या उसके मृत्यु के समय की परिस्थितियों को दृष्टिगत रखते हुये यह स्वीकार किया जा सकता है उसे न्यूनतम सौ रुपये प्रतिदिन मजदूरी प्राप्त होती थी और माह में वह 25 दिन कार्य कर लेता था इस प्रकार 25 दिन में उसे कुल 2500 रुपये की आय होती थी और वार्षिक आय इस प्रकार 30,000 रुपये होती है ।

22. इस तथ्य को सहज उपधारणा की जायेगी कि मृतक अपनी आय का कुछ अंश स्वयं पर व्यय करता था और इस दृष्टिकोण से सरला वर्मा वि. दिल्ली ट्रांसपोर्ट कार्पोरेशन 2009 ए.सी.जे. 1298 में प्रतिपादित सिद्धांतों के प्रकाश में मृतक के आश्रितों की संख्या 4 होने के कारण उक्त वार्षिक आय से 1/4 अंश की कटौती होगी और तदनुसार 1/4 अंश रु. 7,500/- होता है जिसकी कटौती किये जाने के बाद रु 22,500/- शेष होते हैं जो मृतकों की वार्षिक आय क्षति है ।

23. यहाँ पर मृतक की आयु 35 वर्ष निर्धारित हुई है वहाँ पर उक्त सरला वर्मा वाले मामले के विनिश्चय के प्रकाश में संपूर्ण आय क्षति की गणना के लिये 16 का गुणक प्रयुक्त होगा और ऐसे स्थिति में संपूर्ण आय क्षति तीन लाख साठ हजार रुपये होती है जिसे पाने के पात्र आवेदकगण हैं । इसके अतिरिक्त संपदा क्षति के रूप में आवेदकगण पाँच हजार रुपये भी पाने के पात्र हैं इस प्रकार शव परिवहन और अंतिम संस्कार व्यय के रूप में पाँच हजार रुपये भी दिलाया जाना उचित है और मृतक की विधवा पत्नी को दाम्पत्य जीवन की हानी के लिये पाँच हजार रुपये पृथम से दिलाये जाना उचित और न्यायपूर्ण है और उक्त समस्त मदों को जोड़ने पर तीन लाख पचहत्तर हजार रुपये होते हैं जो मृतक के आश्रित आवेदक दुर्घटना क्षतिपूर्ति के रूप में प्राप्त करने के पात्र हैं और तदनुसार वाद प्रश्न क्रमांक 4 सकारात्मक विनिश्चत होता है ।”

17. There is no evidence available on record that in addition to the income as determined by the Tribunal on the basis of the submission made by wife of the deceased, there was any other income available to the deceased which could have been taken into consideration for the purpose of deciding the issue of compensation. In view of aforesaid, there was no enhancement of compensation. However, in the award, there is no mention about the future prospects. Applying the principle laid down in the case of *Sarla Verma & Ors. Vs. Delhi Transport Corp. & another* (2009 ACJ 1298), and the age of deceased at the time of accident and the claimants being the wife, minor children of the deceased, the future prospects are added for the purpose of compensation @ 30% of the assessed income. The annual income as assessed

by the Tribunal is @ Rs.22,500/- and 30% thereof is Rs.6750/-. That is to say, it is held that the appellants would also be entitled to an additional amount of compensation i.e. Rs.6750 x 16= 1,08,000/-. Thus, the amount of compensation is enhanced to Rs.4,83,000/-.

18. The enhanced amount i.e. Rs.1,08,000/- shall be payable by the insurance company within one month from today @ interest of 7.5% per annum w.e.f. 29.6.2009. If the payment is not made within one month, then the entire enhanced amount shall be payable @ 12% per annum. Other terms and conditions of the award shall ipso facto apply on the enhanced portion of the award.

With the aforesaid observations both the appeals are disposed of.

Appeal disposed of.

I.L.R. [2014] M.P., 1562

APPELLATE CIVIL

Before Mr. Justice G.D. Saxena

M.A. No. 486/2005 (Gwalior) decided on 1 August, 2013

DEEPENDRA KUMAR & ors.

...Appellants

Vs.

ORIENTAL INSURANCE COMPANY LTD.

...Respondent

Motor Vehicles Act (59 of 1988), Section 163-A - Whether the LR's of the deceased cum owner cum driver can claim compensation under this Section - It appeared that the accident was the result of the acts of the deceased himself and claimants also could not prove that the deceased was not himself responsible for the accident - Vehicle involved was insured for a third party and own damages under certain conditions - Claimants have also failed to prove that the deceased was covered under the policy - Held - When the deceased had stepped into the shoes of the owner of the vehicle, provisions of Section 163-A of the Act shall have no application, wherein owner of the vehicle himself is involved - Hence, LR's of the deceased could not have claimed compensation under this Section. (Paras 11 & 12)

मोटर यान अधिनियम (1988 का 59), धारा 163-ए - क्या मृतक जो कि स्वामी एवं चालक भी है, के विधिक प्रतिनिधिगण, इस धारा के अंतर्गत प्रतिकर का दावा कर सकते हैं - यह प्रतीत होता है कि मृतक के कृत्यों के परिणामस्वरूप

दुर्घटना घटी और दावाकर्ता यह भी साबित नहीं कर सके हैं कि दुर्घटना के लिये मृतक स्वयं जिम्मेदार नहीं था — अंतर्गृह्यस्त वाहन, तृतीय पक्षकार एवं स्वयं के नुकसान के लिये कतिपय शर्तों के अधीन बीमित था — दावाकर्ता यह साबित करने में भी असफल रहे हैं कि पॉलिसी के अंतर्गत मृतक रक्षित था — अभिनिर्धारित — जब मृतक ने वाहन का स्वामित्व धारण किया, तब अधिनियम की धारा 163-ए के उपबंध लागू नहीं होते, जहां वाहन का स्वामी स्वयं शामिल है — अतः, इस धारा के अंतर्गत मृतक के विधिक प्रतिनिधि प्रतिकर का दावा नहीं कर सकते थे।

Cases referred :

2008 ACJ 921, AIR 2009 SC 3056, 2013 ACJ 1202, AIR 2013 SC 473.

R.P. Gupta, for the appellants.

B.K. Agrawal, for the respondent/Insurance Company.

ORDER

G. D. SAXENA, J. :- This appeal under Section 173 of the Motor Vehicle Act 1988 has been preferred by the claimants/appellants against an Award dated 14th December 2004 in Claim Case No. 77/2004 passed by the Third Additional Member of the Motor Accidents Claim Tribunal, Gwalior dismissing thereby claim petition of appellants under Section 163-A of the Act.

2. The facts of the case are that on 9th April 02 deceased Devenra Kumar Saxena working as an Auditor in the Accountant General Office was going by his scooter from Katoratal towards the way of J.A. Hospital Gwalior. At that juncture, it is alleged that one jeep being driven rashly and negligently by some unknown person caused hit to the deceased, resultantly, he got seriously injured. He was admitted in the hospital but could not be saved. No F.I.R. of the incident was lodged in Police Station. The Marg report at the behest of Medical Officer of the concerned hospital was written. On inquiry, it appears that no vehicle dashed the deceased whereas he got injured on account of his own negligence. So, the final report was filed before the trial Magistrate. It is stated that the vehicle was insured under comprehensive policy with respondent-Insurance Company. Under the circumstances, the claimants filed the claim petition under Section 163-A of the Act seeking compensation of Rs. 11,30,000/- against the respondent under all heads. The learned tribunal after considering the entire evidence on record dismissed the claim petition,

hence, this appeal.

3. It is contended on behalf of the appellants that the impugned award rejecting claim petition by the learned MACT is against the evidence on record and the law applicable to the present case. It is submitted that the deceased was driving the vehicle which was comprehensively insured with respondent/ Insurance Company and thus, the Insurance Company is liable to satisfy the claim for accident which arose due to rash and negligent driving of the opposite vehicle which was unknown. It is submitted that there was no violation of the terms of policy by the deceased. In such premises, it is prayed that by allowing the appeal, the award for appropriate amount against the Insurance company may be passed.

4. Though, the cross-objection under Order 41 Rule 22 of C.P.C. are not filed on behalf of the respondent/Insurance Company, it is pointed out that the Insurance Company under comprehensive policy cannot be blamed for seeking claim under personal injury by the owner himself. The Insurance Company is bound to indemnify the liability of the owner/insured to others and not to cover the injuries/death of the insured. It is contended that in this case the deceased died due to negligence of his own, in that situation the claim petition seeking compensation is not maintainable and the learned tribunal has rightly dismissed the same. Hence, it is prayed that the appeal may be dismissed.

5. Heard the learned counsel for the parties. Also perused the record of the case and the law governing the issue involved in the case.

6. The question to be considered in this appeal is whether the legal representatives of the deceased-cum-owner- cum-driver can claim compensation under section 163-A of the Act ?

7. In *Sunita Lokhande Vs. New India Assurance Company & another* 2008 ACJ 921, the Full Bench of this court headed by Hon'ble Justice A.K. Patnaik (as he then was) observed as follows :-

“9.-Question No. (b) Referred by the Division bench is whether legal heirs of the deceased owner can put forth a claim for compensation in the absence of special policy ? As a logical corollary of our answer to question to question (a) above, we hold that legal heirs of deceased owner cannot

put a claim for compensation for death or injury of the deceased in a motor accident unless additional premium in respect of personal injury has been taken by the insurance company by way of special insurance contract from the owner of the vehicle”

"163-A. Special provisions as to payment of compensation on structured formula basis.-

(1) Notwithstanding anything contained in this Act or in any other law for the time being in force or instrument having the force of law, the owner of the motor vehicle of the authorised insurer shall be liable to pay in the case of death or permanent disablement due to accident arising out of the use of motor vehicle, compensation, as indicated in the Second Schedule, to the legal heirs or the victim, as the case may be.

(2) In any claim for compensation under sub-section (1), the claimant shall not be required to plead or establish that the death or permanent disablement in respect of which the claim has been made was due to any wrongful act or neglect or default of the owner of the vehicle or vehicles concerned or of any other person.

(3) The Central Government may, keeping in view the cost of living, by notification in the official Gazette, from time to time amend the Second schedule.

8. In *Ningamma Vs. United India Insurance Co. Ltd.* (AIR 2009 SC 3056), the Hon. Apex Court observed as follows :-

“19.....In a case wherein the victim died or where he was permanently disabled due to an accident arising out of the aforesaid motor vehicle in that event the liability to make payment of the compensation is on the insurance company or the owner, as the case may be as provided under Section 163-A. But if it is proved that the driver is the owner of the motor vehicle, in that case the owner could not himself be a recipient of compensation as the liability to pay the same is on him. This proposition is absolutely clear on a reading of

Section 163-A of the MVA. Accordingly, the legal representatives of the deceased who have stepped into the shoes of the owner of the motor vehicle could not have claimed compensation under Section 163-A of the MVA."

9. In *Munda Tai Vs. New India assurance Co. Ltd.* 2013 ACJ 1202, while dealing with the question by this court referred to above, it is observed that since there was a special contract between the insurance company and the owner deceased and accordingly the deceased, inter alia paid extra premium for damages of his own, the respondent insurance company is liable to pay the compensation to the claimants.

10. In *National Insurance Company Ltd. v. Balakrishnan* (AIR 2013 SC 473), the Hon. Apex Court observed about the package/comprehensive motor policy regarding the indemnifying the liability of the insurer company and while considering observed as follows :-

"21. In view of the aforesaid factual position, there is no scintilla of doubt that a "comprehensive/package policy" would cover the liability of the insurer for payment of compensation for the occupant in a car. There is no cavil that an "Act Policy" stands on a different footing from a "Comprehensive/Package Policy". As the circulars have made the position very clear and the IRDA, which is presently the statutory authority, has commanded the insurance companies stating that a "Comprehensive/Package Policy" covers the liability, there cannot be any dispute in that regard. We may hasten to clarify that the earlier pronouncements were rendered in respect of the "Act Policy" which admittedly cannot cover a third party risk of an occupant in a car. But, if the policy is a "Comprehensive/Package Policy", the liability would be covered. These aspects were not noticed in the case of *Bhagyalakshmi* (2009 AIR SCW 5325) (supra) and, therefore, the matter was referred to a larger Bench. We are disposed to think that there is no necessity to refer the present matter to a larger Bench as the IRDA, which is presently the statutory authority, has clarified the position by issuing circulars which have been reproduced in the judgment by the Delhi High Court and we have also reproduced the same.

22. In view of the aforesaid legal position, the question that emerges for consideration is whether in the case at hand, the policy is an "Act Policy" or "Comprehensive/Package Policy". There has been no discussion either by the tribunal or the High Court in this regard. True it is, before us, Annexure P-1 has been filed which a policy is issued by the insurer. It only mentions the policy to be a "comprehensive policy" but we are inclined to think that there has to be a scanning of the terms of the entire policy to arrive at the conclusion whether it is really a "package policy" to cover the liability of an occupant in a car."

11. Having examined the principles of law applicable to the cases, now this court would turn to the present case. It is very unfortunate that no FIR regarding the accident by another vehicle was lodged by the claimants side. Marg information report was registered on the basis of information received from the hospital. On inquiry into marg, it appeared that the accident was the result of the acts of the deceased himself. The claimants also could not prove by producing cogent and reliable evidence that the deceased was not himself responsible for the accident by his rash and negligent driving. It is admitted that the vehicle was insured for a third party and own damage under certain conditions. It is also admitted that the insured for the cover of the insurance paid Rs. 2340/- for replacement of parts of damaged scooter of accident. Under the circumstances, the learned Tribunal concluded that the deceased, the owner of the vehicle was liable for his acts in accident as the claimants failed to prove that the deceased was covered under the policy. No additional premium was paid by the owner for his personal injuries or death making the Insurance Company liable for payment to his legal heirs. Keeping the aforesaid law in view, it can be held that in all cases where the claimants are able to satisfy that the deceased-owner had got policy under comprehensive package for his personal injuries or death, they are entitled to compensation for the death of the owner. Of course, the risk of pillion rider on insured scooter under comprehensive package is covered.

12. As discussed above, since the deceased in the present case had stepped into shoes of owner of the vehicle, provisions of section 163-A of the Act shall have no application wherein owner of vehicle himself is involved. Hence, legal representatives of the deceased could not have claimed

compensation under section 163- A of the Act. Consequently, this court does not find any merit in this appeal. It is dismissed accordingly.

Appeal dismissed.

I.L.R. [2014] M.P., 1568

APPELLATE CIVIL

Before Mr. Justice G.D. Saxena

M.A. No. 848/2008 (Gwalior) decided on 1 August, 2013

SHASHI MOHAN DWIVEDI & anr.

...Appellants

Vs.

GANESH & ors.

...Respondents

(and M.A. No. 653/2009)

Motor Vehicles Act (59 of 1988), Section 149 - Liability of Insurer - Whether due to dishonor of cheque delivered for premium by the insured and cancellation of the insurance policy for want of premium, the insurance company could be liable to indemnify the liability of the insured for the payment of compensation award to a third party - Held - The liability subsists and the insurer has to satisfy the award of compensation, unless the policy of the insurance is cancelled by the authorized insurer and intimation of cancellation has reached the insured before the accident - Insurer can initiate proceedings for recovery of amount from insured.
(Paras 15, 16 & 17)

मोटर यान अधिनियम (1988 का 59), धारा 149 - बीमाकर्ता का दायित्व - क्या बीमित द्वारा प्रीमियम के लिये दिया गया चेक अनादृत होने के कारण और प्रीमियम के अभाव में बीमा पॉलिसी के निरस्तीकरण के कारण बीमा कम्पनी, को तृतीय पक्षकार को प्रतिकर अवार्ड का भुगतान करने के दायित्व से बीमित को संरक्षण देने के लिये दायी हो सकती है - अभिनिर्धारित - दायित्व बना रहेगा और बीमाकर्ता को प्रतिकर के अवार्ड की संतुष्टि करनी होगी जब तक कि प्राधिकृत बीमाकर्ता द्वारा बीमा पॉलिसी को निरस्त नहीं किया जाता और दुर्घटना से पहले, बीमित को निरस्तीकरण की सूचना न पहुंच चुकी हो - बीमाकर्ता, बीमित से रकम की वसूली की कार्यवाही आरंभ कर सकता है।

Cases referred :

2013 ACJ 1403, (2012) 5 SCC 234.

Arun Sharma, for the appellants.

Arun Katare, for the respondent No. 3.

ORDER

G. D. SAXENA, J. :- This order shall govern the disposal of aforesaid two appeals (**Misc. Appeal No.848/08 and Misc. Appeal No.653/09**) having arisen against a common Award dated 28th April 2008 in Claim Case No. 61/2007 passed by the Seventh Additional Member of the Motor Accident Claims Tribunal, Gwalior (M.P.).

2. Apparently, Misc. Appeal No. 653/2009 is submitted by the appellant/ Insurance Company beyond period of limitation, hence, with a view to condone such delay of 352 days, firstly I.A. No. 10816/2009 and supporting to it another application I.A.No. 3099/2013 have been filed. The grounds urged for condoning the delay are that the concerned appearing counsel of the tribunal could not inform the result of the case well within time and therefore the appellant-company could not know the fate of the case. It is further pointed out that at the relevant time, the company was having its Divisional Office at Indore. The appellant could know the result about the case only at Gwalior when the notice was served in an execution case. Apart the aforesaid, it is submitted that the file containing proposal was misplaced and could not be traced within time of limitation, hence, the delay has occurred in preferring this appeal.

3. Considering the averments made in the application, it appears that the case of the Insurance Company was not properly contested before the tribunal. However, in the interest of justice, even though the appeal presented on behalf of the Insurance Company is time bared, learned counsel appearing for the company is heard at length after taking into consideration the grounds available under section 147 and 149 (2) of the Act, in view of specific circumstances of the case.

4. Now, turning to the case, the facts, as evident from the record are that on 21st February 2007, the appellant Brijmohan Dwivedi alongwith his family members was travelling from Shivpuri to village Sirsod in a hired Bolero Jeep for participating in the engagement ceremony. When the jeep crossed the new forest colony and reached at Shivpuri Jhansi Highway, the offending dumper coming from front side which was driven in a rash and negligent manner by respondent No. 1 dashed against the jeep from wrong side as a result, the jeep turned turtle. In the said accident, Brijmohan and his brother Rajendra Prasad died on the spot while other passengers got serious injuries. Later on, the other injured were shifted to the hospital. On the report, the F.I.R. was

lodged on which Crime No. 36/07 for offence under sections 279 and 337 of I.P.C. was registered against the driver of the said dumper. After investigation, the charge-sheet was filed before the criminal court.

5. At the time of accident, Brijmohan Dwivedi, aged 56 years was working on the post of Training Officer in IIT Institute and was getting monthly Rs. 12,400/- which was the source of income to maintain the family and after his death, the family was starving. Hence, by submitting a claim, his wife and other dependents prayed for Rs. 20,00,000/- in all heads as compensation to be recovered jointly or severally from the respondents.

6. Therefore, the submission of the learned counsel representing the appellants in Misc. Appeal No. 848/08 is that the award under appeal is not in consonance with the evidence and the settled principles of law. It is further contended that learned tribunal erred in applying multiplier while determining the compensation. No adequate compensation in other heads was awarded. On the basis of above, it is prayed that by allowing the appeal just and proper compensation may be awarded in favour of the appellants.

7. On the other hand, the Insurance Company in Misc. Appeal No. 653/09 averred that the learned MACT failed to appreciate the defences as raised and available under Section 149(2) of the Act. It is submitted that though the offending vehicle was insured, but the premium was paid by way of cheque issued by the insured which on presentation in the concerned bank became dishonoured. Consequently, the policy issued in favour of the insured was cancelled by the company. Therefore, in this case, the policy was not effective for the period the vehicle was insured on account of dishonour of the cheque and cancellation of the insurance. In such circumstances, no liability can be fastened on the company to indemnify the insured. On these premises, it is prayed that by allowing the appeal, the insurance company may be exonerated.

8. The rest of the respondents, i.e., owner and driver after service did not appear nor they participated during the proceedings of the claim before the tribunal as well as this court in the appeals.

9. Following two questions arise for consideration in these appear. They are :-

(i) Whether the award passed by the learned tribunal, looking to the age of the deceased and service benefits as available to the deceased including his contribution to the family is liable to

be enhanced ?

(ii) Whether, under the circumstances when due to dishonour of cheque delivered for premium by the insured and cancellation of the insurance policy for want of premium, the insurance company could be liable to indemnify the liability of the insured for payment of compensation award to a third party ?

10. Heard the learned counsel for the parties. Also perused the record of the case and the law.

11. It is not disputed that Jeep and dumper on dated 21st April 08 met with head on collision at Shivpuri Jhansi Highway and in such accident Brij Mohan Dwivedi and Rajendra Prasad died on the spot while others got injured. It is admitted that the dumper involved in accident was driven by Ganesh (respondent No.3), owned by Arun Sharma (respondent No.4) and insured with ICICI Lombard General Insurance Company (appellant) in M.A.No.653/09. It is also admitted that the deceased aged 56 years was at the time of accident was working as Instructor in ITI Institute and was getting salary @ Rs. 12,400/- and looking to his experience, he was expected to be promoted in near future and extended with all allied benefits as per law and service rules applicable to the promotional post.

12. In *Rajesh and other Vs. Rajvir Singh* and others 2013 ACJ 1403, the Hon. Apex Court has observed as follows :-

“11. Since the court in *Santosh Devi*” case 2012 ACJ 1428 (SC), actually intended to follow the principle in the case of salaried to follow the principle in the case of salaried person as laid down in *Sarla Verma case* 2009 ACJ 1298(SC) and to make it applicable also to self-employed and person on fixed wages, it is clarified that the increase in the case of those groups is not 30 per- centage always; it will also have a reference to that age. In other words, in case of self-employed or persons with fixed wages, in case the deceased victim was below 40 years, there must be an addition of 50 years, in case the deceased while computing future prospects. Needless to say that the actual income should be income after paying the tax, if any Additional should be 30 per-cents in case the deceased was in the age group of 49 to 50 years.

12. In *Sarla Verma*, case 2009 ACJ 1298 (SC) it has been stated those about 50 years , at in the case of those about 50 years, there shall be no addition. Having regard to the fact that in the case of those self-employed or on fixed wages, where there in normally on age of superannuation, we are of view that it will only just and equitable to provide an addition of 15 per-cent in the case where the victim is between the age group of 50 and 60 years so as to make the compensation just equitable, fair, and reasonable. There shall normally be no addition thereafter.”

13. Applying the ratio of *Rajesh's case* (supra) to the present one with further taking note of future prospects of the deceased since the deceased was aged 56 years at the time of accident, his monthly income for the purpose of assessment of compensation is determined as Rs. 14,260/-by adding 15% of his salary to actual salary income. Deducting 1/3rd of the monthly income towards personal and living expenses of the deceased, contribution to family (dependents) is determined as Rs.9,507/-. Having regard to the age of the deceased, applying the multiplier of 8, the loss of dependency is worked out as Rs. 76,056/-, annually Rs.9,12,672/-. In addition thereto, claimants are also entitled to Rs. 5,000/- under the head of loss of estate, Rs. 5,000/- towards funeral expenses, Rs. 10,000/- as loss of consortium, Rs. 20,000/- as love and affection. Thus, the claimants are entitled to receive total compensation as **Rs. 9,52,672/- (Rs. Nine lac fifty two thousand six hundred seventy two only)** alongwith interest @ 6% per annum on the enhanced amount from the date on which the claim petition was filed before the tribunal till final payment of compensation amount, which shall be paid jointly or severally by the respondents.

14. Now, only one question remains to be considered in the light of the arguments as advanced on behalf of the learned counsel for the appellant-Insurance Company. It is submitted that for want of premium the insurance cover-note was cancelled by the Insurance Company and therefore when there was no contract with the Insurance Company on the date of accident, the Insurance Company could be held liable to indemnify the liability of insured for payment of compensation award to a third party.

15. The aforesaid question has been answered in the case of *United India Insurance Co. Ltd. Vs. Laxmamma*, (2012) 5 SCC 234, at page 241, wherein the Hon. Apex Court has been pleased to observe as under:-

“26. In our view, the legal position is this: where the policy of insurance is issued by an authorised insurer on receipt of cheque towards the payment of premium and such a cheque is returned dishonoured, the liability of the authorised insurer to indemnify the third parties in respect of the liability which that policy covered subsists and it has to satisfy the award of compensation by reason of the provisions of Sections 147(5) and 149(1) of the MV Act unless the policy of insurance is cancelled by the authorised insurer and intimation of such cancellation has reached the insured before the accident. In other words, where the policy of insurance is issued by an authorised insurer to cover a vehicle on receipt of the cheque paid towards premium and the cheque gets dishonoured and before the accident of the vehicle occurs, such insurance company cancels the policy of insurance and sends intimation thereof to the owner, the insurance company’s liability to indemnify the third parties which that policy covered ceases and the insurance company is not liable to satisfy awards of compensation in respect thereof.

27. Having regard to the above legal position, insofar as the facts of the present case are concerned, the owner of the bus obtained the policy of insurance from the insurer for the period 16-4-2004 to 15-4-2005 for which premium was paid through cheque on 14-4-2004. The accident occurred on 11-5-2004. It was only thereafter that the insurer cancelled the insurance policy by communication dated 13-5-2004 on the ground of dishonour of cheque which was received by the owner of the vehicle on 21-5-2004. The cancellation of policy having been done by the insurer after the accident, the insurer became liable to satisfy the award of compensation passed in favour of the claimants.

28. In view of the above, the judgment of the High Court impugned in the appeal does not call for any interference. The civil appeal is dismissed. However, the insurer shall be at liberty to prosecute its remedy to recover the amount paid to the claimants from the insured. No order as to costs.”

16. As a result of aforesaid, Misc. Appeal No.848/08 preferred by the

claimants/appellants is partly allowed. The award by the learned tribunal stands modified and enhanced up to Rs. 9,52,672/- (**Rs. Nine lac fifty two thousand six hundred seventy two only**) alongwith @ 6% per annum on the enhanced amount from the date on which the claim petition was filed before the tribunal till final payment of compensation amount which shall be paid jointly or severally by the respondents.

17. Keeping in view the aforesaid law, this court is of the view that the interest of justice will be sub-served, if the appellant-Insurance Company herein is directed to satisfy the award amount in favour of the claimants within a period of three months from the date of this order and on such deposit, the total amount of compensation in the light of the terms of the impugned Award of the learned tribunal shall be disbursed to the claimants. The insurer for recovery of such amount from the owner shall initiate proceedings before the Executing Court as if the dispute between the insurer and the owner is the subject-matter of determination before the Tribunal. The said issue after affording proper opportunity of hearing to the owner and Insurance Company shall be resolved by the learned tribunal in such proceedings within a period of six months from the date of deposit of the award amount before the learned MACT.

18. In view of the above, Misc. Appeal No.653/09 stands disposed of.

Order accordingly.

I.L.R. [2014] M.P., 1574

APPELLATE CIVIL

Before Mr. Justice U.C. Maheshwari

F.A. No. 426/2012 (Jabalpur) decided on 16 August, 2013

STATE OF M.P.

...Appellant

Vs.

DR. NARESH GROVER

...Respondent

Limitation Act (36 of 1963), Section 5 - Condonation of delay - Delay of 6 years and 121 days has caused because of officials and due to procedure of obtaining the sanction and in the lack of information regarding status of the case - Held - While dealing with application u/s 5 of Limitation Act and to examine the sufficient cause, court should adopt the lenient view with justice oriented approach, keeping in view

the stake of litigation - No proceeding should be thrown away merely on the question of limitation as barred by time - Delay is condoned subject to payment of cost of Rs. 10,000 - As condition precedent.

(Paras 6 & 8)

परिसीमा अधिनियम (1963 का 36), धारा 5 – विलम्ब के लिये माफी – 6 वर्ष और 121 दिनों का विलम्ब, शासकीय अधिकारियों के कारण और मंजूरी अभिप्राप्त करने की प्रक्रिया के कारण तथा प्रकरण की स्थिति से संबंधित जानकारी के अभाव में कारित हुआ – अभिनिर्धारित – परिसीमा अधिनियम की धारा 5 के अंतर्गत आवेदन पर कार्यवाही करते समय और पर्याप्त कारण का परीक्षण करने के लिये न्यायालय को न्यायिक अनुकूलन अभिगामी दृष्टिकोण के साथ, मुकदमे की स्थिति को दृष्टिगत रखते हुए उदार रुख अपनाना चाहिए – किसी कार्यवाही को मात्र परिसीमा के प्रश्न पर, समय वर्जित होने से अस्वीकार नहीं किया जाना चाहिये – रु. 10,000/- खर्च के भुगतान की शर्त पर विलम्ब माफ किया गया – पुरोभाव्य शर्त के रूप में।

Cases referred :

(1996) 3 SCC 132, (1996) 10 SCC 634, (1995) 6 SCC 614, (2000) 9 SCC 94.

Santosh Yadav, P.L. for the appellant.

Rajiv Mishra, for the respondent.

ORDER

U. C. MAHESHWARI, J. :- Initially, learned Panel Lawyer prays for further adjournment to file some affidavit in compliance of the earlier direction of this court. On perusing the earlier order sheets dated 28.6.13 and 29.7.13, I have not found any direction of this court. As such at the request of the State counsel the case was adjourned to file some affidavit. It is apparent that no such affidavit has been filed.

2. The case is listed today for consideration of IA No.4778/12, appellant's application under section 5 of the Limitation Act for condoning the delay in filing this appeal as the same is filed barred by six years and 121 days. The same is supported by an affidavit of Atul Singh S/o Shri N.P.Singh, Tehsildar (Nazul) Bairagarh, Bhopal. Such IA was drafted on 30.3.12 and the affidavit was sworn on 30.3.12 and the same is placed in this court along with the appeal.

3. After receiving the notice of aforesaid IA, the Vakalatnam has been filed on behalf of the respondent No.26.4.2013. Since then more than 3 ½ months has been passed. Meanwhile, on three occasions, the case has been listed before the Court for consideration of the IA but it is apparent fact that till today, the respondent has not filed any reply of the same. It shows that the respondent is not interested to file the reply of this IA, hence the IA is taken-up for consideration.

