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स्थान नियंत्रण अधिनियम, म.प्र. (1961 का 41), धारा 13(2) – माड़ा जमा करना – माड़े का बकाया – किरायेदार उक्त आधारों पर प्रकरण में बचाव करना चाहता है, तब भी ऐसी स्थिति में वह अधिनियम की धारा 13(1) के उपबंध अनुसार माड़ा जमा करने के लिये बाध्य है जैसा कि आक्षेपित आदेश में निदेशित किया गया है। (अनिल कुमार गुप्ता वि. शिवचरण गुप्ता) ...2066

Accommodation Control Act, M.P. (41 of 1961), Section 13(6) – Striking off defence – **Petitioner who has challenged the relationship of landlord and tenant in the matter and claiming such possession under his title has a right to defend the suit of eviction under the general law but in view of such pleadings of the written statement, he is not entitled to defend the matter on the ground enumerated u/s 12(1)(a) to 12(1)(p)of the Act. [Anil Kumar Gupta Vs. Shivcharan Gupta] ...2066**

स्थान नियंत्रण अधिनियम, म.प्र. (1961 का 41), धारा 13(6) – बचाव को अलग कर देना – याची जिसने मामले में भूमिस्वामी और किरायेदार के संबंध को चुनौती दी है और अपने हक के अंतर्गत उक्त कब्जे का दावा कर रहा है, उसे सामान्य विधि के अंतर्गत बेदखली के वाद का बचाव करने का अधिकार है परंतु लिखित कथन के उक्त अभिवचनों को दृष्टिगत रखते हुए वह अधिनियम की धारा 12(1)(ए) से 12(1)(पी) के अंतर्गत प्रगणित आधार पर मामले का बचाव करने के लिये हकदार नहीं। (अनिल कुमार गुप्ता वि. शिवचरण गुप्ता) ...2066

Arbitration and Conciliation Act (26 of 1996), Section 11(6) – Appointment of Arbitrator – **Applicant's application to release the amount due to it denied on the ground that he has not resorted to the specified procedure of conciliation, hence are not admissible – Request made by the applicant to appoint an Arbitrator failed to evoke any response – Hence, this application – Held – From perusal of clause 25 of the agreement, recourse to conciliation is not mandatory – Contention of non-applicant that the dispute between the party has not arisen, cannot be accepted – As per clause 25(vi), dispute between the party shall be referred for adjudication through the arbitrator to be**

appointed by the Chief Engineer – Application allowed – Chief Engineer, B.S.N.L. is directed to appoint an Arbitrator within 30 days. [Dharmendra Singh (M/s.) Vs. Bharat Sanchar Nigam Ltd.] ...1961

माध्यस्थम् और सुलह अधिनियम (1996 का 26), धारा 11(6) – मध्यस्थ की नियुक्ति – आवेदक द्वारा उसे देय रकम मुक्त किये जाने हेतु आवेदन इस आधार पर अस्वीकार किया गया कि उसने सुलह की विनिर्दिष्ट प्रक्रिया का अवलंब नहीं लिया, अतः ग्राह्य नहीं – मध्यस्थ को नियुक्त किये जाने हेतु आवेदक के निवेदन का कोई जबाव नहीं दिया गया – इस कारण यह आवेदन – अभिनिर्धारित – करार के खंड 25 का परिशीलन करने पर, सुलह का अवलंब लेना आज्ञापक नहीं – अनावेदक का तर्क कि पक्षकार के बीच विवाद उत्पन्न नहीं हुआ है, स्वीकार नहीं किया जा सकता – खंड 25(vi) के अनुसार पक्षकार के मध्य विवाद को मुख्य अभियंता द्वारा नियुक्त मध्यस्थ के द्वारा न्यायनिर्णित किये जाने हेतु निर्देशित किया जायेगा – आवेदन मंजूर – मुख्य अभियंता, बी.एस.एन.एल. को 30 दिनों के भीतर मध्यस्थ नियुक्त करने के लिये निदेशित किया गया। (धर्मेन्द्र सिंह (मे.) वि. भारत संचार निगम लि.) ...1961

Arbitration and Conciliation Act (26 of 1996), Section 11(6) – Procedure for appointment of Arbitrators **– Held – When the procedure mentioned in the agreement agreed upon by the parties is not fulfilled by a party, application can be filed for appointment of Arbitrator – If the said procedure is not fulfilled, Section 11(6) needs to be invoked. [Anant Electricals (M/s.) Vs. Bharat Sanchar Nigam Ltd.] ...2271**

माध्यस्थम् और सुलह अधिनियम (1996 का 26), धारा 11(6) – मध्यस्थ की नियुक्ति के लिये प्रक्रिया – अभिनिर्धारित – यदि किसी पक्षकार द्वारा अनुबंध में उल्लिखित प्रक्रिया जिस पर पक्षकारों द्वारा सहमति दी गयी थी, को पूरा नहीं किया जाता है तब मध्यस्थ की नियुक्ति हेतु आवेदन प्रस्तुत किया जा सकता है – यदि उक्त प्रक्रिया को पूरा नहीं किया जाता, धारा 11(6) का अवलंब लेने की आवश्यकता है। (अनंत इलेक्ट्रिकल्स् (मे.) वि. भारत संचार निगम लि.) ...2271

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करने की आवश्यकता नहीं। (अशोक वि. मे. संघी ब्रदर्स (इंदौर) लि.) ...2080

Arbitration and Conciliation Act (26 of 1996), Sections 44, 45 – Binding Contract – **For a binding contract written agreement is not necessary but from the contemporaneous correspondence exchanged between the parties "consensus ad idem" should be clearly spelt out, it cannot be said that an agreement had come in existence – The correspondence between the parties also indicate that till 22.09.2008 the parties were at the negotiation stage and final terms were not arrived at between them. [British Marine PLC. London Vs. Agrawal Coal Corporation Pvt. Ltd.] (DB)...1941**

माध्यस्थम् और सुलह अधिनियम (1996 का 26), धाराऐं 44, 45 – बाध्यकारी करार – बाध्यकारी करार के लिये लिखित करार आवश्यक नहीं किन्तु पक्षकारों के मध्य किये गये समकालीन पत्राचार से "एक ही अर्थ में मतैक्य" स्पष्ट रुप से निकलना चाहिये, यह नहीं कहा जा सकता कि करार अस्तित्व में आ गया है – पक्षकारों के मध्य पत्राचार यह भी दर्शाता है कि 22.09.2008 तक पक्षकार बातचीत के प्रक्रम पर थे और उनके बीच अंतिम शर्तें तय नहीं की गयी थी। (ब्रिटिश मैरिन् पी.एल.सी. लंदन वि. अग्रवाल कोल कारपोरेशन प्रा. लि.) **(DB)...1941**

Arbitration and Conciliation Act (26 of 1996), Sections 44, 45 – Collusion – **It is not enough to state in general term that there was "collusion" – Said allegation made by the appellant lacks in material pleading to substantiate the plea of "collusion" – It cannot be held that the respondent No. 2 has colluded with the respondent No. 1. [British Marine PLC. London Vs. Agrawal Coal Corporation Pvt. Ltd.] (DB)...1941**

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Arbitration and Conciliation Act (26 of 1996), Sections 44, 45 & 50 – **Reference of subject matter of suit filed by respondent No. 1 to arbitration – Held – Before referring the dispute for arbitration u/s 45 of the Act, the judicial authority must examine the existence of arbitration agreement between the parties – Section 45 can be invoked**

only if it is found that such an arbitration agreement is not null and void, inoperative and incapable of being performed. [British Marine PLC. London Vs. Agrawal Coal Corporation Pvt. Ltd.] (DB)...1941

माध्यस्थम् और सुलह अधिनियम (1996 का 26), धाराऐं 44, 45 व 50 – प्रत्यर्थी क्र. 1 द्वारा प्रस्तुत वाद की विषयवस्तु को माध्यस्थम को निर्दिष्ट किया जाना – अभिनिर्धारित – अधिनियम की धारा 45 के अंतर्गत माध्यस्थम हेतु विवाद निर्दिष्ट करने से पूर्व न्यायिक प्राधिकारी को पक्षकारों के मध्य माध्यस्थम करार के अस्तित्व का परीक्षण करना चाहिये – धारा 45 का अवलम्ब केवल तब लिया जा सकता है यदि यह पाया जाता है कि उक्त माध्यस्थम करार शून्य व अकृत, अप्रवर्तनीय एवं पूरा करने के लिये अक्षम नहीं है। (ब्रिटिश मैरिन् पी.एल.सी. लंदन वि. अग्रवाल कोल कारपोरेशन प्रा. लि.) (DB)...1941

Arms Act (54 of 1959), Section 25(1B)(a) – Seizure of fire Arms **– Neither seized nor any sanction to prosecute under Arms Act was obtained from the District Magistrate – Conviction u/s 27 of the Arms Act cannot be sustained. [Gulzar Ahmad @ Gulzar Khan Vs. State of M.P.] (DB)...2268**

आयुध अधिनियम (1959 का 54), धारा 25(1बी)(ए) – आग्नेयास्त्र की जब्ती – न तो जब्ती की गयी और न ही आयुध अधिनियम के अंतर्गत अभियोजित किये जाने हेतु जिला मजिस्ट्रेट से कोई मंजूरी ली गई – आयुध अधिनियम की धारा 27 के अंतर्गत दोषसिद्धि कायम नहीं रखी जा सकती। (गुलजार अहमद उर्फ गुलजार खान वि. म.प्र. राज्य) (DB)...2268

Bhumi Vikas Rules, M.P. 2012, Rule 26(9) – Licensing of Engineer – Competence of Architect **– Distinction made between the scope of licence to be granted to Civil Engineers and Architects is discriminatory and hit by Article 14 of Constitution of India – Clause (C) of sub Rule (9) of Rule 26 struck down and further declared that sub rule (9) Clause (A) would apply *proprio vigore* to Engineers as in the case of Architects for grant of licence. [Association of Civil Engineers of Madhya Pradesh (Bhopal Unit) Vs. State of M.P.] (DB)...2085**

भूमि विकास नियम, म.प्र. 2012, नियम 26(9) – अभियंता का अनुज्ञापन – वास्तुविद की सक्षमता – सिविल अभियंता और वास्तुविद को प्रदान की जाने वाली अनुज्ञप्ति की व्याप्ति के मध्य भेद किया गया जो कि भेदभावपूर्ण है और भारत के संविधान के अनुच्छेद 14 द्वारा प्रभावित होता है – नियम 26 का उपनियम (9) का खंड (सी) अभिखंडित और आगे घोषित किया गया कि उप नियम (9) खंड (ए), अनुज्ञप्ति प्रदान किये जाने हेतु अभियंताओं पर स्वबल से लागू होगा जैसा कि

वास्तुविदों के मामले में होता है। (एसोसिएशन ऑफ सिविल इंजीनियर्स ऑफ मध्यप्रदेश (भोपाल यूनिट) वि. म.प्र. राज्य) (DB)...2085

Civil Procedure Code (5 of 1908), Section 9 – Jurisdiction – **Since the correspondence has been done from Indore where registered office is located – Part of action has arisen at Indore – Therefore, Civil Court, Indore has jurisdiction. [British Marine PLC. London Vs. Agrawal Coal Corporation Pvt. Ltd.]** (DB)...1941

सिविल प्रक्रिया संहिता (1908 का 5), धारा 9 – क्षेत्राधिकार – चूंकि इंदौर से पत्राचार हुआ जहां पंजीकृत कार्यालय स्थित है – कार्यवाही का भाग इंदौर में उत्पन्न हुआ है – अतः, इंदौर सिविल न्यायालय का क्षेत्राधिकार है। (ब्रिटिश मैरिन् पी.एल.सी. लंदन वि. अग्रवाल कोल कारपोरेशन प्रा. लि.) (DB)...1941

Civil Procedure Code (5 of 1908), Section 9, Land Revenue Code, M.P. (20 of 1959), Section 257(2x) – Suit for declaration of Bhumiswami rights – **Suit for declaration of Bhumiswami right and possession in respect of agricultural land is maintainable – Such suit not barred under Section 257 of M.P.L.R. Code. [Om Prakash Vs. Ashok Kumar]** ...2119

सिविल प्रक्रिया संहिता (1908 का 5), धारा 9, भू राजस्व संहिता, म.प्र. (1959 का 20), धारा 257(2x) – भूमिस्वामी अधिकारों की घोषणा हेतु वाद – कृषि भूमि के संबंध में भूमिस्वामी अधिकार एवं कब्जे की घोषणा हेतु वाद पोषणीय है – उक्त वाद, म.प्र. भू- राजस्व संहिता की धारा 257 के अधीन वर्जित नहीं। (ओम प्रकाश वि. अशोक कुमार) ...2119

Civil Procedure Code (5 of 1908), Sections 15 to 20 & Succession Act (39 of 1925), Sections 371 & 372 – Jurisdiction of the Succession Court to grant certificate – **Held – For conferring jurisdiction upon a succession court, claimant is required to satisfy the court that the deceased at the time of his death was residing permanently/ordinarily within the local jurisdiction of that court or the property of the deceased is situated within the local jurisdiction of that court and he at the time of his death had no fixed place of residence – Deceased was found to be resident of two places and having property at both the places – Both the court is having jurisdiction to grant succession certificate. [Jag Mohan Tripathi Vs. Baba Annapurna Das Katthiya Baba]** ...2311

सिविल प्रक्रिया संहिता (1908 का 5), धाराऐं 15 से 20 व उत्तराधिकार

अधिनियम (1925 का 39), धाराऐं 371 व 372 – उत्तराधिकार न्यायालय की प्रमाण पत्र प्रदान करने की अधिकारिता – अभिनिर्धारित – उत्तराधिकार न्यायालय की अधिकारिता दर्शाने हेतु, दावाकर्ता को न्यायालय की संतुष्टि करनी चाहिये कि मृतक अपनी मृत्यु के समय उस न्यायालय की स्थानीय अधिकारिता में स्थाई/सामान्य रुप से निवासरत था या मृतक की सम्पत्ति उक्त न्यायालय की स्थानीय अधिकारिता के भीतर स्थित है और मृत्यु के समय उसके पास निवास का कोई निश्चित स्थान नहीं था – मृतक को दो स्थानों का निवासी पाया गया और दोनों स्थानों पर उसके पास सम्पत्ति थी – दोनों न्यायालयों को उत्तराधिकार प्रमाण पत्र प्रदान करने की अधिकारिता है। (जग मोहन त्रिपाठी वि. बाबा अन्नपूर्णा दास कत्थिया बाबा) ...2311

Civil Procedure Code (5 of 1908), Section 100, Specific Relief Act (47 of 1963), Section 34 – Declaration **– Defendants had purchased the suit lands from the mother of the plaintiff – Therefore, they are bound by the act and representation of the guardian of the plaintiff and they are estopped from contending that the plaintiff has no right, title and interest in respect of the suit lands. [Vijay Bahadur Singh Vs. Rameshwar] ...1879**

सिविल प्रक्रिया संहिता (1908 का 5), धारा 100, विनिर्दिष्ट अनुतोष अधिनियम (1963 का 47), धारा 34 – घोषणा – प्रतिवादियों ने वादी की माताजी से वाद भूमियों का क्रय किया था – इसलिए, वे वादी के संरक्षक की कार्यवाही और अभ्यावेदन द्वारा बाध्य है और वह यह तर्क करने से विबंधित है कि वाद भूमियों के संबंध में वादी का कोई अधिकार, हक एवं हित नहीं है। (विजय बहादुर सिंह वि. रामेश्वर) ...1879

Civil Procedure Code (5 of 1908), Order 1 Rule 10 – Necessary party **– On the date of filing the suit, no cause of action was stated in the plaint against the proposed defendant – Held – No averment regarding any date or specific cause of action which is available to the petitioner against the proposed defendant, has been pleaded – In the lack of any cause of action against the proposed defendant, such person could not be said to be the necessary party to adjudicate the present suit. [Abdul Rajjak Vs. Smt. Archana] ...2309**

सिविल प्रक्रिया संहिता (1908 का 5), आदेश 1 नियम 10 – आवश्यक पक्षकार – वाद प्रस्तुतीकरण की तिथि को, प्रस्तावित प्रतिवादी के विरुद्ध वादपत्र में कोई वाद कारण उल्लिखित नहीं – अभिनिर्धारित – प्रस्तावित प्रतिवादी के विरुद्ध याची के पास उपलब्ध किसी तिथि या विनिर्दिष्ट वाद कारण के संबंध में प्रक्कथन का अभिवाक् नहीं – प्रस्तावित प्रतिवादी के विरुद्ध किसी वाद कारण के अभाव में, उक्त व्यक्ति को, वर्तमान वाद न्यायनिर्णित करने के लिये आवश्यक पक्षकार नहीं

कहा जा सकता। (अब्दुल रज्जाक वि. श्रीमती अर्चना) ...2309

Civil Procedure Code (5 of 1908), Order 2 Rule 2 – Second Counter Claim – **Court had directed to remove defects in the first counter claim – First counter claim was withdrawn and second counter claim was filed – Held – In view of direction given by Court to remove defects, second counter claim has implied permission of Court – Res-judicata also does not apply. [Dataram Singh Vs. Brindawan Singh]** ...2348

सिविल प्रक्रिया संहिता (1908 का 5), आदेश 2 नियम 2 – द्वितीय प्रति दावा – प्रथम प्रति दावा में न्यायालय ने त्रुटियां हटाने के लिये निदेशित किया था – प्रथम प्रति दावा वापस लिया गया और द्वितीय प्रति दावा प्रस्तुत किया गया – अभिनिर्धारित – त्रुटियां हटाने के लिये न्यायालय द्वारा दिये गये निदेश को दृष्टिगत रखते हुए, द्वितीय प्रति दावा को न्यायालय की विवक्षित अनुमति है – पूर्व न्याय भी लागू नहीं होता। (दाताराम सिंह वि. ब्रिन्दावन सिंह) ...2348

Civil Procedure Code (5 of 1908), Order 6 Rule 17 – Amendment at Appellate Stage – **Application for amendment was filed after 28 years from the date of institution of the suit with a view to fill up the lacunae – Same is impermissible in law – Possession claimed in the suit is barred by Limitation. [Vijay Bahadur Singh Vs. Rameshwar]** ...1879

सिविल प्रक्रिया संहिता (1908 का 5), आदेश 6 नियम 17 – अपीली प्रक्रम पर संशोधन – वाद संस्थित करने की तिथि से 28 वर्ष पश्चात, कमियों को पूरा करने के उद्देश्य से संशोधन का आवेदन प्रस्तुत किया गया – यह विधि में अननुज्ञेय है – वाद में किया गया कब्जे का दावा परिसीमा द्वारा वर्जित है। (विजय बहादुर सिंह वि. रामेश्वर) ...1879

Civil Procedure Code (5 of 1908), Order 6 Rule 17 – See – Constitution – Article 227 **[Iqbal Vs. Mahila Rasidan]** ...2064

सिविल प्रक्रिया संहिता (1908 का 5), आदेश 6 नियम 17 – देखें – संविधान – अनुच्छेद 227 (इकबाल वि. महिला रसीदन) ...2064

Civil Procedure Code (5 of 1908), Order 6 Rule 17 – See – Constitution – Article 227 **[Mahendra Gupta Vs. Mohd. Yunus]** ...2284

सिविल प्रक्रिया संहिता (1908 का 5), आदेश 6 नियम 17 – देखें – संविधान – अनुच्छेद 227 (महेन्द्र गुप्ता वि. मोहम्मद यूनुस) ...2284

Civil Procedure Code (5 of 1908), Order 8 Rule 1 – Written Statement – Extension of Time – **Object is to expedite the hearing and**

not to scuttle the same – Provision is a part of procedural law and directory in nature – Permission cannot be granted as a matter of routine – Order extending time to file written statement set aside – Petition allowed. [Bismilla Bee Vs. Arjuman Aara] ...2341

सिविल प्रक्रिया संहिता (1908 का 5), आदेश 8 नियम 1 – लिखित कथन – समय बढ़ाया जाना – शीघ्रता से सुनवाई करना उद्देश्य है और न कि उसे विफल करना – उपबंध, प्रक्रियात्मक विधि का एक भाग है और निदेशात्मक स्वरुप का है – सामान्य रुप से अनुज्ञा प्रदान नहीं की जा सकती – लिखित कथन प्रस्तुत करने हेतु समय बढ़ाने का आदेश अपास्त – याचिका मंजूर। (बिस्मिल्ला बी वि. अर्जुमन आरा) ...2341

Civil Procedure Code (5 of 1908), Order 26 Rule 9 – Appointment of Commissioner **– Application for appointment of Commissioner was rejected by trial court – Another application was filed before Appellate Court hearing appeal against the judgment and decree – Held – Appellate Court ought to have heard the appeal first on merits and thereafter on the application and then decide the application first and subject to out come of such application, the judgment on merits be delivered by the Appellate Court but such process has not been adopted by the Appellate Court – Impugned order being perverse is not sustainable and deserves to be set aside. [Dharam Das Rai Vs. Chief Municipal Officer] ...1794**

सिविल प्रक्रिया संहिता (1908 का 5), आदेश 26 नियम 9 – आयुक्त की नियुक्ति – आयुक्त की नियुक्ति किये जाने हेतु आवेदन को विचारण न्यायालय द्वारा अस्वीकार कियां गया – निर्णय और डिक्री के विरुद्ध अपील सुननें वाले अपीली न्यायालय के समक्ष फिर एक आवेदन प्रस्तुत किया गया – अभिनिर्धारित – अपीली न्यायालय को पहले गुणदोषों पर अपील सुननी चाहिए थी और तत्पश्चात आवेदन पर और तब आवेदन का पहले निपटारा करना चाहिये था और उक्त आवेदन के परिणाम के अधीन, अपीली न्यायालय को गुणदोषों पर निर्णय घोषित करना चाहिए किन्तु अपीली न्यायालय द्वारा उक्त प्रक्रिया का अवलंब नहीं लिया गया – आक्षेपित आदेश विपर्यस्त होने के नाते पोषणीय नहीं और अपास्त किये जाने योग्य है। (धरम दास राय वि. चीफ म्यूनिसिपल ऑफीसर) ...1794

Civil Procedure Code (5 of 1908), Order 39 Rules 1 & 2 **– The plea raised by the appellant that anti suit injunction cannot be granted and reliance has been placed upon 2003 (4) SCC 341, wherein Supreme Court has culled out the principles but nothing has been pointed out to show that said principles are violated. [British Marine PLC. London**

Vs. Agrawal Coal Corporation Pvt. Ltd.] (DB)...1941

सिविल प्रक्रिया संहिता (1908 का 5), आदेश 39 नियम 1 व 2 – अपीलार्थी द्वारा अभिवाक् उठाया गया कि वाद निरोधक व्यादेश प्रदान नहीं किया जा सकता और 2003 (4) SCC 341 पर विश्वास किया गया जिसमें उच्चतम न्यायालय ने सिद्धांतों को एकत्रित किया था परंतु यह दर्शाने के लिये कुछ भी प्रकट नहीं किया गया है कि उक्त सिद्धांतों का उल्लंघन हुआ है। (ब्रिटिश मैरिन् पी.एल.सी. लंदन वि. अग्रवाल कोल कारपोरेशन प्रा. लि.) (DB)...1941

Civil Procedure Code (5 of 1908), Order 41 Rule 23 – Remand **– Held – First Appellate Court ordering remand of the case for fresh decision instead of deciding it on merit is an erroneous exercise of jurisdiction – Decree is not sustainable in the eye of law – Appeal allowed. [Murari Lal Vs. Ram Kumar Ojha] ...2162**

सिविल प्रक्रिया संहिता (1908 का 5), आदेश 41 नियम 23 – प्रतिप्रेषण – अभिनिर्धारित – प्रथम अपीली न्यायालय द्वारा गुणदोषों पर न्यायनिर्णित करने की बजाये नये सिरे से निर्णित करने हेतु प्रकरण को प्रतिप्रेषित करने का आदेश, अधिकारिता का त्रुटिपूर्ण उपयोग है – विधि की दृष्टि से डिक्री पोषणीय नहीं – अपील मंजूर। (मुरारी लाल वि. राम कुमार ओझा) ...2162

Civil Procedure Code (5 of 1908), Order 41 Rule 23-A – Remand in other cases **– Held – If the first appellate court intended to remand the case to the trial court, it was required to first reverse the findings of the trial court on issues and thereafter upon conclusion that retrial was necessary, the said jurisdiction could have been invoked – Further held that by choosing to remand the case without reversing the findings of the trial court, the First Appellate Court has committed patent error of law – Impugned judgment set aside. [Shivdayal Vs. Meena Bai] ...2174**

सिविल प्रक्रिया संहिता (1908 का 5), आदेश 41 नियम 23–ए – अन्य प्रकरणों में प्रतिप्रेषण – अभिनिर्धारित – यदि प्रथम अपीली न्यायालय का आशय, विचारण न्यायालय को प्रकरण प्रतिप्रेषित करना था, तब उसे विवाद्यकों पर विचारण न्यायालय के निष्कर्षों को पहले पलट देना अपेक्षित था और तत्पश्चात इस निष्कर्ष पर कि पुनः विचारण आवश्यक है, उक्त अधिकारिता का अवलंब लिया जा सकता था – आगे अभिनिर्धारित किया गया कि अपीली न्यायालय ने विचारण न्यायालय के निष्कर्षों को पलटाये बिना प्रकरण प्रतिप्रेषित करना चुनकर विधि की प्रकट भूल कारित की है – आक्षेपित निर्णय अपास्त। (शिवदयाल वि. मीना बाई) ...2174

Civil Services (Classification, Control and Appeal) Rules, M.P. 1966, Rule 9 – Suspension **– Sufficient reasons disclosed in the suspension**

order – Mere non mention of "in contemplation of enquiry" will not vitiate the suspension order. [Bhupal Singh Vs. State of M.P.] ...2069

सिविल सेवा (वर्गीकरण, नियंत्रण और अपील) नियम, म.प्र. 1966, नियम 9 – निलंबन – निलंबन आदेश में पर्याप्त कारण दर्शाये गये हैं – मात्र " जांच विचाराधीन रहते हुए" का उल्लेख नहीं किये जाने से निलंबन आदेश दूषित नहीं होगा। (भूपाल सिंह वि. म.प्र. राज्य) ...2069

Civil Services (Classification, Control and Appeal) Rules, M.P. 1966, Rule 9(1) & 9(1)(a) – Suspension **– Competence of Divisional Commissioner to place Class-I Gazetted Officer under suspension – Held – It is within the competence of Divisional Commissioner to impose minor penalties on Class-I and Class-II Gazetted Officer and also to place them under suspension – Power of the same has been delegated to him by notification dated 13.08.1977 and 02.08.1999. [Bhupal Singh Vs. State of M.P.] ...2069**

सिविल सेवा (वर्गीकरण, नियंत्रण और अपील) नियम, म.प्र. 1966, नियम 9(1) व 9(1)(ए) – निलम्बन – प्रथम श्रेणी राजपत्रित अधिकारी को निलंबन में रखने की संभागीय आयुक्त की सक्षमता – अभिनिर्धारित – प्रथम श्रेणी एवं द्वितीय श्रेणी राजपत्रित अधिकारी पर लघु शास्तियां अधिरोपित करने के लिये तथा उन्हें निलंबन में रखने के लिये संभागीय आयुक्त सक्षम है – उक्त शक्ति उसे अधिसूचना दि. 13.08.1977 एवं 02.08.1999 द्वारा प्रतिनिहित की गयी है। (भूपाल सिंह वि. म.प्र. राज्य) ...2069

Civil Services (Pension) Rules, M.P. 1976, Rule 9(6) – Interest on retiral dues – Entitlement **– Delay in making payment of retiral dues – Lodging of complaint against the petitioner in the office of the Lokayukt – Case against petitioner was closed – Mere recording of a complaint against the petitioner and starting an investigation by the Economic Offences Bureau or Lokayukta was not constitution of a criminal proceedings against the petitioner in terms of the definition of judicial proceedings indicated in Rule 9(6) of the Rules aforesaid – There was unauthorized delay in making the payment of retiral dues to the petitioner – Petitioner entitled to interest @ 8% on amount of retiral dues. [Aditya Mishra Vs. State of M.P.] ...1756**

सिविल सेवा (पेंशन) नियम, म.प्र. 1976, नियम 9(6) – सेवानिवृत्ति अवशेषों पर ब्याज – हकदारी – सेवा निवृत्ति अवशेषों के भुगतान में विलम्ब – लोकायुक्त कार्यालय में याची के विरुद्ध शिकायत दर्ज – याची के विरुद्ध प्रकरण बंद किया गया – याची के विरुद्ध मात्र शिकायत को अभिलिखित किया जाना और आर्थिक अपराध

ब्यूरो या लोकायुक्त द्वारा अन्वेषण आरंभ किया जाना, उपरोक्त नियम के नियम 9(6) में अंकित न्यायिक कार्यवाही की परिभाषा के अंतर्गत, याची के विरुद्ध दाण्डिक कार्यवाही का गठन नहीं था – याची के सेवा निवृत्ति अवशेषों के भुगतान में अनाधिकृत विलम्ब था – याची सेवा निवृत्ति अवशेषों की रकम पर 8 प्रतिशत की दर से ब्याज का हकदार। (आदित्य मिश्रा वि. म.प्र. राज्य) ...1756

Civil Services – Promotion – **Petitioner was appointed on the post of Sub-Inspector in general category – Later on, petitioner came to know that "Chhattri" caste is in Scheduled Tribe – Since the petitioner is under the category of Schedule Tribe, the benefit for which a candidate of Schedule Tribe is entitled, be given to the petitioner at the time of promotion – Held – Respondents were directed that if found that the petitioner is entitled for the benefit on the basis of a candidate of Schedule Tribe, then the same be given to the petitioner as well. [Ashok Rangshahi Vs. State of M.P.]** ...1751

सिविल सेवा – पदोन्नति – याची को उप–निरीक्षक के पद पर सामान्य श्रेणी में नियुक्त किया गया – बाद में, याची को पता चला कि "छत्तरी" जाति, अनुसूचित जनजाति में आती है – चूंकि याची अनुसूचित जनजाति की श्रेणी के अंतर्गत आता है, याची को पदोन्नति के समय लाभ दिया जाना चाहिए जिसके लिये अनुसूचित जनजाति का अभ्यर्थी हकदार है – अभिनिर्धारित – प्रत्यर्थीगण को निदेशित किया गया कि यदि यह पाया जाता है कि याची अनुसूचित जनजाति का अभ्यर्थी होने के आधार पर लाभ का हकदार है, तब उक्त लाभ याची को भी दिया जाये। (अशोक रंगशाही वि. म.प्र. राज्य) ...1751

Civil Services (Special Provision for Appointment of Women), M.P. Rules, 1997, Rule 3 & Lok Seva (Anusuchit Jatiyon, Anusuchit Jan Jatiyon Aur Anya Pichhade Vargon Ke Liye Arakshan) Adhiniyam, M.P. (21 of 1994), Section 4(4) – **Grievance of the petitioner is that, instead of accommodating the petitioner (though O.B.C.) in General Category, the candidates below the rank of petitioner and receiving less marks than the petitioner are being selected in General Category – Held – Out of 564 posts of Homeopathy Medical Officer, 265 posts are reserved for women candidates of all categories i.e. horizontal reservation – Therefore, candidates of one category even if obtain higher marks than that of General Category cannot seek migration to General Category posts – Respondents cannot be directed to adjust the petitioner against General Category seat. [Sunita Thakre (Dr.) Vs. State of M.P.]** ...1831

सिविल सेवा (महिलाओं की नियुक्ति के लिये विशेष उपबंध), म.प्र., नियम 1997, नियम 3 व लोक सेवा (अनुसूचित जातियों, अनुसूचित जनजातियों और अन्य पिछड़े वर्गों के लिये आरक्षण) अधिनियम, म.प्र., (1994 का 21), धारा 4(4) – याची की शिकायत है कि याची को सामान्य श्रेणी में (अ.पि.व. होते हुये भी) स्थान दिये जाने की बजाय, याची से निम्न क्रम के एवं याची से कम अंक प्राप्त करने वाले अभ्यर्थियों का चयन सामान्य श्रेणी में किया गया – अभिनिर्धारित – होमियोपैथी चिकित्सा अधिकारी के 564 पदों में से 265 पद, सभी श्रेणियों की महिलाओं के लिये आरक्षित है अर्थात क्षैतिज आरक्षण – अतः एक श्रेणी के अभ्यर्थीगण, भले ही सामान्य श्रेणी वाले अभ्यर्थियों से अधिक अंक प्राप्त करते हैं, वह सामान्य श्रेणी के पदों पर प्रव्रजन नहीं मांग सकते – सामान्य श्रेणी के पद पर याची को समायोजित करने के लिए प्रत्यर्थीगण को निदेशित नहीं किया जा सकता। (सुनीता ठाकरे (डॉ.) वि. म. प्र. राज्य) ...1831

***Commercial Tax Act, M.P. 1994 (5 of 1995), Section 69(3) – Penalty* – Petitioner filed his return and calculated the tax but paid less than 80% of the tax – Non-deposit of tax made him defaulter within the definition of Section 69, so as to call the return filed by him as a false return – Section 26 & 69 deals with different situations – However, penalty is reduced from 5 times to 3 times. [Hindustan Lever Ltd. (M/s.) Vs. Assistant Commissioner, Commercial Tax] (DB)...1715**

वाणिज्यिक कर अधिनियम, म.प्र. 1994 (1995 का 5), धारा 69(3) – शास्ति – याची ने कर की गणना कर अपनी विवरणी दाखिल की किन्तु कर का 80 प्रतिशत से कम का भुगतान किया – धारा 69 की परिभाषा में कर जमा न करने के कारण उसे व्यतिक्रमी बना दिया जिससे कि उसके द्वारा दाखिल की गई विवरणी को मिथ्या विवरणी कहा जायेगा – धारा 26 व 69 भिन्न परिस्थितियों में लागू होती हैं – अतः शास्ति 5 गुना से घटाकर 3 गुना की गई। (हिन्दुस्तान लीवर लि. (मे.) वि. असिस्टेन्ट कमिश्नर, कमर्शियल टैक्स) (DB)...1715

***Constitution – Article 16 – Higher Pay Scale – Scheme for* – Employee who had completed 9 years of service on same post without promotion – Denial to petitioner on ground of adverse entries recorded against him in his ACR – Industrial Court in its order stated that there was no reason to record adverse entries against petitioner – Said order was affirmed by High Court – Denial not proper – Direction given to respondent to consider case of petitioner for grant of benefit of higher pay scale. [Abid Hassan Vs. M.P. Electricity Board] ...*15**

संविधान – अनुच्छेद 16 – उच्चतर वेतनमान – के लिये योजना – कर्मचारी

जिसने बिना पदोन्नती उसी पद पर 9 वर्ष की सेवा पूर्ण कर ली है – याची को उसके विरुद्ध एसीआर मे प्रतिकूल प्रविष्टियों के आधार पर अस्वीकार किया जाना – औद्योगिक न्यायालय ने अपने आदेश में कहा कि याची के विरुद्ध प्रतिकूल प्रविष्टियां अभिलिखित करने का कोई कारण नहीं था – उक्त आदेश उच्च न्यायालय द्वारा अभिपुष्ट – अस्वीकृति उचित नहीं – प्रत्यर्थी को निदेश कि उच्चतर वेतनमान का लाभ प्रदान करने हेतु याची के प्रकरण पर विचार करें। (आबिद हसन वि. एम.पी. इलेक्ट्रिसिटी बोर्ड) ...*15

Constitution – Article 21 – Meaningful living – House – **M.P. Housing Board did not construct the house in accordance with specifications and also did not affix the fixtures as per specifications – Housing Board directed to pay compensation of Rs. 5,00,000/-, Rs. 25,000/- by way of cost and Rs. 5,000/- towards counsel fee. [Shakuntala Bhadouria Vs. M.P. Griha Nirman Mandal] (DB)...1706**

संविधान – अनुच्छेद 21 – सार्थक जीवनयापन – मकान – म.प्र. गृह निर्माण मंडल ने मकान का निर्माण कार्य, विनिर्दिष्टियों के अनुसार नहीं किया है और फिक्सचर भी विनिर्दिष्टियों के अनुसार नहीं लगाये गये हैं – प्रतिकर रु. 5,00,000/–, व्यय के माध्यम से रु. 25,000/– और अधिवक्ता फीस की ओर रु. 5,000/– का भुगतान करने के लिए गृह निर्माण मंडल को निदेशित किया गया। (शकुन्तला भदौरिया वि. म.प्र. गृह निर्माण मंडल) **(DB)...1706**

Constitution – Article 22(5) – See – National Security Act, 1980, Sections 8 & 14 **[Bhaiya @ Bhaiyalal @ Arvind Vs. State of M.P.] (DB)... 1730**

संविधान – अनुच्छेद 22(5) – देखें – राष्ट्रीय सुरक्षा अधिनियम, 1980, धाराऐं 8 व 14 (भैया उर्फ भैयालाल उर्फ अरविन्द वि. म.प्र. राज्य) **(DB)...1730**

Constitution – Article 226 – Fixation of Price of Land – Allotment or Registration – Self Financing Schemes – Drawal of Lottery – **Applicant is required to pay 10% of the price at the time of allotment and remaining in installments which are already fixed – Nothing is required by the Board thereafter – Process of Registration is in fact a process of allotment – Collector's guidelines to determine the price of land as existing at the time of registration may properly be taken into consideration to determine price of land – To use Collector's guidelines as existing on the date of handing over of possession as such is to allow the Board to earn profit, which is contrary to the concept of Self Financing Scheme. [M.P. Housing & Infrastructure Development Board Vs. Dr. Sudha Jain] (DB)...2012**

संविधान – अनुच्छेद 226 – भूमि की कीमत का निर्धारण – आवंटन या पंजीकरण – स्व -वित्तीय योजनायें – लॉटरी निकालना – आवंटन के समय कीमत का 10 प्रतिशत भुगतान आवेदक से अपेक्षित है और शेष किस्तों में जो पहले से निर्धारित है – इसके पश्चात बोर्ड द्वारा कुछ अपेक्षित नहीं – पंजीकरण की प्रक्रिया वास्तव में आवंटन की प्रक्रिया है – भूमि की कीमत निर्धारित करने के लिये, भूमि की कीमत निर्धारित करने के कलेक्टर के दिशा निदेश जैसा कि पंजीकरण के समय विद्यमान हो, को उचित रुप से विचार में लिया जा सकता है – कब्जा देने की तिथि को कलेक्टर के विद्यमान दिशा निदेशों का उपयोग करना ठीक उसी तरह से बोर्ड को लाभ अर्जित करने की अनुमति देना है, जो स्व-वित्तीय योजना की संकल्पना के विपरीत है। (एम.पी. हाउसिंग एण्ड इन्फ्रास्ट्रक्चर डव्हेलपमेन्ट बोर्ड वि. डॉ. सुधा जैन) (DB)...2012

Constitution – Article 226 – Investigation by C.B.I. **– Minor girl alleged to have been kidnapped by forest officials – In Habeas Corpus Petition, High Court initially found that investigation by Police is not proper – However, subsequently relying on statements of forest officials and ignoring the statements of eye witnesses, report was filed by police stating that she was not kidnapped – Habeas Corpus petition was accordingly dismissed – Considering the facts and circumstances, investigation handed over to C.B.I. [Alsia Pardhi Vs. State of M.P.] (SC)...1979**

संविधान – अनुच्छेद 226 – केन्द्रीय अन्वेषण ब्यूरों द्वारा जांच – अभिकथित रुप से वन कर्मचारियों द्वारा अल्पवयस्क बालिका का अपहरण – बंदी प्रत्यक्षीकरण याचिका में उच्च न्यायालय ने आंरभ मे पाया कि पुलिस द्वारा जांच उचित नहीं – किन्तु, तत्पश्चात, वन कर्मचारियों के कथनों पर विश्वास करते हुए और चक्षूदर्शी साक्षीगण के कथनों की अवहेलना करते हुए पुलिस द्वारा रिपोर्ट प्रस्तुत की गई, इस कथन के साथ कि उसका अपहरण नहीं हुआ था – तद्नुसार बंदी प्रत्यक्षीकरण याचिका खारिज की गई थी – तथ्यों और परिस्थितियों को विचार में लेते हुए, जांच केन्द्रीय अन्वेषण ब्यूरो को हस्तांतरित की गई। (अलसिया पारधी वि. म.प्र. राज्य) (SC)...1979

Constitution – Article 226 – Writ – Availability of alternative remedy **– Held – Petition can be entertained if the order suffers from violation of principles of natural justice, passed by incompetent authority – Further held, this is a matter of discretion and not of compulsion. [Lata Agrawal (Smt.) Vs. Indian Oil Corporation] ...2096**

संविधान – अनुच्छेद 226 – रिट – वैकल्पिक उपचार की उपलब्धता – अभिनिर्धारित – याचिका ग्राहय् हो सकती है यदि आदेश, नैसर्गिक न्याय के सिद्धांतों के उल्लंघन से ग्रस्त है, अक्षम प्राधिकारी द्वारा पारित किया गया है – आगे अभिनिर्धारित किया गया कि यह प्रकरण विवेकाधिकार का है और न कि अनिवार्यता

का। (लता अग्रवाल (श्रीमती) वि. इंडियन ऑयल कारपोरेशन) ...2096

Constitution – Article 226 – Writ Jurisdiction – Held – Highly disputed questions of fact cannot be adjudicated in a writ petition. [Hotel Adityaz Ltd. Vs. Madhya Pradesh Kshetra Vidyut Vitran Co. Ltd.] ...2353

संविधान – अनुच्छेद 226 – रिट अधिकारिता – अभिनिर्धारित – रिट याचिका में तथ्यों के अत्याधिक विवादित प्रश्नों को न्यायनिर्णित नहीं किया जा सकता। (होटल आदित्याज लि. वि. मध्यप्रदेश क्षेत्र विद्युत वितरण कं. लि.) ...2353

Constitution – Article 226 – Writ Petition – Alternate Remedy – The bar of alternative remedy is a self imposed restriction and it is not a fit case to direct the writ petitioners to avail the alternate remedy, specially when they have raised jurisdictional issues, alleged violation of principles of natural justice and have also given reasons as to why the alternate remedy is not effective and efficacious. [Madhya Pradesh Cricket Association Vs. Shri B.S. Solanki] ...1820

संविधान – अनुच्छेद 226 – रिट याचिका – वैकल्पिक उपचार – वैकल्पिक उपचार का वर्जन स्वयं अधिरोपित निर्बन्धन है और रिट याचीगण को वैकल्पिक उपचार का अवलंब लेने के लिये निदेशित करने के लिये यह उचित प्रकरण नहीं है विशेष रुप से तब जब उन्होंने क्षेत्राधिकार के विवाद्यक उठाये हैं, नैसर्गिक न्याय के सिद्धांतों का उल्लंघन अभिकथित किया है और वैकल्पिक उपचार क्यों प्रभावी एवं प्रभावकारी नहीं है, इसके कारण भी दिये हैं। (मध्य प्रदेश क्रिकेट एसोसिएशन वि. श्री बी.एस. सोलंकी) ...1820

Constitution – Articles 226, 14 – Contractual matter – Tender – While disposing of public property State must give equal opportunity to all concerned and endeavour to fetch the best available price in public interest. [Anand Chouksey Vs. State of M.P.] (DB)...1777

संविधान – अनुच्छेद 226, 14 – संविदा प्रकरण – निविदा – लोक सम्पत्ति का निपटारा करते समय राज्य को सभी संबंधितों को समान अवसर देना चाहिए और लोक हित में, सर्वोत्तम उपलब्ध कीमत निकालने का प्रयास करना चाहिए। (आनंद चौकसे वि. म.प्र. राज्य) (DB)...1777

Constitution – Article 227, Civil Procedure Code (5 of 1908), Order 6 Rule 17 – Amendment – Suit is pending under an order of remand passed by the appellate court with certain directions – On the same subject matter application under Order 6 Rule 17 was filed before appellate court which was dismissed – Held – Since the suit is being

tried under an order of remand passed by the appellate court to decide the matter afresh in accordance with the directions, trial Court did not have any authority to consider any application or circumstance contrary to the direction – The order of dismissal of application under Order 6 Rule 17, by the appellate court is having binding effect as res-judicata. [Iqbal Vs. Mahila Rasidan] ...2064

संविधान – अनुच्छेद 227, सिविल प्रक्रिया संहिता (1908 का 5), आदेश 6 नियम 17 – संशोधन – अपीली न्यायालय द्वारा कतिपय निदेशों के साथ पारित किये गये प्रतिप्रेषण के आदेशान्तर्गत वाद लंबित है – समान विषयवस्तु पर अपीली न्यायालय के समक्ष आवेदन, आदेश 6 नियम 17 के अंतर्गत प्रस्तुत किया गया था, जिसे खारिज किया गया – अभिनिर्धारित – चूंकि वाद का विचारण, निदेशों के अनुसार नये सिरे से मामला न्यायनिर्णित करने के लिये अपीली न्यायालय द्वारा पारित किये गये प्रतिप्रेषण के आदेश के अधीन किया जा रहा है, निदेशों के विपरीत किसी आवेदन या परिस्थिति को विचार में लेने के लिये विचारण न्यायालय को कोई प्राधिकार नहीं – अपीली न्यायालय द्वारा आदेश 6 नियम 17 के अंतर्गत आवेदन की खारिजी के आदेश का पूर्व न्याय के रुप मे बाध्यकारी प्रभाव है। (इकबाल वि. महिला रसीदन) ...2064

Constitution – Article 227, Civil Procedure Code (5 of 1908), Order 6 Rule 17 **– Suit for eviction was filed by the respondent/plaintiff – After recording the evidence of the parties, application seeking amendment in the written statement – Nothing has been explained as to why such a pleading could not be raised at the relevant time – Held – Petitioner who was aware of all such happenings has deliberately not made any pleading in the written statement and virtually has admitted that he was the sole tenant in the suit premises – Withdrawal of admission made earlier by petitioner, which would cause prejudice to the case of plaintiff by way of amendment, cannot be permitted – Petition dismissed. [Mahendra Gupta Vs. Mohd. Yunus] ...2284**