4. Learned Panel Lawyer, after taking me through the averments of the IA argued that initially the impugned ex-parte judgment and decree was passed by the trial court on 2.8.2005 whereby the suit of the respondent filed for declaration and perpetual injunction against the appellant with respect of some Nazul land was allowed. As per further averments, the concerning Advocate who was appointed on behalf of the State was not co-operating to the department. Pursuant to that he was not giving the appropriate information regarding the status of the case to the OIC or other officials, inspite that, the written statement was filed on 28.9.04. Although, the case was looked-after by the appointed Govt. Advocate, inspite that same was proceeded ex-parte on 15.12.2003 and case was fixed for 12.1.04. Subsequent to it, another Govt. Advocate Shri V.K.Joshi, was engaged whose Vakalatnama was taken on the record on the cost of Rs.200/-. Subsequent to it, the case was transferred to some special court and, in the lack of such information of transfer of the case, the OIC could not appear in the matter and pursuant to that the appellant's evidence could not be recorded and ultimately, the suit of the respondent was decreed ex-parte as stated above. As per further averments, subsequent to it the information regarding such ex-parte decree was not received in the office of the appellant upto 2007 but on receiving such information, an application was moved to obtain the certified copy and looking to the nature of the matter for obtaining the sanction to file the appeal the opinion was required from the different officers of the State then such formalities have taken time and ultimately on dated 20.12.11, the sanction for filing the appeal was given and such sanction was received by the OIC on 3.1.12 thereafter he approached Govt. Advocate on 30.1.12 who had also given some instructions to the OIC. After completing the same the appeal was filed on 12.4.12. With these averments with a prayer that the stated cause be treated to be sufficient for condoning the alleged delay in filing the appeal, the impugned application has been filed.

5. It is apparent fact as stated above, inspite extending opportunity to

the respondent, no reply of this application has been filed. In such premises, the un rebutted set of facts regarding sufficient cause for condoning the delay is on record on behalf of the appellant. So, firstly, in the lack of rebuttal of such facts, the cause stated on behalf of the appellant for condoning the delay, could not be discarded.

6. Apart the aforesaid, it is settle proposition of the law as laid down by the Apex Court in various decisions that while dealing with the application under section 5 of the Limitation Act that and to examine the sufficient cause under such provision, court should adopt the lenient view with justice oriented approach so also keeping in view the stake of the litigation and no proceedings should be thrown away mere on the question of limitation as barred by time. So, keeping in view such principle if the case at hand is examined then it is apparent that the alleged delay has been caused in filing the appeal because of the officials of the appellant and due to the procedure of obtaining the sanction from the authority to file the appeal so also in the lack of information regarding status of the case and lack of the information about transfer of the case from one court to another special court. Hence the aforesaid cause could not be discarded by holding the same to be in sufficient cause for condoning the delay. Even otherwise looking to the nature and stake of the impugned litigation in which an ex-parte judgment and decree for declaration and perpetual injunction has been passed against the appellant with respect of the Nazul land which requires reconsideration not only on factual matrix but also in respect of the legal question, Whether the same could have been passed with respect of the Nazul land in the available scenario or not. Thus taking into consideration such stake of litigation, in order to decide the material questions involved in the matter, I adopt the lenient approach with justice oriented approach to consider the aforesaid application filed under section 5 of the Limitation Act.

7. My aforesaid view is fully fortified by the principle laid down by the Apex Court in the matter *State of Haryana Vs. Chandra Mani-* (1996) 3 SCC 132 in which it was held as under :-

“11. It is notorious and common knowledge that delay in more than 60 per cent of the cases filed in this Court - be it by private party or the State - are barred by limitation and this Court generally adopts liberal approach in condonation of delay finding somewhat sufficient cause to decide the appeal on merits. It is equally

common knowledge that litigants including the State are accorded the same treatment and the law is administered in an even-handed manner. When the State is an applicant, praying for condonation of delay, it is common knowledge that on account of impersonal machinery and the inherited bureaucratic methodology imbued with the note-making, file-pushing, and passing-on-the-buck ethos, delay on the part of the State is less difficult to understand though more difficult to approve, but the State represents collective cause of the community. It is axiomatic that decisions are taken by officers/agencies proverbially at slow pace and encumbered process of pushing the files from table to table and keeping it on table for considerable time causing delay intentional or otherwise - is a routine. Considerable delay of procedural red tape in the process of their making decision is a common feature. Therefore, certain amount of latitude is not impermissible. If the appeals brought by the State are lost for such default no person is individually affected but what in the ultimate analysis suffers, is public interest. The expression "sufficient cause" should, therefore, be considered with pragmatism in justice-oriented approach rather than the technical detection of sufficient cause for explaining every day's delay. The factors which are peculiar to and characteristic of the functioning of the Governmental conditions would be cognizant to and requires adoption of pragmatic approach in justice-oriented process. The Court should decide the matters on merits unless the case is hopelessly without merit. No separate standards to determine the cause laid by the State vis-a-vis private litigant could be laid to prove strict standards of sufficient cause. The Government at appropriate level should constitute legal cells to examine the cases whether any legal principles are involved for decision by the courts or whether cases require adjustment and should authorise the officers take a decision or give appropriate permission for settlement. In the event of decision to file appeal needed prompt action should be pursued by the officer responsible to file the appeal and he should be made personally responsible for lapses, if any. Equally, the State cannot be put on the same footing as an individual. The individual would always be quick in taking the decision whether he would pursue the remedy by way of an appeal or application since he is a person legally injured while State is an

impersonal machinery working through its officers or servants.”

The aforesaid principle was further reiterated in the matter of *Special Tehsildar, Land Acquisition Vs. K.V.Ayisumma-* (1996) 10 SCC 634 as also in the matter of *Nand Kishore Vs. State of Punjab-*(1995) 6 SCC 614 and later in the matter of *State of Bihar and others Vs. Kameshwar Prasad Singh-* (2000) 9 SCC 94.

8. In view of aforesaid discussion, this IA deserves to be allowed but while allowing the IA, the court has to compensate the respondent also in this regard. So, in such premises, subject to payment of cost of Rs.10,000/- to the respondent by the appellant, the aforesaid IA is allowed and the entire delay of 6 years and 121 days in filing the appeal is hereby condoned. The cost is to be paid within two months. Payment of the cost, shall be the condition precedent for any further hearing on any question of this appeal.

9. After condoning the delay in filing the appeal, appellant's counsel is heard on the question of admission.

10. Having perused the impugned judgment along with the record of the trial court, this appeal appears to be arguable, hence the same is admitted for final hearing.

11. Respondent's counsel has taken notice of this admission, hence no further notice is required.

12. On asking the counsel present to make their submission on IA No.4779/12 an application for grant of stay against operation and execution of the impugned ex-parte decree, on which, respondent's counsel seeks for and is granted period of 15 days to file the reply of the same.

13. Let this matter be placed in the second week of September, 2013 for consideration of aforesaid IA.

14. As an interim measure, till disposal of the aforesaid IA, the parties are directed to maintain the status-quo with respect of the possession and the nature of the disputed property as it exists today.

C.C as per rules.

Order accordingly.

I.L.R. [2014] M.P., 1580

APPELLATE CIVIL

Before Mr. Justice G.D. Saxena

F.A. No. 24/1999 (Gwalior) decided on 27 August, 2013

STATE OF M.P.

...Appellant

Vs.

RAVINDRA KUMAR SHARMA

...Respondent

Land Acquisition Act (1 of 1894), Section 23 - Determination of compensation - Held - The burden of proving inadequacy of the amount is to be discharged by the claimant himself and he has to satisfactorily furnish basis for determining market value of acquired land.

(Paras 9 &14)

भूमि अर्जन अधिनियम (1894 का 1), धारा 23 - प्रतिकर का निर्धारण - अभिनिर्धारित - रकम की अपर्याप्तता साबित करने के भार का निर्वहन, स्वयं दावाकर्ता को करना होगा और उसे संतोषजनक रूप से, अर्जित भूमि का बाजार मूल्य के निर्धारण का आधार प्रस्तुत करना होगा।

Cases referred :

(2010) 5 SCC 708, (2010) 12 SCC 234, (2013) 5 SCC 527.

Sangeeta Pachori, G.A. for the appellant.*V.K. Bhardwaj* with *Anand Bhardwaj*, for the respondent.**J U D G M E N T**

G. D. SAXENA, J. :- This appeal under Section 54 of the Land Acquisition Act 1894 has been preferred by the State against a judgment dated 24th September 1998 in Civil Reference Case No. 18/1998 by the First Additional Judge to the court of District Judge, Morena (M.P.) directing thereby the appellant/State to pay a sum of Rs.1,35,000/- as an Award alongwith 12% annual interest from the date of the Notification, 30% solatium on the awarded award amount with interest in accordance with the provisions of section 34 of the Act.

2. The facts necessary for the decision of this appeal are that a Notification dated 30th March 1991 for proposed acquisition of the land under Section 4 of the Land Acquisition Act, ad-measuring 4500 sq. ft. which is a part of Survey No. 1041, situated in village Jora Khurd, District Morena for the

purposes of Chambal Awasiya Yojna was published in M.P. Rajpatra dated 19th April 1991 and in two news-papers having wide circulations in the area. After complying with the procedure as laid down in law declaration for the land required under Section 6 of the Land Acquisition Act was published. Thereafter on making enquiry, the Collector passed the award in favour of the owners/beneficiaries whose lands were acquired alongwith interest and solatium. Being aggrieved by the award, the owners/beneficiaries including the respondent filed the application under Section 18 (1) of the Land Acquisition Act before the Collector for making a reference to the District Judge for consideration of their grievance. In Reference Case No. 18/1998, the District Judge after considering the evidence as adduced and hearing the parties passed the award under Section 23 of the Land Acquisition Act and thereby awarded a sum of Rs. 1,35,000/- on the basis of the guidelines fixed by the Collector from time to time which was verified from the sale-deeds of the similar lands. Being aggrieved by the Award-passed by the District Judge, the appellant-State has preferred this appeal.

3. Learned Govt. Advocate appearing for the appellant/State contended that the impugned order of Award so passed is against the fact, evidence on record and the law. It is submitted that the learned Collector after considering the material passed the appropriate amount for acquisition of the lands on legal requirements at Rs. 38,500/-per Bigha, which was prevailing on the land transactions at the relevant time and the Reference court on wrong notion on the plot value of the small piece of land determined compensation which was not on reasonable grounds. Therefore, it is prayed that by allowing the appeal, the award under appeal may be quashed and the Award passed by the Collector may be upheld.

4. By submitting the cross objection under Order 41 Rule 22 of C.P.C., it is contended that the Award passed by the Collector under Section 11 of the Act and the Award passed in the Reference Case are on lower side. It is submitted that no valuation of the land has been made properly as per provisions of the law and the evidence as gathered and adduced by the applicant before the Reference court. It is admitted that the questioned land belonging to the respondent was a piece of land which was not useful for agriculture purposes and was situated near Morena town, nearby the place of National Highway, therefore the award calculated in terms of agricultural land is not proper. The Reference court also while awarding compensation did not

consider this aspect of the matter and awarded compensation on plot value of the small piece of land. Therefore, it is prayed that the compensation on the basis of the evidence so adduced and on considering the prevailing law may be modified.

5. Heard the learned counsel for the parties. Also perused the record of the Reference court and the law applicable to the case.

6. The question for consideration in this appeal is whether the Award passed by the Reference court is based on lower side and against the recognized principles of law ?

7. On factual aspects, it is admitted that the land in question with other lands had been acquired for construction of residential colony for the employees of Chambal Irrigation under Notification dated 30th March 1991 published in M.P. Rajpatra dated 19th April 1999 and possession of the lands was taken over by the Acquisition Officer. The Award after due inquiry, under Section 11 of the Act was passed by the Collector, Morena. It is also admitted that the land acquired including the land in question was situated at A.B. National Highway passing through Morena township and within the local limit of Municipal area and that the adjoining lands were used for residential/commercial purposes. It is also not in dispute that the purpose of acquiring the lands was for construction of residential colony for the employees of Chambal Irrigation. It is also not in dispute that the area of the acquired land belonging to respondent was comprised in Survey No. 1041 having 4500 square feet land. Looking to the nature of the area, same was not used for agriculture and was lying vacant. Further the questioned land was not developed for other purposes. It is also not disputed that the Collector under Section 11 of the Act passed the Award for compensation @ Rs. 38,500/- per Bigha of the land in favour of the owners whose lands were acquired and on reference under Section 18 of the Act, the Reference court passed the award on plot value of the small piece of the land belonging to the respondent. Being aggrieved by the award passed by the Reference court, both the parties have filed the appeal and cross-appeal.

8. Before considering the dispute involved in this case, it would be useful to refer Section 23 of the Act. Section 23 reads as under:

“23. Matters to be considered in determining compensation.-(1) In determining the amount of compensation

to be awarded for land acquired under this Act, the Court shall take into consideration

firstly, the market value of the land at the date of the publication of the notification under Section 4 sub-section (1);

secondly, the damage sustained by the person interested, by reason of the taking of any standing crops or trees which may be on the land at the time of the Collector's taking possession thereof;

thirdly, the damage (if any) sustained by the person interested, at the time of the Collector's taking possession of the land, by reason of severing such land from his other land;

fourthly, the damage (if any) sustained by the person interested, at the time of the Collector's taking possession of the land, by reason of the acquisition injuriously affecting his other property, movable or immovable, in any other manner, or his earnings;

fifthly, if, in consequence of the acquisition of the land by the Collector, the person interested is compelled to change his residence or place of business, the reasonable expenses (if any) incidental to such change; and

sixthly, the damage (if any) bona fide resulting from diminution of the profits of the land between the time of the publication of the declaration under Section 6 and the time of the Collector's taking possession of the land.

(1-A) In addition to the market value of the land, as above provided, the Court shall in every case award an amount calculated at the rate of twelve per centum per annum on such market value for the period commencing on and from the date of the publication of the notification under Section 4 sub-section (1), in respect of such land to the date of the award of the Collector or the date of taking possession of the land, whichever is earlier.

Explanation .- In computing the period referred to in this sub-section, any period or periods during which the

proceedings for the acquisition of the land were held up on account of any stay or injunction by the order of any court shall be excluded.

(2) In addition to the market value of the land, as above provided, the Court shall in every case award a sum of thirty per centum on such market value, in consideration of the compulsory nature of the acquisition.”

Section 23(1) of the Act charges determination of the amount of compensation for the acquired land taking into account firstly the market value of the land at the date of the publication of the notification under Section 4(1) of the Act. The question, therefore, would be that what would be the market value of the land. The market value prevailing on the date of the notification including potentiality the land possessed of or realisable potentiality existing as on the date of the notification would be the relevant fact for consideration to determine market value.”

9. The burden of proving inadequacy of the amount is to be discharged by the claimant himself and he has to satisfactorily furnish basis for determining market value of acquired land. In case of *Land Acquisition Officer Vs. Karigowda*, (2010) 5 SCC 708, at page 723 : the Hon. Apex court observed as follows :-

29. It is a settled principle of law that the onus to prove entitlement to receive higher compensation is upon the claimants. In *Basant Kumar v. Union of India* this Court held that the claimants are expected to lead cogent and proper evidence in support of their claim. Onus primarily is on the claimants, which they can discharge while placing and proving on record sale instances and/or such other evidences as they deem proper, keeping in mind the method of computation for awarding of compensation which they rely upon. In this very case, this Court stated the principles of awarding compensation and placed the matter beyond ambiguity, while also copulating the factors regulating the discretion of the Court while awarding the compensation.

10. In *Chaturbhuj Modi v. State of Orissa*, (2010) 12 SCC 234, the Hon'ble Apex Court held that where large area is the subject-matter of acquisition, rate at which small plots are sold cannot be a safe criterion. It is relevant to reproduce the observations made at page 237 which is as under :-

12. The only evidence that could be considered and relied upon is Ext. 1. The following criteria provide a good indication of whether a sale deed may be comparable to the one in question:

(1) it must be within a reasonable time of date of notification under Section 4(1) of the Act;

(2) it should be a bona fide transaction;

(3) it should be a sale of the land acquired or of the land adjacent to the one acquired; and

(4) it should possess similar advantage.

13. Although the land whose sale is evidenced in Ext. 1 is not an excellent comparison in terms of area, the same indicates sales transaction completed at around the same time as the acquisition of the said land. Moreover, Ext. 1 also concerns a plot that is in geographical proximity to the acquired land. There being no other evidence on record, and since we are not inclined to remand the matter after such a long delay, we would rely on Ext. 1 with necessary scrutiny and caution. Reliance could be placed on the said documentary evidence for determining and assessing the compensation of the acquired land after giving the necessary deduction.

14. The High Court appears to have taken notice of the aforementioned criteria and has given some discount in compensation as the land under Ext. 1 is a very small piece of land and the land acquired in the case in hand is much larger in size. After giving the said discount, the High Court computed the compensation at the rate of Rs. 3,00,000 per acre for the acquired land. While determining compensation, some conjecture is unavoidable as it is generally not possible to have any documentary evidence of sale of land of similar nature

and in the near vicinity of the acquired land. The value shown in Ext. 1 cannot be assessed as the value of the acquired land for the reason that the said land which is sold under Ext. 1 is a very small piece of land, whereas the acquired land being a large tract of land.

15. This Court has held in *Administrator General of W.B. v. Collector, Varanasi* that where large tracts of land are required to be valued, valuation in transactions with regard to small plots is not to be taken as the real basis for determining the compensation of large tracts of land. It follows that where the market value of a large block of land is determined on the basis of sale transactions for smaller property, appropriate deduction has to be made for making allowance for the loss of the acquired land required to be used for internal development such as construction of roads, drains, sewers, open spaces and the expenditure involved in providing other amenities like water, electricity, etc. The extent of area required to be set apart has to be assessed by the court having regard to the shape, size and situation of the block of land concerned.

11. In *Ashrafi Vs. State of Haryana*, (2013) 5 SCC 527, at page 543 : it is held that valuation of the land differs from that of land used for house sites and therefore for determining value of such agricultural land, deductions should be made in respect of development expenses, interest on the outlays for the period of difermnt of realisation of the price, profits on venture, etc. Relevant paras from the aforesaid decision are quoted below :-

48. This brings us to the last part of the submissions made with regard to the amount of deduction effected in respect of the various properties. The general cut imposed is at a flat rate of 40%, which, in our view, is not warranted on account of the fact that the lands in question have lost their character and potentiality as agricultural lands and have more or less been converted into lands which were ready for use for the purpose of construction. Taking Ms Agarwal's submission regarding the factors which determine deduction towards development cost, such as location and potentiality, into account, we are of the view that a deduction of 33-1/3% would be reasonable on

account of the passage of time and the all-round development in the area which has made it impossible for the lands to retain their original character.

49. Accordingly, we direct that except where we have provided otherwise, wherever a deduction of 40% had been made, the same should be altered to 33-1/3% and the compensation awarded is to be modified accordingly.

12. The next question for consideration is as to whether the respondent has been properly compensated for acquirement of his land.

13. While deciding on the compensation to be paid for acquisition of the land, the court is duty bound to ensure that compensation determined is just and fair not only to the individual whose property is acquired but also to the public which has to pay for it. The market value of large area cannot be determined by rates of small plots. The Collector correcting undervaluation of different categories of land, though not strictly relevant may form the basis for arriving at a reasonable conclusion. The market value would depend upon a large number of facts including the nature and quality of the land. The norms applied for determination of market value of agricultural land and homestead land are different.

14. Now, coming to the scenario of the present case, it appears that the proposed acquired land belonging to the respondent is a small plot of land purchased by him for his residential accommodation and the nearby lands not acquired were also used as residential area and after acquisition of the land, the purpose of the acquired land was for development of the residential colony for the employees of Chambal Irrigation. On perusal of the record of Reference court, it appears that by the sale deed dated 14th December 1988, marked as Ex.P/2, one diverted plot area 1800 square feet was sold for Rs. 85,000/-. By next sale deed dated 23rd February 1988, marked as Ex.P/6, the plot having an area of 76 x 14 feet was sold in Rs. 30,000/-. During proceedings before the Reference court, by sale deed dated 25th April 1996, marked as Ex.P/4, one plot having an area of 75 x 24 feet was sold for Rs. 1,96,000/-. These are the comparable sale instances of similar lands in the neighbourhood, which are the best guiding factors to arrive at fair estimate of amount of compensation. It is seen that by the time of acquisition of the land in question, the Collector's rate for sale of the particular area was Rs. 60/- per square feet and Rs. 90/- per square feet for commercial purposes. Prior to acquisition of the land in question, same was declared within municipal limits and also situated nearby place at A.B. National Highway Road.

So, the possibility of development for residential or commercial or composite use cannot be denied. In these circumstances, the land in question deserved a higher rate but in the reference proceedings, the learned Reference court has not assigned any cogent reason for determining compensation @ Rs. 30/- per square feet. Taking into account the extent of land covered by the exemplar sale deeds, the collector's rate for sale of the particular area, i.e., Rs. 60/- per square feet therefore was appropriate and same is accordingly fixed. There is as such manifest error in the Award passed by the Reference court. Now, the respondent is held entitled for receiving compensation @ Rs. 60/- per square feet. Thus, the total compensation would come to $4500 \times 60 = \text{Rs. } 2,70,000/-$. As held in the case of *Ashrafi* (supra) regarding deduction for development charges to make the land suitable for the purpose the land was acquired, after deducting 30% on Rs. 2,70,000/-, Rs. 1,89,000/-, (Rs. One lac eighty nine thousand only) would be payable to the respondent alongwith the solatium @ 30% on this amount, i.e., Rs. 56,700/- with 12% simple interest from the date of Notification of acquisition of land as well as interest in accordance with the provisions of section 34 of the Act, within course of three months from today. If any amount is received by the respondent/ owner of the acquired land and interest, if paid, in that condition, same shall be deducted from the compensation amount.

15. Consequently, the appeal filed by the State fails and is dismissed. Counter appeal filed by the owner/respondent is allowed to the extent of enhancement of the award amount mentioned above.

Order accordingly.

I.L.R. [2014] M.P., 1588

APPELLATE CIVIL

Before Mr. Justice Rajendra Menon & Smt. Justice Vimla Jain

F.A. No. 88/2002 (Jabalpur) decided on 16 September, 2013

PREM NARAYAN @ HALLEBHAI

...Appellant

Vs.

SMT. BANTI BAI

...Respondent

Hindu Marriage Act (25 of 1955), Section 13(1)(i-a) - Cruelty and desertion - There is no proof of mental cruelty caused by wife - It is also not proved that the wife left her matrimonial home without just and reasonable cause - She had to live with her parents out of compulsion - No error or illegality in disallowing the petition - Appeal dismissed.

(Paras 16 & 17)

हिन्दू विवाह अधिनियम (1955 का 25), धारा 13(1) (i-a) – क्रूरता एवं परित्याग – पत्नी द्वारा मानसिक क्रूरता कारित किये जाने का कोई प्रमाण नहीं – यह भी साबित नहीं कि पत्नी ने बिना उचित और युक्तियुक्त कारण के दाम्पत्य निवास को छोड़ा था – उसे विवश होकर अपने माता पिता के साथ रहना पड़ा – याचिका नामंजूर किये जाने में कोई त्रुटि या अवैधता नहीं – अपील खारिज।

Cases referred :

(2002) 5 SCC 706.

T.S. Ruprah with Harpreet Ruprah, for the appellant.*Ajay Mishra*, for the respondent.**J U D G M E N T**

The Judgment of the Court was delivered by :
SMT. VIMLA JAIN, J. :- The appellant, being aggrieved by the judgment and decree dated 07.11.2001 passed by First Additional District Judge, Sagar in Civil Suit No. 19-A/2001 for divorce under Section 13 of the Hindu Marriage Act, 1955 (hereinafter referred to as 'the Act'), thereby dismissing the suit filed by the appellant, filed present first appeal under Section 28 of the Act.

2. Brief facts of the appeal are that as per Hindu rituals, marriage of appellant/ husband was solemnized with the respondent/wife seven years prior to the filing of the suit. Immediately after marriage the respondent came and remained with him for 2 days. Thereafter she again came to his house after one year and remained there for 8-10 days and lastly she lived with him in May, 1995 for about 10 days. During these three periods, the respondent/wife did not allow the appellant to have sexual intercourse with her. She treated him with cruelty and finally deserted him on 24.5.1995. Thereafter she never returned to his home.

3. Respondent/wife in her written statement denied all such allegations and stated that her husband used to demand Rs. 40,000/- for purchasing a tractor and on her denial he treated her with cruelty. At the time of her pregnancy, appellant/ husband beat her and removed her from his house. In the meantime, marriage was consummated and a girl (Rekha) was born from their wedlock. She further alleged that appellant/husband performed second marriage with Nirmala Bai, daughter of Barelal resident of Singpur, who had been living with him. Therefore, she had been living in her parental house. She filed a case against the appellant/ husband under Section 498-A of IPC. She also filed a case under Section 125 of

Cr.P.C., for maintenance for her and her daughter Rekha.

4. On the basis of the pleadings of the parties, the issues were framed by the trial Court in the Civil Suit No. 19-A/2001 for divorce under Section 13 of the Act, filed by the appellant. After appreciation of the evidence led by the parties, the trial Court dismissed the suit.

5. We have heard learned counsel appearing for the parties, and perused the record as well as impugned judgment and decree.

6. It is submitted by the learned senior counsel for the appellant/husband that the Respondent/wife lived with the appellant/husband during three short periods only, but she did not allow him to perform intercourse with her and thus committed cruelty with the appellant/husband. He further submitted that the findings recorded by the Court below are perverse. Thus, the trial Court had committed an error of law and fact in dismissing the divorce petition filed by the appellant/husband. He prayed to set aside the impugned judgment and decree and to allow the appeal.

7. On the other hand, learned counsel for the respondent supported the finding of the Court below and argued that the appellant/husband failed to prove the cruelty on the part of the respondent/wife. Therefore the trial Court has rightly refused to grant decree of divorce.

8. We have heard learned counsel for the parties and gone through the record of the case. We find that in order to establish the ground of cruelty the appellant/husband examined himself (AW-1), his brother Prahlad Singh (AW-2), Balram Lodhi, S/o Hariram Lodhi (AW-3), and his brother-in-law Kundan Singh Lodhi (AW-4) whereas respondent/wife Smt. Banti Bai examined herself (NAW-1) and independent witnesses Balram Lodhi, S/o Pratap Singh Lodhi (NAW-2) and Bhaiyalal Lodhi (NAW-3).

9. Before appreciating the evidence on record the concept of cruelty is to be defined. The Apex Court, in the case of *Praveen Mehta Vs. Inderjit Mehta* reported in (2002) 5 SCC 706, defined cruelty as under:

"Cruelty for the purpose of section 13 (1) (i-a) is to be taken as a behaviour by one spouse towards the other, which causes reasonable apprehension in the mind of the latter that it is not safe for him or her to continue the matrimonial relationship with the other. Mental cruelty is a state of mind and feeling with

one of the spouses due to the behaviour or behavioural pattern by the other. Unlike the case of physical cruelty, mental cruelty is difficult to establish by direct evidence. It is necessarily a matter of inference to be drawn from the facts and circumstances of the case. A feeling of anguish, disappointment and frustration in one spouse caused by the conduct of the other can only be appreciated on assessing the attending facts and circumstances in which the two partners of matrimonial life have been living. The inference has to be drawn from the attending facts and circumstances taken cumulatively. In case of mental cruelty it will not be a correct approach to take an instance of misbehaviour in isolation and then pose the question whether such behaviour is sufficient by itself to cause mental cruelty. The approach should be to take the cumulative effect of the facts and circumstances emerging from the evidence on record and then draw a fair inference whether the petitioner in the divorce petition has been subject to mental cruelty due to conduct of the other."

10. In the light of above principles of law, we have to examine the evidence on record in order to determine whether a case of cruelty has been established.

11. Prem Narayan Lodhi (AW-1) stated that he was married with respondent/wife seven years ago. After marriage, she resided with him for 2-3 days. She again came after one year and remained for about 8-10 days. After four months, respondent/wife also came to his home. She did not treat him like her husband and did not allow him to consummate the marriage. Then she went to her parental house along with Stridhan with her father and had been residing in her parental house since 1995. She filed a criminal case against him. He clarified that he never demanded dowry and did not perform second marriage. His brother Prahalad Singh (AW-4) and two independent witnesses namely Balram Lodhi (AW-3) and Kundan Singh Lodhi (AW-4), supported his statement that respondent/wife had come three times to her 'matrimonial home. She had gone back with her father to his home and did not return thereafter.

12. Smt. Banti Bai (NAW-1) stated that marriage had taken place before 9-10 years with the appellant. After marriage, she remained for 3 years in the house of the appellant/husband. She stated that they had cohabited and she was conceived. She further stated that appellant/husband used to beat her

and to ask her to bring Rs. 40,000/- for purchasing a tractor. Her father could not fulfill the demand of dowry. Therefore, he neglected her. He deserted her when she was pregnant. She delivered a baby Rekha in her parental home. She also alleged that he performed second marriage with Nirmala Bai and asserted that she is still willing to live with appellant/husband.

13. Her witnesses Balram Lodhi (DW-2) and Bhaiyalal Lodhi (DW-3) supported her and stated that appellant Premnarayan had demanded Rs. 40,000/- for purchasing a tractor, but her father, being very poor, could not fulfill his demand. They stated that when respondent/wife had come to parental home, she had four or five months pregnancy. She had given birth to a baby girl in her father's home. After birth of girl child, appellant/husband did not come to take her back. Therefore, she had to live at her parental home. They further stated that her father was ready to send her back to her matrimonial home and respondent/wife was also willing to live with her husband. They also stated that appellant/husband had performed second marriage with Nirmala Bai.

14. Learned senior counsel for appellant by referring to the statement of the respondent/wife Banti Bai (DW-1) vehemently argued that respondent/wife stated in her court statement dated 03.10.2001, that her daughter is 6 years old. It means that her daughter had not born out of her cohabitation with appellant because she herself had admitted in her cross examination that she had been living in her parent's home for about 6-7 years.

15. We have considered the submissions made by the Senior Counsel of the appellant and perused the record. The statement of appellant/husband was recorded in Court below on 26.6.2000. He stated that " अनावेदक से मेरी शादी लगभग सात साल पहले हुई थी। शादी के पश्चात विदा कराने पर अनावेदक मेरे घर पर दो तीन दिन रही। दूसरी बार अनावेदक एक वर्ष बाद मेरे घर पर आई थी। दूसरी बार अनावेदक हमारे यहां पर आठ दस दिन रही थी। फिर चार माह बाद हमारे यहां पर आयी। फिर अनावेदक दस दिन रुकी थी"

It appears that after their marriage, respondent/wife had lived with appellant three times within one year and four months. It is admitted fact that parties belong to rural area. They could not tell the exact dates of marriage and birth of child. In these circumstances, the statement of respondent/wife about six years age of her child can not prove that the child was not born out of their wedlock. The appellant did not bring any medical evidence to disprove paternity of the child. Thus the submissions made by the learned counsel for the appellant are not sustainable.

16. The Senior Advocate of the appellant also submitted that respondent/wife lodged a report against appellant and his family members for demand of dowry and such report amounted to mental cruelty to the appellant. But we find that the appellant did not submit any proof about such report or its contents or its consequential impact on him. Only filing a case under section 498-A of IPC cannot amount to cruelty until and unless it is proved that such case was totally false and baseless. The evidence led by the witnesses of appellant/husband namely Prahlad Singh (AW2), Balram Lodhi (AW-3) and Kundan Singh (AW-4) could not prove that the respondent/wife treated the appellant/husband with cruelty and had left her matrimonial home without any just and reasonable cause. Thus there is no proof of mental cruelty caused by respondent/wife to the appellant. It is also not proved that the respondent/wife left her matrimonial home without just and reasonable cause. She had to live with her parents out of compulsion on being refused by appellant to keep her at his home.

17. In the context of the above discussion, we are of the considered view that trial Court did not commit any error or illegality in disallowing the divorce petition filed by the appellant.

18. In the result, the appeal being devoid of any substance is dismissed. The judgment and decree passed by the learned Court below in Civil Suit No. 19-A/2001 dated 7.11.2001 are affirmed.

19. No order as to costs.

Appeal dismissed.

I.L.R. [2014] M.P., 1593

APPELLATE CIVIL

Before Mr. Justice Prakash Shrivastava

S.A. No. 206/2005 (Indore) decided on 29 October, 2013

UTTAM

...Appellant

Vs.

SAUBHAG SINGH & ors.

...Respondents

Hindu Succession Act (30 of 1956), Sections 4, 6 & 8 - Suit for partition and possession - Suit property is joint family property - Originally owned by the grand-father of the plaintiff - During life time of plaintiff's father no partition has taken place between plaintiff's father and his brothers - Held - Grand-son is not mentioned as class-I heir in the schedule - After coming into force of the Act grand-son

has no birth right in the property of grand-father and he cannot claim partition during life of his father. (Paras 15 & 16)

हिन्दू उत्तराधिकार अधिनियम (1956 का 30), धाराएं 4, 6 व 8 – विभाजन और कब्जे के लिए वाद – वाद सम्पत्ति, संयुक्त कुटुम्ब सम्पत्ति है – मूल रूप से वादी के दादा के स्वामित्व की थी – वादी के पिता के जीवनकाल के दौरान, वादी के पिता और उसके भाईयों के बीच विभाजन नहीं हुआ था – अभिनिर्धारित – पौत्र को अनुसूची में श्रेणी-I का वारिस होना उल्लिखित नहीं – अधिनियम के प्रवर्तन पश्चात, पौत्र को दादा की सम्पत्ति में जन्मजात अधिकार नहीं और वह अपने पिता के जीवित रहते विभाजन का दावा नहीं कर सकता।

Cases referred :

AIR 1986 SC 1753, (1982) 138 ITR 673, (1968) 67 ITR 164, (1978) 114 ITR 523, 144 ITR 18, AIR 1987 SC 558, (2006) 8 SCC 581, 2002(3) MPLJ 576, ILR (2012) MP 1271, AIR 1967 SC 1153, AIR 2003 SC 160, (2006) 8 SCC 656, AIR 2009 SC (Supp.) 1218, 2007 (II) MPJR 303, 2013 SAR (Civil) 785, (2009) 15 SCC 184, (2008) 3 SCC 87.

B.I. Mehta, for the appellant.

G.M. Chaphekar with D.S. Kale, for the respondents No.1 to 4.

Kapil Sharma, for the respondent No.5.

J U D G M E N T

PRAKASH SHIVASTAVA, J. :- This appeal under Section 100 of CPC is at the instance of the plaintiff in the suit challenging the reversal judgment of the first appellate court dated 12th January 2005 allowing the respondent's civil appeal No. 2-A/2001 and dismissing the appellant's suit. The trial court by judgment dated 20/12/2000 had decreed CS No. 5-A/1999.

2. The relationship between the parties is not in dispute. Respondents no. 1 to 4 are four sons of Jagannath who was the original owners of the suit property. Appellant is the son of respondent No. 3 Mohan Singh from his wife Indirabai.

3. Appellant had filed suit for partition and possession pleading that the suit property is the joint family property originally owned by late Jagannath and which has not been partitioned between appellant and respondents No. 1 to 4. It was further pleaded that respondent No.3 Mohan Singh is married to Indirabai from whom the appellant was born. Respondent No. 3 had developed relations with another lady Madhu and had married to her and had thrown out

Indirabai from his house and since then Indirabai is living with her father. It was further pleaded that since the suit property is ancestral property, therefore, the appellant was entitled to get it partitioned and receive his share.

4. The suit was opposed by respondents pleading that about 32-33 years back, respondent No. 3 Mohan Singh had relinquished his share in the suit property and remaining three brothers had partitioned the suit property. Indirabai had left the village in 1973 and the appellant has no right in the suit property.

5. The trial court by judgment dated 20/12/2000 had decreed the suit on reaching to the conclusion that Jagannath was the owner in possession of the suit property and appellant was son of respondent No. 3. The respondent's plead that the suit property was partitioned 32-33 years back was not proved and it was also not proved that the respondent No. 3 had relinquished his right in the suit property. Trial court found that the appellant had 1/8 share in the suit property and appellant was entitled to get the suit property partitioned and received his 1/8th share. Accordingly, a decree was passed in favour of appellant holding that he can receive possession of his 1/8th share and also mesne profit @ 2,000 per annum from the date of filing of the suit till the possession is delivered to him.

6. The first appellate court has affirmed the finding of the trial court that the appellant is the son of respondent No. 3 from Indirabai who was wife of respondent No. 3. It was also proved that respondents No. 1 to 4 are the sons of Jagannath and that no partition of the suit property belonging to Jagannath had taken place but the first appellate court has set aside the decree of the trial court on the ground that respondent No. 3 is alive and under Section 8 of Hindu Succession Act during the lifetime of his father, appellant has no right to get the suit property partitioned and receive his 1/8th share.

7. This court vide order dated 24/2/2006 had admitted the appeal on following substantial questions of law:-

“(1) Whether under the facts and circumstances of the case the decree of lower court could be sustained as it has ignored the settled position of law that in property of grandfather, grand-son does not claim through his father and in particular when no partition has taken place between plaintiff's father and his brother?

(2) Whether under the facts and circumstances of the case the decree of learned lower court could be sustained as it has reversed the well reasoned judgment of the trial court?"

Since, both the aforesaid questions are interrelated therefore, they are decided together.

8. Under the Hindu law existing prior to coming into force of the Hindu Succession Act, 1956, grand-son had birth right in the Mitakshara coparcenary property in the hands of his grand-father but the position has changed after commencement of the Act. Section 4 of the Act provides for over-riding effect of the act on any text, rule or interpretation of Hindu law or any custom or usage as part of that law in force immediately before the commencement of the Act being inconsistent with the provisions of the Act. Section 6 of the Act deals with devolution of interest in coparcenary property and in terms of this Section, interest of a male Hindu dying intestate in the Mitakshara coparcenary property devolves by survivorship upon the surviving members of the coparcenary and not in accordance with the Act and in terms of Explanation (1), the interest of a Hindu Mitakshara coparcener is deemed to be the share in the property that would have been allotted to him if a partition of the property had taken place immediately before his death, irrespective of whether he was entitled to claim partition or not.

9. Under Section 8 of Hindu Succession Act, the property of a male Hindu dying intestate is to devolve according to the provisions of Chapter-II of the Act, firstly upon the heirs, being the relatives specified in Class-I of the Schedule and if there is no class I heir then upon Class II heir and so on. In the schedule grand-son has not been included in the list of class I heirs, whereas son of a predeceased son is included therein, therefore, grand-son's birth right on the coparcenary property no longer exists under the Act and grand-son cannot claim partition during the lifetime of his father.

10. The Supreme court in the matter of *Commissioner of Wealth Tax Kanpur etc. Vs. Chander Sen etc.* reported in AIR 1986 SC 1753 while approving the view taken by this Court in the matter of *Shrivallabhdas Modani Vs. Commissioner of Income Tax MP-I*, reported in (1982) 138 ITR 673; Allahabad High court in the matter of *Commissioner of Income tax UP Vs. Ram Rakshpal Ashok Kumar*, reported in (1968) 67 ITR 164; the Full Bench judgment of Madras High court in the matter of *Additional Commissioner of Income Tax Vs. P.L. Karuppan Chettiar*, reported in [1978] 114 ITR 523;

and judgment of Andhra Pradesh High court in the matter of *Commissioner of Wealth Tax A.P-II Vs. Mukundgirji*, reported in 144 ITR 18, has held that since in Schedule to the Hindu Succession Act, only son is included and son's son is not included as Class I heir therefore, the son would inherit the property in the situation contemplated by Section 8 of the Act not as Karta of his own undivided family and that one should look only to the Act and not to the pre-existing Hindu law. Referring to Section 8 of the Act, it is held that son's son get excluded and the son alone inherits the property to the exclusion of his son. In the judgment of this Court in the matter of *Shrivallabhdas Modani* (supra) which has been approved by the Supreme court in the above judgment, it was held by this Court that son's son is not mentioned as Class I heir in the Schedule and therefore, he cannot get any right in the property of his grand-father under the Act. The right of son's son in his grand-father's property during the lifetime of his father which existed under the Hindu law as in force before the Act is not saved expressly by the Act, and therefore, the earlier interpretation of Hindu law giving a right by birth in such property has ceased to have effect. It was further held that Section 8 of the Act should be taken as a self-contained provision laying down the scheme of devolution of the property of a Hindu dying intestate. The Allahabad High court in the matter of Commissioner of *Income Tax UP Vs. Ram Rakshpal Ashok Kumar* (supra) has held that in case of assets of business left by father in the hands of his son, it would be governed by Section 8 of the Act and he would take in his individual capacity. The Madras High court in the matter of *Additional Commissioner of Income Tax Vs. P.L. Karuppan Chettiar* (supra) had held that by reason of Section 8 of the Act, the son's son gets excluded and the son alone inherits the property to the exclusion of his son and that the statutory provision contained in the Act must prevail in view of the unequivocal intention in the statute itself, expressed in Section 4(1). The Andhra Pradesh High court in the matter of *Commissioner of Wealth Tax A.P-II Vs. Mukundgirji* (supra) had taken the view that the properties which devolved upon heirs mentioned in Class I of Schedule under Section 8 of the Act constituted the absolute properties and the son's son will have no right by birth in such properties. The Supreme court in the matter of *Chander Sen* (supra) has approved the above view of this Court as well as Allahabad, Andhra Pradesh and Madras High Courts. The contrary view of the Gujarat High court has been dis-approved by the Supreme court.

11. In the matter of *Yudhishter Vs. Ashok Kumar*, reported in AIR 1987

SC 558 referring to the earlier judgment in the case of *Chander Sen* (supra) it has been held by the Supreme Court that the property which devolved upon the father on the demise of the grand-father cannot be said to be HUF property in the hands of the father vis-a-vis his own sons. In the matter of *Sheela Devi and others Vs. Lal Chand and another* reported in (2006) 8 SCC 581, it has been further clarified by the Supreme court by holding that prior to the commencement of the Act as per the Mitakshara law usage once a son was born he used to acquire an interest in the coparcenary property as an incident of his birth, but now the Act would prevail over the Hindu law. In that case son's son was born prior to the commencement of 1956 Act therefore, it was held that he would retain his share of the property as a coparcener even after the commencement of the 1956 Act, while father who had died in 1889, his share will devolve upon his heirs according to the provisions of the Act. The Single Bench of this Court in the matter of *Chandrakanta and another Vs. Ashok Kumar and others*, reported in 2002(3) MPLJ 576 has also held that after coming into force of Hindu Succession Act, the theory of birth right does not exist and the son gets share in the property only after death of his father. Similar view has also been taken by another Single Bench judgment in the matter of *Babulal and others Vs. Ramkali Bai & others*, reported in ILR[2012] MP 1271.

12. Counsel for the appellant has placed reliance upon the judgment of the Supreme court in the matter of *Valliammai Achi Vs. Nagappa Chettiar and another* reported in AIR 1967 SC 1153 but the said judgment is under the provisions of Succession Act 1925 and the effect of the Act of 1956 has not been considered. He has further placed reliance upon the judgment of the Supreme Court in the matter of *Gulabrao Balwantrao Shinde and others Vs. Chhabubai Balwantrao Shinde and others*, reported in AIR 2003 SC 160 but in that case also, Balwantrao Shinde had died on 27th June 1954 prior to the coming into force of the Act, 1956 and the share in the property of Balwantrao was claimed. Even otherwise that was a case relating to the effect of Section 14 of the Act.

13. Counsel for the appellant has further placed reliance upon the judgment of the Supreme court in the matter of *Anar Devi and others Vs. Parmeshwari Devi and others*, reported in (2006) 8 SCC 656 but the said judgment is also on different fact situation and does not relate to the birth right of the grand-son. He has further placed reliance upon the judgment of the Supreme court in the matter of *Ranganayakamma and another Vs. K.S. Prakash(D)*

by *L.Rs. & others*, reported in AIR 2009 SC (Supp) 1218, wherein it has been held that when a son get property from his father, as soon as sons are born to him, a joint family is constituted, but in that judgment, it has not been held that son's son will have birth right. A further reliance has been placed on the judgment of the Division Bench of this Court in the matter of *Vijay Goyal Vs. Madan Goyal & others*, reported in 2007(II) MPJR 303, but the said judgment relates to the son's right on the coparcenary property by birth but it does not relate to the right of grand-son.

14. Counsel for the appellant had further placed reliance upon the judgment of the Supreme Court in the matter of *Rohit Chauhan Vs. Surinder Singh & others*, reported in 2013 SAR (Civil) 785 and in the matter of *M. Yogendra and others Vs. Leelamma N. and Others*, reported in (2009) 15 SCC 184 wherein it is held that in partition if the ancestral property remains in the hands of a single person, it has to be treated as his separate property and such a person shall be entitled to dispose of the coparcenary property treating it to be his separate property but if a son is born subsequently, the property becomes a coparcenary property and son would acquire interest in that and becomes a coparcener. He has also placed reliance upon the judgment in the matter of *Bhanwar Singh Vs. Puran and others*, reported in (2008) 3 SCC 87, it has been held that the provision contained in Section 6 of the Act regarding the devolution of property in coparcenary property is not applicable when the surviving members of the coparcenary had already partitioned their properties and become owners to the extent of their share but the benefit of these judgments cannot be given to the appellant because in the present matter no partition had taken place between sons of Jagannath i.e. respondents No. 1 to 4.

15. Thus in view of the provisions contained in Sections 4,6, 8 and Schedule of the Act as well as the law settled by the aforesaid judgments, it is clear that after coming into force of the Act grand-son has no birth right in the properties of grand-father and he cannot claim partition during lifetime of his father.

16. In the present case, it is undisputed that Jagannath had died in the year 1973, leaving behind respondents No. 1 to 4 i.e. his four sons covered by Class I heirs of the schedule therefore, the properties had devolved upon them when succession had opened on the death of Jagannath. It has also been found proved that no partition had taken place between respondents

No. 1 to 4. The appellant who is the grand son of Jagannath is not entitled to claim partition during the lifetime of his father Mohan Singh in the properties left behind by Jagannath since the appellant has no birth right in the suit properties.

17. in view of the aforesaid, the substantial questions of law are answered against the appellant by holding that the first appellate court has committed no error in dismissing the suit for partition filed by the appellant referring to Section 8 of the Act and holding that during the lifetime of Mohan Singh, the appellant has no right to get the suit property partitioned.

Thus, second appeal No. 206/2005 has no merit, which is accordingly dismissed.

Appeal dismissed.

I.L.R. [2014] M.P., 1600

APPELLATE CRIMINAL

Before Mr. Justice B.D. Rath

Cr.A. No. 528/1998 (Jabalpur) decided on 26 July, 2013

SURESH KUMAR

...Appellant

Vs.

STATE OF M.P.

...Respondent

Penal Code (45 of 1860), Sections 450, 376 & 323 - Rape - No opinion could be given by the Doctor that the prosecutrix had been subjected to rape recently - She did not try to resist the attempt of the appellant - Did not raise any hue and cry - Held - Prosecutrix was a consenting party and it was perhaps when the appellant and prosecutrix were caught red handed, the story of rape had been cooked up - Conviction u/s 450 & 376 set aside - Conviction u/s 323 is affirmed - However, custodial sentence is altered to fine sentence. (Paras 4, 8 & 10)

दण्ड संहिता (1860 का 45), धाराएं 450, 376 व 323 - बलात्कार - चिकित्सक द्वारा कोई अभिमत नहीं दिया जा सका कि अभियोक्त्री के साथ थोड़े समय पूर्व बलात्कार किया गया था - उसने अपीलार्थी के प्रयत्न का प्रतिकार करने की कोशिश नहीं की - कोई शोर नहीं मचाया - अभिनिर्धारित - अभियोक्त्री सम्मत पक्षकार थी और संभवतः जब अपीलार्थी और अभियोक्त्री को रंगे हाथ पकड़ा गया, बलात्कार की कहानी गढ़ी गयी - धारा 450 व 376 के अंतर्गत दोषसिद्धि अपास्त - धारा 323 के अंतर्गत दोषसिद्धि की पुष्टि - किन्तु, अभिरक्षा के दण्डादेश को

अर्थदण्ड के दण्डादेश में परिवर्तित किया गया।

Surendra Singh with R.K. Shukla, for the appellant.

Amit Pandey, P.L. for the respondent.

J U D G M E N T

B.D. RATHI, J. :- The appellant has been convicted under Sections 450, 376 & 323 of the IPC and sentenced to undergo R.I. For 5, 7 and 1 years respectively with fine stipulation. The impugned judgment dated 29/1/1998 was passed by I Additional Sessions Judge, Mandla in Sessions Trial No. 103/97.

2. According to the prosecution case, on 15/04/1997 the prosecutrix, aged about 29 years was sleeping inside her house with her son, aged about 6 years. Her husband had gone to a temple. The appellant entered in the house and forcible committed rape upon her. As she tried to shriek, she was gagged. In between, as her husband Lalman arrived, the appellant hid himself in another room and when Lalman went to look after him, appellant started assaulting him with a stick. As she went for his rescue, she was also given a Stick blow on the back side of her head. She fell down and was rendered unconscious. A report of the incident was lodged next day on 16/04/1997 at 9.45 a.m. and Crime No. 37/97 was registered at Police Station Pondi for the offences punishable under Sections 450, 376 & 323 of the IPC. After completion of investigation, charge-sheet was filed and thereafter impugned judgment was passed.

3. Charges under Section 450, 376 & 323 of the IPC were framed. Appellant pleaded false implication and not guilty.

4. At the outset, learned Senior Counsel submitted that he does not want to press the appeal in so far as it relates to conviction under Section 323 of the IPC. However, he prayed that the corresponding sentence may be altered to fine sentence. He further argued that the prosecutrix was medically examined and no opinion could be given by the Dr. K. Uike (PW6) that she had been subjected to rape recently. It is also submitted that the prosecutrix was a consenting party. Learned senior counsel further submitted that the impugned judgment was passed without proper appreciation of evidence on record.

5. In response, learned Government Advocate, while making reference to the incriminating pieces of evidence on record, submitted that the conviction

is well merited and the impugned judgment does not deserve to be interfered with. Alternatively, it was also submitted that even if element of consent is found present, then too appellant can be convicted for (i) the offence of adultery under Section 497 of the IPC for committing sexual intercourse with the prosecutrix, who was the married wife of Lalman and (ii) for the offence of house trespass, that was done for committing adultery and causing hurt to the prosecutrix and her husband.

6. Having regard to the arguments advanced by the parties, record of the trial Court was perused.

7. During the course of arguments, learned counsel invited the attention of the Court to paragraph 7 of the evidence of prosecutrix (PW1), wherefrom it can be easily inferred that during the course of sexual assault, she had maintained such a posture that facilitated the intercourse voluntarily and did not try to resist the attempt of the appellant. In paragraph 10 of the evidence, she has also admitted that during the course of sexual assault, she had neither bitten nor scratched the appellant with her nails. The fact that her son remained asleep while the offence was being committed, itself reveals that the prosecutrix did not raise any hue and cry at the time of sexual assault and so called gag has also not been seized by the police. That apart, mentioning of words "Pura kaam suresh nahi kar paya tha" in FIR (Ex.P/1) by the prosecutrix, itself shows that either of the parties was not fully sexually satisfied before being caught red handed. It also reflects consent.

8. So in the aforesaid premises, in the opinion of the Court, prosecutrix was a consenting party and it was perhaps when the appellant and the prosecutrix were caught red handed, the story of rape had been cooked up.

9. Having regard to the alternative submission made by learned Government Advocate, on perusal of evidence and material on record, appellant cannot be held guilty for the offence of adultery and house trespass under Section 451 of the IPC in absence of complaint as required by Section 198 of the Code of Criminal Procedure. Besides this, it is also not found proved that appellant had entered into the house after having made preparation for causing hurt.

10. Therefore, the convictions under Section 450 and 376 of the IPC cannot be upheld. So far as the conviction under Section 323 of the IPC is concerned, the same deserves to be affirmed. However, in view of the fact

that the appellant is facing ordeal of trial and appeal since 1996, interests of justice would be met if custodial sentence, as awarded by the trial Court, is altered to fine sentence.

11. In the result, the appeal stands allowed in part. Impugned convictions and consequent sentences under Sections 450 and 376 of the IPC are hereby set aside. Conviction under Section 323 of the IPC (on two counts) for assaulting the prosecutrix and her husband is maintained. However, the corresponding custodial sentence is set aside and it is directed that the appellant shall pay a fine of Rs.1000/- on each count i.e. Rs.2000/- in total in default to suffer R.I. for six months on each count. Bail bonds of the appellant stand discharged.

12. Copy be sent to the trial Court for immediate compliance.

Appeal partly allowed.

I.L.R. [2014] M.P., 1603

APPELLATE CRIMINAL

Before Mr. Justice B.D. Rath

Cr.A. No. 561/1998 (Jabalpur) decided on 26 July, 2013

VISHWANATH

...Appellant

Vs.

STATE OF M.P.

...Respondent

A. Penal Code (45 of 1860), Section 307 - Attempt to murder - No offence was made out u/s 307 of the IPC, but it is a case where conviction could safely be recorded u/s 324 of IPC - Since appellant is prosecuting the legal battle for the last 18 years - Only fine sentence is awarded. (Paras 11 & 12)

क. दण्ड संहिता (1860 का 45), धारा 307 - हत्या का प्रयत्न - भा.द.स. की धारा 307 के अंतर्गत अपराध गठित नहीं हुआ किन्तु यह ऐसा प्रकरण है जहां भा.द.स. की धारा 324 के अंतर्गत दोषसिद्धि सुरक्षित रूप से अभिलिखित की जा सकती है - चूंकि अपीलार्थी पिछले 18 वर्षों से कानूनी लड़ाई लड़ रहा है - केवल अर्थदण्ड का दण्डादेश दिया गया।

B. Penal Code (45 of 1860), Section 354 - To outrage modesty - Since there is not even an iota of evidence on record to infer that any attempt was made to outrage the modesty, conviction u/s 354

of the IPC, cannot be sustained.

(Para 11)

ख. दण्ड संहिता (1860 का 45), धारा 354 – लज्जा भंग करना – चूंकि अभिलेख पर किंचित भी साक्ष्य नहीं यह निष्कर्ष निकालने के लिये कि लज्जा भंग करने का कोई प्रयास किया गया था, भा.द.सं. की धारा 354 के अंतर्गत दोषसिद्धि पोषणीय नहीं।

Harish Agnihotri, for the appellant.

Amit Pandey, P.L. for the respondent.

J U D G M E N T

B.D. RATHI, J. :- Being aggrieved by the judgment dated 29.1.1998 passed by the learned IVth Additional Session Judge, Rewa in Sessions Trial No.91/1996 whereby the appellant has been convicted under Sections 354 and 307 of the Indian Penal Code (for short “the IPC”) and sentenced to rigorous imprisonment for six months and two years with fine stipulation respectively, appellant has preferred this appeal.

2. According to the prosecution case, on 27.9.1995, between 6 to 7 pm at village Shivpura Nibuha when victim Sunita (PW2) after throwing cow dung, went to attend the call of nature, at that time, someone had inflicted injuries by Knife on her stomach. Blood was oozing and she was rendered unconscious. Coming to know about the incident, her brother Jagjeevan Ram Mishra (PW3) reached to the spot and brought her to Police Station, where FIR (Ex.P/2) was lodged by him. After completion of investigation, charge-sheet was filed.

3. Statement of victim Sunita under Section 161 of the Cr.P.C. was recorded on 8/10/95, when she became able to speak after treatment.

4. During the trial, the appellant pleaded not guilty of the charges and contended that he had been falsely implicated.

5. Learned counsel submitted that looking to the facts mentioned in the FIR (Ex.P/2) and evidence of witnesses, it cannot be held that appellant was the assailant. He further submitted that even if the prosecution version is accepted in its totality, it cannot be said that appellant had inflicted injury with intention to cause death of victim, and as such the offence cannot fall under Section 307 of the IPC, but, at the most, under Section 324 of the IPC.

6. In response, learned Panel Lawyer, while making reference to the incriminating pieces of evidence on record, submitted that the conviction was

well merited and no interference was called for.

7. Having regard to the arguments advanced by the parties, record of the trial Court was perused.

8. Though FIR was lodged against unknown persons but by looking to the entire evidence of the witnesses, it is revealed that just after the incident, Sunita was rendered unconscious. Her brother Jagjeewan Ram Mishra, after reaching to the spot, had brought her to the Police Station and FIR was lodged by him against unknown persons. The name of assailant was disclosed by Sunita only when she regained consciousness. On the basis of some discrepancies that occurred in the evidence of witnesses in regard to the fact that name of the accused was disclosed by the victim on spot, the whole case of prosecution cannot be disbelieved. Discrepancies generally arise because witnesses are under pressure during lengthy cross-examinations and they fear that the real miscreant may not escape and that is the reason why they, at times, resort to exaggeration. It is the bounden duty of the Court to sift the grain from the chaff and the principle of *Falsus in uno falsus in omnibus* is not applicable in India.

9. In view of the evidence of Sunita (PW2), Ramgopal (PW1) and Umashankar (PW4), it was rightly held by the trial Court that injury was caused by appellant.

10. Dr. Rajendra Shrivastava (PW7), who had examined the victim and prepared the MLC report (Ex.P/14), has found that only one stab wound was caused over the epigastric region (abdomen), having a size of 8 cm x 2 cm x muscle deep. At the time of examination, she was under drowsiness. It was also deposed by him that details and nature of injury could be obtained from the Ward. Though the doctor has deposed that injury was present over vital part and in absence of treatment, death could be caused, yet, in the absence of corresponding Ward report and in view of the X-ray report indicating no bony injury, in the opinion of this Court, the injury was simple and not sufficient to endanger the life of the victim.

11. Though, opinion evidence of a doctor is entitled to some weight and value, yet for adjudging the criminality of the offender, it is the duty of the Court to see whether ingredients for the offence (in this case under S.307 IPC) were fully established or not. In this case, looking to the nature of injury, which was simple and in absence of corresponding opinion of the Ward Doctor, in the considered view of this Court, no offence was made out under Section

307 of the IPC, but it is a case, where conviction could safely be recorded under Section 324 of the IPC. Moreover, there is not even an iota of evidence on record to infer that any attempt was made to outrage the modesty of the victim. Therefore, the conviction under Section 354 of the IPC, cannot be sustained.

12. However, considering the fact that the incident took place on 27/9/95 wherein only one simple injury was caused to the victim, the physical, mental and financial hardship suffered by the appellant in the prosecuting the legal battle for the past 18 years, interests of justice would be met if only fine sentence is awarded to him under Section 324 of the IPC.

13. Resultantly, the appeal is allowed in part. Convictions and consequent sentences under Sections 307 and 354 of the IPC are set aside. Instead, the appellant is convicted under Section 324 of the IPC and sentenced to pay a fine of Rs.4000/- (Rupees four thousand), in default to suffer S.I. for 6 months. Out of the fine amount so deposited, Rs. 2000/- (Rupees two thousand) shall be paid to victim Sunita. Needless to say, that any fine amount, if deposited earlier, shall be accordingly adjusted.

14. Copy of the judgment be sent to the trial Court for compliance.

Appeal partly allowed.

**I.L.R. [2014] M.P., 1606
APPELLATE CRIMINAL**

Before Mr. Justice Shantanu Kemkar & Mr. Justice Mool Chand Garg
Cr.A. No. 218/2002 (Indore) decided on 11 September, 2013

GULAB

...Appellant

Vs.

STATE OF M.P.

...Respondent

Penal Code (45 of 1860), Section 302 - Murder - Sole accused prosecuted for causing death - Eye witness deposed that appellant inflicted three injuries whereas doctor described 8 injuries - Seizure witness did not support prosecution case - Held - Evidence of PW 1 is fully reliable and trustworthy and cannot be discarded on the basis of minor omission and contradiction as also on the ground that the witnesses of seizure of 'Falia' has turned hostile - Defence set up by appellant has not been proved - Conviction is affirmed.