संविधान – अनुच्छेद 227, सिविल प्रक्रिया संहिता (1908 का 5), आदेश 6 नियम 17 – प्रत्यर्थी/वादी द्वारा बेदखली हेतु वाद प्रस्तुत किया गया – पक्षकारों का साक्ष्य अभिलिखित किये जाने के पश्चात, लिखित कथन में संशोधन चाहते हुए आवेदन – कोई स्पष्टीकरण नहीं दिया गया कि उक्त अभिवचन को सुसंगत समय पर क्यों नहीं उठाया जा सका था – अभिनिर्धारित – याची जो उक्त सभी तथ्यों से अवगत था, उसने जानबूझकर लिखित कथन में कोई अभिवचन नहीं किये और व्यवहारिक रुप से स्वीकार किया कि वाद परिसर में वह एकमात्र किरायेदार था – याची द्वारा पूर्व में की गयी स्वीकृति को संशोधन द्वारा वापस लेने की अनुमति नहीं

दी जा सकती जिससे वादी के प्रकरण पर प्रतिकूल प्रभाव कारित होगा – याचिका खारिज। (महेन्द्र गुप्ता वि. मोहम्मद यूनुस) ...2284

Constitution – Article 227, Hindu Marriage Act (25 of 1955), Section 24 – Interim maintenance – Power of Superintendence – Where the interlocutory order stood merged in the final order passed by the court below and that final order is upheld by this court – No justification for interference. [Jagdish Singh Sankhwar Vs. Archana] ...2338

संविधान – अनुच्छेद 227, हिन्दू विवाह अधिनियम (1955 का 25), धारा 24 – अंतरिम भरण-पोषण – अधीक्षण की शक्ति – जब निचले न्यायालय द्वारा पारित किये गये अंतिम आदेश में अंतर्वर्ती आदेश का विलय होता है और उस अंतिम आदेश को इस न्यायालय द्वारा अभिपुष्ट किया जाता है – हस्तक्षेप करना न्यायोचित नहीं। (जगदीश सिंह शंखवार वि. अर्चना) ...2338

Constitution – Article 227 – Power of Superintendence – Held – The basic purpose of exercising the said jurisdiction is to keep the courts below within the bounds of their authority – Interference can be made sparingly for the said purpose and not for correcting error of facts and law in a routine manner. [Dataram Singh Vs. Brindawan Singh] ...2348

संविधान – अनुच्छेद 227 – अधीक्षण की शक्ति – अभिनिर्धारित – उक्त अधिकारिता का प्रयोग करने का मूल प्रयोजन, निचले न्यायालयों को अपनी पाधिकारिता की सीमाओं के भीतर रखना है – उक्त प्रयोजन हेतु हस्तक्षेप, मितव्ययी रुप से करना चाहिए और न कि नैत्यक रुप में तथ्यों और विधि की त्रुटि का सुधार करने के लिये। (दाताराम सिंह वि. ब्रिन्दावन सिंह) ...2348

Constitution – Article 227 – Punishment – Judicial Review – Disproportionate – If major penalty imposed on an employee is disproportionate to the charges levelled against him, Court can look in the penalty and interfere in the order of penalty – It cannot be said that in any circumstances, interference in the order of penalty was not justified however, it would not be justified to remit back the matter now to the disciplinary authority for imposing any punishment to respondent No.1 – It is directed that on reinstatement respondent No. 1 would get 75% of back wages and all other consequential benefit – Amount already paid would be adjusted from the amount payable. [Union of India Vs. Ashok Kumar Tiwari] ...2290

संविधान – अनुच्छेद 227 – दण्ड – न्यायिक पुनर्विलोकन – अननुपातिक – यदि कर्मचारी पर अधिरोपित की गयी कठोर शास्ति, उस पर लगाये गये आरोपों के

अननुपातित है, न्यायालय शास्ति पर विचार करके शास्ति के आदेश में हस्तक्षेप कर सकता है – यह नहीं कहा जा सकता कि किसी परिस्थिति में, शास्ति के आदेश में हस्तक्षेप न्यायोचित नहीं, अपितु, प्रत्यर्थी क्र. 1 पर किसी दण्ड को अधिरोपित किये जाने हेतु अनुशासनिक प्राधिकारी को अब मामला प्रतिप्रेषित करना न्यायोचित नहीं होगा – यह निदेशित किया गया कि बहाल होने पर प्रत्यर्थी क्र. 1 को पिछले वेतन का 75 प्रतिशत और अन्य परिणामिक लाभ मिलेगा – पहले अदा की गयी रकम को देय रकम में समायोजित किया जायेगा। (यूनियन ऑफ इंडिया वि. अशोक कुमार तिवारी) ...2290

Constitution – Article 227 **– Trial Court imposed cost of Rs. 3,000/- for adjournment – Interference by High Court – Lower Court order within its jurisdiction – High Court should not interfere. [V.S. Jiamini (Dr.) Vs. Vinod Kumar Singh]** ...*16

संविधान – अनुच्छेद 227 – स्थगन हेतु विचारण न्यायालय ने रु. 3,000/– का खर्च अधिरोपित किया – उच्च न्यायालय द्वारा हस्तक्षेप – निचले न्यायालय का आदेश उसकी अधिकारिता के भीतर – उच्च न्यायालय को हस्तक्षेप नहीं करना चाहिये। (व्ही.एस. जियामिनी (डॉ.) वि. विनोद कुमार सिंह) ...*16

Constitution – Article 329, Representation of the People Act (43 of 1951), Sub-clause (6) of Section 1 of Section 100 **– Bar to interference by courts in electoral matters – If the Form has wrongly been rejected or accepted then, it is the ground for filing Election Petition – No relief can be granted in the petition. [Suresh Chandra Bhandari Vs. Commissioner, Election Commission of India]** ...2076

संविधान – अनुच्छेद 329, लोक प्रतिनिधित्व अधिनियम (1951 का 43), धारा 100 की धारा 1 का उपखंड (6) – निर्वाचन प्रकरणों में न्यायालयों के हस्तक्षेप का वर्जन – यदि फार्म को अनुचित रुप से अस्वीकार या स्वीकार किया गया है तब, यह निर्वाचन याचिका प्रस्तुत करने का आधार है – याचिका में कोई अनुतोष प्रदान नहीं किया जा सकता। (सुरेश चन्द्र भंडारी वि. कमिश्नर, इलेक्शन कमीशन ऑफ इंडिया) ...2076

Constitution – Article 342 – Majhi **– In view of the provision of Article 342 of the Constitution of India 'Majhi' is now declared to be Scheduled Tribe within the whole of the State. [Dhanraj Singh Pusam Vs. State of M.P.]** ...1761

संविधान – अनुच्छेद 342 – माझी – भारत के संविधान के अनुच्छेद 342 को दृष्टिगत रखते हुये, "माझी' को अब संपूर्ण राज्य के भीतर अनुसूचित जनजाति घोषित किया गया है। (धनराज सिंह पूसम वि. म.प्र. राज्य) ...1761

Contract – Grant of dealership **– Agreement provided that**

candidate must have at least amount of Rs. 15 lacs in Scheduled Bank – Petitioner was having sufficient amount in post office and in different banks, details of which were already disclosed – Termination of agency on the ground of non-availability of amount in "Scheduled" Bank improper – Petition allowed. [Lata Agrawal (Smt.) Vs. Indian Oil Corporation] ...2096

संविदा – डीलरशिप प्रदान की जाना – अनुबंध उपबंधित करता है कि उम्मीदवार के पास अनुसूचित बैंक में कम से कम रु. 15 लाख की राशि होनी चाहिए – याची के पास डाक घर और भिन्न बैंकों में पर्याप्त रकम थी, जिसके विवरण पहले ही प्रकट किये गये थे – "अनुसूचित" बैंक में रकम की अनुपलब्धता के आधार पर एजेंसी समाप्त की जाना अनुचित – याचिका मंजूर। (लता अग्रवाल (श्रीमती) वि. इंडियन ऑयल कारपोरेशन) **...2096**

***Court Fees Act (7 of 1870), Section 7 – Payment of Court Fees – Fixed Court Fees or Ad valorem Court Fee* – Held – The Court fees payable on plaint is to be decided on the basis of allegations made in the plaint and substantive relief sought – The question as to whether the suit valued by the plaintiff, is correctly arrived at or not, is of no consequence to the court at that stage – Pleadings in the suit have to be understood in entirety to draw the nexus of the ultimate relief sought for in the plaint – Mere on assumption being drawn, the plaint will not alleged to come in the way while the court examines and reaches the conclusions as regards the substantive relief – Further held, where a document which is misrepresentation of fraud as regard its character as well as its contents is a void document – Hence, plaintiff is required to pay fix court fees and not the ad valorem court fees. [Saya Jeet Vs. Balle Singh] ...2106**

न्यायालय फीस अधिनियम (1870 का 7), धारा 7 – न्यायालय फीस का भुगतान – निश्चित न्यायालय फीस या मूल्यानुसार न्यायालय फीस – अभिनिर्धारित – वादपत्र पर न्यायालय फीस के भुगतान का निर्धारण, वादपत्र में दिये गये अभिकथन एवं चाहे गये अनुतोष के आधार पर किया जायेगा – यह प्रश्न, कि क्या वादी द्वारा दिया गया वाद मूल्य सही तौर पर निकाला गया है अथवा नहीं, उस प्रक्रम पर न्यायालय के लिये परिणामिक नहीं – वादपत्र में चाहे गये अंतिम अनुतोष का संबंध निकालने के लिये वाद के अभिवचनों को संपूर्णता से समझना चाहिये – मात्र धारणा बनाये जाने से, न्यायालय द्वारा सारभूत अनुतोष के संबंध में परीक्षण करने एवं निष्कर्ष निकालते समय वादपत्र बाधा बनने का अभिकथन नहीं किया जायेगा – आगे अभिनिर्धारित किया गया कि जब कोई दस्तावेज जो कपट का दुर्व्यपदेशन है

जहां तक उसके स्वरुप एवं अंतर्वस्तु का संबंध है, वह शून्य दस्तावेज है – अतः, वादी को निश्चित न्यायालय फीस अदा करना अपेक्षित है और न कि मूल्यानुसार न्यायालय फीस। (साया जीत वि. बल्ले सिंह) ...2106

Criminal Procedure Code, 1973 (2 of 1974), Sections 125 to 128, Muslim Women (Protection of Rights on Divorce) Act (25 of 1986), Section 3 – Applicability of Provision – Law discussed. [Qureshia Bi Vs. Abdul Hameed] ...2466

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धाराऐं 125 से 128, मुस्लिम स्त्री (विवाह विच्छेद पर अधिकार संरक्षण) अधिनियम (1986 का 25), धारा 3 – उपबंध की प्रयोज्यता – विधि की विवेचना की गयी। (कुरेशिया बी वि. अब्दुल हमीद) ...2466

Criminal Procedure Code, 1973 (2 of 1974), Sections 125 to 128, Muslim Women (Protection of Rights on Divorce) Act (25 of 1986), Section 3 – On an application filed u/s 125, Cr.P.C. maintenance Rs. 125/- was awarded to the applicant wife on 15.10.1985 – Applicant filed an application u/s 127 of Cr.P.C. on 12.01.2007 for alteration of the allowance, which was held as not maintainable by courts below – Held – Since wife is residing separately with a justifiable cause from her husband, looking to the status of the husband who is now living with the second wife and earning more than Rs. 10,000/- per month – Rs. 2,000/- as amount of maintenance would be payable from the date of the order passed by the trial court – Petition stands allowed. [Qureshia Bi Vs. Abdul Hameed] ...2466

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धाराऐं 125 से 128, मुस्लिम स्त्री (विवाह विच्छेद पर अधिकार संरक्षण) अधिनियम (1986 का 25), धारा 3 – द.प्र.सं. की धारा 125 के अंतर्गत प्रस्तुत किये गये आवेदन पर दि. 15.10.1985 को आवेदक पत्नी को भरण-पोषण रु. 125/– अवार्ड किया गया – 12.01.2007 को आवेदक ने भत्ता परिवर्तन हेतु द.प्र.सं. की धारा 127 के अंतर्गत आवेदन प्रस्तुत किया, जिसे निचले न्यायालय द्वारा पोषणीय नहीं माना गया – अभिनिर्धारित – चूंकि पत्नी न्यायोचित कारण से अपने पति से अलग रह रही है, उसके पति की स्थिति को देखते हुए, जो अब दूसरी पत्नी के साथ रह रहा है और रु. 10,000/– प्रति माह से अधिक अर्जित कर रहा है – भरण-पोषण की रकम के रुप में रु. 2,000/– विचारण न्यायालय द्वारा पारित किये गये आदेश की तिथि से देय होगा – याचिका मंजूर। (कुरेशिया बी वि. अब्दुल हमीद) ...2466

Criminal Procedure Code, 1973 (2 of 1974), Section 167(2), Proviso (a)(ii) – Petitioner was arrested on 18.02.2013 – Challan was

filed on 22.04.2013 – Prior to filing challan accused filed application u/s 167(2) seeking benefit of the statutory bail – Trial court extended the benefit – Order was set aside by Revisional Court – Held – After exercising the right by moving the application seeking statutory bail, if the challan is filed later, it would not affect the indefeasible right accrues to the applicants to release them on bail – Even if the charge sheet is filed prior to passing the order on such application – Impugned order is set aside. [Babulal Vs. State of M.P.] ...2481

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 167(2), परंतुक (ए) (ii) – याची को 18.02.2013 को गिरफ्तार किया गया – 22.04.2013 को चालान पेश किया गया – चालान प्रस्तुतीकरण से पूर्व, अभियुक्त ने कानूनी जमानत का लाभ चाहते हुए धारा 167(2) के अंतर्गत आवेदन पेश किया – विचारण न्यायालय ने लाभ प्रदान किया – पुनरीक्षण न्यायालय द्वारा आदेश अपास्त – अभिनिर्धारित – कानूनी जमानत चाहते हुए आवेदन देकर अधिकार का प्रयोग करने के पश्चात यदि चालान बाद में प्रस्तुत किया जाता है, तब आवेदकगण को जमानत पर छोड़े जाने का प्रोद्भूत होने वाला अजेय अधिकार प्रभावित नहीं होता – यदि उक्त आवेदन पर आदेश पारित होने से पूर्व आरोप पत्र प्रस्तुत किया जाता है, तब भी – आक्षेपित आदेश अपास्त। (बाबूलाल वि. म.प्र. राज्य) ...2481

***Criminal Procedure Code, 1973 (2 of 1974), Section 197 – Previous sanction for prosecution of public servant and cognizance* – Held – That no court shall take cognizance of offence alleged to have been committed by public servant while acting or purporting to act in discharge of his official duty except with the previous sanction as provided u/s 197 – Further held, the bar on the exercise of power of court to take cognizance of any offence is absolute and complete. [R.K. Kartikeya Vs. Rahul Jain] (DB)...2487**

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 197 – लोक सेवक के अभियोजन हेतु पूर्व मंजूरी और संज्ञान – अभिनिर्धारित – कोई न्यायालय लोक सेवक द्वारा अपने शासकीय कर्तव्य के निष्पादन में कार्य करते समय या तात्पर्यित कार्य करते समय, अभिकथित रुप से कारित किये गये अपराध का संज्ञान सिवाय पूर्व मंजूरी के नहीं लेगा, जैसा कि धारा 197 के अंतर्गत उपबंधित है – आगे अभिनिर्धारित किया गया कि किसी अपराध का संज्ञान लेने के लिये न्यायालय की शक्ति के प्रयोग का वर्जन, आत्यंतिक एवं पूर्ण है। (आर.के. कार्तिकेय वि. राहुल जैन) (DB)...2487

***Criminal Procedure Code, 1973 (2 of 1974), Section 197 – See – Prevention of Corruption Act, 1988, Section 19* [Om Prakash Verma Vs. State of M.P.] (DB)...1753**

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 197 – देखें – भ्रष्टाचार निवारण अधिनियम, 1988, धारा 19 (ओम प्रकाश वर्मा वि. म.प्र. राज्य) **(DB)...1753**

Criminal Procedure Code, 1973 (2 of 1974), Section 378 – Appeal against acquittal **– Appellate Court can interfere with order of acquittal only in an exceptional case where there are compelling circumstances to interfere and the judgment under appeal is found to be perverse. [State of M.P. Vs. Kamal] (DB)...2415**

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 378 –दोषमुक्ति के विरुद्ध अपील – अपीली न्यायालय, दोषमुक्ति के आदेश में केवल अपवादात्मक प्रकरण में हस्तक्षेप कर सकता है जहां हस्तक्षेप के लिए आबद्धकर परिस्थितियां हैं और निर्णय जिसके विरुद्ध अपील की गई है, वह विपर्यस्त पाया जाता है। (म.प्र. राज्य वि. कमल) **(DB)...2415**

Criminal Procedure Code, 1973 (2 of 1974), Section 378 – Appeal against acquittal **– Judgment of acquittal should not be disturbed unless the conclusions drawn on the basis of evidence brought on record are found to be grossly unreasonable or manifestly perverse or palpably unsustainable. [Rajendra Singh Vs. State of M.P.] (DB)...2247**

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 378 – दोषमुक्ति के विरुद्ध अपील – दोषमुक्ति के आदेश में हस्तक्षेप नहीं किया जाना चाहिये जब तक कि अभिलेख पर लाये गये साक्ष्य के आधार पर निकाले गये निष्कर्ष, पूर्ण रुप से अयुक्तियुक्त या प्रकट रुप से अनुचित या स्पष्ट रुप से अपोषणीय नहीं पाये जाते। (राजेन्द्र सिंह वि. म.प्र. राज्य) **(DB)...2247**

Criminal Procedure Code, 1973 (2 of 1974), Section 397 & Penal Code (45 of 1860), Sections 498-A, 306 – Revisional Jurisdiction of High Court **– Order discharging the In-laws except Sister-in-law was set aside by High Court – In discharging the accused the Session Judge is necessarily to have come to conclusion that on a perusal of the material before the court there was no likelihood of a conviction and not even a prima facie case had been disclosed – There can be no gainsaying that no case possibly be made out u/s 306, 498-A, after the marriage has crossed the 7 years period – Merely a presumption is removed. [Sherish Hardenia Vs. State of M.P.] (SC)...1694**

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 397 व दण्ड संहिता (1860 का 45), धाराऐं 498–ए, 306 – उच्च न्यायालय की पुनरीक्षण अधिकारिता – उच्च न्यायालय द्वारा मृतिका के ससुरालवालों को आरोप मुक्त करने का आदेश, देवरानी

छोड़कर, अपास्त किया गया – अभियुक्त को आरोपमुक्त करने में सेशन न्यायाधीश को आवश्यक रुप से इस निष्कर्ष पर पहुंचना चाहिये कि न्यायालय के समक्ष उपलब्ध सांमग्री का परिशीलन करने पर दोषसिद्धि की कोई संभावना नहीं थी, यहां तक कि प्रथम दृष्टया प्रकरण भी प्रकट नहीं किया गया – इसे नकारा नहीं जा सकता कि विवाह के 7 वर्षों की अवधि बीत जाने के बाद, धाराऐं 306, 498–ए के अंतर्गत प्रकरण यथासंभव गठित नहीं होता – मात्र उपधारणा हटायी गयी। (शेरिष हरदेनिया वि. म.प्र. राज्य) (SC)...1694

Criminal Procedure Code, 1973 (2 of 1974), Section 438 – Appeal against grant of anticipatory bail by High Court **– Arrest warrants issued to accused returned unserved – They were not traceable – Therefore, proclamation u/s 82 of Cr.P.C. was issued against them – Held – Since, the accused are facing prosecution u/s 302 and 120-B r/w Section 34 who have been declared as absconders and have not cooperated with the investigation, they should not be granted anticipatory bail – Order passed by High Court and subsequent order of C.J.M. are set aside. [State of M.P. Vs. Pradeep Sharma]** (SC)...1687

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 438 – उच्च न्यायालय द्वारा अग्रिम जमानत प्रदान किये जाने के विरुद्ध अपील – अभियुक्त को जारी किये गये गिरफ्तारी वारंट बिना तामीली वापस – उन्हें खोजा नहीं जा सका – इसलिए, उनके विरुद्ध द.प्र.सं. की धारा 82 के अंतर्गत उद्घोषणा जारी की गयी – अभिनिर्धारित – चूंकि अभियुक्त, धारा 302 एवं 120बी सहपठित धारा 34 के अंतर्गत अभियोजन का सामना कर रहे हैं, उन्हें फरार घोषित किया गया है और उन्होंने अन्वेषण में सहयोग नहीं किया है, उन्हें अग्रिम जमानत प्रदान नहीं की जानी चाहिए – उच्च न्यायालय द्वारा पारित आदेश एवं सी.जे.एम. का पश्चातवर्ती आदेश अपास्त। (म.प्र. राज्य वि. प्रदीप शर्मा) (SC)...1687

Criminal Procedure Code, 1973 (2 of 1974), Section 439 – Grant of bail – Second Application **– On the ground that the offence is not made out against the present applicants – Prosecution witnesses have turned hostile and a compromise had been worked out between the parties – Held – The allegation and the offence involved are very grave in nature – It is a crime against society and is not a matter to be left for the parties to compromise and settle – Application is dismissed. [Shiva Vs. State of M.P.]** ...1976

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 439 – जमानत की मंजूरी – द्वितीय आवेदन – इस आधार पर कि वर्तमान आवेदकगण के विरुद्ध अपराध नहीं

बनता – अभियोजन साक्षी पक्ष द्रोही हो गये एवं पक्षकारों के मध्य समझौते की बातचीत हो गयी है – अभिनिर्धारित – आरोप एवं सम्मिलित अपराध अत्याधिक गंभीर प्रकृति के हैं – यह समाज के विरुद्ध अपराध है और ऐसा विषय नहीं है जिसे पक्षकारों पर समझौता और निपटारा हेतु छोड़ा जावे – आवेदन खारिज। (शिवा वि. म.प्र. राज्य) ...1976

Criminal Procedure Code, 1973 (2 of 1974), Section 482 – Inherent jurisdiction – **Petition for quashing prosecution u/s 138 of Negotiable Instruments Act and u/s 420 of I.P.C. on the ground that petitioner is not the signatory of the cheque which has been dishonoured – Held – Since the petitioner is not the signatory of the cheque which has been dishonoured, no case against him u/s 138 of the Act is made out – But since allegation of cheating is there complaint may proceed against him for the offence u/s 420 of I.P.C. [Tulsi Ram Yadav Vs. Smt. Phoolwati]** ...1969