(Paras 10 & 11)

दण्ड संहिता (1860 का 45), धारा 302 - हत्या - एकमात्र अभियुक्त को मृत्युकारित करने के लिये अभियोजित किया गया - चक्षुदर्शी साक्षी का कथन है कि अपीलार्थी ने तीन क्षतियां पहुंचाई, जबकि चिकित्सक ने 8 क्षतियों का वर्णन किया - जब्ती साक्षी ने अभियोजन प्रकरण का समर्थन नहीं किया - अभिनिर्धारित - अ.सा. 1 का साक्ष्य पूर्णतः विश्वसनीय और भरोसेमंद है और गौण लोप एवं विरोधाभास के आधार पर अस्वीकार नहीं किया जा सकता, इस आधार पर भी नहीं कि 'फलिया' की जब्ती के साक्षी पक्षविरोधी हो गये - अपीलार्थी द्वारा प्रस्तुत बचाव साबित नहीं - दोषसिद्धि की पुष्टि की गयी।

Anirudha Gokhale, for the appellant.

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

J U D G M E N T

The Judgment of the Court was delivered by :
SHANTANU KEMKAR, J. :- This appeal under Section 374 of the Code of Criminal Procedure, 1973 is against the judgment dated 07.12.2001 passed by the Additional Sessions Judge, Jabat, District Jhabua in Sessions Case No.293/2000, whereby convicting the appellant for the offence under Section 302 of the Indian Penal Code and sentencing him for life imprisonment.

2. The prosecution case, in brief, may be stated, as under: -

On 29.03.2000 at about 10.00 PM, appellant Gulab was beating his children. On this, Bhuchariya (brother of the appellant) asked the appellant as to why he is beating them. To this, the appellant replied and said that as they are his children, he is free to do anything with them, and he should not make any interference in it. Having received such reply, the deceased Bhuchariya said yes, they are your children and you may do whatever you like to do with them. After saying so, Bhuchariya went near the well and lied down on the swing hanged there. Hinglibai (PW-1) also followed Bhuchariya. When the deceased was lying on swing and Hinglibai was standing nearby him, the appellant armed with 'Falia' reached there. He while using abusive words, caught hold of Bhuchariya and then dragged him to a distance; on which Hinglibai tried to get Bhuchariya freed from the appellant, but was not successful. The appellant then inflicted 'Falia' blow on the neck of Bhuchariya, on account of which Bhuchariya fell down. The appellant then also continued to inflict injuries to him by 'Falia'. When Hinglibai shouted and asked to the appellant as to why he is beating Bhuchariya, he tried to attack Hinglibai. In order to save herself, Hinglibai ran away from the spot. On hearing cry of

Hinglibai, villagers came to the spot and found Bhuchariya to be dead. First Information Report Ex.P/1 was lodged at Police Station, Nanpur, District Jhabua. The Police prepared Naksha Panchayatnama Ex.P/5. Dead body was sent to postmortem. The postmortem report is Ex.P/7-A. After completion of investigation challan was filed by the Police against the appellant.

3. The appellant abjured guilt and pleaded innocence. In order to prove the charge, the prosecution examined five witnesses and in defence, no evidence was led by the appellant.

4. The trial Court, placing reliance on the eye witness account of Hinglibai (PW-1), recorded a finding of guilt against the appellant and sentenced him, as aforesaid. Aggrieved, the appellant has filed this appeal.

5. Shri Anirudha Gokhale, learned counsel for the appellant has argued that the trial Court has committed error in convicting the appellant only on the basis of solitary statement of Hinglibai (PW- 1) which was not trustworthy in view of the various contradictions and omissions in her statement. He also contended that Hinglibai deposed that the appellant inflicted three 'falia' injuries on the deceased, whereas her deposition about number of injuries does not find support from the postmortem report Ex.P/7-A and the evidence of Dr. Arun Kulkarni (PW-4), who conducted the postmortem in which total eight injuries were described. He also contended that witness of seizure of 'Falia', Guman (PW-2) did not support the prosecution case, and as such, the seizure of the weapon from the appellant having been not proved; the conviction of the appellant cannot be sustained.

6. On the other hand, Shri R.S. Parmar, learned Panel Lawyer appearing for the respondent, supported the impugned judgment of conviction. He submits that the trial Court has rightly placed reliance on the eye witness account of Hinglibai (PW- I), which is duly corroborated by the medical and other evidence. According to him, there is no material contradiction and omission in the evidence of Hinglibai, so as to discard her version.

7. We have considered the submissions made by the learned counsel for the parties and perused the evidence on record as also the impugned judgment.

8. Hinglibai (PW-I) has deposed that her brother-in-law Gulab (the appellant) was beating his children. On which, her husband, who was brother of the appellant asked the appellant as to why he is beating his children. The appellant did not like his intervention and said that he should not say in between. On this, her husband went to the well and lied down on a swing tied near the well. She also followed

him and went at the swing near the well. Soon thereafter, the appellant reached there armed with 'Falia'. He started abusing the deceased and then dragged him from the swing to some distance and then inflicted 'Falia' blow' on his neck.. Thereafter, he inflicted 2-3 times 'Falia' blows on his body. When she cried, the appellant tried to cause her injury, on which she fled away from the spot and told the incident to Guman, Raisingh, Nandu and Samrath. All of them reached to the spot where they found Bhuchariya to be dead. In her cross-examination, nothing has come out so as to disbelieve her version. Some contradictions with her previous statement about reaching Guman, Raisingh and Nandu on the spot, when they heard her cry and in her deposition that she ran to her house and thereafter narrated the incident to other persons namely Guman, Raisingh., Nandu and Samrath and then they came to the spot will not make her version to be untrustworthy. In the circumstances, we are unable to agree with the submission of learned counsel for the appellant that on account of this discrepancy, the testimony of Hinglibai should not have been relied upon by the trial Court.

9. 'As regards the discrepancy about number of injuries stated by her and were found in the postmortem, in our considered view, merely because in her deposition, Hinglibai had stated that she has seen the appellant inflicting 3 - 4 injuries to the deceased and in the postmortem report and as per the version of the doctor, if the injuries were eight in number, the version of Hinglibai (PW-1) cannot be discarded. It has come in her evidence that when the appellant was inflicting injuries to her husband, she started shouting, on this, the appellant tried to catch her and to save herself from him, she fled away from the spot. In the circumstances, it was very natural for her to have not seen the further injuries, which were caused by the appellant to the deceased.

10. In the circumstances, we are of the considered view that the trial Court has committed no error in passing the impugned judgment of conviction of the appellant on the basis of testimony of Hinglibai, wife of the deceased, who had seen the incident. Her evidence is fully reliable and trustworthy and cannot be discarded on the basis of minor omissions and contradictions as also on the ground that the witness of seizure of 'Falia' Guman (PW-2) has turned hostile.

11. The defence tried to be set up by the appellant in the cross-examination of Hinglibai that she was having illicit relationship with one Pratap and it was not acceptable to the appellant, and therefore, she has falsely implicated the appellant, has not been proved by the appellant by leading any cogent evidence,

and as such, has rightly not been believed by the trial Court.

1 2. As a result, we are of the view that no case is made out to interfere into the impugned judgment of conviction passed by the trial Court. The appeal fails and is hereby dismissed.

Appeal dismissed.

I.L.R. [2014] M.P., 1610

APPELLATE CRIMINAL

Before Mr. Justice S.K. Gangele & Mr. Justice B.D. Rath

Cr.A. No. 396/1999 (Gwalior) decided on 7 May, 2014

NEERAJ

... Appellant

Vs.

STATE OF M.P.

...Respondent

(and Cr.A. No. 462/1999, Cr.A. No. 465/1999 & Cr.A. No. 566/1999)

A. Penal Code (45 of 1860), Section 302 - Murder - Circumstantial evidence - Cases which rest upon circumstantial evidence, conviction can be permissible only when all links in chain of events are established beyond reasonable doubt and established circumstances are consistent only with hypothesis of guilt of accused and totally inconsistent with his innocence. (Paras 21/22)

क. दण्ड संहिता (1860 का 45), धारा 302 - हत्या - परिस्थितिजन्य साक्ष्य - जो प्रकरण परिस्थितिजन्य साक्ष्य पर निर्भर होते हैं, दोषसिद्धि केवल तब अनुज्ञेय हो सकती है जब घटनाओं की सभी कड़ियाँ, युक्तियुक्त संदेहों से परे स्थापित होती हैं और स्थापित परिस्थितियाँ केवल अभियुक्त की दोषिता की उपकल्पना के साथ सुसंगत हैं और उसकी निर्दोषिता के साथ पूर्णतः असंगत।

B. Penal Code (45 of 1860), Section 302 - Murder - Last seen together - If the time gap between the last seen and death of deceased was more, the possibility of entry of third person to commit the murder was there. (Para 21)

ख. दण्ड संहिता (1860 का 45), धारा 302 - हत्या - अंतिम बार एक साथ देखा जाना - यदि अंतिम बार देखे जाने और मृतक की मृत्यु के बीच के समय का अंतर अधिक था, तब हत्या करने के लिये तीसरे व्यक्ति के प्रवेश की संभावना थी।

Cases referred :

(2007) 2 SCC (Cri) 162, 2013(1) Crimes 162 (SC), 1998 Cr.L.J.

3934, (2013) 7 SCC 45, (2013) 14 SCC 434, (2010) 6 SCC 1, AIR 2011 SC 3690, (2012) 6 SCC 174, (2013) 9 SCC 283, AIR 2012 SC 2600, (2012) 10 SCC 464, (2012) 7 SCC 646.

V.K. Saxena with Jagdish Singh & Shipra Agrawal, for the appellants.

Vivek Khedkar, P.P. for the respondent/State.

J U D G M E N T

The Judgment of the Court was delivered by :
B.D. RATHI, J. :- This judgment shall govern the disposal of Cr.A.396/1999 [Neeraj Vs. The State of M.P.], Cr.A.462/1999 [Bhola Mahor Vs. The State of M.P.], Cr.A.465/1999 [Kallu Jatav Vs. The State of M.P.] and Cr.A.566/1999 [Pappu Pal Vs. The State of M.P.] since all these appeals have arisen out of the common judgment of conviction and order of sentence dated 27.07.1999 passed by the IV Additional Sessions Judge, Gwalior (M.P.) in Sessions Trial No.400/93 whereby the accused/appellants have been convicted under Section 302/34 of the Indian Penal Code and sentenced to suffer imprisonment for life (rigorous) each with a fine of Rs.2,000/- each with default stipulations.

2. Prosecution story, in nutshell, is that on 21.08.1993 at 9 A.M. Ram Narayan while going from Taraganj to the market at Balabai Ka Bag, Jamdar Ka Bagicha noticed that a dead body of a young man aged near about 23-24 years was lying half submerged in water. Ram Narayan informed the police on the basis of which Marg No.42/93 Ex.P-15 was registered and enquiry into the circumstances of death was taken up by A.S.I. Shri Dixit. Site-plan Ex.P-21 dated 21.08.1993 at 08:50 am and lash Panchayatnama Ex.P-22 dated 21.08.1993 were prepared. Ordinary clay and blood stained clay was seized from the site vide seizure memo Ex.P-23 dated 21.08.1993 at 11:30 am. One blue and one yellow coloured pair footwear (chappal) from the site were seized and seizure memo Ex.P-24 dated 21.08.1993 at 11:50 am was prepared. Clothes of the deceased were seized from the spot vide seizure memo Ex.P-25 dated 21.08.1993. The body was sent for the autopsy which was conducted by Dr. V.K. Diwan (PW-6) on 21.08.1993 at 05:30 pm who found that the death was homicidal in nature. Post Mortem report Ex.P-4 was prepared & signed by him.

3. On the basis of aforesaid investigation done by the Investigating Officer

in the aforesaid Marg, an offence at Crime No.214/93 Ex.P-14 under Section 302/34 of the Indian Penal Code was registered at Police Station against unknown persons on 21.08.1993 at 10:00 pm. During investigation, it was revealed that in the evening of 20.08.1993 the deceased had gone with the accused persons and at about 08:30 pm he was seen near Taraganj bridge taking food alongwith 3-4 persons. On 20.08.93 at about 11:00 the accused appellant Neeraj had kept the bicycle of the deceased in the house of Nirpat (PW-5) and on 21.08.1993 he alongwith one person took it back. On 21.08.1993 the appellant Neeraj, Pappu went to the house of Chhiddilal (PW-2) stayed there in the night and took dinner. On 22.08.1993 Pappu and the appellant Neeraj came back leaving the bicycle at the house of Chhiddilal. On information given under Section 27 of the Evidence Act, the cycle was recovered by the Investigating Officer, Mr. M.L. Sharma (PW-15). The cycle alongwith other recovered articles like Shirt, briefs, Nekar, footwear (Chappal), silver ring, chain and keys were identified by Randhir Singh, in Test Identification Parade conducted by Ramesh Patharia (PW-4). The TIP Memo of Ex.P-3 was prepared.

4. After investigation, charge-sheet against the accused persons/appellants was filed under Section 302/34 of the Indian Penal. The accused/appellant abjured their guilt and pleaded complete innocence.

5. To bring home the charges, prosecution has examined as many as seventeen witnesses, namely, Ramdayal (PW-1), Chhiddilal (PW-2), Somdev Singh (PW-3), Ramesh Pathariya (PW-4), Nirpat Singh (PW-5), Dr. V.K. Deewan (PW-6), Pannlal (PW-7), Pooran Singh (PW-8), Mohanlal Shrivastava (PW-9), Ajay Sonone (PW-10), Randheer Singh (PW-11), Suresh Kumar (PW-12), Bundabai (PW-13), Leela (PW-14), M.L. Sharma (PW-15). Inspector, Dinesh Chandra Assistant Sub- Inspector (PW-16), and Ramnarayan Kushwah (PW-17). Similarly, two witnesses were examined by the accused in defence, namely, Kamlesh Kumar Pandey Head Constable (DW-1) and Dashrath Singh Assistant Sub- Inspector (DW-2).

6. It is an admitted position that there is no eyewitness of the incident in question and the matter solely rests upon circumstantial evidence. The circumstances which have been relied by the learned Trial Court are as under:

- (i) The accused persons had taken the deceased Ram Babu from his house on 20.08.1993 at about 6 pm.

(ii) After some time, the accused persons were seen alongwith the deceased in the way near the house of Hariom at the square and further they were seen at 8:30 pm at Taraganj bridge near the spot from where dead body was recovered.

(iii) The recovery of the dead body of Ram Babu from Jamdar-Ka-Bagicha.

(iv) Immediately after the incident, the cycle of the deceased was kept at the house of Nirpat and then left it at the house of Chhiddilal by accused Neeraj; and

(v) Recovery of the cycle and other articles on instigation of accused Neeraj & other accused persons respectively.

7. After taking into consideration the evidence adduced by the parties, impugned judgment of conviction and order of sentence was passed by the learned trial court. Hence, this appeal.

8. It is argued by Shri V.K. Saxena, learned Senior Counsel appearing on behalf of the appellants that the learned trial court has not appreciated the evidence, available on record, properly. It is also submitted by Shri Saxena, learned Senior Counsel that in absence of the evidence in regard that the accused persons were seen alongwith the deceased at the last time just near the place where dead body was found or murder was committed judgment of conviction could not be passed. It is also submitted that recovery of worthless articles like silver ring and silver chain is more unnatural. The entire story of seizure was developed by the prosecution only just for false implication of the appellants. Motive for committing the offence has also not been proved by he (sic:the) prosecution. Identification parade was not organized for the identification of appellants. Short time gap, between the last seen & time of death, was also not established. Identification parade of articles was disgraced. Thus, on these grounds, learned Senior Counsel appearing for the appellant submitted that the present appeals be allowed and the appellants be acquitted of the charges levelled against them. In support of contention following judgments have been cited:

9. In the case of *State of Goa Vs. Sanjay Thakran and another* reported in (2007) 2 SCC (Cri) 162, the Hon'ble Supreme Court has held as under:

“13. The prosecution case is based on the circumstantial

evidence and it is a well-settled proposition of law that when the case rests upon circumstantial evidence, such evidence must satisfy the following tests:

(1) the circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established;

(2) those circumstances should be of a definite tendency unerringly pointing towards guilt of the accused;

(3) The circumstances, taken cumulatively, should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and non else; and

(4) the circumstantial evidence in order to sustain conviction must be complete and incapable of explanation of any other hypothesis than that of the guilt of the accused and such evidence should not only be consistent with the guilt of the accused but should be inconsistent with his innocence.”

10. It was further held by the Hon'ble Apex Court in *Sanjay Thakran* (supra) that in such types of cases duration of time gap between the accused persons seen in the company of the deceased and the detection of the crime would be a material consideration. Thus, normally such evidence would be taken into account where the prosecution establishes that the said time gap was so small that possibility of any other person being with the deceased could completely be ruled out. But it cannot be said that in all cases where there is a long time gap between the above two points, the evidence of last seen together is to be rejected. Even in such cases the proof of last seen together would be relevant if the prosecution establishes that in the intervening period there was no possibility of an other person meeting or approaching the deceased at the place of incident or before the commission of the crime.

11. In *Sanjay Thakran* (supra), it was further held by the Hon'ble Apex Court that if test identification parade was organized under Section 9 of the Evidence Act then persons identifying articles did not have sufficient opportunity to see the said articles being used by the deceased for a long duration. Further these articles not carrying any distinctive marks on the basis of which these could be distinguished from similar articles which were easily accessible and available in market. Hence it is held that identification of the said articles as

belonging to deceased, could not be believed.

12. In case of *Rishipal Vs. State of Uttarakhand* reported in 2013(1) Crimes 162 (SC), it was held by the Hon'ble Apex Court as under:

“14. It is fairly well-settled that while motive does not have a major role to play in cases based on eye-witness account of the incident, it assumes importance in cases that rest entirely on circumstantial evidence. [See *Sukhram v. State of Maharashtra* (2007) 7 SCC 502, *Sunil Clifford Daniel (Dr.) v. State of Punjab* (2012) 8 SCALE 670, *Pannayar v. State of Tamil Nadu by Inspector of Police* (2009) 9 SCC 152]. Absence of strong motive in the present case, therefore, is something that cannot be lightly brushed aside.

13. In the case of *Shobhau Vs. State of M.P.* (1998 Cri.L.J. 3934) considering the aforesaid aspect this court observed as follows :-

“5. In a case where the entire case of the prosecution rests on the circumstantial evidence, all circumstances from which conclusion of guilt is to be drawn must be fully established. It is well settled that there is a long distance between 'may be true' and 'must be true'. The prosecution has to travel all the way to establish fully the chain of evidence which should be consistent only with the hypothesis of the guilt of the accused and this circumstance should be of conclusive nature and definite tendency. They should be such as to exclude every hypothesis but one proposed to be proved. The circumstances must be satisfactorily established and the proved circumstances must bring home the offence to the accused beyond all reasonable doubt. It is not necessary that each circumstance by itself be conclusive; but cumulatively must form unbroken chain of events leading of the proof of the guilt. If these circumstances or some of them can be explained by any of the reasonable hypothesis the accused must have the benefit of the hypothesis. In assessing the evidence imaginary possibilities have no role to play. What is to be considered are ordinary human probabilities. In other words when there is no direct evidence to the commission of murder and case rests entirely on circumstantial evidence, the circumstances relied must be

fully established. The chain of events furnished by the circumstances should be so far complete as not to leave any reasonable ground for conclusion consistent with the innocence of the accused. See *Kishore Chand v. State*, AIR 1990 SC 2140 : 1990 Cri LJ 2289.

14. Per contra, Shri Khedkar, learned Public Prosecutor appearing on behalf of the State vehemently opposed the prayer made by the learned Senior Counsel for the appellants and submitted that the impugned judgment of conviction and order of sentence has been passed on proper appreciation of evidence on record and needs no interference. It was also submitted that appellants have not explained the circumstances under which the death of Rambabu occurred, therefore, they all were rightly convicted. In support of his contention, he relied on judgment rendered by the Hon'ble Apex Court in the matter of *Harivadan Babubhai Patel Vs. State of Gujarat* reported in (2013) 7 SCC 45, in which it was laid down by the Hon'ble Supreme Court that time gap between when deceased was seen in company of accused and time of death is not long, as duly established by medical evidence and there is no reason to discredit the same, circumstance pertaining to theory of last seen, thus deserves acceptance against appellant. He further relied on *Rohtash Kumar Vs. State of Haryana* reported in (2013) 14 SCC 434, in which the Hon'ble Apex Court has held as under:

"32. In cases where the accused was last seen with the deceased victim (last seen together theory) just before the incident, it becomes the duty of the accused to explain the circumstances under which the death of the victim occurred. [Vide *Nika Ram V. State of H.P.*, AIR 1972 SC 2077 and *Ganeshlal v. State of Maharashtra*, (1992) 3 SCC 106].

33. In *Trimukh Maroti Kirkan v. State of Maharashtra*, (2006) 10 SCC 681, this Court held as under: (SCC p.694, para 22)

"22. Where an accused is alleged to have committed the murder of his wife and the prosecution succeeds in leading evidence to show that shortly before the commission of crime they were seen together or the offence takes place in the dwelling home where the husband also normally resided, it has been consistently held that if the accused does not offer any explanation how the wife received injuries or offers an explanation which is found to be false, it is a

strong circumstance which indicates that he is responsible for commission of crime. [See also *Prithipal Singh V. State of Punjab*, (2012) 1 SCC 10].

34. Thus, the doctrine of “last seen together” shifts the burden of proof on the accused, requiring him to explain how the incident had occurred. Failure on the part of the accused to furnish any explanation in this regard, would give rise to a very strong presumption against him.

15. It is also submitted by Shri Khedkar, learned Public Prosecutor that even when there is no previous TIP, the Court may appreciate dock identification as being above board and more than conclusive. Dock identification is a substantive piece of evidence and even in absence of TIP no prejudice is caused to prosecution case. Reliance has been placed on the judgment rendered by Hon'ble Apex Court in the matter of *Sidhartha Vashisht alias Manu Sharma Vs. State* (NCT of Delhi) reported in (2010) 6 SCC 1. Again it was submitted by Shri Khedkar, learned Public Prosecutor, that though motive is important but even if prosecution fails to prove the motive, case of the prosecution will not fail. Reliance has been placed on *Ajitsingh Harnamsingh Gujral Vs. State of Maharashtra* reported in AIR 2011 SC 3690. It is further argued by learned Public Prosecutor that in this case appellant Neeraj was injured. He has not explained the injuries who he sustained, therefore, such conduct of appellant Neeraj will go against him. In order to strengthen this plea, reliance was placed on *Munna Kumar Upadhyaya alias Munna Upadhyaya Vs. State of Andhra Pradesh* reported in (2012) 6 SCC 174 and on *Ravirala Laxmaiah Vs. State of Andhra Pradesh* reported in (2013) 9 SCC 283. It is further argued by learned Public Prosecutor that minor contradictions and omissions do not affect the credibility of evidence and failure of accused to explain circumstances found against him will go in favour of the prosecution. He relied on *Jagroop Singh Vs. State of Punjab* reported in AIR 2012 SC 2600 and on *Munish Mubar Vs. State of Haryana* reported in (2012) 10 SCC 464.

16. Having heard learned counsel for the rival parties the impugned judgment and evidence available on record have been perused.

17. It is not in dispute that murder of Rambabu was committed and his dead body was seized from Jamdar Ka Bagicha Hanuman Bandh Road, Taraganj and spot map Ex:P-21 was prepared on 21.08.93 at about 09:50

am. So, in this way, nature of death of Rambabu has to be ascertained and while adhering to such issue we find that in evidence of Dr. V.K. Diwan (PW-6) he proved that the death of Rambabu was homicidal in nature as during autopsy he has found 15 injuries over the body of Rambabu and both coronal fosa bone were fractured. According to him, the cause of death was cardiorespiratory failure because of sustaining injuries which resulted in his death. Post Mortem report Ex.P-4 was prepared and signed by him.

18. Now, to come to a right conclusion, we will see whether the evidence was properly appreciated or not under the following heads by the learned trial court in view of propositions laid down by the Hon'ble Apex Court in above-mentioned cases:

1. Motive
2. Last seen
3. Identification of accused
4. Seizure of weapons from the possession of the appellants.
5. Seizure of property from the possession of accused persons
6. Identification of properties seized from the possession of the accused persons.

19. **Detailed discussion follows:**

1. Motive:

(A) For this purpose, witness Pannalal (PW-7) was cited. It was stated by him in para 1 of his statement that Rambabu (deceased) and his father Randheer Singh both were residing in his neighbourhood. In the morning at about 6-7 one girl, namely, Sarla came to my house alongwith accused appellant Neeraj. Sarla told him that for performance of sexual abuse with my son, Neeraj had opened his undergarment and therefore Neeraj was scolded. On which, Neeraj had stated that since Sarla was defaming him everywhere, he would inflict knife to Sarla's son. Again, it was stated by Pannalal (PW-7), in the same para, that at that time Rambabu had shouted from the roof of his house that Neeraj was in the habit of stealing

and a evildoer, therefore, FIR should be lodged against him.

(B) It is submitted by learned counsel appearing on behalf of the respondent/State that it shows that accused Neeraj is a person who has very much revengeful attitude. In the morning of the fateful day because some allegations were made by Rambabu against Neeraj and therefore to take vengeance, murder of Rambabu was committed by Neeraj alongwith other co-accused persons.

(C) But the statement of Pannalal (PW-7) is not reliable because in para 2 it was admitted by him that this fact was not stated by him to the police in his police statement. Except this evidence, prosecution has not produced any other evidence to prove the inimical relationship between Neeraj and Rambabu or between other co-accused persons and Rambabu. Prosecution has also not produced any other evidence to prove the motive of the crime but on the contrary Ajay Sonone (PW-10) stated in para 1 that Neeraj and Rambabu were friends and the members of orchestra party. Similarly, Leela (PW-14), sister of the deceased, in para 6 of her evidence and Suresh Kumar (PW-12), brother of the deceased, in para 13 of his evidence have deposed that there was no inimical relationship between Rambabu and appellants Kalla, Neeraj, Bholu and Pappu. Learned trial court has also found in para 46 of its judgment that motive was not proved by the prosecution. In this way, it is clear that prosecution has failed to prove the motive behind commission of crime.

2. Last seen, 3. Identification of accused & 4. Seizure of weapons from the possession of the appellants :

(A) To prove this set of evidence, prosecution has produced Leela (PW-14) who is the younger sister of the deceased. It was stated by her in paragraph 1 of her evidence that at about 6 pm when she was sweeping the platform of the house, she saw that appellant Neeraj, Kallu and one unknown person had come there. They invited the deceased to take food at hotel. During dock identification, it was also stated that third

unknown person was, the person present in court, (indicating appellant-Bhola). After a period of half an hour of this incident, deceased came back but she and her mother did not ask any question to the deceased whether he had taken food or not. This evidence was fully corroborated from the evidence of Bundabai (PW-13) who is the mother of the deceased.

(B) Bundabai (PW-13) and Leela (PW-14) further deposed in their respective evidence that thereafter they had gone to purchase vegetables and after purchasing when both were returning they saw that deceased had a cycle and was going with appellant Neeraj, Kallu alongwith two unknown persons who were identified in the Court during trial by indicating towards appellant Pappu and Bholu. Both have also stated that they did not know the name of these two (Pappu & Bholu) appellants. Similarly, Randheer Singh (PW-11), father of the deceased, stated in para 2 of his evidence that on that fateful evening deceased had come to the shop by bicycle and told him that he was going with his friends. He did not return till 9 pm. In para 5, it was stated by him that he was informed by Leela (PW-14) and Bundabai (PW-13) that the deceased had gone with appellants Neeraj, Kallu, Pappu and Bholu. But so far as this statement in regard to names of Pappu and Bholu is concerned is not reliable because Bundabai (PW-13) and Leela (PW-14) both themselves state that they do not know the names of these two unknown persons (Pappu and Bholu). Ajay Sonone (PW-10) deposed in para 1 of his statement that he had seen that the deceased and Neeraj alongwith 2-3 unknown persons were taking food near Taraganj bridge. Suresh Kumar (PW-12), brother of the deceased stated in para 1 of his evidence that in the fateful evening when he was going to his shop, on a square, he saw that Rambabu and appellants Neeraj, Kallu, Pappu and Bholu were going. At that time, deceased was having cycle.

(C) From the above mentioned evidence, it is clear that at about between 08:00 to 08:30 pm deceased was seen alongwith appellants Neeraj and Kallu. So far as appellants Pappu and Bholu are concerned, their presence is not reliable

because Bundabai (PW-13), Leela (PW-14) and Ajay Sonone (PW-10) stated that two unknown persons were there alongwith appellants Neeraj and Kallu. Test Identification Parade was not organized by the prosecution for identification of appellants Pappu and Bholu. Statement of Suresh Kumar (PW-12) is not reliable on this point because it was not stated by him in his police statement Ex.D-6 that he has seen the deceased alongwith all appellants i.e. Neeraj, Kallu, Pappu and Bholu. Therefore, appellants Pappu and Bholu could not be connected with the last seen.

(D) It was submitted by Shri Khedkar, learned Public Prosecutor that when appellants Pappu and Bholu were identified by the witnesses during court-trial, therefore, only in the absence of TIP during investigation, names of appellants Pappu and Bholu cannot be removed from the last seen evidence. It is also submitted by Shri Khedkar that deceased was last seen in the company of the appellant and just thereafter in the same locality dead body of deceased Rambabu was found. No explanation was given, therefore, the appellants are liable for conviction. To strengthen his plea, he relied on *Shyamlal Ghosh Vs. State of West Bengal* reported in (2012) 7 SCC 646. But we are of the considered view that it gives no help to the prosecution because in the present case appellants Pappu and Bholu were unknown persons for the witnesses. Their names were also not mentioned in police statements. Identification parade was also not organized for them. Their names were also not stated during trial when witnesses had seen them present in the Court alongwith appellants Neeraj and Kallu. They were identified by indication only.

(E) Now, the question before us for consideration is whether appellants Neeraj and Kallu could be linked with the offence of murder only because both were seen alongwith deceased by the witnesses? The answer will be "No" since in absence of motive as discussed in foregoing paras and because Rambabu and Neeraj both were friends; they used to go here and there and also at orchestra-office of Ajay Sonone (PW-10) and there was no inimical relationship between these

persons as stated by Suresh (PW-12) in para 13 of his statement, Leela (PW-14) in para 6 of her statement. Ajay Sonone (PW-10) also deposed in para 5 of his evidence that 8-10 days prior to this incident, he had seen the deceased alongwith appellants Kallu and Neeraj at Chandrabadani hills where house of deceased is situated. It also shows that deceased & appellants Neeraj and Kallu used to remain in company to each other and also used to go here and there. Therefore, only mere presence of appellants Neeraj and Kallu alongwith the deceased on the fateful night at about 08:30 pm cannot be a ground for linking them with the offence because both the appellants and deceased used to go here and there due to their friendship.

(F) Dr. V.K. Diwan (PW-6) has conducted the autopsy. He has found 15 ante-mortem injuries on the body of the deceased. It was stated by him in para 3 of his evidence that death of Rambabu occurred within 12 to 24 hours. Autopsy report Ex.P-4 was prepared and signed by him. Post mortem was conducted on 21.08.1993 at 05:30 pm. Dead body of deceased was recovered from Jamdar Ka Bageecha in the morning of 21.08.1993 at 09:50 and spot map Ex.P-21 was prepared.

(G) It was pointed out by the learned Public Prosecutor that at about 08:30 pm, appellant Neeraj and Kallu both were seen in the company of deceased and then after a period of 2-1/2 hours Neeraj reached at about 11 pm at the house of Nirpat Singh (PW-5) just to keep cycle of deceased at his house which was taken away in the next morning by Neeraj from the house of (PW-5). Meaning thereby, murder of deceased was committed between near about 08:30 pm to 10:30 pm of 20.08.1993. This fact was also proved from the evidence Dr. V.K. Diwan (PW-6) who stated that autopsy was conducted on 21.08.1993 at about 05:30 pm and death of deceased occurred within 12-24 hours and in this way appellants can be very well linked with the offence.

(H) We are unable to accept the contention of learned Public

Prosecutor because reaching of appellant Neeraj at the house of Nirpat (PW-5) at 11 pm is doubtful because neither cycle was produced for identification before (PW-5) nor seizure of cycle was proved as discussed in next paras. It is also made clear that TIP for cycle and other articles was also found doubtful as discussed in subsequent paras. Apart that Dr. V.K. Diwan (PW-6) has stated in his evidence the duration of death was 12-24 hours but reasons were not assigned by him in his evidence that how he arrived at this conclusion. Therefore, it may also be possible that murder was committed within 12 hours from the time of autopsy i.e. 05:30 pm on 21.08.1993. Meaning thereby, murder may be committed at about 05:30 am early in the morning of 21.08.1993 (within 12 hours). Time of last seen was 08:30 pm on 20.08.1993 and death may be occurred at about 05:30 am in 21.08.1993 and in between a long period of these nine hours, possibility of entry of third person for committing the murder cannot be ruled out. In Post Mortem Report Ex.P-4 it was mentioned that rigor mortis were present all over the body. As per Modi's Medical Jurisprudence and Toxicology, 24th Edition Reprint-2012 pg.343, Time of onset This varies greatly in different cases, but the average period of its onset may be regarded as three to six hours after death in temperate climates, and it may take two to three hours to develop. In this way, in absence of other evidence appellant Neeraj and Kallu cannot be connected with the crime only on this ground.

(I) Besides this, appellants Neeraj and Kallu could not be connected with the offence in the absence of seizure of any weapon from their possession. Admittedly, about 15 ante-mortem injuries were found present on the body of the deceased and it was specifically stated by the doctor in para 3 of his statement that injuries No.1 to 14 were caused by hard and blunt object and injury No.15, incised wound, was caused by sharp-edged weapon. This important piece of the evidence was not collected by the prosecution and it creates doubt whether appellant, Neeraj and Kallu who were the friends of deceased and usually used to remain in his company, committed offence of murder.

(J) Apart that on perusal of spot map Ex.P-21, it is clear that dead body of deceased was lying near pit filled with water. This area was situated in Taraganj but nowhere the distance, from Taraganj bridge to the spot where the dead body of the deceased was found present, was mentioned in Ex.P-21. Apart that it was also not stated by Dinesh Dixit (PW-16), ASI, Police Station Janakganj that at what distance Taraganj bridge was situated from the spot wherefrom the dead body was seized. It was important and material piece of the evidence to link the appellants Neeraj and Kallu with the offence because Ajay Sonone (PW-10) has categorically stated that he had seen deceased and Neeraj alongwith 2-3 other persons near Taraganj bridge where they were taking food. Therefore, distance between Taraganj bridge and the spot where the dead body of the deceased was found was very material and important piece of the evidence. If distance was established then possibility of third person being with the deceased or not could be judged. Meaning thereby if the distance is short then possibility of entry of third person was less in the absence of other evidence and if distance was long then possibility of third person being with the deceased remains more there.

(K) It is an admitted fact that Jamdar Ka Bagicha where the dead body was found also comes within the area known as Taraganj and Taraganj bridge is also situated in the area known as Taraganj. But only on this basis, it cannot be presumed that the distance between to points was very short.

5. Seizure of property from the possession of accused persons & 6. Identification of properties seized from the possession of the accused persons :

(A) As per the prosecution case, cycle which was seen by the witnesses at the time of last seen with appellant Neeraj and Kallu was seized from the house of Chhiddilal (PW-2) on the instigation of appellant Neeraj. Seizure memo Ex.P-2 was prepared. Bicycle was seized on 24.08.1993. But this seizure is doubtful because Chhiddilal (PW-2) deposed in para 1 of his evidence that Neeraj alongwith one boy and his son Somdev

were going to his house. He also reached there. Thereafter, bicycle was left by Neeraj at his house. But Somdev (PW-3) deposed in par (sic:para) 5 of his evidence that when Neeraj had come to his house alongwith bicycle at that time he was not present at home. Later on, he was informed by his sister that cycle was left there by Neeraj. So, similarly, Chhiddilal (PW-2) deposed in para 2 of his evidence that after 2-3 days he was called from the agricultural field by Somdev. He came at house where the cycle was being seized by police and seizure memo was being prepared. But Somdev (PW-3) deposed in para 4 that at the time of seizure of bicycle his father was not present there and did not come back home till the moment police was present. Due to contradictory statements of both these witnesses, seizure of bicycle from the house of Chhiddilal (PW-2), on the instigation of appellant Neeraj, is doubtful.

(B) Similarly, as per the prosecution case, one half shirt and one used cream-coloured singlet (Baniyan). Both the articles, which were of his own, were seized from the possession of appellant Pappu on his instigation. For the sake arguments, if it is presumed that both the articles were seized from the possession of the appellant Pappu which were owned by him even then he cannot be linked with the offence because prosecution has not produced any evidence in regard to the presence of blood of deceased on these two articles. Therefore, mere seizure of his (appellant Pappu) own clothes cannot be a ground for linking him with the offence.

(C) Now, for the sake of arguments if it is presumed that one silver chain belonging to deceased was seized from the possession of appellant Bholu vide seizure memo Ex.P-7 dated 25.08.1993; bicycle of deceased was seized from the house of Chhiddilal (PW-2) on the instigation of appellant Neeraj vide seizure memo Ex.P-2 and similarly if it is also presumed that one silver ring and two keys tagged in a keyring belonging to the deceased were seized from the possession of appellant Kallu on his instigation vide seizure memo Ex.P-1 dated 24.08.1993, even then the appellants Neeraj, Kallu and Bholu cannot be linked with the crime because, TIP for these articles

was not properly conducted to prove that these articles were belonging to deceased. For this purpose, TIP memo was prepared Ex.P-3. Articles were identified by Randhir Singh (PW-11), father of the deceased, and TIP was conducted by Ramesh Patharia (PW-4) former corporator. Ramesh Patharia (PW-4) has admitted in para 7 of his statement that in TIP memo Ex.P-3 crime number, name of the witnesses, articles for identification and whether rightly or wrongly identified; all these facts were mentioned by his friend Dinesh Bhatnagar. He was also present on the spot. Even his name i.e. Ramesh Patharia, former corporator, Ward No.39, Police Station Janakganj dated 07.09.1993 time 09:30 was also written in the handwriting by Dinesh Bhatnagar. Entire memo Ex.P-3 was prepared by Dinesh Bhatnagar but neither the presence of Dinesh Bhatnagar was mentioned in this memo nor his signature was present on that memo. Though in the bottom of para 7 of his evidence it was deposed by Ramesh Patharia (PW-4) that on his dictation entries were made by Dinesh Bhatnagar but even this fact was not mentioned in this TIP memo Ex.P-3. Further, it was admitted by Randhir Singh (PW-11) in para 6 of his evidence that identification parade was conducted by two unknown persons. Therefore, in absence of examination of very important and material witness Dinesh Bhatnagar, the possibility of preparation of preplanned identification memo Ex.P-3 cannot be ruled out. In this way, entire TIP was defiled and remained not reliable. It was also not explained by prosecution that how two different dates were mentioned in Ex.P-3 i.e. on top 07.09.93 and at bottom 09.07.97. It also creates doubt.

(D) Apart that, initially Randhir Singh in his first police statement dated 21.08.1993, Ex.D-14, Leela Bai in her first police statement dated 21.08.1993, Ex.D-7 and Bundabai in her first police statement dated 21.08.1993, Ex.D-7, did not state that deceased used to wear one silver ring, one silver chain and he used to keep with him keys tagged in keyring. But in subsequent statements it was stated by the witnesses that Rambabu used to wear and keep above mentioned articles with him.

Therefore, the possibility of manipulation, by showing seizure of articles belonging to deceased from the possession of the appellants, cannot be ruled out.

(E) On perusal of statement of Randhir Singh (PW-11), in the bottom of para 3, when question was put before him by the defence "आपका लडका रामबाबू क्या-क्या पहनता था?", he answered "अंगूठी चांदी की, चैन चांदी की, बुशर्ट, चड़ी, हाफ पैंट, साईकिल व चप्पल और दुकान की चाबी।" From perusal of this answer, it is clear that how the witness was tutored by the prosecution to answer that whenever such types of questions were asked by the defence then he had to answer in regard to the articles seized from the possession of the appellants. The question was simply asked as to what articles deceased used to wear but answer was given with cycle and keys of the shop also. These articles i.e. cycle and keys of the shop cannot be worn by anyone while they can be kept alongwith. This question-answer itself creates a doubt on the testimony of Randhir Singh (PW-11).

(F) Dinesh Chandra Dixit (PW-16), ASI, has admitted in cross-examination that during marg enquiry this fact had not come before him that when deceased went from his house at that time one silver chain, one silver ring and keys were alongwith him.

(G) Apart that Randhir Singh (PW-11) was not sure himself that the offence was committed by the appellants because in para 14 of his statement it was deposed by him that he had doubt that murder of deceased was conspired by Mahesh. He has never stated in his entire evidence, that at any point of time, any doubt arose against the appellants for commission of such offence.

20. It was further submitted by the learned Public Prosecutor that as per the arrest memo of appellant Neeraj, Ex.D-3, at the time of arrest it was found that his nose was injured and blood was oozing. Similarly, in MLC report Ex.D-11 and D-12, it was mentioned that two injuries were found present; one is lacerated wound on the right nasal side and the second is contusion but the injuries were not explained by appellant Neeraj, therefore, after taking into consideration the entire circumstances it should be presumed that offence was committed by Neeraj.

Contention is not acceptable because as per the defence contention injuries were inflicted by police authorities by giving him third degree treatment and to prove this fact question was put by the defence before M.L. Sharma (PW-15), the investigating officer. Though this fact was denied that third degree treatment was given to appellant Neeraj. Injuries were explained during the examination of accused under Section 313 of Cr.P.C. when question No.61 was asked by the trial court from appellant Neeraj and it was explained by him that he was beaten by police due to which injuries were sustained.

21. On the basis of above discussion of evidence and after taking into consideration the entire material available on record, we are of the considered view that prosecution has failed to complete the chain of events by circumstantial evidence by missing following rings of the chain:

(a) In absence of motive;

(b) since appellant Neeraj was the close friend of deceased and both were used to remain in the company of each other at different places; therefore on the fateful day company of these persons was not unnatural.

(c) Because distance of last seen spot and the place from where the dead body was seized was not proved;

(d) In the absence of TIP in regard to appellant Pappu and Bholu;

(e) TIP of articles seized from the appellants belonging to deceased was defiled;

(f) The weapons used in the commission of offence of murder of the deceased were not seized from the possession of the appellants; and

(g) time-gap between the last seen and death of Rambabu was more than 09 hours therefore possibility of entry of third person to commit the murder was there,

therefore, we are not inclined to hold that the impugned judgment of conviction and order of sentence was rightly passed by the learned Trial Court.

22. In the above mentioned facts and circumstances of the case, authorities as relied on by the learned Public Prosecutor are of no relevance since they

are quite distinguishable from the facts of the present case. In cases which rest upon circumstantial evidence, conviction can be permissible only when all links in chain of events are established beyond reasonable doubt and established circumstances are consistent only with hypothesis of guilt of accused and totally inconsistent with his innocence. This principle was laid down by Hon'ble Apex Court in *Jagroop Singh* (supra). But in this case prosecution has failed to become complete the chain of events.

23. It is settled law that benefit of doubt always goes in favour of the accused. In this case also, entire case of the prosecution is doubtful. The prosecution has failed to prove the guilt of the appellants beyond reasonable doubt, therefore, the benefit of doubt is granted to the appellants.

24. Accordingly, all the appeals are hereby allowed. The impugned judgment of conviction and order of sentence passed by the learned trial court is set aside. All the accused/appellants are acquitted of the charges levelled against them. Fine amount, if any deposited by the accused/appellants, be refunded to them respectively. All the appellants are in jail. Release warrants be issued in their favour, if not required in any other case. The order regarding disposal of the seized articles passed by the learned trial court is hereby confirmed. A copy of this judgment alongwith record be sent to the trial court for necessary compliance.

Appeal allowed.

I.L.R. [2014] M.P., 1629

ARBITRATION CASE

Before Mr. Justice Alok Aradhe

Arb. Case No. 33/2013 (Jabalpur) decided on 1 April, 2014

DIAMOND AGENCIES (M/S)

...Applicant

Vs.

UNION OF INDIA & anr.

...Non-applicants

Arbitration and Conciliation Act (26 of 1996), Section 11 - Contract - Appointment of Arbitrator - Petitioner's request to appoint an arbitrator was turned down on the ground that the claim of the petitioner is for an amount which is more than 20% of the contract value - Held - Court may not be able to decide whether particular dispute can be referred to arbitration but can examine whether a particular dispute falls within the arbitration clause or not - The dispute raised by the petitioner falls beyond

the purview of clauses 63 and 64 of the General Conditions of the Contract, as the same is for an amount of more than 20% of the contract value - Dispute cannot be referred to arbitrator. (Paras 5, 6 & 7)

माध्यस्थम् और सुलह अधिनियम (1996 का 26), धारा 11 - संविदा - मध्यस्थ की नियुक्ति - मध्यस्थ नियुक्त करने का याची का निवेदन इस आधार पर अस्वीकार किया गया कि याची का दावा ऐसी रकम के लिये है जो संविदा मूल्य के 20 प्रतिशत से अधिक है - अभिनिर्धारित - न्यायालय यह निश्चित करने के लिये सक्षम नहीं हो सकता कि क्या किसी विशिष्ट विवाद को माध्यस्थम के लिये निर्दिष्ट किया जा सकता है अथवा नहीं, किन्तु यह परीक्षण कर सकता है कि क्या कोई विशिष्ट विवाद माध्यस्थम खंड के भीतर आता है अथवा नहीं - याची द्वारा उठाया गया विवाद, संविदा की सामान्य शर्तों के खंड 63 व 64 की परिधि से परे आता है क्योंकि वह संविदा मूल्य के 20 प्रतिशत से अधिक की रकम के लिये है - विवाद, मध्यस्थ को निर्देशित नहीं किया जा सकता।

Cases referred :

(2005) 8 SCC 618, (2010) 5 SCC 407, (2009) 3 SCC 223.

J.P. Sanghi with Ajay, S.K. Shukla, for the applicant.

N.S. Ruprah, for the non-applicants.

ORDER

ALOK ARADHE, J. :- By means of this application filed under section 11 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as 'the Act'), the petitioner seeks appointment of an arbitrator.

2. Facts giving rise to filing of this application, briefly stated, are that the respondent No.1 issued notice inviting tender dated 04.10.2010 for construction of civil works. The tender submitted by the petitioner was accepted. It is the case of the petitioner that despite several requests, the respondent No.1 neither cooperated nor fulfilled his obligations in respect of furtherance of execution of the work, due to which the petitioner could not execute the work within the prescribed time limit. The respondent No.1, thereafter, vide order dated 21.3.2012 rescinded the contract of the petitioner and called upon it to deposit a sum of Rs.3,66,876/- towards balance sum of performance guarantee within three days and a sum of Rs.2,53,740/- furnished vide Term Deposit Receipt was also forfeited. The petitioner by letter dated 16.8.2012 invoked the arbitration clause and requested the General Manager, Western Central Railway to appoint an arbitrator within 120 days from the receipt of letter as provided under clauses 63 and 64 of the General Conditions of Contract. However, the request made by the petitioner for referring the dispute for arbitration was turned down by

the respondents vide communication dated 03.1.2013 on the ground that claim of the petitioner is for an amount of more than 20% of the contract value, therefore, it cannot be referred to arbitration, under clause 63 & 64 of the general conditions of the contract.

3. Learned senior counsel for the petitioner was unable to dispute the fact that the claim of the petitioner is more than the 20% of the value of the contract. However, it was submitted by him that under section 16 of the Act, the Arbitral Tribunal has authority to rule on its own jurisdiction and, therefore, the action of the respondents in not referring the dispute to the arbitrator cannot be sustained. On the other hand, learned counsel for the respondents submitted that the claim of the petitioner does not fall within the purview of arbitration clause as it is more than the 20% of the value of the contract and, therefore, respondents have rightly declined to accede to the prayer of the petitioner for referring the dispute to the arbitration.

4. I have considered the respective submissions made by learned counsel for the parties. In *SBP & Co. vs. Patel Engineering Ltd. and another*, (2005) 8 SCC 618, it has been held that in order to set into motion the arbitral procedure the following issues, if raised, have to be decided, namely, territorial jurisdiction, existence of arbitration agreement between the parties and whether the claim made by the applicant was a dead one in the sense that the parties have already concluded the transaction by recoding satisfaction of their mutual rights and obligations or have recorded satisfaction regarding their financial claims. However, it was held that at that stage of consideration of the application under section 11(6) of the Act it may not be possible to decide whether a live claim made is one which comes within the purview of the arbitration clause and this question should be left to be decided by the Arbitral Tribunal on taking evidence. Similar view has been taken by the Supreme Court in the case of *Anil Kumar vs. B.S.Neelkanta*, (2010) 5 SCC 407.

5. However it is pertinent to mention here that at the stage of consideration of application under section 11(6) of the Act the Court may not be able to decide whether the particular dispute can be referred to the Arbitration, but the Court can examine whether a particular dispute falls within the purview of the arbitration clause on admitted facts and in such a case as it is not necessary to record evidence. In case of *Deepak Kumar Bansal vs. Union of India and another*, (2009) 3 SCC 223 the Supreme Court dealt with *pari materia* clause which prohibited the reference of dispute to an arbitrator, in case the claim was more than 20% of the value of contract. It was held in the facts of that case that the amount in question

is not more than 20% of the value of contract and, therefore, it was held that dispute can be referred to the arbitrator. In other words, if the claim is more than 20% of the value of contract the dispute cannot be referred for arbitration.

6. In the backdrop of well settled legal proposition, the facts of the case may be seen. Admittedly, the value of the contract is Rs.1,24,12,320/-. The petitioner has, admittedly, submitted the claim to the tune of Rs.32,24,472/- which is 25.98% of the contract value. Clauses 63 & 64 of the General Conditions of Contract provide for reference of the dispute between the parties to the arbitration. The relevant extract annexed by the petitioner himself at page 58 of the application, reads as under:-

“11) Arbitration:- The provisions of clause 63 and 64 of the General Conditions of Contract will be applicable only for settlement of claims or disputes between the parties for values less than or equal to 20% of the value of the contract.”

7. Thus, in view of the preceding analysis, on admitted facts of the case, the dispute raised by the petitioner is falls beyond the purview of clauses 63 & 64 of the General Conditions of Contract which provide for arbitration. Therefore, the dispute cannot be referred for arbitration and the respondents have rightly rejected the claim of the petitioner for referring the dispute to the arbitration.

8. For the aforementioned reasons, I do not find any merit in the application. The same fails and is hereby dismissed with cost of Rs.200/-.

Application dismissed.

I.L.R. [2014] M.P., 1632

CIVIL REVISION

Before Mr. Justice K.K. Trivedi

Civil Rev. No. 424/2012 (Jabalpur) decided on 10 April, 2013

NEELAM KUMAR BACHANI & anr.

...Applicants

Vs.

BHISHAMLAL

...Non-applicant

Civil Procedure Code (5 of 1908), Section 115, Order 7 Rule 11, Limitation Act (36 of 1963), Article 20 - Limitation for filing the suit based on payment of money by cheque is three years from the date when the cheque is given - Admittedly in the present case the said date was 15.05.2009 as set-forth in the plaint itself - Suit was filed on

23.08.2012 - Held - Suit is barred by limitation - No evidence was required to be recorded in terms of the law made in the Limitation Act - The postponement of the right to sue should be in writing - Revision allowed - Suit dismissed being barred by Limitation. (Paras 8, 9, 10)

सिविल प्रक्रिया संहिता (1908 का 5), धारा 115, आदेश 7 नियम 11, परिसीमा अधिनियम (1963 का 36), अनुच्छेद 20 - चेक द्वारा रकम के भुगतान पर आधारित वाद प्रस्तुत करने के लिये परिसीमा, चेक दिये जाने की तिथि से तीन वर्ष है - स्वीकृत रूप से प्रस्तुत प्रकरण में उक्त तिथि 15.05.2009 थी, जैसा कि वादपत्र में ही दर्शाया गया है - वाद को 23.08.2012 को प्रस्तुत किया गया - अभिनिर्धारित - वाद परिसीमा द्वारा वर्जित - परिसीमा अधिनियम में दी गयी विधि की शर्तोंनुसार किसी साक्ष्य को अभिलिखित किया जाना अपेक्षित नहीं - वाद लाने के अधिकार का स्थगन, लिखित में होना चाहिए - पुनरीक्षण मंजूर - परिसीमा द्वारा वर्जित होने के कारण वाद खारिज किया गया।

Cases referred :

2005(3) MPHT 492, 1970 JLJ 290, 1996 MPLJ 697, 1992(1) MPWN 104, AIR 1951 SC 477.

R.K. Pancholi, for the applicants.

Bhishamlal, non-applicant present in person.

ORDER

K.K. TRIVEDI, J. :- This revision under Section 115 of the Code of Civil Procedure is directed against the order, dated 10.10.2012, passed in Civil Suit No.91-B/2012 by the First Additional Civil Judge, Class-II to the Court of First Civil Judge, Class-II, Bhopal, whereby the application filed by the applicants under Order 7 Rule 11 of CPC for dismissal of the suit as barred by law, has been rejected.

2. Facts in brief giving rise to filing of this revision are that the non-applicant/plaintiff filed a suit for recovery of Rs.1,50,000/- against the applicants/defendants, on the grounds that the non-applicant has paid Rs.1,50,000/- by a cheque on 15.5.2009 to the applicants/defendants, as loan for the purposes of purchase of a shop situated at Bhopal Plaza, Bhopal Talkies Compound from one M/s Balaji Associates. It was averred that the applicant No.2 promised to return the said loan amount within a year. The cheque was given on 15.5.2009 which was got encashed on the same day. When the demand was made by the non-applicant for refund

of amount of loan, the same was not repaid, therefore, a notice was issued to the applicants by non-applicant on 13.9.2011 through a counsel. In reply to the said notice, though it was admitted that Rs.1,50,000/- was received by the applicants, but it was said that the amount was in fact refund of, amount spent by the applicants in the Ring Ceremony of the son of the non-applicant. The said amount was refunded back by the non-applicant to the applicants by the cheque. It was further contended that since it was not a loan transaction, therefore, no money was to be paid by the applicants to the non-applicant.

3. Contending that from the said refusal, the cause of action accrued to the non-applicant, the plaint dated 22.6.2012 was said to be presented in the Court on 23.8.2012. The trial Court entertained the suit, issued the notices to the applicants and upon service of the said notice, a written statement was filed by the applicants jointly. The applicants contended that the shop was purchased for an amount of Rs.9,41,000/- from Balaji Construction. The amount of the shop was paid by two cheques one drawn on 2.4.2009 for an amount of Rs.4 lacs and the other one paid on 15.11.2009 for an amount of Rs.5,41,000/-. Thus, it was contended that a false story was concocted by the non-applicant/plaintiff that for the purchase of any shop, an amount of Rs.1,50,000/- was taken by the applicants from the non-applicant as loan. Other pleas were also raised.

3. The applicants also moved an application under Order 7 Rule 11 of CPC seeking dismissal of the suit being barred by limitation. The said application having been rejected by the Court below by the impugned order, this revision is required to be filed.

4. It is contended by learned counsel for applicants that apparently from the description as made in the plaint itself, the suit was barred by limitation and was, thus, liable to be dismissed under the provisions of Order 7 Rule 11(d) of CPC. Reading the definition given in the Limitation Act, 1963 in Section 2(c), it is contended that the bill of exchange includes a hundi and a cheque. Article 20 of Limitation act would prescribe limitation for filing of a suit on the strength of a cheque which is three years when the cheque is paid. Article 35 of the Limitation Act prescribes that on a bill of exchange or promissory note payable on demand and not accompanied by any writing restraining or postponing the right to sue, the limitation would start from the date of the bill or the promissory note as the case may (sic:may) be. There was nothing

indicated in the plaint that there was any restraint put that the claim would not be filed from the date of encashment of the cheque. Admittedly, the cheque was said to be encashed on 15.5.2009. No written agreement was executed in between the applicants and the non-applicant that the amount of loan would be refunded after a year, therefore, there would not be enlargement of the limitation for filing a suit nor there is shifting of the cause of action for filing of the suit from the date of encashment of the cheque. As per the averments made in the plaint, notice of demand was issued by the non-applicant against the applicants and if there was denial in any manner by the applicants with respect to the said loan transaction, immediately the suit was required to be filed. Further, drawing attention of this Court to the provisions of Section 5 of the Limitation Act, it is contended that there is no provision for extension of prescribed period of limitation in a suit as the said provision would not be applicable to a suit. If the suit was not filed within the limitation prescribed, it was barred by limitation and, therefore, upon the application of the applicants, it was necessary for the Court below to dismiss the suit as barred by limitation. It is contended that the law is not properly considered by the Court below. It was wrongly held that there was a mixed question of law and facts both involved in the present suit and, therefore, only on the ground of limitation on an application under Order 7 Rule 11 of CPC, the suit was not to be dismissed.

5. Per contra, it is contended by the non-applicant, who appeared in person that he was in the services. The applicant No.1 is his brother. Upon asking for some financial assistance, the amount was given by cheque. Orally it was agreed that the amount would be returned after a year. Despite demand when the amount was not returned, a legal notice was issued to the applicants of which an evasive reply was given by the applicants. After receipt of the reply of the notice, the suit was filed and, therefore, the cause of action would start from the date of refusal to repay the loan and, this being so, it cannot be said that the suit filed by the non-applicant was barred by limitation. Further, it is contended that since question of limitation is a mixed question of law and facts, it would not be justified for the Court to decide the same merely on an application filed by the applicants under Order 7 Rule 11 of CPC. Relying on the case of *Mrityunjay Prasad Vs. Santosh Kumar Mishra and others* [2005(3) M.P.H.T. 492]. It is contended that suit so filed by the non-applicant was not to be dismissed without recording of evidence of parties and, therefore, if the trial Court has rejected the application filed by the

applicants, no wrong has been committed.

6. Heard learned counsel for the parties at length and minutely perused the record.

7. It is settled law that if an application under Order 7 Rule 11 of CPC for dismissal of the suit is filed at the preliminary stage, as prescribed under the provisions of the aforesaid order, only the pleadings in the plaint are required to be examined. The pleadings raised by the defendants in the written statement are not required to be looked into while deciding an application under Order 7 Rule 11 of CPC. However, it is also to be seen that the law of limitation varies with respect to prescription of limitation for filing the suit of different descriptions. A suit for loan transaction may be based on the cause of action which accrued after payment of the loan amount. For example, if an agreed date for repayment of the loan amount is prescribed and on demand within the said period or day, the loan amount is not repaid, the cause of action would accrue on refusal of repayment of loan and the limitation would start from the date of refusal of the repayment of the loan. However, there are specific safeguard prescribed in cases where the amount is paid by cheques. As far as the cheques are concerned, the same are treated as bill of exchange as per the definition given under Section 2(c) of the Limitation Act. A specific bar is also created under the Limitation Act in Section 3, where it is said that subject to the provisions contained in Sections 4 to 24 (inclusive) every suit instituted, appeal preferred, and application made after the prescribed period of limitation shall be dismissed, although limitation has not been set up as a defence. Section 4 of the Limitation Act prescribes nothing but enlargement of the period of limitation if on the last date of filing of the suit, appeal or application expires on a day when the court is closed, only upto the day when the court reopens. The period of limitation as prescribed under Limitation Act can be extended only in case of an appeal or any application, but the provisions of Section 5 of the Limitation act are not made applicable to the suits.