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 482 – अंतर्निहित अधिकारिता – परक्राम्य लिखत अधिनियम की धारा 138 के अंतर्गत एवं भा.द.सं. की धारा 420 के अंतर्गत अभियोजन अभिखंडित करने हेतु याचिका इस आधार पर कि जो धनादेश अनादृत हुआ उसका हस्ताक्षरकर्ता याची नहीं था – अभिनिर्धारित – चूंकि जो धनादेश अनादृत हुआ उसका हस्ताक्षरकर्ता याची नहीं था, अधिनियम की धारा 138 के अंतर्गत उसके विरुद्ध कोई प्रकरण नहीं बनता – किन्तु चूंकि शिकायत में छल का आरोप है भा. द.सं. की धारा 420 के अंतर्गत अपराध के लिये उसके विरुद्ध कार्यवाही जारी रखी जा सकती है। (तुलसी राम यादव वि. श्रीमती फूलवती) ...1969

Criminal Procedure Code, 1973 (2 of 1974), Section 482 – Inherent jurisdiction – **Quashing FIR and observations/adverse remarks – Remarks made by trial court against applicant – Such remarks ensuing serious consequences on future career of applicant – He should be given opportunity of being heard in the matter in respect of the proposed remarks or strictures – Such opportunity is basic requirement, for otherwise offending remarks would be in violation of the principles of natural justice – F.I.R. and observations/adverse remarks quashed. [Girish Kumar Jain Vs. State of M.P.] (DB)...2275**

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 482 – अंतर्निहित अधिकारिता – प्रथम सूचना रिपोर्ट एवं टिप्पणी/प्रतिकूल अभ्युक्तियों को अभिखंडित किया जाना – विचारण न्यायालय द्वारा आवेदक के विरुद्ध अभ्युक्ति – उक्त अभियुक्ति के कारण आवेदक के भावी भविष्य पर गंभीर प्रभाव – प्रस्तावित अभ्युक्ति या अवक्षेप के संबंध में उसे मामले में सुनवाई का अवसर दिया जाना चाहिये – उक्त अवसर

मूल अपेक्षा है क्योंकि अन्यथा आक्षेपक अभ्युक्ति से नैसर्गिक न्याय के सिद्धांतों का उल्लंघन होगा – प्रथम सूचना रिपोर्ट एवं टिप्पणी/प्रतिकूल अभ्युक्तियां अभिखंडित। (गिरीश कुमार जैन वि. म.प्र. राज्य) (DB)...2275

Criminal Procedure Code, 1973 (2 of 1974), Section 482, Penal Code (45 of 1860), Section 316 – Quashment of proceedings – Inherent jurisdiction – **No evidence available on record which may establish that abortion took place on account of injuries sustained by the injured who as per the medical evidence was carrying pregnancy of 2-3 months – Order set-aside – Remit back the case to the Magistrate to pass appropriate order regarding framing of other charges except u/s 316 of I.P.C. [Jyoti (Smt.) Vs. State of M.P.]** ...1971

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 482, दण्ड संहिता (1860 का 45), धारा 316 – कार्यवाहियों का अभिखंडन – अंतर्निहित अधिकारिता – अभिलेख पर कोई साक्ष्य उपलब्ध नहीं जिससे यह स्थापित हो सके कि आहत, जो कि चिकित्सीय साक्ष्य के अनुसार 2–3 माह की गर्भवती थी, द्वारा सहन की गई चोटों के कारण गर्भपात हुआ है – आदेश अपास्त – भा.द.सं. की धारा 316 को छोड़कर अन्य आरोप विरचित किये जाने के संबंध में समुचित आदेश पारित करने के लिये प्रकरण मजिस्ट्रेट को प्रतिप्रेषित । (ज्योति(श्रीमती) वि. म.प्र. राज्य) ...1971

Education Service (School Branch) Recruitment and Promotion Rules, M.P. 1982 – **Rejection of petitioner's candidature for appointment of Area Education Officer on the ground that he does not possess 5 years teaching experience as Teacher/U.D.T./Head Master/ Adhyapak of local bodies – Experience gained by him as Assistant Teacher, cannot be counted – Held –Unless the incumbent fulfills all the three elements, he is not entitled to be appointed as Area Education Officer – Experience gained by the petitioner prior to his promotion to the post of Upper Division Teacher cannot be taken into consideration – Experience gained on the feeder cadre can only be taken into consideration. [Rajesh Kumar Soni Vs. State of M.P.]** ...1810

शैक्षणिक सेवा (शालेय शाखा) भर्ती और पदोन्नति नियम, म.प्र., 1982 – क्षेत्रीय शिक्षा अधिकारी की नियुक्ति हेतु याची की अभ्यर्थिता को इस आधार पर अस्वीकार किया गया कि स्थानीय निकाय के शिक्षक/उच्च श्रेणी शिक्षक/प्रधान अध्यापक/अध्यापक के रुप में उसके पास 5 वर्ष सिखाने का अनुभव नहीं – सहायक शिक्षक के रुप में उसके द्वारा प्राप्त किये गये अनुभव को नहीं गिना जा सकता – अभिनिर्धारित – जब तक कि पदधारी सभी तीन तत्वों की पूर्तता नहीं करता, वह

क्षेत्रीय शिक्षा अधिकारी के रुप में नियुक्त किये जाने का हकदार नहीं – याची द्वारा उच्च श्रेणी शिक्षक के पद पर उसकी पदोन्नति से पूर्व प्राप्त किये गये अनुभव को विचार में नहीं लिया जा सकता – केवल फीडर कैडर में प्राप्त अनुभव को विचार में लिया जा सकता है। (राजेश कुमार सोनी वि. म.प्र. राज्य) ...1810

Electricity Act (36 of 2003), Sections 126 & 135 – Investigation and Enforcement – **Provision u/s 126 & 135 operates in different field – Theft is governed by Section 135 and not 126 – Petition dismissed. [Hotel Adityaz Ltd. Vs. Madhya Pradesh Kshetra Vidyut Vitran Co. Ltd.] ...2353**

विद्युत अधिनियम (2003 का 36), धाराऐं 126 व 135 – जांच और प्रवर्तन – धारा 126 व 135 के उपबंध भिन्न क्षेत्र में प्रवर्तित होते हैं – चोरी, धारा 135 द्वारा शासित होती है और न कि 126 द्वारा – याचिका खारिज। (होटल अदित्याज लि. वि. मध्यप्रदेश क्षेत्र विद्युत वितरण कं. लि.) ...2353

Evidence Act (1 of 1872), Section 3 – Child witness – Tutored – **Eye witness (child) appears to be tutored by first informant due to property dispute with accused – Evidence of child witness not reliable. [In Reference Vs. Ganesh Lodhi] (DB)...2453**

साक्ष्य अधिनियम (1872 का 1), धारा 3 – बालक साक्षी – सिखाया हुआ – चक्षूदर्शी साक्षी (बालक) को प्रथम मुखबिर द्वारा, अभियुक्त से सम्पत्ति के विवाद के कारण, सिखाया जाना प्रतीत होता है – बालक साक्षी का साक्ष्य विश्वसनीय नहीं। (इन रेफ्रेन्स वि. गणेश लोधी) (DB)...2453

Evidence Act (1 of 1872), Section 3 – Circumstantial Evidence – **Hon'ble Apex Court laid down five principles which constitute the 'panchasheel' of proof of a case based on circumstantial evidence and held that following conditions must be fulfilled before a case against an accused can be said to be fully established:- (1) The Circumstances from which the conclusion of guilt is to be drawn should be fully established –The circumstances concerned 'must or should' be and not 'may be' established. (2) The facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty. (3) The circumstances should be of a conclusive nature and tendency. (4) They should exclude every possible hypothesis except the one to be proved, and (5) There must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all**

human probability the act must have been done by the accused. [Bhagwandas Vs. State of M.P.] (DB)...2182

साक्ष्य अधिनियम (1872 का 1), धारा 3 – परिस्थितिजन्य साक्ष्य – माननीय सर्वोच्च न्यायालय ने पांच सिद्धांत प्रतिपादित किये हैं जो परिस्थितिजन्य साक्ष्य पर आधारित प्रकरण के सबूत के 'पंचशील' का गठन करते हैं और यह अभिनिर्धारित किया कि किसी अभियुक्त के विरुद्ध प्रकरण पूर्णतः स्थापित कहे जा सकने से पहले निम्नलिखित शर्तों को पूरा किया जाना चाहिए :– (1) परिस्थितियां, जिससे दोषिता का निष्कर्ष निकाला जाना है, वह पूर्णतः स्थापित होनी चाहिए – संबंधित परिस्थितियां स्थापित "होनी चाहिए" और न कि "हो सकती है"। (2) इस तरह स्थापित तथ्यों को केवल अभियुक्त की दोषिता की उपकल्पना के साथ सुसंगत होना चाहिए अर्थात, वह अभियुक्त की दोषिता को छोड़कर किसी अन्य उपकल्पना को स्पष्ट किये जाने योग्य नहीं होना चाहिए। (3) परिस्थितियां, निर्णयात्मक स्वरुप एवं प्रवृत्ति की होना चाहिए। (4) उन्हें प्रत्येक संभावित उपधारणा अपवर्जित करनी चाहिए सिवाय एक जिसे साबित करना है और (5) साक्ष्य की श्रृंखला इतनी पूर्ण होनी चाहिए कि अभियुक्त की निर्दोषिता के साथ सुसंगत निष्कर्ष हेतु कोई युक्तियुक्त आधार नहीं छूटे और यह दर्शायें कि सभी मानवीय संभाव्यताओं में, कृत्य को अभियुक्त द्वारा ही किया गया होगा। (भगवानदास वि. म.प्र. राज्य) **(DB)...2182**

***Evidence Act (1 of 1872), Section 3 – Defence Evidence* – Credential value of defence witness is always at par with that of prosecution witness. [Laxminarayan Vs. State of M.P.] ...2177**

साक्ष्य अधिनियम (1872 का 1), धारा 3 – बचाव साक्ष्य – बचाव साक्षी की विश्वसनीयता का मूल्य, सदैव अभियोजन साक्षी के समतुल्य रहता है। (लक्ष्मीनारायण वि.. म.प्र. राज्य) **...2177**

***Evidence Act (1 of 1872), Section 3 – See – Penal Code, 1860, Section 302/34* [Dilip Kumar Vs. State of M.P.] (DB)...1916**

साक्ष्य अधिनियम (1872 का 1), धारा 3 – देखें – दण्ड संहिता, 1860, धारा 302/34 (दिलीप कुमार वि. म.प्र. राज्य) **(DB)...1916**

***Evidence Act (1 of 1872), Section 27* – No evidence that the appellant No.1 did any intercourse with the prosecutrix, at least the semen sample of the appellant No.2 could be compared from the semen obtained from the vaginal swab of the deceased prosecutrix. [In Reference Vs. Ganesh Lodhi] (DB)...2453**

साक्ष्य अधिनियम (1872 का 1), धारा 27 – कोई साक्ष्य नहीं कि अपीलार्थी क्र. 1 ने अभियोक्त्री से समागम किया, कम से कम अपीलार्थी क्र. 2 के वीर्य के नमूने

का मिलान, मृतिका अभियोक्त्री के वेजाईनल स्वेब से प्राप्त वीर्य के साथ किया जा सकता है। (इन रेफ्रेन्स वि. गणेश लोधी) (DB)...2453

Evidence Act (1 of 1872), Section 32 – See – Penal Code, 1860, Section 302 [Garibdas @ Pappu Choudhari Vs. State of M.P.] (DB)... 1923

साक्ष्य अधिनियम (1872 का 1), धारा 32 – देखें – दण्ड संहिता, 1860, धारा 302 (गरीबदास उर्फ पप्पू चौधरी वि. म.प्र. राज्य) (DB)...1923

Evidence Act (1 of 1872), Section 115 – Estoppel – Since the defendants were estopped from questioning the title of the plaintiff – Therefore, it is not necessary for courts below to examine the plaintiff's title. [Vijay Bahadur Singh Vs. Rameshwar] ...1879

साक्ष्य अधिनियम (1872 का 1), धारा 115 – विबन्ध – चूंकि वादी के हक पर प्रश्न करने से प्रतिवादीगण को विबन्धित किया गया इसलिये, वादी के हक का परीक्षण करना अधीनस्थ न्यायालयों के लिये आवश्यक नहीं। (विजय बहादुर सिंह वि. रामेश्वर) ...1879

Executive instructions – Executive instructions cannot be made or given effect in violation of what is mandated by the Rules – In case of conflict, Rules will prevail. [Ruchi Jain Vs. State of M.P.] (DB)...2322

कार्यपालिक अनुदेश – नियमों द्वारा जो आज्ञापक है, उसके अतिलंघन में कार्यपालिक अनुदेशों को बनाया या प्रभावशील नहीं किया जा सकता – टकराव की स्थिति में, नियम अभिभावी होगा। (रूचि जैन वि. म.प्र. राज्य) (DB)...2322

General Clauses Act (10 of 1897) – *"Schedule"* – Means, schedule to the Act or Regulation in which the word occur – Further held, it is the duty of the respondent to mention with accuracy and precision the meaning of scheduled bank – It cannot be expected from a common man to make research to ascertain the meaning. [Lata Agrawal (Smt.) Vs. Indian Oil Corporation] ...2096

साधारण खण्ड अधिनियम (1897 का 10) – *"अनुसूची"* – का अर्थ है, अधिनियम या विनियमन में दी गयी अनुसूची जिसमें वह शब्द आता है – आगे अभिनिर्धारित किया गया कि अनुसूचित बैंक के अर्थ को यथार्थता एवं परिशुद्धता के साथ उल्लिखित करना प्रत्यर्थी का कर्तव्य है – अर्थ सुनिश्चित करने के लिए शोध कार्य करना एक सामान्य व्यक्ति से अपेक्षित नहीं। (लता अग्रवाल (श्रीमती) वि. इंडियन ऑयल कारपोरेशन) ...2096

Hindu Marriage Act (25 of 1955), Sections 9, 25 & 26 – Grant

of permanent alimony – **Application for withdrawal of petition for grant of decree for restitution of conjugal rights was allowed – At the same time, application by the respondent wife for permanent alimony and maintenance of child was also allowed – No decree was passed by the Lower Court – Held – The Supreme Court has observed that claim to permanent maintenance or alimony is based on the supposition that either her marital status has been strained or affected by passing a decree for restitution of conjugal rights or judicial separation in favour or against her, or her marriage stands dissolved by a decree of nullity or divorce – Without marital status being affected or disrupted by the court under Hindu Marriage Act, the claim of permanent alimony was not to be valid as ancillary or incidental to such affectation or disruption – Impugned order so far as it relates to grant of permanent alimony and maintenance set aside. [Vishnu Vs. Smt. Durga Bai] (DB)...2142**

हिन्दू विवाह अधिनियम (1955 का 25), धाराऐं 9, 25 व 26 – स्थाई निर्वाहिका का प्रदान – दाम्पत्य अधिकारों का प्रत्यास्थापन हेतु डिक्री प्रदान किये जाने हेतु याचिका वापस लेने का आवेदन मंजूर किया गया – उसी समय प्रत्यर्थी पत्नी द्वारा स्थाई निर्वाहिका और बालक के भरण-पोषण हेतु दिया गया आवेदन भी मंजूर किया गया – निचले न्यायालय द्वारा कोई डिक्री पारित नहीं की गयी – अभिनिर्धारित – उच्चतम न्यायालय ने टिप्पणी की है कि स्थाई भरण-पोषण या निर्वाहिका का दावा इस अनुमान पर आधारित है कि या तो दाम्पत्याधिकारों के प्रत्यास्थापन या न्यायिक प्रथक्करण की डिक्री, उसके पक्ष में या उसके विरुद्ध पारित किये जाने से या अकृतता अथवा विवाह विच्छेद की डिक्री द्वारा उसका विवाह का विघटन होने से उसकी वैवाहिक स्थिति में तनाव या प्रभाव पड़ा है – हिन्दू विवाह अधिनियम के अंतर्गत न्यायालय द्वारा वैवाहिक स्थिति प्रभावित या विच्छिन्न किये जाये बिना स्थाई निर्वाहिका का दावा, उक्त प्रभाव या विच्छिन्नता का प्रासंगिक या आनुशांगिक के रुप में वैध नहीं होता – आक्षेपित आदेश, जहां तक स्थाई निर्वाहिका एवं भरण-पोषण से संबंधित है, अपास्त किया गया। (विष्णु वि. श्रीमती दुर्गा बाई) **(DB)...2142**

Hindu Marriage Act (25 of 1955), Section 24 – Interim alimony – **Salary of the husband is around Rs. 52,885.68 P. per month, after necessary deduction, he is getting in hand Rs. 34,660/- P.M. – Wife did not have any source of income and also not involved in any service or the profession and besides herself, she is also looking after and maintaining two minor daughters – Held – Keeping in view the price index of food stuff and other things in the market and the income of the respondent/husband, the sum of the interim alimony awarded by**

the trial court is hereby enhanced from Rs. 8,000/- P.M. to Rs. 12,000/- P.M. [Aparna (Smt.) Vs. P. Durga Prasad] ...1790

हिन्दू विवाह अधिनियम (1955 का 25), धारा 24 – अंतरिम निर्वाह भत्ता – पति का वेतन लगभग रु. 52,885.68 पैसे प्रतिमाह, आवश्यक कटौत्री पश्चात वह रु. 34,660/– प्रतिमाह प्राप्त कर रहा है – पत्नी के पास आय का कोई स्त्रोत नहीं और वह किसी सेवा या व्यवसाय में भी शामिल नहीं तथा स्वयं के अतिरिक्त वह दो अवयस्क पुत्रियों की भी देखभाल और पालन–पोषण कर रही है – अभिनिर्धारित – खाद्य पदार्थ और बाजार की अन्य वस्तुओं का मूल्य दर और प्रत्यर्थी/पति की आय दृष्टिगत रखते हुए, विचारण न्यायालय द्वारा प्रदान की गयी अंतरिम निर्वाह भत्ता की राशि को एतद् द्वारा, रु. 8,000/– प्रतिमाह से बढ़ाकर रु. 12,000/– प्रतिमाह किया गया। (अपर्णा (श्रीमती) वि. पी. दुर्गा प्रसाद) **...1790**

Hindu Marriage Act (25 of 1955), Section 24 – Second Wife – Entitlement **– Where a woman marries a man with full knowledge of subsistence of his first marriage, provision of Section 24 would not apply. [Jagdish Singh Sankhwar Vs. Archana] ...2338**

हिन्दू विवाह अधिनियम (1955 का 25), धारा 24 – द्वितीय पत्नी – हकदारी – जब एक स्त्री एक पुरुष से विवाह करती है, उसका प्रथम विवाह विद्यमान होने की पूरी जानकारी के साथ, तब धारा 24 का उपबंध लागू नहीं होगा। (जगदीश सिंह शंखवार वि. अर्चना) **...2338**

Hindu Marriage Act (25 of 1955), Section 24 – See – Constitution – Article 227 **[Jagdish Singh Sankhwar Vs. Archana] ... *2338***

हिन्दू विवाह अधिनियम (1955 का 25), धारा 24 – देखें – संविधान – अनुच्छेद 227 (जगदीश सिंह शंखवार वि. अर्चना) **...2338**

Interpretation of Statutes **– If a provision is made to deal with specific situation, the same would prevail over the general situation. [M.P. Electricity Board, Jabalpur Vs. S.K. Dubey] (FB)...1698**

कानून का निर्वचन – यदि विनिर्दिष्ट स्थिति के निपटारे के लिये उपबंध बनाया गया है, तब वह सामान्य स्थिति पर अभिभावी होगा। (म.प्र. इलेक्ट्रिसिटी बोर्ड, जबलपुर वि. एस.के. दुबे) **(FB)...1698**

Jawaharlal Nehru Krishi Vishwavidyalaya Act, 1963 (12 of 1963), Section 27 **– Petitioner appointed as a daily wages labour who worked for a considerable time – He was then appointed on the time scale post with the salary in that scale – Order by Vishwavidyalaya**

that he is to retire on attaining the age of superannuation as he is completing 60 years of age – Posts were created by the University against which post the benefit was extended to the petitioner – Therefore, it cannot be said that the petitioner was not entitled to the similar age enhancement as was granted to class-IV employees – Petitioner held entitled to enhancement of age of superannuation as was made available to the work charged employees of the Government Departments. [S.P. Patel Vs. State of M.P.] ...1739

जवाहरलाल नेहरु कृषि विश्वविद्यालय अधिनियम, 1963 (1963 का 12), धारा 27 – याची को दैनिक वेतन श्रमिक के रुप में नियुक्त किया गया, जिसने काफी समय तक कार्य किया – उसे तब समय वेतनमान के पद पर, उस वेतनमान में वेतन के साथ नियुक्त किया गया – विश्वविद्यालय का आदेश कि वह अधिवर्षिकी वय प्राप्त करने पर निवृत्त होगा क्योंकि वह 60 वर्ष की आयु पूर्ण कर रहा है – जिस पद का लाभ याची को दिया गया था, वह पद विश्वविद्यालय द्वारा सृजित किये गये थे – इसलिए, यह नहीं कहा जा सकता कि याची सामानांतर वय वृद्धि जो श्रेणी–IV कर्मचारियों को प्रदान की गयी थी, का हकदार नहीं – याची को अधिवार्षिकी वय वृद्धि का हकदार माना गया जैसा कि सरकारी विभागों के निर्धारित कर्म कर्मचारियों को उपलब्ध कराया गया था। (एस.पी. पटेल वि. म.प्र. राज्य) ...1739

Judicial Service Pay Revision, Pension and Other Retirement Benefits Rules, M.P., 2003, Rules 9, 11-A – Dearness Allowance **– Presiding Officers of Industrial Court are entitled to equal scale of pay at par with that of District Judges – They are entitled to payment of salary not only for pay fixation but also for grant of dearness allowance as may be revised from time to time in accordance with Rules – Action of State Government in treating Presiding Officers of Industrial Court differently from District Judges is violative of Article 14 of Constitution of India. [State of M.P. Vs. Satish Shrivastava]** (DB)...2002

न्यायिक सेवा वेतन पुनरीक्षण, पेंशन और अन्य सेवानिवृत्ति लाभ नियम, म.प्र., 2003, नियम 9, 11-ए – मंहगाई भत्ता – औद्योगिक न्यायालय के पीठासीन अधिकारीगण, जिला न्यायाधीशों के समतुल्य समान वेतनमान के हकदार हैं – वे न केवल वेतन निर्धारण के लिये वेतन के भुगतान के हकदार हैं, बल्कि महंगाई भत्ते के भी है जैसा कि नियमानुसार उसे समय-समय पर पुनरीक्षित किया गया हो – औद्योगिक न्यायालय के पीठासीन अधिकारियों को जिला न्यायाधीशों से भिन्न मानने की राज्य सरकार की कार्यवाही भारत के संविधान के अनुच्छेद 14 का उल्लंघन है। (म.प्र. राज्य वि. सतीश श्रीवास्तव) (DB)...2002

Judicial Services Revision of Pay Rules, M.P. 2003, Rules 4,7,9

& 12 – See – Service Law [Satish Shrivastava Vs. State of M.P.] ...2299

न्यायिक सेवा वेतन पुनरीक्षण नियम, म.प्र., 2003, नियम 4,7,9 व 12 – देखें – सेवा विधि (सतीश श्रीवास्तव वि. म.प्र. राज्य) ...2299