8. This leads no doubt that specific limitation prescribed under the Schedule of the Limitation Act are to be specifically followed. As has been referred to hereinabove, limitation for filing of the suit based on payment of money by cheque, the period of limitation is three years from the date when the cheque is paid. Admittedly, in the present case, the said date was 15.5.2009, as set forth in the plaint itself. As prescribed in Section 35 of the Limitation Act, the period of repayment of the loan amount on the basis of the bill of exchange or promissory note was to be specifically written. A restrain was to

be put postponing the right to sue from the date of payment of the aforesaid bill of exchange or cheque or promissory note as the case may be. if such a restrain is put, then from the date the right to sue accrued, the limitation would be three years for filing of the suit. A complete reading of the plaint nowhere indicates that there was any such restrain put by the applicants. Nothing has been stated whether the parties executed a separate agreement with respect to the said loan transaction for which the amount was paid by cheque on 15.5.2009, putting restrain to filing of a suit within three years from the said date of transaction. Merely because a notice was issued and a reply was submitted and payment of Rs.1,50,000/- was admitted by the applicants, again the cause of action for filing of the suit for recovery of the alleged loan amount would start from 15.5.2009. From the averments made in the plaint, it is clear that the suit ought to have been filed by 14.5.2012. The period of three years limitation had expired on this day. The suit was not filed on the said date. On the other hand, the suit was said to be filed on 23.8.2012 when it was presented in the Court though the plaint was dated 22.6.2012. If these facts are taken together, only on the basis of pleadings in the plaint, it is apparently clear that the suit filed by the non-applicant was barred by limitation. No evidence was required to be recorded as these facts have emerged only from the plaint. Any oral evidence would not have changed the accrual of the cause of action to the non-applicant as in terms of the law made in the Limitation Act, the postponement of the right to sue should be in writing. If this was not, then again it was not necessary to prove anything by adducing evidence.

9. The Full Bench of this Court was dealing in the matter of limitation and it was of the opinion that the question of limitation is normally a mixed question of facts and law and cannot be decided except by recording evidence. However, the facts as were taken into consideration by the Full Bench of this Court in the case of *Santosh Chandra & Others Vs Gyan Sunder Bai & others* [1970 J.L.J 290] were altogether different. The said case was not with respect to counting of limitation for the purposes of filing a suit on the strength of a bill of exchange or cheque. Again the reliance placed in the case of *Mrityunjay Prasad* (supra) is totally misconceived, because in that case the question of whether limitation for filing of a suit for declaration with respect to the change of entry of a birth or death in the register was being considered by this Court. Again in the case of *Sharda Talkies (Firm) Vs. Madhulata Vyas and others* (1996 MPLJ 697), a loan transaction not dependent on a cheque was being considered. The said case was being considered under a loan

transaction for which limitation prescribed under the Limitation Act is under Article 22 and not under Article 20 or 35. As has been said herein above, for different suit, different provisions of limitations are made under the Limitation Act. Lastly the reliance placed in the case of *Rajendra Singh Vs. Sheetal Das* [(1992(1) MPWN 104)] is also misconceived as the delay in filing of a Miscellaneous Appeal under the Motor Vehicles Act was being condoned by this Court in exercise of power under Section 5 of the Limitation Act. Provisions of Section 5 of the Limitation Act are not attracted for condoning delay in filing a suit.

10. The Apex Court in the case of *Sant Lal Mahton Vs. Kamla Prasad and others* (AIR 1951 SC 477) has categorically dealt with an acknowledgment and an admission to that effect made in the written statement. Even if the acknowledgment made in the reply to the notice sent by the applicants is taken into consideration, it will not mean that the same was in fact an acknowledgment of the fact that right to sue on the strength of the cheque given in favour of the applicants, was enlarged by the applicants. If that is not there, the limitation would start only from the date of issuance and encashment of the cheque for the purposes of filing of the suit. In such a situation again the suit was filed beyond the limitation and this aspect is not disputed by the non-applicant even before this Court while making his submission. This being so, for proving such facts which were specifically stated in the plaint no evidence was required. It was to be seen by the Court below that the suit filed by the non-applicant would be bar by limitation and since there is no provision to enlarge limitation for filing of such suit and no such power is vested in the Court, the suit of the non-applicant was liable to be dismissed under the provisions of Order 7 Rule 11 of CPC. Having failed to appreciate such legal position, the Court below erred in exercising the jurisdiction vested in it in appropriate manner and in rejecting the application of the applicants under Order 7 Rule 11 of C.P.C.

11. In view of the discussions made herein above, the revision is allowed. The order impugned dated 10.10.2012 in Civil Suit No.91-B/2012 is hereby set aside. The application filed by the applicants under Order 7 Rule 11 of CPC is hereby allowed. The suit of the non-applicant is hereby dismissed being barred by limitation. However, in the facts and circumstances of the case, there shall be no order as to costs.

Revision allowed.

I.L.R. [2014] M.P., 1639

CIVIL REVISION

Before Mr. Justice U.C. Maheshwari

C.R. No. 299/2013 (Jabalpur) decided on 13 August, 2013

RAJESH JAISWAL

...Applicant

Vs.

SANJAY SARVAGI

...Non-applicant

A. Civil Procedure Code (5 of 1908), Order 7 Rule 11 – Counter claim – Non payment of court fee – Counter claim dismissed for want of court fee inspite of several opportunities given by trial court – No application for extension of time also filed – Trial court was within its jurisdiction to pass such an order, cannot be interfered. (Para 3)

क. सिविल प्रक्रिया संहिता (1908 का 5), आदेश 7 नियम 11 – प्रतिदावा – न्यायालय शुल्क का अर्सदाय – विचारण न्यायालय द्वारा अनेक अवसर दिये जाने के बावजूद न्यायालय शुल्क के अभाव में प्रतिदावा खारिज – समय की वृद्धि के लिये भी आवेदन दाखिल नहीं किया गया – आदेश पारित करना विचारण न्यायालय की अधिकारिता में, हस्तक्षेप नहीं किया जा सकता।

B. Civil Procedure Code (5 of 1908), Section 2(2), Order 7 Rule 11 – Decree – Order passed under Order 7 Rule 11 amounts to decree – Revision not maintainable as the order is appealable u/s 96 of C.P.C. (Para 5)

ख. सिविल प्रक्रिया संहिता (1908 का 5), धारा 2(2), आदेश 7 नियम 11 – डिक्री – आदेश 7 नियम 11 के अंतर्गत पारित आदेश डिक्री के समतुल्य – सिविल प्रक्रिया संहिता की धारा 96 के अंतर्गत आदेश अपील योग्य होने के कारण पुनरीक्षण पोषणीय नहीं।

Cases referred :

2000(4) MPHT 318, AIR 1973 SC 76, AIR 2011 SC 1353.

P. Pareek, for the applicant.**ORDER**

U.C. MAHESHWARI, J. :- The applicant/defendant has filed this revision under Section 115 of the Civil Procedure Code being aggrieved by the order dated 19.6.2013 passed by the Civil Judge Class-2 Dist. Anuppur in Civil suit No. 45-.A/2006, whereby after taking so many adjournment when the

requisites court fees was not affixed/paid by the applicant/defendant on his counter claim then the same has been dismissed under Order 7 Rule 11 of the CPC for want of the Court fees.

2. Applicant counsel after taking me through the revision memo as well as impugned order place on the record by referring the earlier decision of the Full Bench of this court in the matter of *Subhash Chandra Jain, Vs. The Chairman, M. P. Electricity Board and others*, reported in 2000(4) MPHT 318 has argued that in view of the Para 6 of this judgment the impugned order is not sustainable and prayed that the impugned order being passed contrary to the aforesaid legal position be set aside, by admitting and allowing this revision.

3. Having heard the counsel keeping in view the argument I have carefully gone through the averments of the revision and the papers placed on record. So far the principal laid down in the aforesaid cited case is concerned, there is no dispute regarding such principal but the same is not applicable to the present case because the cited case is based on some other question relating to the arbitrary valuation. While in the present case despite extending so many opportunities to the applicant to submit the deficit court fees on the counter claim, neither the court fees was paid nor any application in that regard was filed. So in such premises the trial court has not committed any error in passing the impugned order dismissing the counter claim of the applicant in default of payment of the deficit court fees. Even otherwise the impugned order appears to be passed by the trial court under the vested discretionary jurisdiction and as per settled preposition laid down by the Apex Court in the matter of *The Managing Director (MiG) Hindustan Aeronautics Ltd. Balanagar, Hyderabad and another (in both the Appeals) Appellants. v. Ajit Prasad Hindustan Aeronautics Ltd. Balanagar, Hyderabad, (In both the Appeals), Respondent.* reported in AIR. 1973 SC-76 holding that the order passed by the Subordinate Court under its vested jurisdiction could not be interfered under the revisional jurisdiction. Such principal is also laid down by the Apex Court in the matter of *Kokkanda B. Poondacha. & Ors. v. K. D. Ganapathi & Anr.* reported in AIR 2011 S.C. 1353 in which while considering the scope of Article 227 of the Constitution of India it was held that discretionary order of the Subordinate Court could not be interfered by the High Court under the writ jurisdiction vested under Article 227 of the Constitution of India.

4. In the aforesaid premises, I have not found any circumstances, in the

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impugned order to invoke the revisional jurisdiction of this court to set aside the same, hence this revision is hereby dismissed.

5. Even otherwise the dismissal of counter claim under provision of Order 7 Rule 11 of CPC is amount of decree as per definition of the decree enumerated u/s 2(2) of CPC and the same is appealable u/s 96 of CPC. So in such premises also their revision could not be entertained.

6. At this stage the applicant counsel seeks liberty file to some application for extension of time to pay the court fees before the trial court. The party has a right to file any application in his litigation if the same is permissible under the law hence no liberty is required. However pursuant to it the trial court is directed that if any such application, as prayed by the applicant counsel, is filed then the same be considered in accordance with the procedure prescribed under the law.

7. The revision is dismissed with aforesaid observation.

Revision dismissed.

I.L.R. [2014] M.P., 1641

MISCELLANEOUS CRIMINAL CASE

Before Mr. Justice M.C. Garg

M.Cr.C. No. 11473/2011 (Jabalpur) decided on 6 March, 2013

**SHRI MAHILA GRIH UDYOG LIJJAT PAPAD,
JABALPUR & ors.**

...Applicants

Vs.

STATE OF M.P.

...Non-applicant

A. *Prevention of Food Adulteration Act (37 of 1954), Section 13 (2) & Criminal Procedure Code, 1973 (2 of 1974), Section 482 - Quashment of criminal complaint - Delay in trial - Held - Complaint was filed after one year and no progress has taken place for about 14 years, since filing of the complaint - No evidence has been recorded, accused also deprived of his rights u/s 13(2) of Act, 1954 - Proceedings are liable to be quashed on the point of delay.*

(Paras 2 & 17)

क. *खाद्य अपमिश्रण निवारण अधिनियम (1954 का 37), धारा 13(2) व दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 482 - दण्डिक शिकायत को*

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अभिखंडित किया जाना – विचारण में विलम्ब – अभिनिर्धारित – शिकायत को एक वर्ष पश्चात प्रस्तुत किया गया और शिकायत प्रस्तुत किये जाने के बाद से करीब 14 वर्षों तक कोई प्रगति नहीं हुई है – कोई साक्ष्य अभिलिखित नहीं किया गया है, अभियुक्त को अधिनियम 1954 की धारा 13(2) के अंतर्गत उसके अधिकार से भी वंचित किया गया – विलम्ब के विन्दू पर कार्यवाही अभिखंडित किये जाने योग्य।

B. Constitution, Article 21, Criminal Procedure Code, 1973 (2 of 1974), Section 309 - Speedy trial - Fair, just and reasonable procedure is implicit in Article 21 - This right comprehends all stages viz investigation, trial, inquiry, appeal, revision and retrial. (Para 16)

ख. संविधान, अनुच्छेद 21, दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 309 – शीघ्र विचारण – अनुच्छेद 21 में उचित, न्यायसंगत और युक्तियुक्त प्रक्रिया विवक्षित है – इस अधिकार में सभी प्रक्रमों का बोध है, नामतः अन्वेषण, जांच, विचारण, अपील, पुनरीक्षण एवं पुनः विचारण।

Cases referred :

2009(II) Scale, (1992) 1 SCC 225.

J.P. Sanghi with Aditya Sanghi, for the applicants.
Akshay Namdeo, P.L. for the non-applicant/State.

ORDER

M.C. GARG, J. :- Petitioners have sought for quashing of a criminal complaint registered against them vide Criminal Case No.2163/1997, pending in the Court of JMFC, Jabalpur instituted against them on the basis of a complaint filed by Food Inspector who allegedly took samples of 600 grams of Kali Mirch out of consignment of 130 bags of Hari Mirch purchased by the petitioner No. 1 from Cochin on 31st January, 1997. It is alleged that sanction to prosecute the petitioner was obtained on 17th November, 1997 but the complaint was filed after 10 months i.e. 20th November, 1997. It has been submitted that since then proceedings are pending in the Court of Magistrate and despite 17 hearings not even a single witness has been examined on behalf of the prosecution.

2.. Learned counsel also submits that the complaint having been filed after 10 months, petitioners had no opportunity to send second sample for testing within time.

3. With the aforesaid submission made at the Bar counsel for the

petitioners prays for quashing of proceedings initiated at the instance of Food Inspector on 20th November, 1997 on the basis of sample taken on 30th January, 1997.

4. The brief facts giving rise to filing of the present (sic:present) petition are that on 31.01.1997 Shri H.D. Dubey, Food Inspector visited the petitioner No. 1 office and took a sample of black pepper alleging it to be adulterated. Vide order dated 17.11.1997, the Deputy Director, Food and Drugs Administration, Jabalpur sanctioned for launching prosecution against the petitioners under the Prevention of Food Adulteration Act.

5. As per the sanction, the Food Inspector filed the challan on 20.11.1997 before Judicial Magistrate First Class, Jabalpur.

6. The State Analyst vide his report dated 10.03.1997 found the black pepper to be adulterated.

7. The proceedings began in the Court from 20.11.1997 on which day the Presiding Officer was on leave. Thereafter, till today no action worth the name has been taken but the process of law has been abused which is clearly depicted from the order-sheet from 20.11.1997 to 20.07.2011.

8. It is also the case of the petitioners that a careful perusal of the order-sheet shows that on 90% of the dates the complainant remained absent while on some dates the Presiding Officer remained on leave. On every date of hearing if any of the accused could not appear for cogent reasons, the request to exempt the appearance was denied and warrant of arrest was issued. It is further submitted that the accused persons were called in the Court at 11.00 AM. and were forced to remain present in Court till 5.00 P.M. The order sheet dated 09.09.2009 which fortunately is typed written will reveal that on that day the complainant was absent, warrant of arrest were issued against the petitioners. It was also mentioned by the counsel for the petitioners that his application under Section 203 Cr.P.C. be decided which is pending since long but same has not been done and the case was adjourned to 07.10.2009 on that day also nothing was done. The last order sheet dated 20.07.2011 will show that the complainant was absent. According to the petitioners, negligent delay in testing of 14 years itself is a good ground to quash the proceedings.

9. On the other hand learned counsel for the respondent submits that in such kind of case the proper course for this Court would be to direct

Magistrate to dispose of the trial in time bound frame.

10. I have heard submissions of both sides and have perused the record.

11. Petitioner No. 1 is the Society registered under the Societies Registration Act in the name of Shri Mahila Grih Udyog Lijjat Papad. Its Head Office is at Mumbai and Branches all over India including Branch at Wright Town, Jabalpur. No doubt, the Food Inspector took sample from the office of the petitioner No.1 on 31st January, 1997 of black pepper which was found to be adulterated. It is also a matter of record that he filed complaint only on 17th November, 1997 and, therefore, opportunity to the petitioners for sending second sample under section 13 (2) of the Prevention of Food Adulteration Act became available only when the complaint was served upon the petitioners. It is said that criminal proceedings must be brought to an end as soon as possible. More over in a case of foodstuff where samples are taken second sample is also required for testing within specified time so that the sample may not become incapable of testing.

12. In the present case, in the light of filing of the complaint after 10 months, it can safely be said that the adequate opportunity to the petitioners for sending second sample to the Central Food Laboratory was not available. Even otherwise there is no justification as to why proceedings have not been concluded even after 14 years despite the fact that there is no stay of the proceedings in this case.

13. It is also a matter of record that despite filing of petition under section 203 Cr.P.C. for dismissal of complaint, no orders have been passed on that petition. As per the provisions contained in the Code of Criminal Procedure, criminal proceedings are required to be taken on day-to-day basis and disposed of as early as possible. However, this aspect has not been dealt with. Learned Public Prosecutor has not been at all able to explain why the case is not proceeding despite lapse of 14 years.

14. In a similar matter when the complaint was filed by the prosecution much belated this Court answering the provisions contained under section 13 (2) of the Prevention of Food Adulteration Act in the light of a judgment delivered by the Hon'ble Apex Court in the case of *Girish Bhai Dahyabhai Shah v. CC Jani & Anr.* reported in 2009 (11) Scale while disposing of a matter under section 482 Cr.P.C. quashed prosecution on the ground that in view of the delay in filing of the complaint, accused was deprived of his right

under section 13 (2) of the Act. Order of the Apex Court was taken note of by this Court while delivering the judgment in the case of *B.G Subramanian and others v. State of M.P.* (M.Cr.C. No.3908/2011) which reads as under:-

“11. The Apex Court has observed in paragraphs 7, 8, 9 & 10 which are reproduced here under :-

“7. Section 13 (1) and (2) of the Prevention of Food Adulteration Act, 1954 reads as follows:-

“Section 13. *Report of Public Analyst.* (1) The Public Analyst shall deliver, in such form as may be prescribed, a report to the local (Health) Authority of the result of the analysis of any article of food submitted to him for analysis

(2) On receipt of the report of the result of the analysis under sub-section (1) to the effect that the article of food is adulterated, the local (Health) Authority shall, after the institution of prosecution against the persons from whom the sample of the article of food was taken and the person, if any, whose name, address and other particulars have been disclosed under section 14A, forward, in such manner as may be prescribed, a copy of the report of the result of the analysis to such person or persons, as the case may be, informing such person or persons that it is so desired, either of both of them may make an application to the Court within a period of ten days from the date of receipt of the copy of the report to get the sample of the article of food kept by the local (Health) Authority analysed by the Central Food Laboratory.

8. It will be apparent from the above, that only on receipt of the report of the Public Analyst under sub-section (1) to the effect that the article of food is adulterated, can a prosecution be launched and a copy of the report could be supplied to the accused. Sub-section (2) also indicates, that on

receipt of the report the accused could, if he so desired, make an application to the court within a period of 10 days from the date of receipt of the copy of the report to get the sample of article of food kept by the Local (Health) Authority analysed by the Central Food Laboratory.

9. In other words, in the instant case, the appellant was prevented from applying for analysis of the second sample before 17th July, 1989 by which time the second sample of curd had deteriorated and was not capable of being analyzed as was found in the case of *Ghisa Ram* (supra) referred to above.

10. In that view of the matter, we are unable to sustain the judgment of the High Court impugned in this appeal and also see no reason to continue with the proceedings which have lasted for 28 years in the absence of any valid and reliable report with regard to the second sample."

12. Admittedly, the samples which were taken on behalf of the respondents by the Food Inspector in both the cases i.e. Soybean Oil as well as Sun feast Glucose Biscuits, the Food Inspector had filed the complaints against the petitioners after expiry of shelf life of the products.

13. A reading of the aforesaid section goes to show that the right to send a second sample accrues in favour of the accused only after the complaint is filed an intimation regarding the complaint is made known to the accused which in this case has not been done/complied with. Therefore filing the complaint only after expiry of shelf life of the products the right to send the second sample for testing which is vested right available to the petitioners were prevented from applying for analysis of the second sample. The delay in filing the complaint was mala fide and negative.

14. In view of the aforesaid, there is merit in the contention

of petitioners that the complaint filed against them by the Food Inspector with respect to the two samples on the basis of the report of the Public Analyst after expiry of the shelf period of the product, made the whole exercise redundant inasmuch as, once the complaint was filed after expiry of shelf life, a right to send the second sample became frustrated. Therefore the complaint filed by the respondent can never succeed and thus the prosecution of the petitioner in both the cases deserves to be quashed. The aforesaid contention of the petitioners is directly supported by the judgment delivered by the Apex Court in the case of *Girishbhai* (supra).

15. In view of the aforesaid, both the petitions filed by the petitioners are allowed and the complaint filed by respondent Food Inspector against the petitioners which is subject matter of Misc. Cri. Case No. 6461 of 08 and Misc. Cri. Case No. 3908 of 11 pending in the court of Judicial Magistrate First Class, Mhow and Neemuch respectively are hereby quashed."

15. In the present case also, admittedly, the complaint was filed by the respondent only after one year of the taking of the sample. As stated above, no evidence has been led by the prosecution for a period of more than 11 years. For both these reasons, I accept the submission made by the petitioners that they have been adversely affected and continuation of the prosecution in this case is an abuse of the process of law Court.

16. It is well settled that Article 21 requires speedy trial of a criminal case. It has been held by Hon'ble the Apex Court in the case of *Abdul Rehman Antulay and others v. R.S. Nayk and another* reported in (1992) 1 SCC 225 that fair, just and reasonable procedure implicit in Art.21 and is also reflected in section 309 of Cr.P.C., this right comprehends all stages viz. investigation, inquiry, trial, appeal, revision and retrial. Thus it is mandate of the Constitution that proceedings must be concluded with reasonable despatch. If there is delay, burden lies on the prosecution to justify and explain the delay.

17. In the present case there is no explanation available which may explain the delay. There is also nothing on record which may show, that the delay has occurred because of the petitioners. It is surprising that not even a single witness could be examined by the prosecution in a period of 11 years after

filing of the complaint. Thus the delay which has occurred is certainly in the teeth of Article 21 of the Constitution of India and mandates bringing to an end to the prosecution in such a case. Considering the fact that in this case complaint was filed after one year and no progress has taken place for about 14 years since filing of the complaint, no evidence at all has been recorded, it is a fit case where, proceedings are liable to be quashed on the point of delay.

18. Consequently, the petition filed by the petition under section 482 Cr.P.C. is allowed and the proceedings are quashed. The bail- bonds of the petitioners are discharged.

Order accordingly.

I.L.R. [2014] M.P., 1648

MISCELLANEOUS CRIMINAL CASE

Before Mr. Justice M.C. Garg

M.Cr.C. No. 12992/2012 (Jabalpur) decided on 7 March, 2013

JAI PRAKASH NARAYAN MISHRA

...Applicant

Vs.

DEVENDRA KUMAR MISHRA & ors.

...Non-applicants.

Criminal Procedure Code, 1973 (2 of 1974), Section 482 – Inherent jurisdiction – Application u/s 482 against not taking the cognizance by Magistrate against respondents No. 2 & 3 for want of sanction u/s 197 of Cr.P.C. as they are the Government servants – Held – Revision against order refusing to take cognizance rejected by revisional court – Petition u/s 482 is maintainable – However, power has to be exercised only in a case where there is grave miscarriage of justice or abuse of the process of the court or where the required statutory procedure has not been complied with or where there is failure of justice or that the order passed requires correction. (Paras 5 to 6)

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 482 – अंतर्निहित अधिकारिता – मजिस्ट्रेट द्वारा, प्रत्यर्थी क्र. 2 व 3 जो कि सरकारी कर्मचारी थे, के विरुद्ध, द. प्र.सं. की धारा 197 के अंतर्गत मंजूरी के अभाव में, संज्ञान नहीं लिये जाने के विरुद्ध धारा 482 के अंतर्गत आवेदन – अभिनिर्धारित – संज्ञान लेने से इंकार करने के आदेश के विरुद्ध पुनरीक्षण को पुनरीक्षण न्यायालय द्वारा अस्वीकार किया गया – धारा 482 के अंतर्गत याचिका पोषणीय – किन्तु, शक्ति का प्रयोग केवल ऐसे प्रकरण

में किया जाना चाहिए जहां न्याय हानि या न्यायालय की प्रक्रिया का दुरुपयोग हुआ है अथवा जहां आवश्यक कानूनी प्रक्रिया का अनुपालन नहीं किया गया या जहां न्याय विफल हुआ हो या पारित किये गये आदेश में सुधार अपेक्षित है।

Cases referred :

(2005) 2 SCC 571, (1997) 4 SCC 241.

Nilesh Kotecha, for the applicant.

Akshay Namdeo, for the non-applicants.

ORDER

M.C. GARG, J. :- This revision has been filed by the petitioner being aggrieved of the order passed by the revisional Court in having dismissed the revision petition which was filed against the order of J.M.F.C., in having discharged respondents on the ground of there being no sanction under Section 197 of Cr.P.C. The relevant portion of the order reads as under :

02. विद्वान अधीनस्थ न्यायालय ने आलोच्य आदेश दिनांक 24.05.10 के द्वारा परिवादी-पुनरीक्षणकर्ता द्वारा प्रस्तुत परिवाद पत्र (अभियोग पत्र) बाबवत् गैरपुनरीक्षण के विरुद्ध, अंतर्गत धारा-2 (ख), 2,4 व 3 को लोक संपत्ति हानि निवारण, अधिनियम 1984 तथा धारा 169,177,201,202,217,218,219 भा.द.से गैरपुनरीक्षण कर्ता गण के विरुद्ध संज्ञान लिये जाने एवं आदेशिका जारी किये जाने हेतु को आंशिक रूप से स्वीकार करते हुए गैरपुनरीक्षणकर्ता क0 2 और 3 के विरुद्ध संज्ञान लेने से इंकार करते हुए परिवादपत्र को निरस्त किया है।

3. प्रकरण के तथ्य संक्षेप में इस प्रकार है कि परिवादी द्वारा अधीनस्थ न्यायालय के समक्ष इस आशय का परिवाद प्रस्तुत किया गया कि गैरपुनरीक्षणकर्ता क0 1 देवेन्द्र कुमार द्वारा शासकीय तालाब को फोड़कर पानी बहा दिया गया, जिससे जन-जीवन को पानी का अभाव उत्पन्न हो गया है। आरक्षी केन्द्र लौर की पुलिस द्वारा गैरपुनरीक्षणकर्ता क0 1 के विरुद्ध अपराध पंजीबद्ध किया गया था, किंतु गैरपुनरीक्षणकर्ता क0 2 और 3 द्वारा देवेन्द्र को बचाने के आशय से खात्मा स्वीकृत किया गया। अतः पुनरीक्षणकर्ता द्वारा गैरपुनरीक्षणकर्ता क0 2 और 3 के विरुद्ध संज्ञान लेते हुए आदेशिका जारी किये जाने की प्रार्थना की है।

04. पुनरीक्षणकर्ता ने दांडिक पुनरीक्षण याचिका व अंतिम तर्क में व्यक्त किया है कि गैरपुनरीक्षणकर्ता क0 2 आर0. एन0. सिंह एवं एस0 एम0 उपाध्याय द्वारा साक्ष्य के अभाव में खात्मा तराशने का आदेश किया गया, जो भा0दं0सं0 की धारा- 217 के अंतर्गत दंडनीय अपराध है। गैरपुनरीक्षणकर्ता

क्र० 2 और 3 द्वारा तालाब के फोड़ने के अपराध को लोक संपत्ति हानि-निवारण अधिनियम की मंशा के अनुसार आपराधिक कृत्य होना मान्य न कर देवेन्द्र को लाभ पहुँचाया गया है। गैरपुनरीक्षण क्र० 1 के विरुद्ध-आदेशिका जारी किये जाने से स्पष्ट है कि गैरपुनरीक्षणकर्ता क्र० 2 और 3 द्वारा आपराधिक कृत्य किया गया है। उनका भी अभियोजन किया जाना अनिवार्य है। अतः पुनरीक्षणकर्ता ने आलोच्य ओदश आंशिक रूप से अपास्त किये जाने एवं दंडिक पुनरीक्षण याचिका स्वीकार किये जाने की प्रार्थना की है।

2. This petition filed by the petitioner is in the nature of second revision. Nothing substantial has been brought in this Court which may show that it is a fit case where the Court should interfere in its extra-ordinary jurisdiction.

3. It is well settled now that to bring a case under Section 482 Cr.P.C. when a bar is expressly provided by Section 397(3) Cr.P.C. the case must be of a sparing nature and it should be shown that mis-carriage of justice has been done as laid down by the Apex Court in the case of *Kailash Verma Vs. Punjab State Civil Supplies Corporation & Anr.* (2005) 2 SCC 571:

5. It may also be noticed that this Court in *Rajathi v. C. Ganesan* said that the power under Section 482 of the Criminal Procedure Code has to be exercised sparingly and such power shall not be utilized as a substitute for second Revision. Ordinarily, when a Revision has been barred under Section 397(3) of the Code, the complainant or the accused cannot be allowed to take recourse to Revision before the High Court under Section 397(1) of the Criminal Procedure Code as it is prohibited under Section 397(3) thereof. However, the High Court can entertain a petition under Section 482 of the Criminal Procedure Code when there is serious miscarriage of justice and abuse of the process of the court or when mandatory provisions of law were not complied with and when the High Court feel that the inherent jurisdiction is to be exercised to correct the mistake committed by the revisional court.

4. This issue has also been discussed in the case of *Krishnan & Anr. Vs. Krishnaveni and Anr.* (1997) 4 SCC 241. Some of the observations made in this regard are reproduced hereinbelow for the sake of reference:

10. Ordinarily, when revision has been barred by Section 397(3) of the Code, a person - accused/ complainant -

cannot be allowed to take recourse to the revision to the High Court under Section 397(1) or under inherent powers of the High Court under Section 482 of the Code since it may amount to circumvention of the provisions of Section 397(3) or Section 397(2) of the Code. It is seen that the High Court has suo motu power under Section 401 and continuous supervisory jurisdiction under Section 483 of the Code. So, when the High Court on examination of the record finds that there is grave miscarriage of justice or abuse of process of the Courts or the required statutory procedure has not been complied with or there is failure of justice or order passed or sentence imposed by the Magistrate requires correction, it is but the duty of the High Court to have it corrected at the inception lest grave miscarriage of justice would ensue. It is, therefore, to meet the ends of justice or to prevent abuse of the process that the High Court is preserved with inherent power and would be justified, under such circumstances, to exercise the inherent power and in an appropriate case even revisional power under Section 397(1) read with Section 401 of the Code. As stated earlier, it may be exercised sparingly so as to avoid needless multiplicity of procedure, unnecessary delay in trial and protraction of proceedings. The object of criminal trial is to render public justice, to punish the criminal and to see that the trial is concluded expeditiously before the memory of the witness fades out. The recent trend is to delay the trial and threaten the witness or to win over the witness by promise or inducement. These malpractices need to be curbed and public justice can be ensured only when expeditious trial is conducted.

5. The facts of this case needs to be analysed in the light of the ratio of the aforesaid judgments which circumscribe the powers vested in this Court under Section 482, 483 of Cr.P.C. whenever an attempt is made to again invoke the power of revision though in the garb of petition under Sections 482, 483 in view of the bar created under Section 397(3) Cr.P.C. once the

petitioner has already availed the remedy of revision in respect of his grievance by approaching the Sessions Court. The ratio of the judgment, as quoted above, makes it abundantly clear that while the powers vested in this Court under Sections 482, 483 Cr.P.C. are wide enough to still interfere in a case where even the revisional jurisdiction has already been invoked by the Sessions Court on a petition filed by the petitioner under Section 397(1) of the Cr.P.C. but it has to be exercised only in a case where there is grave miscarriage of justice or abuse of the process of Court or where the required statutory procedure has not been complied with or where there is failure of justice or that the order passed or sentence imposed requires correction.

6. As discussed above, the cognizance has not been taken by the Magistrate against respondents 2 and 3 only because cognizance against them needed sanction under Section 197 of Cr.P.C. as they are the Government servants. This is the reason which has been given by the revisional Court also. I find no infirmity in the aforesaid order which may call for interference by this Court under Section 498 of Cr.P.C.

7. Accordingly, this petition is dismissed.

Petition dismissed.

I.L.R. [2014] M.P., 1652

MISCELLANEOUS CRIMINAL CASE

Before Mr. Justice M.C. Garg

M.Cr.C. No. 8264/2012 (Jabalpur) decided on 7 March, 2013

JAYESH TIWARI & ors.

...Applicants

Vs.

STATE OF M.P. & anr.

...Non-applicants

Criminal Procedure Code, 1973 (2 of 1974), Sections 177, 482, Penal Code (45 of 1860), Sections 498-A, 204 & 506/34, Dowry Prohibition Act (28 of 1961), Sections 3 & 4 - Quashing of proceedings - Jurisdiction - Complaint filed u/s 498-A, 204 & 506/34 I.P.C. and u/s 3 & 4, Dowry Prohibition Act, 1961 against husband and his relations by the wife at Damoh where she came to stay after leaving her husband's house - All the offences alleged to have taken place at Jabalpur - Said offences not continuing one - No part of cause of action arose at Damoh - Held - Magistrate at Damoh has no jurisdiction to deal with the matter

- Proceedings quashed - Complainant given liberty to file complaint in appropriate court. (Paras 2,3 & 6)

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धाराएं 177, 482, दण्ड संहिता (1860 का 45), धाराएं 498-ए, 204 व 506/34, दहेज प्रतिषेध अधिनियम (1961 का 28), धाराएं 3 व 4 - कार्यवाही अभिखंडित की जाना - अधिकारिता - धारा 498-ए, 204 व 506/34 मा.द.सं. एवं धारा 3 व 4, दहेज प्रतिषेध अधिनियम, 1961 के अंतर्गत पति तथा उसके रिश्तेदारों के विरुद्ध पत्नी द्वारा दमोह में शिकायत प्रस्तुत की गई, जहां वह अपने पति का घर छोड़ने के बाद रहने आयी थी - सभी अपराध अभिखंडित रूप से जबलपुर में घटित हुए - उक्त अपराध निरंतर स्वरूप के नहीं - वाद हेतुक का कोई भाग दमोह में उत्पन्न नहीं हुआ - अभिनिर्धारित - दमोह मजिस्ट्रेट को मामले में कार्यवाही करने की अधिकारिता नहीं - कार्यवाहियां अभिखंडित - शिकायतकर्ता को समुचित न्यायालय में शिकायत प्रस्तुत करने की स्वतंत्रता दी गई।

Cases referred :

(2004) 8 SCC 100, 2006 (2) Crimes 110, (2010) 7 SCC 667.

Adarsh Muni Trivedi with Annd Shukla, for the applicants.

Akshay Namdeo, P.L. for the non-applicant/State.

Gaurav Sharma, for the non-applicant No.2.

ORDER

M.C. GARG, J. :- By this petition under section 482 of the Code of Criminal Procedure petitioners seek quashing of the proceedings registered against them under sections 498-A, 204 and 506/34 IPC read with section 34 of the Dowry Prohibition Act by Police Station Kotwali, district Damoh vide Crime No. 84/12. The main submission of learned counsel appearing on behalf of the petitioners is that Damoh Court had no jurisdiction to entertain grievance of the complainant inasmuch as, after marriage had taken place between the petitioner No. 1 along with respondent No. 2 on 12th December, 2009. The matrimonial house of the parties was at Jabalpur.

2. It has been submitted that as per averments made in the complaint filed on behalf of the second respondent none of the incident which is the basis of filing of complaint against the petitioners occurred in Police Station Kotwali of district Damoh. As per the averments of the incident of cruelty, as stated by the complainant happened at Jabalpur. It would be appropriate to take note of the averments made in the complaint which reads thus :-

ससुराल पहुचने पर मेरे पति सास रूकमणी द्वारा दहेज की मांग करने लगे और मुझसे कहने लगे कि तुम्हारे मायके वालों ने ए0सी0 एवं कम्प्युटर तथा चार पहिया कार नहीं दिया है तब मैने कहा तो मेरे मां व भाई की हैसियत थी वों उन्होंने दिया है तब मेरे पति व सास कहने लगे कि ज्यादा मुह चलाती हो और मुझे गंदी-गंदी गालियां देकर मारपीट करते थे खाना पीना भी नहीं देते थे। भूखा रखते थे इसके बाद मेरी ननंद अल्का और नंदेच रामलाल शर्मा को मेरे पति ने बुलाया और उनके द्वारा भी दहेज की मांग की जाती थी और इसी बात पर से मुझे प्रताड़ित करते थे, काफी परेशानी सहन करने के बाद मैने अपने मायके वालों को घटना की जानकारी मां एवं भाई को बताई तब मेरा भाई राहुल तिवारी मुझे जबलपुर से लिवाकर दमोह ले आये थे और फिर मेरे पति ने फोन पर बोले कि अगर दहेज का समान लेकर नहीं आओगी तो मैं अपने घर में नहीं रहने दूंगा एवं जान से खत्म कर दूंगा। सो रिपोर्ट करता हूँ कार्यवाही की जावे।

A bare reading of the complaint shows that no part of cause of action arisen in Damoh.

3. Learned counsel for the petitioners therefore, submits that in the present case in absence of incident having happened at Damoh, Damoh Court had no jurisdiction. He has relied upon a judgment delivered by Hon'ble the Apex Court in the case of *V. Abraham Ajith and others v. Inspector of Police, Chennai and another* Reported in (2004)8 SCC 100 wherein "cause of action" has been discussed.

"13. While in civil cases, normally the expression "cause of action" is used, in criminal cases as stated in Section 177 of the Code, reference is to the local jurisdiction where the offences is committed. These variations in etymological expression do not really make the position different. The expression "cause of action" is, therefore, not a stranger to criminal cases.

14. It is settled law that cause of action consists of a bundle of facts, which cause to enforce the legal inquiry for redress in a court of law. In other words, it is a bundle of facts, which taken with the law applicable to them, gives the allegedly affected party a right to claim relief against the opponent. It must include some act done by the latter since in the absence of such an act no cause of action would possible accrue or would arise.

17. The expression "cause of action" is generally understood to mean a situation or state of facts that entitles a party to maintain an action in a court or a tribunal; a group of operative facts giving rise to one or more bases for sitting; a factual situation that entitles one person to obtain a remedy in court from another person. In Black's Law Dictionary a "cause of action" is stated to be the entire set of facts that gives rise to an enforceable claim; the phrase comprises every fact, which, if traversed, the plaintiff must prove in order to obtain judgment. In Words and Phrases (4th Edn.), the meaning attributes to the phrase "cause of action" in common legal parlance is existence of those facts, which give a party a right to judicial interference on his behalf."

4. In the light of the aforesaid judgment it is submitted that the petition deserves to be allowed and proceedings are required to be quashed. Reliance has also been placed in the judgment of this Court in the case of *Kailash Chandra Maheshwari and others v. State of M.P. and others* reported in 2006 (2) Crimes 110. Paragraphs 9 to 17 are relevant which read thus :-

"9. A careful scrutiny of the entire material on record makes it abundantly clear that the first information report was lodged by the complainant after the divorce petition was filed by Sanjay (husband) on 22-8-1996 and the summons were issued to Sandhya. The report on the basis of which the criminal case was registered, was received by the police on 12-3-1997. No fresh allegation was made against the petitioners except reminding that earlier a complaint was filed with the police on 20-8-1996. A copy of alleged written report dated 20-8-1996 was annexed with the later report. 20-8-1996 being the date just two days prior to 22-8-1996 on which the divorce petition was filed. On perusal of the copies of summons of the aforesaid divorce petition it is apparent that on 28-2-1997, the summons of Sandhya was returned unserved with the report of the process server that address was not correct. The copy of the report dated 20-8-1996 does not bear any endorsement by police and there is nothing on record to show that any such report was ever made to police.

10. On perusal of the entire record there appears no material to show that the petitioners had committed any act of cruelty towards Sandhya for meeting the demand made by Radhelal. The allegations that the petitioners had gone to Sehore or had asked Radhelal on telephone to fulfill the demand made by father-in-law of Sandhya, prima facie appear to be absurd and inherently improbable in the circumstances of case. At the relevant time the petitioners Madhu and her husband Vinod were living at Mumbai, Subhash and his Wife Smt. Gita were at Uganda and Kailash and Neeta were living separate from Radhelal at Sagar.

11. It is also significant to note that the allegation advanced during the investigation that on 10-7-1994 petitioner Madhu along with others and sprinkled kerosene on Sandhya is conspicuously missing in the alleged written report dated 20-8-1996.

12. It has been held by the Supreme Court in *Niranjan Singh Karam Singh Punjabi v. Jitendra Bhimraj Bijja and Ors.* that at the stage of framing the charge, the Court is required to evaluate the material and documents on record in order to find out if the facts emerging therefrom taken at their face value, prima facie disclose the existence of all the ingredients constituting the alleged offence. It has, further been held by the Supreme Court that the Court may for this limited purpose, sift the evidence as it can not be expected even at that initial stage, to accept all that the prosecution states as gospel truth even if it is opposed to common sense or the broad probabilities of the case.

13. The facts and circumstances as discussed above clearly establish that the criminal proceedings were initiated against the petitioners with a view to pressurize the husband and other family members of Sandhya, as Sanjay, the husband, had filed the divorce petition against her on 22-8-1996.

14. It is right, that inherent powers should not be exercised to stifle a legitimate prosecution and it would be improbable to analyze the case of complainant in the light of probabilities in

order to determine whether a conviction would be sustainable, however, the exercise of inherent powers to quash the proceeding is called for in a case where the complaint does not disclose any offence or is frivolous, vexatious or oppressive. If the allegations set out in the complaint do not constitute the offence, of which the cognizance has been taken, it is open for this Court to quash the same in exercise of inherent powers under Section 482 of Cr.PC.

15. Considering the scope of exercise of power under Section 482 of Cr.PC the Apex Court in *State of Haryana v. Bhajanlal* 1992(3) SCC (Cri) 426 indicated the illustrative categories of the cases in which such power may be exercised:

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(5) where the allegations made in the first information report or the complaint are so absurd and inherently improbable on the basis of such no prudent person can never reach a just conclusion that there is sufficient ground for proceeding against the accused....

(7) where a criminal proceeding is manifestly attended with malafides and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.

16. On meticulous analysis of the case it is manifestly clear that the criminal proceeding against the petitioners is frivolous and suffers with mala-fide. The allegations made against the petitioners appear to be inherently improbable, absurd and malicious.

17. A Court of law can not remain a silent spectator and can not be made a tool of gratifying personal vengeance of any party. Tendency to wreak vengeance against all the family members and relatives of husband has to be checked and deserves to be nipped in the bud. In cases where the facts available on record prima facie indicate at the stage of framing charge that criminal proceedings have been initiated by the

wife or her family members for wreaking her vengeance against all the family members of her husband, the Trial Court should carefully examine the material on record and should not frame the charge against the persons, against whom the criminal proceeding prima facie appears to be maliciously instituted and the allegations being absurd and inherently improbable."

5. It is also relevant to take note of the judgment of Hon'ble the Apex Court in *Preeti Gupta and another v. State of Jharkhand* and another reported in (2010) 7 SCC 667 wherein also in similar circumstances complaint lodged under section 498-A IPC was sought to be quashed. Relevant part of the judgment which has bearing on the legal question faced by me is reproduced as under :-

"13. The main question which falls for consideration in this case is whether the High Court was justified in not exercising its inherent powers under section 482 of the Code of Criminal Procedure, 1973 in the facts and circumstances of this case?

14. This court in a number of cases has laid down the scope and ambit of courts' powers under section 482 Cr.P.C. Every High Court has inherent power to act ex debito justitiae to do real and substantial justice, for the administration of which alone it exists, or to prevent abuse of the process of the court. Inherent power under section 482 Cr.P.C. can be exercised:

- (i) to give effect to an order under the Code;
- (ii) to prevent abuse of the process of court, and
- (iii) to otherwise secure the ends of justice.

15. Reference to the following cases would reveal that the courts have consistently taken the view that they must use this extraordinary power to prevent injustice and secure the ends of justice.

16. The English courts have also used inherent power to achieve the same objective. It is generally agreed that the Crown Court has inherent power to protect its process from abuse. In *Connelly v. Director of Public Prosecutions* [1964]

AC 1254, Lord Devlin stated that where particular criminal proceedings constitute an abuse of process, the court is empowered to refuse to allow the indictment to proceed to trial.

17. *Lord Salmon in Director of Public Prosecutions v. Humphrys* [1977] AC 1 stressed the importance of the inherent power when he observed that; (AC p.46D)

".....it is only if the prosecution amounts to an abuse of the process of the court and is oppressive and vexatious that the judge has the power to intervene."

He further mentioned that the court's power to prevent such abuse is of great constitutional importance and should be jealously preserved.

18. The powers possessed by the High Court under section 482 of the Code are very wide and the very plenitude of the power requires great caution in its exercise. The court must be careful to see that its decision in exercise of this power is based on sound principles. The inherent power should not be exercised to stifle a legitimate prosecution but the court's failing to use the power for advancement of justice can also lead to grave injustice.

19. The High Court should normally refrain from giving a prima facie decision in a case where all the facts are incomplete and hazy; more so, when the evidence has not been collected and produced before the court and the issues involved, whether factual or legal, are of such magnitude that they cannot be seen in their true perspective without sufficient material. Of course, no hard and fast rule can be laid down in regard to cases in which the High Court will exercise its extraordinary jurisdiction of quashing the proceedings at any stage.

20. This court had occasion to examine the legal position in a large number of cases. In *R.P. Kapur v. State of Punjab* AIR 1960 SC 866, this court summarized some categories of cases where inherent power can and should be exercised to quash the proceedings:

(i) where it manifestly appears that there is a legal bar against the institution or continuance of the proceedings;

(ii) where the allegations in the first information report or complaint taken at their face value and accepted in their entirety do not constitute the offence alleged;

(iii) where the allegations constitute an offence, but there is no legal evidence adduced or the evidence adduced clearly or manifestly fails to prove the charge.

21. This court in *State of Karnataka v. L. Muniswamy & Others* (1977) 2 SCC 699 observed that the wholesome power under section 482 Cr.P.C. entitles the High Court to quash a proceeding when it comes to the conclusion that allowing the proceeding to continue would be an abuse of the process of the court or that the ends of justice require that the proceeding ought to be quashed. The High Courts have been invested with inherent powers, both in civil and criminal matters, to achieve a salutary public purpose. A court proceeding ought not to be permitted to degenerate into a weapon of harassment or persecution. In this case, the court observed that ends of justice are higher than the ends of mere law though justice must be administered according to laws made by the legislature. This case has been followed in a large number of subsequent cases of this court and other courts.

22. In *Madhu Limaye v. The State of Maharashtra* (1977) 4 SCC 551, a three-Judge Bench of this court held as under:-

"..... In case the impugned order clearly brings out a situation which is an abuse of the process of the court, or for the purpose of securing the ends of justice interference of the High Court is absolutely necessary, then nothing contained in Section 397(2) can limit or affect the exercise of the inherent power of the High Court. Such cases would necessarily be few and far between. One such case would be the desirability of the quashing of a criminal proceeding initiated illegally, vexatiously or as being without jurisdiction. The present case would

undoubtedly fall for exercise of the power of the High Court in accordance with Section 482 of the 1973 Code even assuming that the invoking of the revisional power of the High Court is impermissible."

23. This court in *Madhavrao Jiwajirao Scindia & Others v. Sambhajirao Chandrojirao Angre & Others* (1988) 1 SCC 692 observed in para 7 as under:

"7. The legal position is well settled that when a prosecution at the initial stage is asked to be quashed, the test to be applied by the court is as to whether the uncontroverted allegations as made *prima facie* establish the offence. It is also for the court to take into consideration any special features which appear in a particular case to consider whether it is expedient and in the interest of justice to permit a prosecution to continue. This is so on the basis that the court cannot be utilized for any oblique purpose and where in the opinion of the court chances of an ultimate conviction are bleak and, therefore, no useful purpose is likely to be served by allowing a criminal prosecution to continue, the court may while taking into consideration the special facts of a case also quash the proceeding even though it may be at a preliminary stage."

24. In *State of Haryana & Others v. Bhajan Lal & Others* 1992 Supp. (1) SCC 335, this court in the backdrop of interpretation of various relevant provisions of the Code of Criminal Procedure (for short, Cr.P.C.) under Chapter XIV and of the principles of law enunciated by this court in a series of decisions relating to the exercise of the extraordinary power under Article 226 of the Constitution of India or the inherent powers under section 482 Cr.P.C. gave the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of process of the court or otherwise to secure the ends of justice. Thus, this court made it clear that it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list to myriad kinds of cases wherein such power should be

exercised:

"(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is

maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

25. In *G. Sagar Suri & Another v. State of UP & Others* (2000) 2 SCC 636, this court observed that it is the duty and obligation of the criminal court to exercise a great deal of caution in issuing the process particularly when matters are essentially of civil nature.

26. This court in *Zandu Pharmaceutical Works Ltd. & Others v. Mohd. Sharaful Haque & Another* (2005) 1 SCC 122 observed thus:-

"8 It would be an abuse of process of the court to allow any action which would result in injustice and prevent promotion of justice. In exercise of the powers, court would be justified to quash any proceeding if it finds that initiation/continuance of it amounts to abuse of the process of court or quashing of these proceedings would otherwise serve the ends of justice. When no offence is disclosed by the complaint, the court may examine the question of fact. When a complaint is sought to be quashed, it is permissible to look into the materials to assess what the complainant has alleged and whether any offence is made out even if the allegations are accepted in toto."

27. A three-Judge Bench (of which one of us, Bhandari, J. was the author of the judgment) of this Court in *Inder Mohan Goswami and Another v. State of Uttaranchal & Others* (2007) 12 SCC 1 comprehensively examined the legal position. The court came to a definite conclusion and the relevant observations of the court are reproduced in para 24 of the said judgment as under:-

"24. Inherent powers under section 482 Cr.P.C. though wide have to be exercised sparingly, carefully and with great caution and only when such exercise is justified by the tests specifically laid down in this section itself."

Authority of the court exists for the advancement of justice. If any abuse of the process leading to injustice is brought to the notice of the court, then the Court would be justified in preventing injustice by invoking inherent powers in absence of specific provisions in the Statute."

6. In view of the aforesaid, the complaint lodged against the petitioners at Damoh being Crime No.84/12 and the proceedings arising therefrom are quashed with liberty to the complainant to file complaint, if she so wants, at Jabalpur. With this observation, the petition is allowed.

Petition allowed.

I.L.R. [2014] M.P., 1664

MISCELLANEOUS CRIMINAL CASE

Before Mr. Justice U.C. Maheshwari

M.Cr.C. No. 2621/2013 (Jabalpur) decided on 8 March, 2013

ABHINAV CHAKRADHAR

...Applicant

Vs.

STATE OF M.P.

...Non-applicant

Criminal Procedure Code, 1973 (2 of 1974), Sections 156(3), 200, 202 - Magistrate rejected the application filed u/s 156(3) but was duty bound to proceed further u/s 200 to 203 read with Section 190 of Cr.P.C. - After recording evidence court is to consider the evidence and proceed further - Matter remitted back. (Para 5)

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धाराएं 156 (3), 200, 202 - मजिस्ट्रेट ने धारा 156(3) के अंतर्गत प्रस्तुत किये गये आवेदन को अस्वीकार किया परन्तु वह द.प्र.सं. की धारा 200 से 203 सहपठित धारा 190 के अंतर्गत कार्यवाही करने के लिये कर्तव्यबद्ध था - साक्ष्य अभिलिखित किये जाने के पश्चात् न्यायालय को साक्ष्य को विचार में लेना चाहिए और आगे कार्यवाही करना चाहिए - मामला प्रतिप्रेषित।

Cases referred :

AIR 1963 SC 397, AIR 2001 SC 571.

Manish Datt with P.S. Chouhan, for the applicant.

Umesh Pandey, G.A. for the non-applicant No.1/State.

ORDER

U.C. MAHESHWARI, J. :- The applicant- complainant has filed this petition under Section 482 of Cr.P.C. being aggrieved by the order dated 4.2.2013 passed by the Chief Judicial Magistrate, Bhopal in unregistered Criminal Complaint Case No. 0/2013, whereby his complaint filed by mentioning Section 156 (3) of Cr.P. C. on the cause title for taking the cognizance of the offence of Sections 153, 153 (a), 153 (b), 121, 121 (a) 124 (a) and Section 120 (b) of the IPC and Sections 13, 16, 18, 20 of the Prevention of Unlawful Activities Act 1967 against the respondent nos. 2 and 3 with a further prayer for appropriate direction to some Police Station to register such offence against such respondents has been dismissed.

2. Shri Manish Datt, learned Sr. Adv assisted by Shri P.S. Chouhan, counsel for the applicant, after taking me through the copies of the report in writing (Annexure 2) and of the complaint (Annexure 3) filed in the aforesaid court of CJM, Bhopal alongwith the impugned order argued that although such complaint was filed in the court of CJM, Bhopal by the applicant under Section 156 (3) of the Cr.P.C. In such complaint the prayer for taking cognizance of the above mentioned offence against the respondent nos. 1 and 2 with a further prayer for giving appropriate direction to the Police Station, T.T. Nagar, Bhopal to register the offence against the respondent nos. 2 and 3 for above mentioned offences was made. In addition to it, the prayer for appropriate direction to the authorities to remove the objectionable version from the Internet site was also made.

3. If the aforesaid subordinate court, on consideration was not inclined to direct the aforesaid Police Station to register the offence, even then such court was duty bound to proceed with the matter in accordance with the provision of Chapter XV from Section 200 to 203 of Cr.P.C., r/w Section 190 of the same Code. In such premises, after refusing such prayer treating the impugned complaint to be a complaint defined under Section 2 (d), r/w Section 200 of Cr.P.C. the evidence of the applicant and his witnesses should have been recorded by such court under Section 200 and 202 of Cr.P.C and thereafter on appreciation and evaluation of such evidence, the trial court should have passed the order either for dismissal of the complaint or for taking the cognizance of

any of the offences in the matter against respondent nos. 1 and 2. In continuation, he said that it is apparent fact that such procedure has neither been adopted nor followed. He also said that in the available facts and circumstances in the light of decision of the Apex Court in the matter of *Surech Chand Jain Vs. State of Madhya Pradesh* reported in AIR 2001, SC 571, the subordinate court should have directed the aforesaid Police Station to register the offence against the respondent nos. 2 and 3 and prayed for taking the cognizance of the aforesaid offence against the respondent nos. 2 and 3 by setting aside the impugned order or in any case to direct the aforesaid Police to register the offence and investigate the same or in any case, the case be remitted back to the aforesaid court to decide afresh by adopting the procedure provided in the above mentioned Chapter XV, r/w Section 190 of Cr.P.C by allowing this petition.

4. Having heard, keeping in view the arguments advanced by the counsel, I have carefully gone through the papers alongwith the record and averments of the petition so also the impugned order. True it is the impugned complaint (Annexure 3) was filed on the basis of report in writing (Annexure 2) by mentioning the Section 156 (3) of Cr.P.C. on its cause title. In such complaint categorical three prayers were made by the applicant; one is for taking the cognizance of the above mentioned offence against the respondent nos. 2 and 3. Second is for appropriate direction to the P.S. T.T. Nagar, Bhopal to register such offence against respondent nos. 2 and 3; and thirdly for appropriate direction to remove the objectionable speech of respondent no. 2 from the Internet site.

5. In the available circumstances as appeared from the papers available on record, without touching any merits or demerits of the matter, if the impugned order is examined, then it is apparent that after refusing the prayer of the applicant to direct the Police authority to register the offence, the case was not considered by the court according to the provision of Chapter XV under Section 200 to 203, r/w Section 190, of Cr.P.C. As such after refusing the prayer to direct the Police to register the offence, the trial court ought to have extended an opportunity to the applicant to record his statements as well as of his witnesses under Section 200 and 202 of Cr.P.C. and in the light of such evidence, the court had to consider the question for taking the cognizance in the matter, but such

process has neither been adopted nor complied with by the Court of CJM.

6. If the case is examined in the light of principle laid down by the Apex Court in the Case of *Surech Chand Jain* (supra), then it is apparent that the provision of Section 156 (1) and (3) have also not been considered by the subordinate court with proper approach.

7. In view of the aforesaid discussion, the case is remitted back to the aforesaid subordinate court with a direction to decide afresh keeping in view the law laid down by the Apex Court in the matter of *Surech Chand Jain* (supra) and in case if such court again comes to conclusion that the direction to register the offence to the Police is not required, then in that position such court is directed to consider the complaint (Annexure -3) as complaint defined under Section 2 (d), r/w Section 200 of Cr.P.C. and consider the matter by adopting the procedure provided under Chapter XV, i.e. from Section 200 to 203 and Section 190, of Cr.P.C.

8. The petition stands allowed, as indicated above.

C c as per rules.

Petition allowed.

I.L.R. [2014] M.P., 1667

MISCELLANEOUS CRIMINAL CASE

Before Smt. Justice Vimla Jain

M.Cr.C. No. 1814/2014 (Jabalpur) decided on 24 March, 2014

PAWAN KUMAR DHIMAAN & anr.

...Applicants

Vs.

STATE OF M.P.

...Non-applicant

Criminal Procedure Code, 1973 (2 of 1974), Section 438 - Conditions - Reasonable - Word "any condition" used in the provision has to be interpreted as a reasonable condition - Condition of depositing Rs. 50 lakh in fixed deposit, is unreasonable, harsh and erroneous and defeat the very purpose of grant of anticipatory bail - Same would result in denial of liberty - Condition of depositing Rs. 50 lakh is set-aside.

(Paras 13 &14)

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 438 — शर्तें — युक्तियुक्त — उपबंध में प्रयुक्त शब्द “कोई शर्त” का निर्वचन युक्तियुक्त शर्त के रूप में किया जाना चाहिए — सावधि जमा के रूप में रु. 50 लाख जमा करने की शर्त, अयुक्तियुक्त, कठोर एवं त्रुटिपूर्ण है और अग्रिम जमानत प्रदान करने के प्रयोजन को ही विफल बनाता है — उक्त का परिणाम स्वतंत्रता से वंचित किया जाना होगा — रु. 50 लाख जमा करने की शर्त अपास्त।

Case referred :

(1980) 2 SCC 564.

Brain D'silva with Anand Singh for the applicants.

Pratibha Mishra, P.L. for the non-applicant/State.

ORDER

SMT. VIMLA JAIN, J. :- This is first bail application filed by the applicants under Section 438 of the Cr.P.C. for grant of anticipatory bail.

2. The applicants apprehend their arrest in connection with Crime No.301/2013 registered at Police Station Lakhanwada District Seoni for the offences punishable under Sections 406/34 of the IPC.

3. The case of the prosecution is that the applicants, who are the employees of M/s Sadbhav Engineering Limited had illegally lifted 2708.50 cubic meters of aggregate out of 6900 cubic meters of aggregate which was granted to them on supratnama by the the competent Court and by their such acts, the applicants had caused a loss of revenue to the State to the tune of Rs.94,79000/-.

4. Learned counsel for the applicants submits that the applicants had filed applications for anticipatory bail bearing No. 12/2014 and 538/2013 before the lower Court and the lower Court had allowed both applications vide order dated 16/01/2014 and 30/12/2013 respectively. However, while allowing the aforesaid applications, the learned Lower Court had imposed a condition of depositing an FDR of Rs. 50 Lakh and surety of Rs.1 Lakh along with a bail bond of similar amount by each of the applicant.

5. He further submits that the conditions imposed by the lower Court while granting the bail are improper, unreasonable and arbitrary. He prays to

waive such conditions. In support of his submissions, he relies on judgment dated 13/09/2013 passed by the Supreme Court in Criminal Appeal No.14361/2013 (Sumit Mehta vs. State of NCT of Delhi).

6. On the other hand, learned Panel Lawyer of the State submits that looking to the gravity of offence, the learned Court below rightly imposed the conditions while granting anticipatory bail.

7. I have carefully considered the contentions raised by the learned counsel of the parties and perused the case diary.

8. For ready reference the Section 438 of the Code reads as under:-

“438. Direction for grant of bail to person apprehending arrest:-

(1) Where any person has reason to believe that he may be arrested on an accusation of having committed a non-bailable offence, he may apply to the High Court or the Court of Session for a direction under this section; that in the event of such arrest he shall be released on bail; and that Court may, after taking into consideration, inter alia, the following factors, namely:-

- (i) the nature and gravity of the accusation;
- (ii) the antecedents of the applicant including the fact as to whether he has previously undergone imprisonment on conviction by a Court in respect of any cognizable offence;
- (iii) the possibility of the applicant to flee from justice; and
- (iv) where the accusation has been made with the object of injuring or humiliating the applicant by having him so arrested,

either reject the application forthwith or issue an interim order for the grant of anticipatory bail.

Provided that, where the High Court, as the case may be, the Court of Session, has not passed any interim order under this sub-section or has rejected the application for grant of anticipatory bail, it shall be open to an officer in-charge of a police station to arrest, without warrant the applicant on the basis of the accusation apprehended in such application.