Judicial Services Revision of Pay Rules, M.P. 2003, Rule 9 – Fixation of Pay – Grant of D.A. **– In terms of Rule 9 of Rules, 2003 Judicial Officers shall be allowed D.A. from 1st July 1996 at the rate applicable to the Central Government Employees – Since this would be applicable to the Members of Labour Judiciary, the benefit is to be extended to the petitioner – Respondents are directed to fix the salary of the petitioner as per Fundamental Rule 22(D) in appropriate manner w.e.f. 28.08.2003 and to restore the payment of D.A. applicable to Central Government employees in terms of Rules 9 and 12 of Rules, 2003. [Satish Shrivastava Vs. State of M.P.] ...2299**

न्यायिक सेवा वेतन पुनरीक्षण नियम, म.प्र., 2003, नियम 9 – वेतन निर्धारण – मंहगाई भत्ता प्रदान किया जाना – नियम 2003 के नियम 9 की शर्तों नुसार न्यायिक अधिकारियों को 1 जुलाई 1996 से, केन्द्र सरकार के कर्मचारियों को लागू की गई दर से मंहगाई भत्ता मंजूर होगा – चूंकि यह श्रम न्यायपालिका के सदस्यों को लागू होगा, यह लाभ याची को दिया जाना चाहिए – प्रत्यर्थीगण को निदेशित किया गया कि याची का वेतन निर्धारण उचित ढंग से मूलभूत नियम 22(डी) के अनुसार, 28.08.2003 से प्रभावी रुप से करें और नियम 2003 के नियम 9 व 12 की शर्तों नुसार केन्द्र सरकार के कर्मचारियों को लागू किया गया मंहगाई भत्ते के भुगतान को प्रत्यावर्तित करे। (सतीश श्रीवास्तव वि. म.प्र. राज्य) ...2299

Juvenile Justice (Care and Protection of Children) Act (56 of 2000), Section 53 – Repeat application – Repeat application for Supurdginama/Bail **– Held – Since similarly placed co-accused persons have been released on supurdginama/bail – Applicant has accrued fresh right for being released on supurdginama on the ground of parity – Revision allowed. [Sachin Ahirwar Vs. State of M.P.] ...2431**

किशोर न्याय (बालकों की देख–रेख और संरक्षण) अधिनियम (2000 का 56), धारा 53 – पुनरावेदन – सुपुर्दगीनामा/जमानत हेतु पुनरावेदन – अभिनिर्धारित – चूंकि समान रुप से स्थित सह–अभियुक्तगण को सुपुर्दगीनामा/जमानत पर मुक्त किया गया – समानता के आधार पर आवेदक को सुपुर्दगीनामा पर मुक्त किये जाने के लिये नये सिरे से अधिकार प्रोद्भूत होता है – पुनरीक्षण मंजूर। (सचिन अहिरवार वि. म.प्र. राज्य) ...2431

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Labour Judicial (Recruitment & Conditions of Service), Rules, M.P. 2006, Rule 3(2)(c) – See – Service Law [Satish Shrivastava Vs. State of M.P.] ...2299

श्रम न्यायिक (भर्ती और सेवा शर्तें), नियम, म.प्र. 2006, नियम 3(2)(सी) – देखें – सेवा विधि (सतीश श्रीवास्तव वि. म.प्र. राज्य) ...2299

Land Revenue Code, M.P. (20 of 1959), Sections 35, 44 & 50 – Revisional Power – Names of petitioners were mutated in Revenue Record by Tahsildar which was challenged before S.D.O. –Against interlocutory order of permitting amendment in memo appeal, the revisions were dismissed by Collector and Commissioner – Revision was pending before Board of Revenue, however in the meanwhile, S.D.O. dismissed the appeal for want of prosecution –Application for restoration pending – Board of Revenue set aside all the orders including order of mutation passed by Tahsildar and remitted the matter back to Tahsildar – Suo motu revisional power could not be invoked by the Board of Revenue by ignoring the propriety of the Court and also the provisions of restoration and appeal – Impugned order set aside – Case is remitted back to the Board of Revenue with a direction that subject to restoration of the appeal only to decide the correctness of the interlocutory order. [Shakuntala Devi-Vs. Board of Revenue] ...2059

भू राजस्व संहिता, म.प्र. (1959 का 20), धाराऐं 35, 44 व 50 – पुनरीक्षण शक्ति – तहसीलदार द्वारा राजस्व अभिलेख में याचियों के नाम का नामांतरण, जिसे एस.डी.ओ. के समक्ष चुनौती दी गई – अपील पत्र में संशोधन की अनुमति के अंतर्वर्ती आदेश के विरुद्ध पुनरीक्षणों को कलेक्टर और आयुक्त द्वारा खारिज किया गया – राजस्व मंडल के समक्ष पुनरीक्षण लंबित था, किन्तु इस दौरान एस.डी.ओ. ने अभियोजन के अभाव में अपील खारिज की – प्रत्यावर्तन हेतु आवेदन लंबित – राजस्व मंडल ने तहसीलदार द्वारा पारित किये गये नामांतरण आदेश के साथ-साथ सभी आदेश अपास्त किये और प्रकरण तहसीलदार को प्रतिप्रेषित किया – राजस्व मंडल द्वारा स्वप्रेरणा से पुनरीक्षण शक्ति का अवलंब, न्यायालय के औचित्य और अपील एवं प्रत्यावर्तन के उपबंधों को भी नजरअंदाज करके नहीं लियां जा सकता – आक्षेपित आदेश अपास्त – प्रकरण राजस्व मंडल को इस निदेश के साथ प्रतिप्रेषित कि अपील के प्रत्यावर्तन के अधीन केवल अंतर्वर्ती आदेश की सत्यता का विनिश्चय करें। (शकुन्तला देवी वि. बोर्ड ऑफ रेवेन्यु) ...2059

Land Revenue Code, M.P. (20 of 1959), Section 51 – Review – Authority has to issue show cause notice disclosing grounds on which it intends to review the order – After hearing the parties, if the authority

is satisfied that there is error apparent on record, should set aside the earlier order and should hear the matter afresh on merits. [Kripa Tori Vs. State of M.P.] ...1848

भू राजस्व संहिता, म.प्र. (1959 का 20), धारा 51 – पुनर्विलोकन – प्राधिकारी को कारण बताओ नोटिस जारी कर, उन आधारों को प्रकट करना चाहिए जिन पर वह आदेश का पुनर्विलोकन करना चाहता है – पक्षकारों को सुने जाने के पश्चात, यदि प्राधिकारी संतुष्ट है कि अभिलेख देखने से ही भूल प्रकट होती है, उसे पूर्ववर्ती आदेश अपास्त करना चाहिए और नये सिरे से गुणदोषों पर मामले की सुनवाई करनी चाहिए। (कृपा तोरी वि. म.प्र. राज्य) ...1848

***Land Revenue Code, M.P. (20 of 1959), Sections 51 & 165 (7) – Period of limitation – Suo-motu review* – Although no period of limitation has been prescribed, statutory authority must exercise its jurisdiction within a reasonable period – Reasonable time must be determined by the facts of the case and the nature of the order which is being revised – Review petition initiated after more than 3 years was not sustainable – Impugned order is set aside. [Kripa Tori Vs. State of M.P.] ...1848**

भू राजस्व संहिता, म.प्र. (1959 का 20), धाराऐं 51 व 165(7) – परिसीमा की अवधि – स्वप्रेरणा से पुनर्विलोकन – यद्यपि परिसीमा की अवधि विहित नहीं है, कानूनी प्राधिकारी को अपनी अधिकारिता का प्रयोग युक्तियुक्त अवधि के भीतर करना चाहिए – प्रकरण के तथ्य एवं आदेश जिसे पुनर्विलोकित किया जा रहा है, के स्वरुप से युक्तियुक्त समय का निर्धारण किया जाना चाहिये – पुनर्विलोकन याचिका जिसे 3 वर्ष से अधिक अवधि के पश्चात आरंभ किया गया था, पोषणीय नहीं थी – आक्षेपित आदेश अपास्त। (कृपा तोरी वि. म.प्र. राज्य) ...1848

***Land Revenue Code, M.P. (20 of 1959), Section 162 – Disposal of certain land in unauthorized possession* – Section 162 would apply to Govt. land notified in official Gazette by the State Government for that purpose – Section 162 cannot be invoked as a general rule. [Krishnanand Vs. State of M.P.] (DB)...2110**

भू राजस्व संहिता, म.प्र. (1959 का 20), धारा 162 – अनाधिकृत कब्जे की कतिपय भूमि का निपटारा – इस प्रयोजन हेतु राज्य सरकार द्वारा राजपत्र में अधिसूचित की गयी सरकारी भूमि को धारा 162 लागू होगी – धारा 162 का अवलंब सामान्य नियम के रुप में नहीं लिया जा सकता। (कृष्णानंद वि. म.प्र. राज्य) (DB)...2110

***Land Revenue Code, M.P. (20 of 1959), Section 165 (7)(b) – Lease* – Lease was granted to original lessee in the year 1923 –**

Possession was also delivered to lessee – As Govt. was not in possession of land therefore, no permission for sale from State Govt. was required as per circular introduced in the year 1947. [Kripa Tori Vs. State of M.P.] ...1848

भू राजस्व संहिता, म.प्र. (1959 का 20), धारा 165(7)(बी) – पट्टा – मूल पट्टाधारी को वर्ष 1923 में पट्टा प्रदान किया गया था – पट्टाधारी को कब्जा भी हस्तांतरित किया गया था – चूंकि सरकार के पास भूमि का कब्जा नहीं था इसलिए वर्ष 1947 में समाविष्ट किये गये परिपत्र के अनुसार, विक्रय हेतु राज्य सरकार की अनुमति अपेक्षित नहीं। (कृपा तोरी वि. म.प्र. राज्य) ...1848

Land Revenue Code, M.P. (20 of 1959), Section 248 – Dispossession **– Petitioners No. 1 to 6 were in unauthorized possession of land as they could not point out that they are in possession because of allotment of that land in their favour by way of sale, lease or licence etc. – Tehsildar empowered to eject them from Government Land. [Krishnanand Vs. State of M.P.] (DB)...2110**

भू राजस्व संहिता, म.प्र. (1959 का 20), धारा 248 – बेकब्जा किया जाना – याची क्र. 1 से 6, अनाधिकृत रुप से भूमि के कब्जाधारी थे क्योंकि वे यह नहीं दर्शा पाये कि विक्रय, पट्टा, अनुज्ञप्ति इत्यादि के जरिए उनके पक्ष में उस भूमि के आवंटन के कारण उनका कब्जा है – उन्हें सरकारी भूमि से बाहर करने के लिए तहसीलदार सशक्त है। (कृष्णानंद वि. म.प्र. राज्य) (DB)...2110

Land Revenue Code, M.P. (20 of 1959), Section 248 – Dispossession **– Petitioner No. 7 was allotted land for plantation purposes – No protection is available to structure constructed by him. [Krishnanand Vs. State of M.P.] (DB)...2110**

भू राजस्व संहिता, म.प्र. (1959 का 20), धारा 248 – बेकब्जा किया जाना – याची क्र. 7 को पौधा रोपण के प्रयोजन हेतु भूमि आवंटित की गई थी – उसके द्वारा निर्मित ढांचे को कोई संरक्षण उपलब्ध नहीं। (कृष्णानंद वि. म.प्र. राज्य) (DB)...2110

Land Revenue Code, M.P. (20 of 1959), Section 257(2x) – See – Civil Procedure Code, 1908, Section 9 **[Om Prakash Vs. Ashok Kumar] ...2119**

भू राजस्व संहिता, म.प्र. (1959 का 20), धारा 257(2x) – देखें – सिविल प्रक्रिया संहिता, 1908, धारा 9 (ओम प्रकाश वि. अशोक कुमार) ...2119

Limitation Act (36 of 1963), Section 5 – Condonation of delay **– Held – Even if there is an inordinate delay but explanation offered is**

found to be bonafide and satisfactory in nature, same can be condoned – On the other hand, if the delay is short but explanation offered is found to be lacking in bonafide, same cannot be accepted as sufficient cause. [Hari Singh Vs. Kailash] ...2168

परिसीमा अधिनियम (1963 का 36), धारा 5 – विलम्ब के लिये माफी – असाधारण विलम्ब हो तब भी, यदि प्रस्तावित स्पष्टीकरण सद्भाविक एवं संतोषजनक स्वरुप का पाया जाता है, उक्त को माफ किया जा सकता है – दूसरी ओर यदि विलम्ब कम है, परन्तु प्रस्तावित स्पष्टीकरण सद्भाविक नहीं पाया जाता, उक्त को पर्याप्त कारण के रुप में स्वीकार नहीं किया जा सकता। (हरि सिंह वि. कैलाश) ...2168

Limitation Act (36 of 1963), Section 5/14 – Condonation of delay **– If the party has filed any proceedings before the Forum which is not competent to entertain, hear and adjudicate the same and on coming to know about such position, if such matter is withdrawn from such Forum and filed before the appropriate competent Forum, then the period spent by such party in prosecuting the proceedings before the wrong Forum deserves to be excluded to count the period of limitation in filing the proceedings before the competent Forum provided under the law – Impugned order set aside and the application of the petitioner filed u/s 5 of the limitation Act allowed and the entire delay in filing the second appeal is condoned. [Anil Kumar Dikshit Vs. State of M.P.] ...*13**

परिसीमा अधिनियम (1963 का 36), धारा 5/14 – विलम्ब के लिए माफी – यदि पक्षकार ने ऐसे न्यायालय के समक्ष किसी कार्यवाही को प्रस्तुत किया है जो उसे ग्रहण करने, सुनने एवं न्यायनिर्णित करने के लिए सक्षम नहीं है और उक्त स्थिति का ज्ञान होने पर यदि ऐसा मामला उक्त न्यायालय से वापिस लिया जाता है और समुचित सक्षम न्यायालय के समक्ष प्रस्तुत किया जाता है, तब विधि अंतर्गत उपबंधित सक्षम न्यायालय के समक्ष कार्यवाही प्रस्तुत करने में परिसीमा अवधि की गणना करने के लिये उक्त पक्षकार द्वारा गलत न्यायालय के समक्ष कार्यवाहियां चलाने में बितायी गयी अवधि अपवर्जित किये जाने योग्य है – आक्षेपित आदेश अपास्त और याची द्वारा परिसीमा अधिनियम की धारा 5 के अंतर्गत प्रस्तुत किया गया आवेदन मंजूर किया गया तथा द्वितीय अपील प्रस्तुत करने में किया गया संपूर्ण विलम्ब माफ किया गया। (अनिल कुमार दीक्षित वि. म.प्र. राज्य) ...*13

Limitation Act (36 of 1963), Sections 5 & 14 – Consideration of delay **– Since the issue has not been dealt with in the spirit of Section 14 of the Limitation Act – This question be decided by the Commissioner for Workmen's Compensation Act – Appeal is allowed – Parties are directed to appear before the Commissioner who would decide the claim petition**

on merits. [Mahabir Sen Vs. Vijay Singh] ...2365

परिसीमा अधिनियम (1963 का 36), धाराऐं 5 व 14 – विलम्ब पर विचार – चूंकि विवाद्यक को परिसीमा अधिनियम की धारा 14 के आशय अनुसार नहीं निपटाया गया – इस प्रश्न को कर्मकार प्रतिकर अधिनियम हेतु आयुक्त द्वारा निर्णित किया जावे – अपील मंजूर – पक्षकारों को निदेशित किया गया कि वे आयुक्त के समक्ष उपस्थित होवें, जो दावा याचिका को गुणदोषों पर निर्णित करेगा। (महावीर सेन वि. विजय सिंह) ...2365

Lok Seva (Anusuchit Jatiyon, Anusuchit Jan Jatiyon Aur Anya Pichhade Vargon Ke Liye Arakshan) Adhiniyam, M.P. (21 of 1994), Section 4(4) – See – Civil Services (Special Provision for Appointment of Women), M.P. Rules, 1997, Rule 3 [Sunita Thakre (Dr.) Vs. State of M.P.] ...1831

लोक सेवा (अनुसूचित जातियों, अनुसूचित जनजातियों और अन्य पिछड़े वर्गों के लिये आरक्षण) अधिनियम, म.प्र., (1994 का 21), धारा 4(4) – देखें – सिविल सेवा (महिलाओं की नियुक्ति के लिये विशेष उपबंध), म.प्र., नियम 1997, नियम 3 (सुनीता ठाकरे (डॉ.) वि. म.प्र. राज्य) ...1831

Medical and Dental Post Graduate Course Entrance Examination Rules, M.P., 2013, Rule 11 – Education and Universities – Medical Colleges/Education – Admission – Irregular/Illegal admission – **Inaccurate, inefficient and improper admissions process defeating Rule of merit – Meritorious candidate not getting admission in her preferred course – Held – Petitioner is not at fault and she pursued her rights and remedies as expeditiously as possible – The petitioner was a candidate placed higher in the merit list – There is fault on the part of the authorities and apparent breach of Rule 11 of the Rules of 2013 in granting admission to respondent No. 5 – The career of meritorious youth is at stake, when there is conflict between the Rules and executive instructions, the Rules will prevail – Executive instructions cannot be made or given effect in violation of what is mandated by the Rules – Admission of respondent No. 5 quashed and respondents directed to grant admission to the petitioner. [Ruchi Jain Vs. State of M.P.] (DB)...2322**

चिकित्सा और दंत स्नातकोत्तर पाठ्यक्रम प्रवेश परीक्षा नियम, म.प्र. 2013, नियम 11 – शिक्षा और विश्वविद्यालय – चिकित्सा महाविद्यालय/शिक्षा – प्रवेश – अनियमित/अवैध प्रवेश – गुणवत्ता के नियम को विफल करते हुए त्रुटिपूर्ण, अयोग्य एवं

अनुचित प्रवेश प्रक्रिया – गुणवत्ता धारक अभ्यर्थी को उसके पसंद के पाठ्यक्रम में प्रवेश नहीं मिला – अभिनिर्धारित – याची की ओर से कोई त्रुटि नहीं और उसने अपने अधिकारों और उपचारों का उपयोग यथासंभव शीघ्रता से किया – याची गुणवत्ता सूची में उच्चतर स्थान पर थी – प्राधिकारियों की ओर से त्रुटि है और प्रत्यर्थी क्र. 5 को प्रवेश प्रदान करने में नियम 2013 के नियम 11 का प्रकट रुप से भंग है – गुणवत्ता धारक युवती का भविष्य दांव पर है, जब नियम और कार्यपालिक अनुदेशों के बीच टकराव होता है, नियम अभिभावी होंगे – नियमों द्वारा जो आज्ञापक है, उसके अतिलंघन में कार्यपालिक अनुदेशों को बनाया या प्रभावशील नहीं किया जा सकता – प्रत्यर्थी क्र. 5 का प्रवेश अभिखंडित और प्रत्यर्थीगण को निदेश कि याची को प्रवेश प्रदान किया जाये। (रूचि जैन वि. म.प्र. राज्य) **(DB)...2322**

***Motor Vehicles Act (59 of 1988), Section 147 – Injury Case* – Passenger traveling in a transport vehicle alongwith his buffaloes after paying fare for buffaloes – Insurance Company is liable. [Mahesh Chandra Vs. Anokhilal] ...2156**

मोटर यान अधिनियम (1988 का 59), धारा 147 – चोट का प्रकरण – यात्री परिवहन यान में अपनी भैंसो के साथ, भैंसो का भाड़ा अदा करने के पश्चात, यात्रा कर रहा था – बीमा कम्पनी दायित्वाधीन। (महेश चन्द्र वि. अनोखीलाल) **...2156**

***Motor Vehicles Act (59 of 1988), Section 149* – Plea of insurer that driver had no valid driving licence – To be proved by insurer itself. [Mahesh Chandra Vs. Anokhilal] ...2156**

मोटर यान अधिनियम (1988 का 59), धारा 149 – बीमाकर्ता का अभिवाक् कि वाहन चालक के पास वैध ड्राईविंग लाईसेंस नहीं था – स्वयं बीमाकर्ता द्वारा साबित किया जाना चाहिये। (महेश चन्द्र वि. अनोखीलाल) **...2156**

***Motor Vehicles Act (59 of 1988), Section 163-A – Injury case* – Claimant himself was negligent then he is not entitled to claim compensation on the principle of no fault liability. [Mahipal Singh Bhati Vs. Nisar Mohd.] ...2125**

मोटर यान अधिनियम (1988 का 59), धारा 163–ए – चोट का प्रकरण – दावाकर्ता स्वयं उपेक्षक, तब वह बिना दोष दायित्व के सिद्धांत पर प्रतिकर का दावा करने के लिये हकदार नहीं। (महिपाल सिंह भाटी वि. निसार मोहम्मद) **...2125**

***Motor Vehicles Act (59 of 1988), Section 166 – See – Workmen's Compensation Act, 1923, Section 10* [Mahabir Sen Vs. Vijay Singh] ...2365**

मोटर यान अधिनियम (1988 का 59), धारा 166 – देखें – कर्मकार प्रतिकर अधिनियम, 1923, धारा 10 (महावीर सेन वि. विजय सिंह) **...2365**

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Motor Vehicles Act (59 of 1988), Sections 168 & 171 – Enhancement of Compensation – **Claimant became permanently disabled to the extent of 100 % – Aged 39 1/2 years – Entitled to Rs. 18,17,000/- –Awarded interest on enhanced amount @ 6% p.a. [United Indian Insurance Company Ltd. Vs. Vardiya @ Vardichandra] ...2135**

मोटर यान अधिनियम (1988 का 59), धाराऐं 168 व 171 – प्रतिकर बढ़ाया जाना – दावाकर्ता 100 प्रतिशत की सीमा तक स्थाई रुप से निःशक्त – वय 39 1/2 वर्ष – रु. 18,17,000/– का हकदार – बढ़ायी गयी राशि पर 6 प्रतिशत प्रतिवर्ष की दर से ब्याज अवार्ड किया गया। (यूनाईटेड इंडियन इंश्योरेन्स कंपनी लि. वि. वरदिया उर्फ वरदीचन्द्र) ...2135

Motor Vehicles Act (59 of 1988), Section 173 – Appeal – For enhancement of award – **M.L.C. report, X-ray report and the X-ray plate placed on record –Same has been proved by appellant himself – Doctor has not been examined – Fracture of 9th ribs of the right side is there – Held – Law relating to the accident claim, being law of social welfare, Rules relating to the admissibility of the medical documents should not be followed strictly – If the medical documents appears to be bonafide and genuine appropriate relief should be given – In view of the available scenario, nature of injuries sustained award is enhanced from 7,000/- to Rs. 25,000/- with 7.5% interest from the date of filing the claim petition. [Radhika Prasad Namdeo Vs. Driver Naresh @ Bhoora] ...2390**

मोटर यान अधिनियम (1988 का 59), धारा 173 – अपील – अवार्ड बढ़ाये जाने हेतु – एम.एल.सी. रिपोर्ट, एक्सरे रिपोर्ट और एक्सरे प्लेट अभिलेख पर प्रस्तुत – उक्त को स्वयं अपीलार्थी द्वारा साबित किया गया – चिकित्सक का परीक्षण नहीं किया गया – दाहिनी ओर की 9वीं पसली का अस्थिभंग है – अभिनिर्धारित – दुर्घटना दावा से संबंधित विधि, सामाजिक कल्याण की विधि होने के नाते, चिकित्सीय दस्तावेजों की ग्राहयता से संबंधित नियमों का कठोरता से पालन नहीं किया जाना चाहिये – यदि चिकित्सीय दस्तावेज सद्भाविक एवं वास्तविक प्रतीत होते हैं, समुचित अनुतोष दिया जाना चाहिये – उपलब्ध परिदृश्य में पहुंचाई गयी क्षतियों के स्वरुप को दृष्टिगत रखते हुये अवार्ड को रु. 7,000/– से रु. 25,000/–, दावा याचिका प्रस्तुती की तिथि से 7.5 प्रतिशत ब्याज के साथ बढ़ाया गया। (राधिका प्रसाद नामदेव वि. ड्रायवर नरेश उर्फ भूरा) ...2390

Motor Vehicles Act (59 of 1988), Section 173 – Compensation – **Documents of the business duly verified by the Chartered Accountant, who is a witness of the Insurance Company – Chartered Accountant**

also admitted that there was no manipulation in Income Tax return and accounts were maintained as per Rules – Income Tax returns should not be disbelieved – Income may be safely accepted as Rs. 9,00,000/- per annum – Since there are four dependents, 1/4 income is deducted towards personal expenses – Compensation enhanced from Rs. 65,88,106/- to Rs. 82,63,885/- – Enhanced amount shall carry interest @ 7.5% per annum from the date of filing the claim petition. [New India Assurance Co. Ltd. Vs. Smt. Preeti] ...2382

मोटर यान अधिनियम (1988 का 59), धारा 173 – प्रतिकर – कारोबार के दस्तावेजों को चार्टर्ड अकाउंटेन्ट द्वारा सम्यक रुप से सत्यापित किया गया जो बीमा कम्पनी का साक्षी है – चार्टर्ड अकाउंटेन्ट ने यह भी स्वीकार किया कि आयकर रिटर्न में हेर–फेर नहीं था और खाते नियमानुसार संधारित थे – आयकर रिटर्न पर अविश्वास नहीं किया जा सकता – रु. 9,00,000/– प्रतिवर्ष आय, सुरक्षित रुप से स्वीकार की जा सकती है – चूंकि चार आश्रित हैं, 1/4 आय व्यक्तिगत खर्चे के रुप में घटायी गई – प्रतिकर को रु. 65,88,106/– से बढ़ाकर रु. 82,63,885/– किया गया – बढ़ायी गयी रकम पर, दावा याचिका प्रस्तुत करने की तिथि से 7.5 प्रतिशत प्रतिवर्ष की दर से ब्याज लगेगा। (न्यू इंडिया एश्योरेन्स कं. लि. वि. श्रीमती प्रीति) ...2382

Motor Vehicles Act (59 of 1988), Section 173 – Composite negligence **– Head on collusion – Tribunal awarded compensation to the claimant against owner and insurance company of opposite truck while exonerating owner and insurance company of the truck in which deceased was going – Held – Sole eyewitness deposed that driver of truck coming from opposite direction caused the accident by rash and negligent driving – No spot map prepared during investigation by I.O. was filed or proved in his support – Owners of both trucks are responsible for payment of award amount to claimants of deceased – Both insurance companies of both trucks to indemnify liability of insured/owner of the trucks to satisfy award payable. [National Insurance Company Ltd. Vs. Ramlal] ...2149**

मोटर यान अधिनियम (1988 का 59), धारा 173 – संयुक्त उपेक्षा – सीधी टक्कर – अधिकरण ने विरुद्ध ट्रक के स्वामी और बीमा कम्पनी के विरुद्ध दावाकर्ता को प्रतिकर का अवार्ड किया, जबकि उस ट्रक के स्वामी और बीमा कम्पनी को विमुक्त किया गया जिसमें मृतक जा रहा था – अभिनिर्धारित – एकमात्र चक्षूदर्शी साक्षी का कथन है कि विरुद्ध दिशा से आ रहे ट्रक के चालक ने उतावलेपन और उपेक्षापूर्ण वाहन चलाकर दुर्घटना कारित की – इसके समर्थन में अन्वषण अधिकारी द्वारा जांच के दौरान तैयार किया गया कोई घटनास्थल नक्शा प्रस्तुत एवं

साबित नहीं किया गया – दोनों ट्रकों के स्वामी, मृतक के दावाकर्ताओं को अवार्ड की रकम का भुगतान करने के लिये दायी है – दोनों ट्रकों की दोनों बीमा कम्पनियां, देय अवार्ड की संतुष्टि के लिये ट्रकों के बीमित/स्वामियों के दायित्व की क्षतिपूर्ति करेंगी। (नेशनल इंश्योरेन्स कंपनी लि. वि. रामलाल) ...2149

Motor Vehicles Act (59 of 1988), Section 173 – Contributory Negligence – **Looking to the spot map and the evidence so brought on record by the claimants as well as by the driver of the offending vehicle, the contributory negligence of the offending vehicle and the vehicle driven, by the deceased is quantified by 80%-20% – Finding recorded by the Tribunal regarding negligence of the offending vehicle only is set-aside. [New India Assurance Co. Ltd. Vs. Smt. Preeti]** ...2382

मोटर यान अधिनियम (1988 का 59), धारा 173 – योगदायी उपेक्षा – घटनास्थल नक्शा और आक्षेपित वाहन के चालक द्वारा एवं दावाकर्ताओं द्वारा अभिलेख पर लाये गये साक्ष्य को देखते हुए, आक्षेपित वाहन और मृतक द्वारा चलाया गये वाहन की योगदायी उपेक्षा 80 प्रतिशत से 20 प्रतिशत परिमाणित की गयी – अधिकरण द्वारा केवल आक्षेपित वाहन की उपेक्षा संबंधित अभिलिखित किया गया निष्कर्ष अपास्त। (न्यू इंडिया एश्योरेन्स कं. लि. वि. श्रीमती प्रीति) ...2382

Motor Vehicles Act (59 of 1988), Section 173 – Quantum of compensation – **Amount of Rs. 75,000/- awarded in addition to the amount of Rs. 3,67,000/- – Appellant, Insurance Company to satisfy 50% of the award and 50% shall be paid by respondent owner and respondent Insurance Company in joint or several manner within a period of two months. [National Insurance Company Ltd. Vs. Ramlal]** ...2149

मोटर यान अधिनियम (1988 का 59), धारा 173 – प्रतिकर की मात्रा – रु. 3,67,000/– की रकम के अतिरिक्त रु. 75,000/– की रकम अवार्ड की गई – अपीलार्थी, बीमा कम्पनी अवार्ड के 50 प्रतिशत की संतुष्टि करेगी और 50 प्रतिशत, प्रत्यर्थी स्वामी तथा प्रत्यर्थी बीमा कम्पनी द्वारा संयुक्त या पृथक रुप से दो माह की अवधि के भीतर अदा करेगी। (नेशनल इंश्योरेन्स कंपनी लि. वि. रामलाल) ...2149

Motor Vehicles Act (59 of 1988), Section 173(1) – Exoneration of Insurance Company – **It was expected from the Insurance Company to examine a reasonable officer to explain that how the Insurance Company is not liable to pay compensation inspite of charging of extra premium – Impugned award, modified by enhancing from Rs. 2,37,979/- to Rs. 3,15,000/- with interest @ 8% from the date of application – Insurance Company shall be liable to pay Rs. 1.00 lac alongwith**

proportionate interest and balance amount shall be paid by respondent Nos. 1 & 2. [Shyamlal Vs. Ghanshyam] ...1875

मोटर यान अधिनियम (1988 का 59), धारा 173(1) – बीमा कम्पनी को उत्तरदायित्व से मुक्त किया जाना – बीमा कम्पनी से यह अपेक्षित था कि वह युक्तियुक्त अधिकारी का परीक्षण करे, यह स्पष्ट करने के लिये कि कैसे अतिरिक्त प्रीमियम भारित करने के बावजूद, बीमा कम्पनी प्रतिकर अदा करने के लिये दायी नहीं है – आक्षेपित अवार्ड को रु. 2,37,979/– से बढ़ाकर रु. 3,15,000/–, 8 प्रतिशत की ब्याज दर के साथ, उपांतरित किया गया – बीमा कम्पनी, अनुपातिक ब्याज के साथ रु. 1.00 लाख अदा करने के लिये दायी होगी और बकाया रकम प्रत्यर्थी क्र. 1 व 2 द्वारा अदा की जायेगी। (श्यामलाल वि. घनश्याम) ...1875

Motor Vehicles Act (59 of 1988), Section 173(1) – For Enhancement **– Accident is of the year 2006, learned Tribunal was not justified in awarding Rs. 2,37,979/- as compensation – The income is assessed @ 3,000/- p.m. – After deducting 1/2 as the deceased was bachelor and after applying the multiplier of 15, total compensation comes to Rs. 3,15,000/-. [Shyamlal Vs. Ghanshyam] ...1875**

मोटर यान अधिनियम (1988 का 59), धारा 173(1) – बढ़ाये जाने हेतु – दुर्घटना वर्ष 2006 में घटी थी, विद्वान अधिकरण द्वारा प्रतिकर के रुप में रु. 2,37,979/– का अवार्ड करना न्यायोचित नहीं था – आय का निर्धारण 3,000/– प्रतिमाह की दर से किया गया – क्योंकि मृतक अविवाहित था, 1/2 के कटौत्रा पश्चात और 15 का गुणक लागू करने के बाद, कुल प्रतिकर रु. 3,15,000/– बनता है। (श्यामलाल वि. घनश्याम) ...1875

Municipal Corporation Act, M.P. (23 of 1956), Section 441(4)(a) **– Validity of election of petitioner as Corporater was challenged by respondent – After recording evidence of respondent No. 1 petitioner filed an application u/s 441(4)(a) of the Act praying that respondent No.1 be directed to implead all the candidates as party which was dismissed hence present petition has been filed – Held – All the returned candidates are required to be impleaded in case the validity of election of all the returned candidates is challenged – In the present case the validity of election of petitioner is under challenge – Therefore, all the elected Corporaters are neither necessary nor proper party – Same is required if the validity of a particular election is challenged. [Dinesh Pandey Vs. Shri Bharat Mathurawala] ...1746**

नगरपालिक निगम अधिनियम, म.प्र. (1956 का 23), धारा 441(4)(ए) –

पार्षद के रुप में याची के निर्वाचन की वैधता को प्रत्यर्थी द्वारा चुनौती – प्रत्यर्थी क्र. 1 का साक्ष्य अभिलिखित किये जाने के पश्चात, याची ने अधिनियम की धारा 441(4)(ए) के अंतर्गत आवेदन इस निवेदन के साथ प्रस्तुत किया कि सभी प्रत्याशियों को पक्षकार के रुप में आलिप्त करने के लिये प्रत्यर्थी क्र. 1 को निदेशित किया जाये, जिसे खारिज किया गया, अतः वर्तमान याचिका प्रस्तुत की गयी है – अभिनिर्धारित – सभी निर्वाचित प्रत्याशियों के निर्वाचन की वैधता को चुनौती के प्रकरण में सभी निर्वाचित प्रत्याशियों को आलिप्त किया जाना अपेक्षित है – वर्तमान प्रकरण में याची के निर्वाचन की वैधता को चुनौती दी गयी है – इसलिए, सभी निर्वाचित पार्षद, न तो आवश्यक और न ही उचित पक्षकार हैं – उक्त की अपेक्षा तब होती यदि किसी विशिष्ट निर्वाचन की वैधता को चुनौती दी जाती। (दिनेश पाण्डे वि. श्री भारत मथुरावाला) ...1746

Municipal Services (Pension) Rules, M.P., 1980, Rule 1 – See – Payment of Gratuity Act, 1972, Section 14 **[Municipal Corporation, Burhanpur Vs. Nathu]** ...2315

नगरपालिक सेवा (पेंशन) नियम, म.प्र. 1980, नियम 1 – देखें – उपदान संदाय अधिनियम, 1972, धारा 14 (म्यूनिसिपल कारपोरेशन, बुरहानपुर वि. नाथू) ...2315

Muslim Women (Protection of Rights on Divorce) Act (25 of 1986), Section 3 – See – Criminal Procedure Code, 1973, Sections 125 to 128 **[Qureshia Bi Vs. Abdul Hameed]** ...2466

मुस्लिम स्त्री (विवाह विच्छेद पर अधिकार संरक्षण) अधिनियम (1986 का 25), धारा 3 – देखें – दण्ड प्रक्रिया संहिता, 1973, धाराऐं 125 से 128 (कुरेशिया बी वि. अब्दुल हमीद) ...2466

Narcotic Drugs and Psychotropic Substances Act (61 of 1985), Sections 8/15(c) & 29 **– Witnesses relied upon by the prosecution have not supported the prosecution case – There was violation of Section 42 & 57 – Evidence adduced is wholly insufficient to conclude that what was seized from the appellants alone was sent to chemical examination – Seized 'Doda Chura' was not produced before trial court – Lapse are not explained properly – Held – Benefit of doubt extended in favour of appellants – Conviction of appellant is set aside – Appeal allowed. [Gopal Singh Vs. State of M.P.]** ...1886

स्वापक औषधि और मनःप्रभावी पदार्थ अधिनियम (1985 का 61), धाराऐं 8/15(सी) व 29 – अभियोजन ने जिन गवाहों पर विश्वास किया उन्होंने अभियोजन प्रकरण का समर्थन नहीं किया – धारा 42 एवं 57 का उल्लंघन किया गया –

उपस्थित साक्ष्य यह निष्कर्ष निकालने के लिए पूर्णतः अपर्याप्त है कि अपीलार्थीगण से जो जप्ती हुई, उसी को रासायनिक परीक्षण के लिये भेजा गया था – जप्त 'डोडा चूरा' विचारण न्यायालय के समक्ष प्रस्तुत नहीं किया गया – चूक को उचित रुप से नहीं समझाया गया – अभिनिर्धारित – संदेह का लाभ अपीलार्थीगण के पक्ष में दिया गया – अपीलार्थी की दोषसिद्धि अपास्त – अपील मंजूर। (गोपाल सिंह वि. म.प्र. राज्य) ...1886

Narcotic Drugs and Psychotropic Substances Act (61 of 1985), Section 8/18, Penal Code (45 of 1860), Sections 63 to 70 – Reduction of Sentence – **As the appellant is the first offender, the sentence of 15 years is reduced to the minimum sentence of 10 years – Reduction of default sentence in lieu of fine – Provisions of Penal Code makes it clear that the amount of fine should not be harsh or excessive – Where a substantial term of imprisonment is inflicted, an excessive fine should not be imposed except in exceptional cases – R.I. of 6 months in lieu of fine is upheld. [Ansar Khan Sherani Vs. State of M.P.](DB)...1929**

स्वापक औषधि और मनःप्रभावी पदार्थ अधिनियम (1985 का 61), धारा 8/18, दण्ड संहिता (1860 का 45), धाराऐं 63 से 70 – दण्डादेश को घटाया जाना – चूंकि अपीलार्थी प्रथम अपराधी है, 15 वर्ष के दण्डादेश को घटाकर 10 वर्ष का न्यूनतम दण्डादेश किया गया – अर्थदण्ड के बदले व्यतिक्रम दण्डादेश घटाना – दण्ड संहिता के उपबंध स्पष्ट करते हैं कि अर्थदण्ड की राशि कठोर या अत्याधिक नहीं होनी चाहिए – जहां कारावास की पर्याप्त अवधि अधिरोपित की गयी हो, तब आपवादिक प्रकरणों को छोड़कर अत्याधिक अर्थदण्ड अधिरोपित नहीं किया जाना चाहिये – अर्थदण्ड के बदले 6 मांह का सश्रम कारावास अभिपुष्ट किया गया। (अंसार खान शेरानी वि. म.प्र. राज्य) (DB)...1929

National Security Act (65 of 1980), Proviso to Section 3(3) and 3(5) – **Order passed by the Detaining Authority or by the State Govt. was not communicated to the Central Government at all – No document showing compliance of Section 3(5) of the Act – Order quashed. [Bhaiya @ Bhaiyalal @ Arvind Vs. State of M.P.]** (DB)...1730

राष्ट्रीय सुरक्षा अधिनियम (1980 का 65), धारा 3(3) व 3(5) के परन्तुक – निरोध प्राधिकारी या राज्य सरकार द्वारा पारित किये गये आदेश की संसूचना केन्द्रीय सरकार को बिल्कुल नहीं दी गयी – अधिनियम की धारा 3(5) का अनुपालन दर्शाता कोई दस्तावेज नहीं – आदेश अभिखंडित। (भैया उर्फ भैयालाल उर्फ अरविन्द वि. म.प्र. राज्य) (DB)...1730

National Security Act (65 of 1980), Sections 8 & 14, Constitution

–*Article 22(5) – Order of detention* – Representation was decided by State after a delay of about four months but was not communicated to petitioner – Representations made to Detaining Authority was not decided – The detention order is therefore, liable to be quashed. [Bhaiya @ Bhaiyalal @ Arvind Vs. State of M.P.] (DB)...1730

राष्ट्रीय सुरक्षा अधिनियम (1980 का 65), धाराऐं 8 व 14, संविधान – अनुच्छेद 22(5) – निरोध आदेश – राज्य द्वारा याची के अभ्यावेदन को करीब चार माह के विलम्ब के पश्चात निराकृत किया गया परन्तु याची को संसूचित नहीं किया गया – निरोध प्राधिकारी को दिया गया अभ्यावेदन को निराकृत नहीं किया गया – निरोध आदेश इसलिए अभिखंडित किये जाने योग्य। (भैया उर्फ भैयालाल उर्फ अरविन्द वि. म.प्र. राज्य) **(DB)...1730**

***Nikshepakon Ke Hiton Ka Sanrakshan Adhiniyam, M.P., 2000 (16 of 2001), Section 4, Nikshepakon Ke Hiton Ka Sanrakshan Niyam, M.P., 2003, Rule 9 – Seizure or attachment* – There is distinction between seizure and attachment – Before passing the order of Seizure, the competent Authority must record satisfaction that it is satisfied or has reason to believe that the property liable to be attached is likely to be concealed or transferred or dealt with in any manner which will result in defeating the purpose of Act – Impugned order of seizure quashed – However, Company directed not to transfer or otherwise deal with immovable property which has been seized except with the permission of the High Court – Direction to remain in force till fresh order is passed by competent authority. [Sai Prasad Foods Ltd. (M/s.) Vs. State of M.P.] (DB)...2091**

निक्षेपकों के हितों का संरक्षण अधिनियम, म.प्र., 2000, (2001 का 16), धारा 4, निक्षेपकों के हितों का संरक्षण नियम, म.प्र., 2003, नियम 9 – अभिग्रहण या कुर्की – अभिग्रहण और कुर्की के बीच अंतर है – अभिग्रहण का आदेश पारित करने से पहले, सक्षम प्राधिकारी को संतुष्टि अभिलिखित करनी चाहिए कि वह संतुष्ट है या विश्वास का कारण है कि कुर्की योग्य सम्पत्ति का छिपाव या अंतरण या किसी अन्य ढंग से कार्यवाही की संभावना है, जिसके परिणामस्वरुप अधिनियम का प्रयोजन विफल होगा – अभिग्रहण का आक्षेपित आदेश अभिखंडित – किन्तु, कम्पनी को निदेश दिया गया कि उच्च न्यायालय की अनुमति के सिवाए अभिग्रहित की गयी, अचल सम्पत्ति का अंतरण या अन्यथा निपटारा नहीं किया जाये – सक्षम प्राधिकारी द्वारा नया आदेश पारित किये जाने तक प्रवर्तनीय रखने का निदेश। (सांई प्रसाद फुडस् लि. (मे.) वि. म.प्र. राज्य) **(DB)...2091**

Nikshepakon Ke Hiton Ka Sanrakshan Niyam, M.P., 2003, Rule 9

– See – Nikshepakon Ke Hiton Ka Sanrakshan Adhiniyam, M.P., 2000, Section 4 [Sai Prasad Foods Ltd. (M/s.) Vs. State of M.P.] (DB)...2091

निक्षेपकों के हितों का संरक्षण नियम, म.प्र., 2003, नियम 9 – देखें – निक्षेपकों के हितों का संरक्षण अधिनियम, म.प्र., 2000, धारा 4 (साई प्रसाद फुडस् लि. (मे.) वि. म.प्र. राज्य) (DB)...2091

Panchayat Service (Discipline and Appeal) Rules, M.P. 1999, Rule 4(1) – **Petitioner who is Sahayak Adhyapak has challenged his suspension by Collector on the ground that the Collector being an appellate authority under M.P. Panchayat Adhyapak Samvarg (Niyam Evam Seva Ki Sharten) Niyam, 2008 does not have the power to suspend him – Held – Since the Committee constituted under Rule 5(2) of 2008 Rule is subordinate to the Collector – Therefore, as per rule 4(1) of 1999 Rules, the Collector is within his powers to place the petitioner under suspension – No interference is warranted – Petition is dismissed. [Yuvraj Singh Vs. State of M.P.]** ...2074

पंचायत सेवा (अनुशासन और अपील) नियम, म.प्र. 1999, नियम 4(1) – याची जो सहायक अध्यापक है, ने कलेक्टर द्वारा उसके निलंबन को इस आधार पर चुनौती दी कि म.प्र. पंचायत अध्यापक संवर्ग (नियम एवं सेवा की शर्तें) नियम, 2008, के अंतर्गत कलेक्टर, अपीली प्राधिकारी होने के नाते उसे निलंबित करने की शक्ति नहीं रखता – अभिनिर्धारित – चूंकि नियम 2008 के नियम 5(2) के अंतर्गत गठित समिति, कलेक्टर के अधीनस्थ है – इसलिए नियम, 1999 के नियम 4(1) के अनुसार याची को निलंबन में रखने के लिये कलेक्टर सशक्त है – हस्तक्षेप की आवश्यकता नहीं – याचिका खारिज। (युवराज सिंह वि. म.प्र. राज्य) ...2074

Payment of Gratuity Act (39 of 1972), Section 14, Municipal Services (Pension) Rules, M.P., 1980, Rule 1 – Gratuity – **Employees of Municipal Corporation are entitled to payment of gratuity – Whether they had opted for pension or not ? [Municipal Corporation, Burhanpur Vs. Nathu]** ...2315

उपदान संदाय अधिनियम (1972 का 39), धारा 14, नगरपालिक सेवा (पेंशन) नियम, म.प्र. 1980, नियम 1 – उपदान – नगरपालिक निगम के कर्मचारी, उपदान के भुगतान के हकदार है – भले ही उन्होंने पेंशन चुनी हो अथवा नहीं। (म्यूनिसिपल कारपोरेशन, बुरहानपुर वि. नाथू) ...2315