(1A) Where the Court grants an interim order under sub-section (1), it shall forthwith cause a notice being not less than seven days notice, together with a copy of such order to be served on the Public Prosecutor and the Superintendent of Police, with a view to give the Public Prosecutor a reasonable opportunity of being heard when the application shall be finally heard by the Court.

(1B) The presence of the applicant seeking anticipatory bail shall be obligatory at the time of final hearing of the application and passing of final order by the Court, if on an application made to it by the Public Prosecutor, the Court considers such presence necessary in the interest of justice.

(2) When the High Court or the Court of Session makes a direction under sub-section (1), it may include such conditions in such directions in the light of the facts of the particular case, as it may think fit, including-

(i) a condition that the person shall make himself available for interrogation by a police officer and and when required;

(ii) a condition that the person shall not, directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any police officer;

(iii) a condition that the person shall not leave India

without the previous permission of the Court;

(iv) such other condition as may be imposed under sub-section (3) of Section 437, as if the bail were granted under that section.

(3) If such person is thereafter arrested without warrant by an officer in charge of a police station on such accusation, and is prepared either at the time of arrest or at any time while in the custody of such officer to give bail, he shall be released on bail; and if a Magistrate taking cognizance of such offence decides that a warrant should issue in the first instance against that person, he shall issue a bailable warrant in conformity with the direction of the Court under sub-section (1)."

9. On perusal of Section 438, it is clear that the conditions imposed in granting anticipatory bail should not be so harsh as to generate undue harassment to the applicants and the anticipatory bail should be granted or rejected on the merits and circumstances of each and every case.

10. In the matter of *Baldev Raj vs. State of Himachal Pradesh*, (1980) 2 Supreme Court Cases 564, the Supreme Court while dealing mainly with the question of considerations that can validly weigh with the Courts while granting bail under Section 438 examined various facets of the issue and held as under:

"26. We find a great deal of substance in Mr. Tarkunde's submission that since denial of bail amounts to deprivation of personal liberty, the Court should lean against the imposition of unnecessary restrictions on the scope of Section 438, especially when no such restrictions have been imposed by the legislature in the terms of that section. Section 438 is a procedural provision which is concerned with the personal liberty of the individual, who is entitled to the benefit of the presumption of innocence since he is not, on the date of his application for anticipatory bail, convicted of the offence in respect of which he seeks bail. An over-generous infusion of constraints and conditions which are not to be found in Section 438 can make its

provisions constitutionally vulnerable since the right to personal freedom cannot be made to depend on, compliance with unreasonable restrictions. The beneficent provision contained in Section 438 must be saved, not jettisoned. No doubt can linger after the decision in *Maneka Gandhi* [1978]2SCR621 that in order to meet the challenge of Article 21 of the Constitution, the procedure established by law for depriving a person of his liberty must be fair, just and reasonable. Section 438, in the form in which it is conceived by the legislature, is open to no exception on the ground that it prescribes a procedure which is unjust or unfair. We ought, at all costs, to avoid throwing it open to a Constitutional challenge by reading words in it which are not found therein.”

12. The Supreme Court in the matter of *Sumit Mehta vs. State of NCT of Delhi*, in paragraphs 16 held that 'the words “any condition” used in the provision should not be regarded as conferring absolute power on a Court of law to impose any condition that it chooses to impose. Any condition has to be interpreted as a reasonable condition acceptable in the facts permissible in the circumstance and effective in the pragmatic sense and should not defeat the order of grant of bail.'

13. From the perusal of both the orders of the Court below, it appears that the conditions of depositing an amount of Rs.50 Lacs in fixed deposit in each of the both cases are unreasonable, harsh and erroneous and defeat the very purpose of grant of anticipatory bail for the applicants. Such conditions will virtually result in denial of liberty to them.

14. In view of the aforesaid discussion, I set aside the direction relating to deposit of FDR for Rs.50 lacs in each order and maintain both the orders of granting anticipatory bail in favour of the applicants with the remaining conditions imposed thereby.

15. The M.Cr.C. disposed off accordingly.

M.Cr.C. disposed of.

I.L.R. [2014] M.P., 1673

MISCELLANEOUS CRIMINAL CASE

Before Mr. A.M. Khanwilkar, Chief Justice & Mr. Justice K.K. Trivedi

M.Cr.C. No. 6119/2014 (Jabalpur) decided on 7 May, 2014

BAL KUMAR KAUSHIK

...Applicant

Vs.

STATE OF M.P.

...Non-applicant

Recognised Examination Act, M.P. (10 of 1937), Section 4, Penal Code (45 of 1860), Sections 419, 320, 467, 468, 471 & 120-B & Criminal Procedure Code, 1973 (2 of 1974), Sections 4, 5, 438/439 - Bail - Offence allegedly committed by the applicant is covered by the provisions of the M.P. Recognised Examination Act, 1937 - Whether applicant can be tried for the offences punishable under the provisions of I.P.C. - Held - It is premature for the applicant to pursue this contention for the simple reason that, admittedly, investigation of the case is still pending - This can be pursued only after the evidence is collated by the Investigating Officer and presented alongwith the challan before the appropriate court - This contention cannot be the basis to grant bail to the applicant.

(Paras 3 & 5)

मान्यताप्राप्त परीक्षा अधिनियम, म.प्र. (1937 का 10), धारा 4, दण्ड संहिता (1860 का 45), धाराएं 419, 320, 467, 468, 471 व 120बी व दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धाराएं 4, 5, 438/439 - जमानत - अभिकथित रूप से आवेदक द्वारा कारित अपराध, म.प्र. मान्यताप्राप्त परीक्षा अधिनियम, 1937 के उपबंधों द्वारा आवृत्त है - क्या आवेदक को भा.द.सं. के उपबंधों के अंतर्गत दण्डनीय अपराधों के लिये अभियोजित किया जा सकता है - अभिनिर्धारित - इस तर्क को पेश करना आवेदक के लिये अपरिपक्व है, इस साधारण कारण से कि स्वीकृत रूप से प्रकरण का अन्वेषण अभी तक लंबित है - इस तर्क को केवल, अन्वेषणकर्ता अधिकारी द्वारा साक्ष्य एकत्रित किये जाने के पश्चात और समुचित न्यायालय के समक्ष चालान के साथ प्रस्तुत किये जाने पर पेश किया जा सकता है - आवेदक को जमानत प्रदान करने के लिये यह तर्क आधार नहीं हो सकता।

A.M. Trivedi with Prashant Avasthi, for the applicant.

P.K. Kauray, Addl. A.G. for the non-applicant/State.

O R D E R

The Order of the Court was delivered by :
A.M. KHANWILKAR, Chief Justice. :- According to the applicant, the offence allegedly committed by the applicant is covered by the provisions of the Madhya Pradesh Recognized Examination Act 1937. As a result, the applicant cannot be tried for the offences punishable under the provisions of I.P.C. and, therefore, deserves to be released on bail. To buttress this argument reliance has been placed under Sections 4 and 5 of the Cr.P.C.

2. The fact that the offences punishable under the provisions of Act of 1937 have been applied in the present case is not in dispute.

3. The question is: whether the provisions of Sections 4 and 5 of the Code would disentitle the prosecution to proceed against the applicant for offences punishable under Sections 419, 320, 467, 468, 471 and 120-B of I.P.C., which are in addition to or at best overlapping to some extent with the offences punishable under the provisions of the Act of 1937?

4. In the first place, Section 4 of the Code cannot be construed to mean that it ousts the application of offences under the provisions of I.P.C. in cases covered by the provisions of the Act of 1937. Emphasis was placed on sub Section (2) of Section 4 of the Code, which deals with the investigation to be done in respect of the offences under any other law. This provision cannot be construed to mean that it ousts the application of offences under the provisions of I.P.C., even if the fact situation of the case warrants invocation of those offences. Similarly, Section 5 of the Code will be of no avail to the applicant since the Act of 1937 does not contain any express provision that if the acts of commission and omission constitute offence under the Act of 1937 that person cannot be tried for any other offence under the provisions of I.P.C. though attracted. In absence of such express provision we fail to understand as to how Section 5 would come to the aid of applicant. Section 5 of the Code makes it amply clear that provisions of the Code shall ordinarily apply unless specific provision to the contrary is provided for.

5. Learned counsel for the applicant submits that maxim *generalia specialibus non derogant* is attracted in the fact situation of the present case. It is not possible to accept this submission keeping in mind the provisions of the Act of 1937 and including Sections 4 and 5 of the Code. More so, in our opinion, it is premature for the applicant to pursue this contention for the

simple reason that, admittedly, investigation of the case is still pending. This contention can be pursued only after the evidence is collated by the Investigating Officer and presented along with the Challan before the appropriate Court. This contention, in our opinion, cannot be the basis to grant bail to the applicant.

6. After some deliberation, learned counsel for the applicant submitted that in that case applicant would wait till filing of the Challan, instead of inviting any finding of this Court, on the basis of the material already available with the investigating agency, as any finding by this Court, at this stage, would prejudice the applicant one way or the other.

7. As a result, we permit the applicant to withdraw this application with liberty to raise all contentions available to the applicant after filing of the Challan by way of fresh bail application, which will be considered on its own merits.

8. This application stands disposed of.

C.C., as per rules.

Application disposed of.

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MISCELLANEOUS CRIMINAL CASE

Before Mr. Justice Subhash Kakade

M.Cr.C. No. 850/2014 (Jabalpur) decided on 16 May, 2014

NEELESH & ors

...Applicants

Vs.

STATE OF M.P.

...Non-applicant

Criminal Procedure Code, 1973 (2 of 1974); Section 407 - Transfer of criminal case - Applicants were arrested for the offence u/s 457, 380, I.P.C. - They sought transfer of case from Sagar to Jabalpur - They stated that the complainant is a practicing advocate under the jurisdiction of Sessions Court, Sagar - He is pressurizing and giving threats to the advocates of Sagar not to appear in the case of the applicants - Applicants have no faith or believe upon their counsel or any counsel of Sagar - Held - Not clarified in the petition, names of the advocates of other districts to whom the relatives of the applicants contacted and they refused to defend the applicants - It is also not a

case in which the Bar Association of the District, Sagar had passed any resolution that any member advocate of the Bar Association will not to argue or defend the case of the applicants - No substantial ground made out for transfer of case from Sagar to Jabalpur - Hence, the application is rejected on its merit. (Paras 2, 3 & 14 to 17)

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 407 - आपराधिक प्रकरण का अंतरण - आवेदकगण को भा.द.सं. की धारा 457, 380 के अंतर्गत अपराध के लिये गिरफ्तार किया गया - उन्होंने प्रकरण का सागर से जबलपुर स्थानांतरण चाहा - उनका कथन है कि शिकायतकर्ता सत्र न्यायालय, सागर के क्षेत्राधिकार के अंतर्गत वकालत कर रहा है - वह सागर के अधिवक्ताओं को आवेदकों के प्रकरण में उपस्थित नहीं होने के लिए दबाव डाल रहा है और धमका रहा है - आवेदकगण को अपने वकील पर या सागर के किसी वकील पर विश्वास या भरोसा नहीं है - अभिनिर्धारित - याचिका में अन्य जिलों के अधिवक्ताओं के नाम स्पष्ट नहीं जिनसे आवेदकों के रिश्तेदारों ने संपर्क किया और उन्होंने आवेदकगण का बचाव करने से मना कर दिया - यह ऐसा प्रकरण भी नहीं जिसमें जिला सागर के अधिवक्ता संघ ने कोई संकल्प पारित किया हो कि अधिवक्ता संघ का कोई सदस्य आवेदकों के प्रकरण में तर्क या बचाव नहीं करेगा - प्रकरण को सागर से जबलपुर अंतरित करने के लिये कोई ठोस आधार नहीं बनता - अतः गुणदोषों पर आवेदन को अस्वीकार किया गया।

Cases referred :

AIR 1979 SC 468, AIR 1982 SC 1558, 1982 SCC (Cri.) 268 : 1982 Cr.L.J. 1944 (SC).

G.P. Patel, for the applicants.

R.K. Kesharwani, P.L. for the non-applicant/State.

ORDER

SUBHASH KAKADE, J. :- By this petition under Section 407 of the Code of Criminal Procedure, 1973, the applicants are praying for transfer of Criminal Case No.6939/2013, State of M.P. through P.S. Gopalganj, District Sagar v. Neelesh and others pending before the Judicial Magistrate First Class Sagar to Jabalpur.

2. On dated 25.10.2013 unknown person were committed theft in the house of the complainant. On the said allegation Police Station Gopalganj registered Crime No. 470/2013 for the offence punishable under Sections 457, 380 of IPC and after due investigation the applicants were arrested and

charge-sheeted.

3. The basis of transfer mentioned in petition is that the complainant is a practicing advocate under the jurisdiction of Sessions Court, Sagar, hence he is pressurizing and giving threats to the advocates of Sagar not to appear in the case of the applicants. All the advocates of Sagar are afraid and in pressure of the complainant therefore they are against the applicant and not ready to defend their case. The applicants are in jail, hence, their relatives contacted with the Advocates, who belongs to other District but, looking to above mentioned pressure they did not ready to prosecute the case of the applicants at Sagar hence, fair and impartial trial is not possible at Sagar. The applicants have no faith or believe upon their counsel or any counsel of Sagar.

4. In view of the above facts and circumstances of the case learned counsel for the applicants submits that looking to status of the complaint that he is in position to influence the advocates practicing at Sagar, it is a fit case in which transfer of the aforesaid case from District Sagar to Jabalpur or any other District is expedient for the ends of justice.

5. Learned counsel for the States vehemently opposing the transfer of the case from Sagar.

6. Section 407 of Cr.P.C. clothes a party with the power to apply for transfer of a case where the party apprehends he cannot get a fair or impartial enquiry or trial.

7. Cardinal Principle is that the trial of a Case should be in an atmosphere which does not create even a suspicion that there has been or is likely to be an improper interference with the course of justice. It is not merely of some importance but of fundamental importance that justice should not only be done but should manifestly be seen to be done.

8. In case of *Maneka Gandhi vs. Rani Jethamalani*, AIR 1979 SC 468, the Supreme Court observed that assurance of a fair trial is the first, imperative of the dispensation of justice and the central criterion for the Court to consider when a motion for transfer is made is not the hypersensitivity or relative convenience of a party of easy availability of legal services or like mini-grievances. Something more substantial, more compelling, more imperiling, from the point of view of public justice and its attendant environment, is necessitous if the Court is to be exercise its power of transfer. This is the cardinal principle although the circumstances may be myriad and vary from

case to case.

9. Now, the point for determination is whether the applicants have reasonable apprehension that they would not get a fair and impartial trial and whether the transfer of the case is expedient for the ends of justice?

10. On application for transfer the real test is whether there exist real grounds for the applicant's apprehension that they will not get a fair and impartial hearing. To judge the reasonableness of the apprehension the state of mind of the person who entertains the apprehension is no doubt relevant but that is not all. The apprehension must not only be entered but must appear to the Court to be a reasonable apprehension, though the party is not required to demonstrate the justice will inevitably fail but it has to show that is apprehension is reasonable one.

11. Now, duty is upon the applicant to show that there is existence of some material from which it can be inferred that the some persons are so hostile that they are interfering or are likely to interfere either directly or indirectly with the course of justice.

12. In the normal course of the trial of aforesaid case should be take place at Sagar, a place which has territorial jurisdiction.

13. The normal course of things should not be lightly interfered with and the case should be allowed to be tried by the Court, which has territorial jurisdiction as it was held by the Apex Court in case of *Baljit Singh vs. State of Jammu & Kashmir*, AIR 1982 SC 1558: 1982 SCC (Cri.) 268: 1982 CrLJ 1944 (SC).

14. It is not a case in which the Bar Association of the District, Sagar had passed any resolution that any member advocate of the Bar Association will not to argue or defend the case of the applicants.

15. It is also not clarified in the petition names of the advocates of other districts to whom the relatives of the applicants contacted and they refused to defend the applicants.

16. In absence of any well founded material it cannot be said that the atmosphere at Sagar is not conducive for fair trial. Some apprehension have been expressed that justice may not be done to the applicants but keeping in view the facts and circumstances of this case, the apprehension does not appear

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to be a reasonable one. In the present case no substantial ground could be made out for transfer of the case from Sagar to Jabalpur or any other district.

17. The application is rejected on its merit.

18. It is sufficient to record a note of precaution that a copy of this order by sent to the learned trial Court with the request that to see that the trial is conducted with utmost fairness in an atmosphere of complete detachment and neutrality.

19. Before parting with the case this Court is not only hopeful but having all the faith that the learned President of Bar Association Sagar will guide and assist the applicants and also generate confidence among the applicants that their apprehension is not at all well founded as well as any learned member of the Bar Association Sagar of the applicants choice will defend their case alike case of any other litigant who comes to seek justice at any of the courts administrating justice at Sagar.

20. The copy of this order be supplied to the learned President of the Bar Association Sagar also for information and necessary action with the request as mentioned aforesaid.

21. The application is disposed of as rejected accordingly.

Application rejected.

I.L.R. [2014] M.P., 1679

MISCELLANEOUS CRIMINAL CASE

Before Mr. Justice Subhash Kakade

M.Cr.C. No. 6235/2010 (Jabalpur) decided on 5 June, 2014

SATYENDRA TIWARI @ SONU

...Applicant

Vs.

STATE OF M.P. & anr.

...Non-applicants

Negotiable Instruments Act (26 of 1881), Section 138 - Non-service of demand notice - Notice sent by registered post was returned with the report that the addressee not found, but thereafter the complainant did not make concrete efforts to serve the notice on the accused - No presumption regarding service of demand notice could be drawn - Trial court rightly appreciated the evidence and rightly acquitted the accused.
(Paras 20, 27 & 28)

परक्राम्य लिखत अधिनियम (1881 का 26), धारा 138 – मांग पत्र की तामीली न होना – रजिस्टर्ड डाक से प्रेषित नोटिस, इस रिपोर्ट के साथ वापिस कि प्रेष्य नहीं मिला, परन्तु तत्पश्चात शिकायतकर्ता ने अभियुक्त को नोटिस तामील करने के लिए कोई ठोस प्रयास नहीं किये – मांग पत्र की तामीली के संबंध में कोई उपधारणा नहीं की जा सकती – विचारण न्यायालय ने साक्ष्य का उचित रूप से मूल्यांकन किया और उचित रूप से अभियुक्त को दोषमुक्त किया।

Rakesh Pandey, for the applicant.

ORDER

SUBHASH KAKADE, J. :- This petition under Section 378 (4) of Cr.P.C. for grant of leave to appeal has been filed by the applicant/complainant against the impugned judgment dated 23.04.2010, passed in Private Complaint Case No.517/2006, by the learned Judicial Magistrate First Class, Jabalpur acquitting the respondent no.2, hereinafter referred as "the accused" for the offence punishable under Section 138 of Negotiable Instruments Act, 1881; hereinafter referred to as "N.I. Act".

2. Short facts of the case are that on 14.09.2005 the accused issued a cheque amounting to Rs.48,000/- in favour of the complainant. The complainant presented the cheque through his Banker Dena Bank and the same has been returned with an endorsement 'Funds insufficient'. In spite of duly served legal notice of demand the accused did not return the amount of cheque.

3. The learned trial Court on the basis of affidavit of the complainant and documentary evidence passed the order for registration of complaint. Accuse absurd his guilt. His further plea was that he has been falsely roped in this complaint. The complainant, to substantiate the charge against the accused examine himself as PW/1 and witness Aashish Namdeo (PW/2) and exhibited impugned cheque with endorsement memo, unserved notice with AD and postal receipt as Ex.P/1 to Ex.P/4 respectively. Ciril Jorge (D.W.1) examined as defence witness.

4. On consideration of oral as well as documentary evidence learned trial Court acquitted the accused as mentioned above.

5. Learned counsel for the applicant mainly based his arguments on two counts that the learned trial Court firstly, wrongly held that the complainant did not make serious effort to serve the notice on the accused and secondly, also wrongly held that there was no seal of bank found on endorsement memo.

He further submitted that as per provisions of Section 146 of N.I. Act, the Court has to presume that memo issued by the Bank is proper and valid, unless rebuttal by the accused. Finally, it is submitted by the learned counsel for the applicant that the learned trial Court has failed to appreciate the evidence in proper prospect and committed grave error and arrived at wrong conclusion resulting acquitting the accused, hence the impugned judgment is illegal and contrary to the provision of law.

6. Having heard the learned counsel for the appellant and after perusing the entire record this Court is of the view that the learned trial Court has not committed any error in acquitting the accused.

7. The object of promulgate the Negotiable Instrument Act containing Sections 138 to 142 by the Banking, Public Financial Institutions and Negotiable Instruments Laws (Amendment) Act, 1988 was to promoting and inculcating faith in the efficacy of banking system and its operations and giving credibility to negotiable instruments in business transaction. In developing countries like ours importance of the banking system is need not to be required ornamental words. The introduction of these provisions was intended to create an atmosphere of faith and reliance on banking system by discouraging people from not honouring their commitments by way of payment through cheques. Section 138 of the N.I. Act was enacted to punish those unscrupulous persons who purported to discharge their liability by issuing cheques without really intending to do so. Apart from civil liability, criminal liability is sought to be imposed by the said provision on such unscrupulous drawers of cheques. Therefore, while construing the provision, the object of the legislation has to be borne in mind.

8. In other words, these provisions have been introduced to give the better credibility to our trade, business, commerce and industry, which is absolutely imperative in view of the growing international trade and business. The constitutional validity of these provisions have been upheld by the apex Court.

Protective Umbrella for honest drawer:

9. However, with a view to avert unnecessary prosecution of an honest drawer of the cheque and with a view to give an opportunity to him to make amends, the prosecution under section 138 of the N.I. Act has been made subject to certain conditions. The object of notice is to give a chance to the

drawer of the cheque to rectify his omission and also to protect an honest drawer.

10. The first condition is stipulated in the proviso (b) of the section 138 of the N.I. Act. is service of notice of demand which is a condition precedent for filing a complaint under Section 138 of the N.I. Act. Under this clause (b) of the proviso, the holder of the cheque (sic:cheque) in due course is required to give a written notice to the drawer of the cheque within a period of thirty days from the date of receipt of information from the bank regarding the return of the cheque as unpaid.

11. The second condition is stipulated under clause (b) of the proviso of the section 138 of the N.I. Act., the drawer of the cheque is given a period of fifteen days from the date of receipt of the notice to make the payment and only if he fails to make the payment, a complaint may be filed against him.

12. The object of above noted both proviso is to give an statutory protection against unnecessary prosecution of an honest drawer of the cheque and with a view to give an opportunity to him to make amends, the prosecution under section 138 of the N.I. Act. Therefore, the observance of stipulations in clause (b) and its aftermath in clause (c) being a pre-condition for invoking section 138 of the N.I. Act, giving a notice to the drawer before filing complaint under section 138 of the N.I. Act is a mandatory provision.

13. Once the cheque is issued by the drawer, a presumption under section 139 of the N.I. Act will follow. Presentation of the cheque in the bank is the next step.

14. The holder of the cheque in due course is required to give a written notice to the drawer of the cheque within a period of thirty days from the date of receipt of information from the bank regarding the return of the cheque as unpaid.

15. The drawer of the cheque is given a period of 15 days from the date of receipt of the notice to make the payment and only if he fails to make the payment then the drawer of the cheque can be held responsible under section 138 of the N.I. Act.

16. Drawer refused to receive notice: Where drawer had refused to receive notice, even then complaint to be filed after expiry of fifteen days from the date of receipt of notice.

17. Any drawer who claims that he did not receive the notice sent by post, can, within 15 days of receipt of summons from the trial (sic: trial) court in respect of the complaint under Section 138 of the Act, make payment of the cheque amount and submit to the Court that he had made payment within 15 days of receipt of summons, the complaint is liable to be rejected.

18. Therefore, the object of notice is clear that to give a chance to the drawer of the cheque to rectify his omission and also to protect an honest drawer. Service of notice of demand is a condition precedent for filing of complaint. Notice of demand is mandatory.

19. No doubt Section 138 of the N.I. Act does not require that the notice should be given only by post. The notice may be sent either through counsel or directly by the payee or the holder in due course stating dishonour of cheque, demanding payment of the cheque amount and intimating that non-compliance would result in initiating legal action.

20. There is no bar for a person sending the notice of dishonour both by Certificate of Posting and also by Registered Post. What all Section 138 of the Act requires is sending of notice in writing to the drawer of the cheque demanding payment of the amount covered by the dishonoured cheque. The Section does not lay down that the notice of dishonour should be sent by Registered Post only. In several cases drawers of the cheques, to whom statutory notices of dishonour are sent by Registered Post, manage to evade service of the notice, by getting an endorsement made by the postman that they are not available or absent or that the door is locked for seven days. Obviously with a view to get over of such return of notice sent by Registered Post, statutory notice would be sent by Certificate of Posting and also by Registered Post Acknowledgment Due. Whenever a notice is sent by Certificate of Posting, a presumption under the provisions of the Section 114 of Evidence Act, Illustration (f) and Section 27 of General Clause Act, 1897 would be that the letter sent under Certificate of Posting was received by the addressee, and also that notice is duly served. But, as the presumption is rebuttable one.

21. On the part of the payee he has to make a demand by "giving a notice" in writing. If that was the only requirement to complete the offence on the failure of the drawer to pay the cheque amount within 15 days from the date of such 'giving', the travails of the prosecution would have been very much

lessened. But the legislature says that failure on the part of the drawer to pay the amount should be within 15 days of the cheque amount within 15 days from the date of such 'giving', the travails of the prosecution would have been very much lessened. But the legislature says that failure on the part of the drawer to pay the amount should be within 15 days of the receipt of the said notice. It is, therefore, clear that 'giving notice' in the context is not the same as receipt of notice. Giving is a process of which receipt is the accomplishment.

22. The words in Clause (b) of the proviso to Section 138 of the N.I. Act show that payee has the statutory obligation to make a demand by giving notice. The thrust in the clause is on the need to make a demand. It is only the mode for making such demand which the legislature has prescribed. A payee can send the notice for doing his part for giving the notice. Once it is dispatched his part is over and the next depends on what the sendee does. It is for the payee to perform the former process by sending the notice to the drawer at the correct address.

23. If a strict interpretation is given that the drawer should have actually received the notice for the period of 15 days to start running no matter that the payee sent the notice on the correct address, a trickster cheque drawer would get the premium to avoid receiving the notice by different strategies and he could escape from the legal consequences of Section 138 of the N.I. Act. It must be borne in mind that the Court should not adopt an interpretation which helps a dishonest evader, and clips an honest payee as that would defeat the very legislative measure.

24. The statutory scheme unmistakably shows that the burden is on the complainant to show the service of notice and also that the accused has managed to get an incorrect postal endorsement made. Where the notice could not be served on the addressee for one or the other reason, such as his non-availability at the time of delivery, or premises remaining locked on account of his having gone elsewhere etc; it was observed that if in each such case, the law is understood to mean that there has been no service of notice, it would completely defeat the very purpose of the Act. It would then be very easy for an unscrupulous and dishonest drawer of a cheque to make himself scarce for sometime after issuing the cheque so that the requisite statutory notice can never be served upon him and consequently he can never be prosecuted.

25. Here the notice is returned as addressee being not found and not as

refused. True, that the notice was sent at the correct address of the drawer of the cheque by registered post acknowledgment due.

26. In the case at hand, it is clear that notice was sent on correct address of the drawer also within time as per provisions under Section 138 Proviso (b) of the N.I. Act. Postman tried to deliver the notice on several dates and finally it was returned with the remark that the addressee not available hence not served. The returned envelope was annexed to the complaint and it thus, formed a part of the complaint which showed that the notice was sent by registered post acknowledgment due to the correct address.

27. Learned trial Court after appreciation of evidence available on record categorically held that though notice received unserved with A.D. receipt (Ex. P-4) as addressee not found, but thereafter the complainant did not make concrete efforts to serve the notice on the accused.

28. After perusing the record carefully in light of above discussed facts and circumstances, in the light of the object of promulgate the N.I. Act and mandatory statutory provisions of Section 138 of the N.I. Act it is crystal clear that the learned trial Court has rightly appreciated the evidence, hence the finding of learned trial Court for non-service of demand notice does not require any interference.

Endorsement Memo

29. Another reason given by the learned court to acquit the accused was that the complainant failed to prove the submission of cheque (Ex. P-1) in the bank.

30. When a cheque is drawn by a person on an account maintained by him for payment of any amount or discharge of liability or debt and is returned by the bank with endorsement like (i) refer to drawer, (ii) exceeds arrangement, (iii) instruction for stoppage of payment; (iv) fund insufficient and like other usual endorsements, it amounts to dishonour within the meaning of section 138 of the N.I. Act.

31. Cheque to be presented within six months from the date of cheque to the bank on which it was drawn and if it is presented beyond that time complaint is not maintainable. In this case in hand the cheque (Ex.P-1) was presented within time.

32. In fact, learned trial Court initially committed grave mistake while issuing

summons for appearance of the accused on the assumption that case has been disclosed while bankers seal was totally missing of the bankers written memo in such circumstances the summons was not required to issue against the accused.

33. Learned trial Court after scrutinizing statement of the complainant in this regard and after examining the cheque (Ex. P-1) with returning endorsement (Ex. P-2) found that there is absolutely lack of banker's seal on endorsement memo (Ex.P.-2).

34. It is pertinent to mention here that even after committing initial error learned trial Court given appropriate opportunity to the complainant to examine Manager or any authorized Officer of the Punjab and Sindh Bank, the Banker's who returned the Cheque (Ex.P.-1) vide their endorsement memo (Ex.P.-2) under the caption "Fund Insufficient", but the complainant fail to comply. In such a situation endorsement memo (Ex.P.-2) has no evidently value as public document, but mere piece of paper.

35. The learned counsel for the applicant could not point out any other illegality or perversity in the impugned judgment as discussed above. It is a well-settled principle of law that unless the judgment of acquittal is palpably wrong and grossly unreasonable, interference in the application for leave to file appeal by private complainant is not called for.

36. The application for grant of leave to appeal is, therefore, dismissed summarily.

Application dismissed.