Penal Code (45 of 1860), Sections 63 to 70 – See – Narcotic Drugs and Psychotropic Substances Act, 1985, Section 8/18 [Ansar Khan Sherani Vs. State of M.P.] (DB)...1929

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दण्ड संहिता (1860 का 45), धाराऐं 63 से 70 – देखें – स्वापक औषधि और मन:प्रभावी पदार्थ अधिनियम, 1985, धारा 8/18 (अंसार खान शेरानी वि. म. प्र. राज्य) (DB)...1929

Penal Code (45 of 1860), Sections 147, 148, 149 & 302 – Circumstantial Evidence **– No eye-witness was present at the time of incident – Axes seized from the appellants were not found stained with blood – Accused acquitted. [Rajendra Singh Vs. State of M.P.] (DB)...2247**

दण्ड संहिता (1860 का 45), धाराऐं 147, 148, 149 व 302 – परिस्थितिजन्य साक्ष्य – घटना के समय चक्षुदर्शी साक्षी उपस्थित नहीं – अपीलार्थियों से जब्त कुल्हाड़ियों पर रक्त के धब्बे नहीं पाये गए – अभियुक्त दोषमुक्त। (राजेन्द्र सिंह वि. म.प्र. राज्य) (DB)...2247

Penal Code (45 of 1860), Sections 148, 149, 353/149 and 307/149 –Attempt to Murder **– Accused robbed P.W. 2 and killed his driver and looted Rs. 15,00,000/- – On receiving information of incident, Constable alongwith force intercepted accused persons –Appellants with intention to terrorise the Constable who was public servant came towards him and fired gun shot causing him injury – No indulgence called for – Appellants already convicted for killing driver and looting P.W. 2 – Sentence awarded in present case to run concurrently with sentence awarded in another case. [Shakir Vs. State of M.P.] (DB)...2394**

दण्ड संहिता (1860 का 45), धाराऐं 148, 149, 353/149 व 307/149 – हत्या का प्रयत्न – अभियुक्त ने अ.सा. 2 को लूटा और उसके ड्राईवर की हत्या की व 15,00,000/– रुपये लूटे – घटना की सूचना मिलने पर, आरक्षक ने बल के साथ अभियुक्तगण को रोका – आरक्षक जो लोक सेवक था, को आतंकित करने के आशय से अपीलार्थीगण उसकी ओर आये और अग्नेयास्त्र से गोली चलाकर उसे आहत किया – लिप्तता की आवश्यकता नहीं – अपीलार्थीगण पहले से ड्राईवर की हत्या और अ.सा. 2 को लूटने के लिये दोषसिद्ध किये गये – वर्तमान प्रकरण में अवार्ड किया गया दण्डादेश, अन्य प्रकरण में अवार्ड किये गये दण्डादेश के साथ साथ भुगताया जायेगा। (शाकिर वि. म.प्र. राज्य) (DB)...2394

Penal Code (45 of 1860), Section 302 – Circumstantial Evidence **– When case rests on circumstantial evidence it must satisfy three tests (1) Circumstances must be cogently and firmly established (2) Circumstances should be of definite and unerringly pointing towards guilt of accused and (3) Circumstances taken cumulatively should form a complete chain. [State of M.P. Vs. Inder Singh] (DB)...2412**

दण्ड संहिता (1860 का 45), धारा 302 – परिस्थितिजन्य साक्ष्य – जब प्रकरण परिस्थितिजन्य साक्ष्य पर आधारित होता है तब उसे तीन परीक्षणों को संतुष्ट करना चाहिए (1) परिस्थितियां, प्रबल एवं ठोस रुप से स्थापित की जानी चाहिए (2) परिस्थितियां, सुस्पष्ट/निश्चित होनी चाहिए और अचूक रुप से अभियुक्त की दोषिता की ओर इंगित करने वाली होनी चाहिए, तथा (3) परिस्थितियों को संयुक्त रुप से लेने पर, संपूर्ण श्रृंखला निर्मित होनी चाहिए। (म.प्र. राज्य वि. इंदर सिंह) **(DB)...2412**

Penal Code (45 of 1860), Section 302, Evidence Act (1 of 1872), Section 32 – Death by burn injuries – Dying declaration **– No mention that dying declaration was read over to deceased – Benefit will go to accused – Hands were totally burnt but thumb impression with ridges and curves was taken on dying declaration – No ink impression was found on thumb of victim – Cannot be relied on – Accused acquitted. [Garibdas @ Pappu Choudhari Vs. State of M.P.] (DB)...1923**

दण्ड संहिता (1860 का 45), धारा 302 व साक्ष्य अधिनियम (1872 का 1), धारा 32 – जलने की क्षतियों से मृत्यु – मृत्युकालिक कथन – मृत्युकालिक कथन को मृतिका को पढ़कर सुनाये जाने का कोई उल्लेख नहीं – अभियुक्त को लाभ मिलेगा – हाथ पूरी तरह से जल गये थे, किन्तु मत्युकालिक कथन पर किनारे और मोड़ के साथ अंगूठा निशानी ली गयी थी – मृतिका के अंगूठे पर स्याही का निशान नहीं पाया गया – विश्वसनीय नहीं – अभियुक्त दोषमुक्त। (गरीबदास उर्फ पप्पू चौधरी वि. म.प्र. राज्य) **(DB)...1923**

Penal Code (45 of 1860), Section 302 – Murder **– Case under Section 125 of Cr.P.C. for grant of maintenance was pending between deceased and appellant No.2 – Evidence of Sisters of deceased that appellant No.2 exhorted appellant No.1 who in his turn caused blow by means of spade to deceased not reliable in absence of corroborative independent evidence – In absence of Serologist's report, presence of blood stains on seized spade is of no value – Findings given by Trial Court cannot be said to be perverse – Appeal dismissed. [State of M.P. Vs. Kamal] (DB)...2415**

दण्ड संहिता (1860 का 45), धारा 302 – हत्या – मृतिका और अपीलार्थी क्र. 2 के बीच में द.प्र.सं. की धारा 125 के अंतर्गत भरण-पोषण का प्रकरण लंबित था – मृतिका की बहनों का साक्ष्य कि अपीलार्थी क्र. 2 ने अपीलार्थी क्र. 1 को उकसाया, जिसने अपनी ओर से मृतिका पर फावड़े से वार किया, पुष्टिकारक स्वतंत्र साक्ष्य की अनुपस्थिति में विश्वसनीय नहीं – सीरम विज्ञानी के प्रतिवेदन की अनुपस्थिति में, जब्त किये गये फावड़े पर रक्त के दाग की उपस्थिति का कोई मूल्य

नहीं – विचारण न्यायालय द्वारा दिये गये निष्कर्षों को विपर्यस्त नहीं कहा जा सकता – अपील खारिज। (म.प्र. राज्य वि. कमल) (DB)...2415

Penal Code (45 of 1860), Section 302 – Murder – Circumstantial Evidence – **Accused known to deceased – Deceased left her house informing her children that she is going to purchase clothes and to meet appellant – Appellant and deceased had hot talk in the house of P.W. 5, thereafter both went away – A lady was seen entering in the house of appellant – Appellant was seen carrying heavy luggage on his cycle – Motive also present – Chain of circumstance complete and appellant has not rendered any explanation – Appellant guilty of killing deceased. [Bhagwandas Vs. State of M.P.]** (DB)...2182

दण्ड संहिता (1860 का 45), धारा 302 – हत्या – परिस्थितिजन्य साक्ष्य – अभियुक्त को मृतिका जानती थी – मृतिका अपने बच्चों से यह कहते हुये घर से निकली कि वह कपड़े खरीदने और अपीलार्थी से मिलने जा रही है – अ.सा. 5 के मकान में अपीलार्थी और मृतिका में कहा-सुनी हुई थी, तत्पश्चात दोनों वहां से चले गये – एक महिला को अपीलार्थी के मकान में प्रवेश करते देखा गया – अपीलार्थी को साईकिल पर भारी समान ले जाते देखा गया – हेतु भी उपस्थित – परिस्थितियों की श्रृंखला पूर्ण और अपीलार्थी ने कोई स्पष्टीकरण नहीं दिया है – मृतिका की हत्या के लिये अपीलार्थी दोषी। (भगवानदास वि. म.प्र. राज्य) (DB)...2182

Penal Code (45 of 1860), Section 302 – Murder – Circumstantial Evidence – Last seen together – **Dead body of minor girl was found in the jungle as she had gone there for grazing goats – Evidence on record show that appellant was seen alongwith the deceased at a distance of 1 1/2 Km. from the place where dead body was found – No evidence that appellant was last seen at or near the place where the dead body was found – Graver the crime, graver should be the degree of proof – No F.S.L. Report produced regarding presence of blood on Darata – Appeal allowed. [Man Singh Vs. State of M.P.]** (DB)...2253

दण्ड संहिता (1860 का 45), धारा 302 – हत्या – परिस्थितिजन्य साक्ष्य – अंतिम बार साथ देखा जाना – अल्पवयस्क बालिका की मृतदेह जंगल में पायी गयी जैसा कि वह वहां पर बकरियां चराने गयी थी – अभिलेख का साक्ष्य दर्शाता है कि अपीलार्थी को मृतिका के साथ उस स्थान से 1 1/2 किमी. की दूरी पर देखा गया था, जहां मृतदेह पायी गयी थी – कोई साक्ष्य नहीं कि अपीलार्थी को अंतिम बार उस स्थान पर या उसके आस पास देखा गया था, जहां मृतदेह पायी गयी – गंभीरतम अपराध का गंभीरतम कोटि का प्रमाण होना चाहिए – दराता पर रक्त की उपस्थिति के संबंध में न्यायालयिक विज्ञान प्रयोगशाला की कोई रिपोर्ट प्रस्तुत नहीं की गयी

– अपील मंजूर। (मान सिंह वि. म.प्र. राज्य) (DB)...2253

Penal Code (45 of 1860), Section 302 – Murder – Conviction and Sentence – Appeal – **Death by burn injuries – 71% burn injuries in the incident – Alleged previous animosity between the parties – Cannot be a ground for false implication – Conviction affirmed. [Manohar Vs. State of M.P.]** (DB)...1913

दण्ड संहिता (1860 का 45), धारा 302 – हत्या – दोषसिद्धि एवं दण्डादेश – अपील – जलने की क्षतियों से मृत्यु – घटना में 71 प्रतिशत जलने की क्षतियां – पक्षों के मध्य पुरानी वैमनस्यता अभिकथित – मिथ्या आलिप्त करने का आधार नहीं – दोषसिद्धि अभिपुष्ट। (मनोहर वि. म.प्र. राज्य) (DB)...1913

Penal Code (45 of 1860), Section 302 – Murder – Death Sentence – Rarest of rare case – **The crime was committed in cruel, diabolic and brutal manner – Innocent girl aged 4 years was subjected to such a barbaric treatment by the appellant, who was her uncle – Having regard to the vulnerability of the victim and the gruesome nature of the crime, case falls in the category of "Rarest of rare case" – Death sentence is confirmed. [In Reference Vs. Sunil]** (DB)...2433

दण्ड संहिता (1860 का 45), धारा 302 – हत्या – मृत्युदण्ड – विरलतम से विरल प्रकरण – अपराध क्रूरतापूर्ण, पैशाचिक और पाश्विक ढंग से कारित किया गया – 4 वर्षीय अबोध बालिका के साथ अपीलार्थी जो कि उसका चाचा था, द्वारा उक्त बर्बर व्यवहार किया गया – प्रहार सुलभ पीड़िता और अपराध के घिनौने स्वरुप को ध्यान में रखते हुए प्रकरण "विरलतम से विरल प्रकरण" की श्रेणी में आता है – मृत्युदण्ड की पुष्टि की गई। (इन रेफ्रेन्स वि. सुनील) (DB)...2433

Penal Code (45 of 1860), Section 302/34, Evidence Act (1 of 1872), Section 3 – Circumstantial evidence – **Evidence of last seen together not reliable because of material contradiction – All circumstances should unite to form a complete chain pointing towards the guilt of accused – In absence of it accused cannot be convicted. [Dilip Kumar Vs. State of M.P.]** (DB)...1916

दण्ड संहिता (1860 का 45), धारा 302/34, साक्ष्य अधिनियम (1872 का 1), धारा 3 – परिस्थितिजन्य साक्ष्य – तात्विक विरोधाभास के कारण, अंतिम बार साथ देखे जाने का साक्ष्य विश्वसनीय नहीं – सभी परिस्थितियों को एक साथ होकर एक संपूर्ण श्रृंखला निर्मित करनी चाहिये जो अभियुक्त की दोषिता प्रकट करती हो – इसके अभाव मे अभियुक्त को दोषसिद्ध नहीं किया जा सकता। (दिलीप कुमार वि. म.प्र. राज्य) (DB)...1916

Penal Code (45 of 1860), Section 302/34 – Murder – **Eye witnesses have testified that appellants had assaulted deceased with Sword, Pharsa and Gupti – Doctor has found 8 incised wounds – Case was also supported by circumstantial evidence – Seized articles were also found stained with human blood – Held – Fact of homicidal death is well established from the evidence on record – Corroborated by Doctor, who opined that cause of death was haemorrhage and shock due to the ante-mortem injuries caused by sharp edged weapons – No illegality committed by the trial court in convicting the appellants. [Vivek Gupta @ Jaiswal Vs. State of M.P.]** **(DB)...2259**

दण्ड संहिता (1860 का 45), धारा 302/34 – हत्या – चक्षुदर्शी साक्षियों की परिसाक्ष्य कि अपीलार्थीगण ने मृतक पर तलवार, फरसा एवं गुप्ती से प्रहार किये – चिकित्सक ने 8 कटे हुए घाव पाये – प्रकरण परिस्थितिजन्य साक्ष्य से भी समर्थित – जब्त सामग्री पर भी मानव रक्त के धब्बे पाये गए – अभिनिर्धारित – मानव वध के तथ्य अभिलेख पर उपलब्ध साक्ष्य से भी पूर्णतः स्थापित – इसकी पुष्टि चिकित्सक ने भी की, जिसका अभिमत है कि धारदार हथियार से कारित क्षतियों के कारण रक्तस्त्राव एवं आघात, मृत्यु का कारण है – विचारण न्यायालय ने अपीलार्थीगण को दोषसिद्ध करने में कोई अवैधता नहीं कारित की। (विवेक गुप्ता उर्फ जायसवाल वि. म.प्र. राज्य) **(DB)...2259**

Penal Code (45 of 1860), Sections 302/34 & 323/34 – Murder – Enmity – **Material inconsistency between ocular and medical evidence – Held – Where the eye-witness account is found credible and trustworthy, medical opinion pointing to the alternative possibilities is not accepted as conclusive – The testimony of an injured witness is accorded a special status in law – Such a witness comes with a built-in-guarantee of his presence at the scene of crime and is unlikely to spare his actual assailment in order to falsely implicate someone – No perversity in convicting and sentencing the appellants – Appeal stands dismissed. [Suresh Vs. State of M.P.]** **(DB)...2407**

दण्ड संहिता (1860 का 45), धाराऐं 302/34 व 323/34 – हत्या – वैमनस्यता – प्रत्यक्षदर्शी साक्ष्य और चिकित्सीय साक्ष्य के मध्य तात्विक असंगति – अभिनिर्धारित – जब चक्षुदर्शी साक्षी का कथन विश्वसनीय और भरोसेमंद पाया जाता है, तब वैकल्पिक संभावनाओं की ओर इंगित करते चिकित्सीय अभिमत को निर्णायक रुप से स्वीकार नहीं किया जायेगा – आहत साक्षी की परिसाक्ष्य को विधि में विशेष स्थान दिया जाता है – ऐसा साक्षी, अपराध के घटनास्थल पर अपनी उपस्थिति की अंतरंग गारंटी के साथ आता है और किसी और को मिथ्या आलिप्त

करने के लिये वह अपने वास्तविक हमलावरों को बचायेगा, यह असंभावित है – अपीलार्थीगण को दोषसिद्ध और दण्डादिष्ट करने में कोई विपर्यस्तता नहीं – अपील खारिज। (सुरेश वि. म.प्र. राज्य) **(DB)...2407**

Penal Code (45 of 1860), Sections 302 & 304 Part-I – Murder – Culpable homicide not amounting to murder – Appreciation of Evidence **– Appellant caused single injury – It was not clear that the weapon used was Screwdriver or Gupti – Circumstances compelled him to react once as he was hit by the deceased – Injury was neither premeditated nor with intention to cause death – Doctor is not clear regarding the cause of the death – Held – It cannot be said that the injury was sufficient in the ordinary course of nature to cause death and thus, case would be squarely covered between clause (b) of Section 299 and clause (3) of Section 300 – Therefore, it will be fit case to convert the conviction from Section 302 to Section 304 Part-I, I.P.C. – Since appellant in jail for 9 years, sentence is reduced to the period already undergone. [Sukhlal Vs. State of M.P.] (DB)...2202**

दण्ड संहिता (1860 का 45), धाराऐं 302 व 304 भाग-I – हत्या – हत्या की कोटि में न आने वाला आपराधिक मानव वध – साक्ष्य का अधिमूल्यन – अपीलार्थी ने एक क्षति कारित की – यह स्पष्ट नहीं कि उपयोग किया गया शस्त्र, पेचकस था या गुप्ती – क्योंकि उस पर मृतक द्वारा वार किया गया था, तत्काल प्रतिकार करने के लिये उसे परिस्थितियों ने बाध्य किया – क्षति न तो पूर्वचिंतित थी और न ही मृत्यु कारित करने का आशय था – चिकित्सक, मृत्यु के कारण के संबंध में स्पष्ट नहीं – अभिनिर्धारित – यह नहीं कहा जा सकता कि प्रकृति के सामान्य क्रम में मृत्यु कारित करने के लिये वह चोट पर्याप्त थी, प्रकरण पूर्ण रुप से धारा 299 के खंड (बी) एवं धारा 300 के खंड (3) के बीच आयेगा – इसलिये, दोषसिद्धि को भा.द.सं. की धारा 302 से परिवर्तित कर धारा 304 भाग-I में करने हेतु उचित प्रकरण होगा – चूंकि अपीलार्थी 9 वर्षों से कारागृह में है, दण्डादेश को भुगताई जा चुकी अवधि तक घटाया गया। (सुखलाल वि. म.प्र. राज्य) **(DB)...2202**

Penal Code (45 of 1860), Sections 302, 304-II – Murder – Conviction and Sentence – Appeal **– Eye witness turned hostile – Trial Court, treating the F.I.R. lodged by the deceased as dying declaration – Acquitted the other two accused persons, but convicted the appellant – Held – It is a case of the single blow, which landed on the stomach of the deceased, the accused persons were three in number, but they did not cause further injuries – No intention to kill – Set aside the conviction of the appellant u/s 302 of I.P.C. and the sentence of life imprisonment**

awarded to appellant and instead, convict appellant u/s 304 Part -II of the I.P.C. and impose upon appellant the sentence of 10 years rigorous imprisonment. [Rum Singh Vs. State of M.P.] (DB)...1911

दण्ड संहिता (1860 का 45), धाराऐं 302, 304–II – हत्या – दोषसिद्धि एवं दण्डादेश – अपील – चक्षुदर्शी साक्षी पक्षद्रोही हो गया – विचारण न्यायालय ने मृतक द्वारा दर्ज कराये गये प्रथम सूचना प्रतिवेदन को मृत्युकालिक कथन माना – अन्य दो अभियुक्तगणों को दोषमुक्त किया गया, किन्तु अपीलार्थी को दोषसिद्ध – अभिनिर्धारित – यह प्रकरण एक वार का है, जो मृतक के पेट में लगा, अभियुक्तगण संख्या में तीन थे, किन्तु उन्होंने कोई अतिरिक्त चोट कारित नहीं की – हत्या का आशय नहीं – भा.द.सं. की धारा 302 के अंतर्गत अपीलार्थी की दोषसिद्धि एवं अपीलार्थी को दी गई आजीवन कारावास की सजा अपास्त और इसके स्थान पर अपीलार्थी को भा.द.सं. की धारा 304 भाग–दो के अंतर्गत दोषसिद्ध किया गया एवं अपीलार्थी के ऊपर 10 वर्ष के कठोर कारावास का दण्डादेश अधिरोपित किया गया। (रम सिंह वि. म.प्र. राज्य) **(DB)...1911**

Penal Code (45 of 1860), Sections 302, 363, 367, 376(2)(F) – Rape – Murder – Circumstantial evidence **– Appellant lifted the victim which was objected by grand-mother Shyamlibai – He was also seen on the way taking the girl with him by P.W. 2 and P.W.3 – Dead body was recovered at the instance of the appellant – Postmortem report, evidence of doctor and F.S.L. report supports the prosecution case – Held – Entire oral evidence as well as the medical evidence completely connects the appellant with the commission of the crime of rape and murder – In the absence of any satisfactory explanation by the appellant in whose custody, the minor child was, the appellant is guilty of commission of rape and murder of a girl aged 4 years. [In Reference Vs. Sunil] (DB)...2433**

दण्ड संहिता (1860 का 45), धाराऐं 302, 363, 367, 376(2)(एफ) – बलात्कार – हत्या – परिस्थितिजन्य साक्ष्य – अपीलार्थी ने पीड़िता को उठाया, जिसका विरोध दादी श्यामलीबाई द्वारा किया गया – उसे बालिका को अपने साथ ले जाते हुए अ.सा. 2 व अ.सा. 3 द्वारा भी देखा गया – अपीलार्थी की निशानदेही पर शव बरामद किया गया – शव प्रतिवेदन, चिकित्सक का साक्ष्य और न्यायालयिक विज्ञान प्रयोगशाला का प्रतिवेदन अभियोजन के प्रकरण का समर्थन करते हैं – अभिनिर्धारित – संपूर्ण मौखिक साक्ष्य तथा चिकित्सीय साक्ष्य पूर्ण रुप से अपीलार्थी को बलात्कार और हत्या के अपराध से जोड़ते हैं – अपीलार्थी, जिसकी अभिरक्षा में अवयस्क बालिका थी, द्वारा किसी संतोषजनक स्पष्टीकरण की अनुपस्थिति में, अपीलार्थी 4 वर्षीय बालिका का बलात्कार और हत्या कारित करने का दोषी। (इन

रेफ्रेन्स वि. सुनील)
(DB)...2433

Penal Code (45 of 1860), Sections 302, 376-A, 363, 201, Protection of Children from Sexual Offences Act, (32 of 2012), Section 6 – Death Sentence – Rarest of rare case – Circumstantial evidence – **Male profile from the clothes of the prosecutrix and her vaginal swab were found of the appellant – Chain of circumstantial evidence is complete and it is established that it was the appellant who, committed rape upon the prosecutrix. [In Reference Vs. Arvind alias Chhotu Thakur]**
(DB)...2441

दण्ड संहिता (1860 का 45), धाराऐं 302, 376-ए, 363, 201, लैंगिक अपराधों से बालकों का संरक्षण अधिनियम, (2012 का 32), धारा 6 – मृत्युदण्ड – विरलतम से विरल प्रकरण – परिस्थितिजन्य साक्ष्य – अभियोक्त्री के कपड़े एवं वेजाइनल स्वैब से प्राप्त पौरुष पार्श्विका, अपीलार्थी की होना पाया गया – परिस्थितिजन्य साक्ष्य की श्रृंखला पूर्ण और यह स्थापित हो जाता है कि वह अपीलार्थी था, जिसने अभियोक्त्री से बलात्कार कारित किया। (इन रेफ्रेन्स वि. अरविन्द उर्फ छोटू ठाकुर)
(DB)...2441

Penal Code (45 of 1860), Sections 302, 376-A, 363, 201 & 304 Part-II – Death Sentence – **Appellant did not kill the deceased intentionally but, while he stopped the prosecutrix from crying or shouting, suffocation was caused and the deceased prosecutrix died – However, rape with a girl of tender age is brutal on its own but, no death sentence is provided for offence u/s 376(1) or (2) of I.P.C. – Therefore, due to that brutality, no death sentence can be directed under such circumstances, it cannot be said that it is a rare of rarest case – Conviction and sentence u/s 201 & 302 of I.P.C. set aside – Conviction u/s 363 & 376-A of I.P.C. is confirmed – Appellant acquitted of the charge of offence u/s 302 & 201 of I.P.C. but, appellant is convicted for offence u/s 304 Part-II of I.P.C. under the head of charge u/s 302, I.P.C. – Appeal partly allowed. [In Reference Vs. Arvind alias Chhotu Thakur]**
(DB)...2441

दण्ड संहिता (1860 का 45), धाराऐं 302, 376-ए, 363, 201 व 304 भाग - II – मृत्युदण्ड – अपीलार्थी ने मृतिका की हत्या आशयपूर्वक नहीं की बल्कि जब उसने अभियोक्त्री को रोने या चीखने से रोका, उसका दम घुटा और मृतिका अभियोक्त्री की मृत्यु हो गयी – अपितु, बाल्यावस्था की बालिका से बलात्कार अपने आप में निर्दयता है, परंतु भा.द.सं. की धारा 376(1) या (2) के अंतर्गत अपराध के लिये मृत्युदण्ड उपबंधित नहीं – अतः, उस निर्दयता के कारण, उक्त परिस्थितियों

में मृत्युदण्ड निदेशित नहीं किया जा सकता, यह नहीं कहा जा सकता कि यह विरलतम से विरल प्रकरण है – भा.द.सं. की धारा 201 व 302 के अंतर्गत दोषसिद्धि एवं दण्डादेश अपास्त – भा.द.सं. की धारा 363 व 376-ए के अंतर्गत दोषसिद्धि की पुष्टि की गई – अपीलार्थी को भा.द.सं. की धारा 302 व 201 के अंतर्गत अपराध के आरोप से दोषमुक्त किया गया, परन्तु अपीलार्थी को भा.द.सं. की धारा 302 के अंतर्गत आरोप के शीर्षान्तर्गत, भा.द.सं. की धारा 304 भाग-II के अंतर्गत अपराध के लिये दोषसिद्ध किया गया – अपील अंशतः मंजूर। (इन रेफ्रेन्स वि. अरविन्द उर्फ छोटू ठाकुर) **(DB)...2441**

Penal Code (45 of 1860), Sections 302, 376(2)(g) – Death Sentence – Murder – Rape – Circumstantial evidence **– Prosecution has failed to prove a complete chain of circumstantial evidence – It is not proved beyond doubt that the appellants were the persons, who committed rape upon the deceased prosecutrix and killed her – Benefit of doubt is to be given to the appellants – Impugned judgment is held to perverse and deserves to be set aside – Appeal allowed. [In Reference Vs. Ganesh Lodhi] (DB)...2453**

दण्ड संहिता (1860 का 45), धाराऐं 302, 376(2)(जी) – मृत्युदण्ड – हत्या – बलात्कार – परिस्थितिजन्य साक्ष्य – अभियोजन परिस्थितिजन्य साक्ष्य की पूर्ण श्रृंखला साबित करने में असफल रहा – यह संदेह से परे साबित नहीं कि मृतिका अभियोक्त्री का बलात्कार एवं उसकी हत्या कारित करने वाले जो व्यक्ति थे, वे अपीलार्थीगण थे – अपीलार्थीगण को संदेह का लाभ दिया जाना चाहिए – आक्षेपित आदेश विपर्यस्त और अपास्त किये जाने योग्य ठहराया गया – अपील मंजूर। (इन रेफ्रेन्स वि. गणेश लोधी) **(DB)...2453**

Penal Code (45 of 1860), Section 304 Part II **– Deceased was injured and died during treatment – Previous enmity between parties – Discrepancies in statements of witnesses – As per F.S.L. report, it could not be ascertained that the blood found on the Lathis allegedly seized from the possession of appellants was human blood and further tests to determine blood group of the same could also not been carried out – Conviction set aside. [Pintu @ Pradeep Kumar Vs. State of M.P.] ...2263**

दण्ड संहिता (1860 का 45), धारा 304 भाग II – मृतक आहत था एवं चिकित्सा के दौरान उसकी मृत्यु हुई – पक्षों के बीच पुरानी वैमनस्यता – साक्षियों के कथनों में भी विसंगती – न्यायालयिक विज्ञान प्रयोगशाला के प्रतिवेदन के अनुसार यह सुनिश्चित नहीं किया जा सकता कि कथित रुप से अपीलार्थी के कब्जे से जप्त लाठीयों पर पाया गया रक्त मानव रक्त था एवं उक्त का रक्त समूह निर्धारित करने के लिये अतिरिक्त परीक्षण भी नहीं कराया गया – दोषसिद्धि

अपास्त। (पिंटू उर्फ़ प्रदीप कुमार वि. म.प्र. राज्य) ...2263

Penal Code (45 of 1860), Section 306 – Abetment to commit suicide – **Appellants are said to have filthily abused and humiliated deceased Sonelal to such an extent that he could not tolerate and committed suicide – Held – Act of the appellants not amounted to abetment – It did not fall within the definition as they did not in any manner instigate, conspire or aid in the doing of that thing – Hence, they did not abet commission of suicide by Sonelal – Conviction and consequent sentence are hereby set aside. [Premlal alias Dadu Vs. State of M.P.]** ...1902

दण्ड संहिता (1860 का 45), धारा 306 – आत्महत्या का दुष्प्रेरण – अपीलार्थीगण ने कथित रुप से मृतक सोनेलाल को इस सीमा तक अश्लील गालीगलौच एवं अपमानित किया कि वह सहन नहीं कर पाया और आत्महत्या कारित की – अभिनिर्धारित – अपीलार्थीगण का कृत्य दुष्प्रेरण की कोटि में नहीं आता – वह परिभाषा के भीतर नहीं आता क्योंकि उन्होंने किसी प्रकार से उस बात के लिये न तो उकसाया, न ही भाडयंत्र किया और ना उसे करने में सहायता की – अतः उन्होंने सोनेलाल को आत्महत्या कारित करने के लिये दुष्प्रेरित नहीं किया है – दोषसिद्धि और परिणामिक दण्डादेश एतद् द्वारा अपास्त। (प्रेमलाल उर्फ दादू वि. म. प्र. राज्य) ...1902

Penal Code (45 of 1860), Section 316 – See – Criminal Procedure Code, 1973, Section 482 **[Jyoti (Smt.) Vs. State of M.P.]** ...1971

दण्ड संहिता (1860 का 45), धारा 316 – देखें – दण्ड प्रक्रिया संहिता, 1973, धारा 482 (ज्योति (श्रीमती) वि. म.प्र. राज्य) ...1971

Penal Code (45 of 1860), Section 326 – Grievous hurt – **Evidence of complainant inconsistent and self contradictory – F.I.R. appears to be doubtful as injured stated that F.I.R. was lodged by his father whereas in fact the F.I.R. was alleged to have been lodged by injured – Oral evidence also contradictory to medical evidence – Place of incident also changed – Defence from very beginning was that injured was molesting and passing remarks at the daughter of the appellant and therefore, he was falsely implicated – Guilt of appellant not proved beyond reasonable doubt – Appeal allowed. [Laxminarayan Vs. State of M.P.]** ...2177

दण्ड संहिता (1860 का 45), धारा 326 – घोर उपहति – शिकायतकर्ता का

साक्ष्य असंगत एवं स्वतः विरोधाभाषी है – प्रथम सूचना रिपोर्ट संदेहास्पद प्रतीत होती है जैसा कि आहत का कथन है कि प्रथम सूचना रिपोर्ट उसके पिता द्वारा दर्ज कराई गई थी, जबकि वास्तव में प्रथम सूचना रिपोर्ट अभिकथित रुप से आहत द्वारा दर्ज कराई गई थी – मौखिक साक्ष्य भी चिकित्सीय साक्ष्य से विरोधाभाषी – घटनास्थल भी बदला गया – आरंभ से बचाव था कि अपीलार्थी की पुत्री को आहत ने उत्पीड़ित किया और टीका–टिप्पणीयां करता था और इसलिए, उसे मिथ्या रुप से आलिप्त किया गया – अपीलार्थी को दोषिता युक्तियुक्त संदेह से परे साबित नहीं – अपील मंजूर। (लक्ष्मीनारायण वि. म.प्र. राज्य) ...2177

***Penal Code (45 of 1860), Section 364-A – Kidnapping* – Complainant was kidnapped and kept under detention – He was threatened with knife and revolver of death – Affidavit was obtained from him to exonerate one who was accused in another case in which complainant was one of the witness for which there is no cross-examination – In the absence of cogent defence there is no reason to disbelieve version of the complainant – Held – There was no issue of demand of ransom as is required u/s 364-A of I.P.C. – Therefore, offence u/s 364-A is not made out – However, since kidnapping and threat perception is there, conviction is converted u/s 364 I.P.C. – Since appellants are in jail since last more than 8 years – Sentence awarded is reduced to the period already undergone. [Shahid Khan Vs. State of M.P.]** **(DB)...2224**

दण्ड संहिता (1860 का 45), धारा 364–ए – व्यपहरण – शिकायतकर्ता का व्यपहरण किया गया और उसे निरोध में रखा गया – उसे चाकू और रिवाल्वर से जान से मारने की धमकी दी गयी – उससे शपथ पत्र अभिप्राप्त किया गया, एक की विमुक्ती के लिये जो एक अन्य प्रकरण में अभियुक्त था और जिसमें शिकायतकर्ता एक साक्षी था, जिसके लिये प्रतिपरीक्षण नहीं किया गया – प्रबल बचाव की अनुपस्थिति में शिकायतकर्ता के कथन पर अविश्वास करने का कोई कारण नहीं – अभिनिर्धारित – फिरौती की मांग का कोई विवाद्यक नहीं जैसा कि भा.द.स. की धारा 364–ए के अंतर्गत अपेक्षित है – इसलिये, धारा 364–ए के अंतर्गत अपराध गठित नहीं होता – किन्तु, चूंकि व्यपहरण एवं धमकी का बोध होता है, दोषसिद्धि को भा.द.सं. की धारा 364 के अंतर्गत परिवर्तित किया गया – चूंकि अपीलार्थीगण पिछले 8 वर्षो से अधिक समय से कारागृह में हैं – भुगताई जा चुकी अवधि तक दण्डादेश घटाया गया। (शाहिद खान वि. म.प्र. राज्य) **(DB)...2224**

***Penal Code (45 of 1860), Sections 366 & 376 – Rape – Age of prosecutrix* – Prosecutrix was between 16 and 19 years of age looking to the development of secondary sexual characters on her body – It is clear that on the date of incident, she was a major – Prosecutrix was a**

consenting party – Accused cannot be convicted. [Taj Mohammad Vs. State of M.P.] ...1908

दण्ड संहिता (1860 का 45), धाराऐं 366 व 376 – बलात्कार – अभियोक्त्री की आयु – अभियोक्त्री के शरीर पर द्वितीयक यौन लक्षणों का विकास देखते हुए उसकी आयु 16 और 19 वर्ष के बीच थी – यह स्पष्ट है कि घटना दिनांक को वह बालिग थी – अभियोक्त्री सहमत पक्षकार थी – अभियुक्त को दोषसिद्ध नहीं किया जा सकता। (ताज मोहम्मद वि. म.प्र. राज्य) ...1908

***Penal Code (45 of 1860), Section 376 & Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act (33 of 1989), Section 3(1)(xi) – Caste – Caste certificate not produced* – Statement of prosecutrix itself is not sufficient to establish that she belongs to Scheduled Tribe community – As per Rule 7 of the Rules 1995 investigation should have been made by a police officer not below the rank of Dy.S.P. – Whereas investigation was done by Inspector – Appeal allowed. [Rajola Yadav Vs. State of M.P.] ...1905**

दण्ड संहिता (1860 का 45), धारा 376 व अनुसूचित जाति और अनुसूचित जनजाति (अत्याचार निवारण) अधिनियम (1989 का 33), धारा 3(1)(xi) – जाति – जाति प्रमाण पत्र प्रस्तुत नहीं – अभियोक्त्री का स्वयं का कथन अपने आप में यह स्थापित करने के लिये पर्याप्त नहीं कि वह अनुसूचित जनजाति समुदाय की है – नियम 1995 के नियम 7 के अनुसार उप पुलिस अधीक्षक से निम्न श्रेणी के पुलिस अधिकारी द्वारा अन्वेषण नहीं किया जाना चाहिए था – जबकि निरीक्षक द्वारा अन्वेषण किया गया था – अपील मंजूर। (राजोला यादव वि. म.प्र. राज्य) ...1905

***Penal Code (45 of 1860), Section 376 & Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act (33 of 1989), Section 3(1)(xi)* –Incident took place on 14.05.1995 and F.I.R. lodged on 09.06.1995 – Sufficient cause not shown for delay – Prosecutrix, admitted that as her uncle-in-law came on the spot, the appellant fled, she had not informed the police about rape – They were taken by one Gopika for giving report to S.P. – Conviction set aside. [Rajola Yadav Vs. State of M.P.] ...1905**

दण्ड संहिता (1860 का 45), धारा 376 व अनुसूचित जाति और अनुसूचित जनजाति (अत्याचार निवारण) अधिनियम (1989 का 33), धारा 3(1)(xi)– दिनांक 14.05.1995 को घटना घटी और प्रथम सूचना रिपोर्ट 09.06.1995 को दर्ज की गई – विलम्ब का पर्याप्त कारण नहीं दर्शाया गया – अभियोक्त्री ने यह स्वीकार किया कि उसके चाचा ससुर घटना स्थल पर पहुंचे, अपीलार्थी भाग गया, उसने पुलिस को

बलात्कार के संबंध में सूचना नहीं दी – पुलिस अधीक्षक से रिपोर्ट करने के लिये उन्हें गोपिका द्वारा ले जाया गया था – दोषसिद्धि अपास्त। (राजोला यादव वि. म.प्र. राज्य) ...1905

***Penal Code (45 of 1860), Sections 376, 450 & 302 – Death Sentence – Rarest of rare case – Murder – Rape* – Rape and murder of 14 years girl proved – However, death sentence not a Rule but an exception – Existence of aggravating circumstances is must for awarding death sentence – Present case not within category of rarest of rare cases – However, jail sentence of 35 years ordered. [Rajkumar Vs. State of M.P.]** (SC)...1991

दण्ड संहिता (1860 का 45), धाराऐं 376, 450 व 302 – मृत्युदण्ड – विरलतम से विरल प्रकरण – हत्या – बलात्कार – 14 वर्षीय बालिका का बलात्कार और हत्या साबित की गई – किन्तु, मृत्युदण्ड एक नियम नहीं बल्कि एक अपवाद है – मृत्यु दण्डादेश दिये जाने के लिये, गंभीर परिस्थितियां विद्यमान होनी चाहिए – वर्तमान प्रकरण, विरलतम से विरल प्रकरणों की श्रेणी में नहीं – अपितु, 35 वर्ष कारावास का दण्डादेश आदेशित किया गया। (राजकुमार वि. म.प्र. राज्य) (SC)...1991

***Penal Code (45 of 1860)*, Sections 403, 409, 120-B, *Prevention of Corruption Act (49 of 1988), Sections 13(1)(c),(d) R/w 13(2) – Criminal breach of trust and Corruption* – Truck carrying 150 bags of cement illegally – Charge of Godown in which the cement was used to be kept, was already handed over by the appellant and as per stock register, no shortage of cement was found – Since, there was no shortage of cement therefore, merely because of seizure of cement of particular marka which was being used in Tillar Project, it cannot be held that the seized cement was of the said project – Appeal allowed. [Bhagwati Prasad Sharma Vs. State of M.P.]** (DB)...2242

दण्ड संहिता (1860 का 45), धाराऐं 403, 409, 120बी, भ्रष्टाचार निवारण अधिनियम (1988 का 49), धाराऐं 13(1)(सी),(डी) सहपठित धारा 13(2) – आपराधिक न्यास भंग और भ्रष्टाचार – अवैध रुप से 150 बोरा सीमेन्ट ट्रक में ले जाया गया – गोदाम जिसमें सीमेन्ट रखा जाता था उसका प्रभार, अपीलार्थी द्वारा पहले ही हस्तांतरित किया गया था और भंडारबही के अनुसार सीमेन्ट की कमी नहीं पायी गयी – चूंकि सीमेन्ट की कमी नहीं थी इसलिए, मात्र इस कारण से कि विशिष्ट मार्का का सीमेन्ट जब्त किया गया जिसका उपयोग टिल्लर परियोजना में किया जा रहा था, यह अभिनिर्धारित नहीं किया जा सकता कि जब्तशुदा सीमेन्ट, उक्त परियोजना का था – अपील मंजूर। (भगवती प्रसाद शर्मा वि. म.प्र. राज्य) (DB)...2242

Penal Code (45 of 1860), Sections 498-A, 306 – See – Criminal Procedure Code, 1973, Section 397 [Sherish Hardenia Vs. State of M.P.] (SC)...1694

दण्ड संहिता (1860 का 45), धाराऐं 498–ए, 306 – देखें – दण्ड प्रक्रिया संहिता, 1973, धारा 397 (शेरिष हरदेनिया वि. म.प्र. राज्य) (SC)...1694

Police Executive (Gazetted) Service Recruitment and Appeal Rules, M.P. 2000, Rule 4 – Held – The Gazette Rules categorically prescribed three kinds of persons forming the gazetted cadre – This Rule 4 does not contemplate a fourth kind i.e. Inspector, who claims his existence in the gazetted service merely by implication based upon declaration of Inspector as gazetted. [Manoj Verma Vs. State of M.P.] (DB)...2279

पुलिस कार्यपालिक (राजपत्रित) सेवा भर्ती व अपील नियम, म.प्र., 2000, नियम 4 – अभिनिर्धारित – राजपत्रित नियम, राजपत्रित कैडर निर्मित करने वाले तीन प्रकार के व्यक्ति स्पष्ट रुप से विहित करते हैं – नियम 4, चौथा प्रकार अनुध्यात नहीं करता अर्थात निरीक्षक जो मात्र राजपत्रित के रुप में निरीक्षक की घोषणा पर आधारित विवक्षा द्वारा राज़पत्रित सेवा में अपने अस्तित्व का दावा करता है। (मनोज वर्मा वि. म.प्र. राज्य) (DB)...2279

Prakoshtha Swamitva Adhiniyam, M.P. 2000 (15 of 2001), Sections 22 & 43(2) – See – Society Registrikaran Adhiniyam, M.P., 1973, Section 2 [Ansal Welfare Vs. State of M.P.] ...1798

प्रकोष्ठ स्वामित्व अधिनियम, म.प्र., 2000 (2001 का 15), धाराऐं 22 व 43(2) – देखें – सोसायटी रजिस्ट्रीकरण अधिनियम, म.प्र., 1973, धारा 2 (अंसल वेलफेयर वि. म.प्र. राज्य). ...1798

Prevention of Corruption Act (49 of 1988), Sections 13(1)(c),(d) R/w 13(2) – See – Penal Code, 1860, Sections 403, 409, 120-B [Bhagwati Prasad Sharma Vs. State of M.P.] (DB)...2242

भ्रष्टाचार निवारण अधिनियम (1988 का 49), धाराऐं 13(1)(सी),(डी) सहपठित धारा 13(2) – देखें – दण्ड संहिता, 1860, धाराऐं 403, 409, 120बी (भगवती प्रसाद शर्मा वि. म.प्र. राज्य) (DB)...2242

Prevention of Corruption Act (49 of 1988), Section 13(1)(d) – Legal opinion – Merely because the legal opinion of a lawyer may not be acceptable, he cannot be fastened with criminal liability in absence of tangible evidence that he had aided or abetted other conspirators – No documents were produced to prove that report submitted by

petitioner was false and the opinion was based on the documents supplied by bank itself – Proceedings quashed. [Harikishan Tuteja Vs. State of M.P.] (DB)...1973

भ्रष्टाचार निवारण अधिनियम (1988 का 49), धारा 13(1)(डी) – विधिक राय – मात्र इसलिए कि वकील की विधिक राय स्वीकार करने योग्य नहीं, उसके द्वारा अन्य भाडयंत्रकारियों को सहायता या दुष्प्रेरित करने की मूर्त साक्ष्य के अभाव में उस पर आपराधिक उत्तरदायित्व नहीं डाला जा सकता – यह साबित करने के लिये कोई दस्तावेज प्रस्तुत नहीं किये गये, कि याची द्वारा प्रस्तुत किया गया प्रतिवेदन मिथ्या था और बैंक द्वारा उपलब्ध कराये गये दस्तावेजों पर ही राय आधारित थी – कार्यवाही अभिखंडित। (हरिकिशन टुटेजा वि. म.प्र. राज्य) **(DB)...1973**

***Prevention of Corruption Act (49 of 1988), Sections 13(1)(d) r/w 13(2) & 7 – Demand* – Acceptance of illegal gratification has not been corroborated by any independent witness – Neither demand of bribe nor acceptance thereof has been proved by the prosecution beyond reasonable doubt – Appeal allowed. [Narain Singh (Dr.) Vs. State of M.P.] (DB)...2400**

भ्रष्टाचार निवारण अधिनियम (1988 का 49), धाराऐं 13(1)(डी) सहपठित 13(2) व 7 – मांग – किसी स्वतंत्र साक्षी द्वारा, अवैध परितोषण की स्वीकृति की पुष्टि नहीं की गयी – अभियोजन द्वारा न तो रिश्वत की मांग और न ही उसकी स्वीकृति को युक्तियुक्त संदेह से परे साबित किया गया है – अपील मंजूर। (नारायण सिंह (डॉ.) वि. म.प्र. राज्य) **(DB)...2400**

***Prevention of Corruption Act (49 of 1988), Section 19, Criminal Procedure Code, 1973 (2 of 1974), Section 197 – Sanction* – Law & Legislative Affairs Department is empowered under the Rules, to grant sanction and refusal to grant sanction by the parent department is of no consequence – Opinion of the parent department is not binding on the Law Department, while considering the case for grant of sanction – Order of sanction is self contained speaking order – No infirmity or any jurisdictional error in the sanction order – Petitions dismissed. [Om Prakash Verma Vs. State of M.P.] (DB)...1753**

भ्र□टाचार निवारण अधिनियम (1988 का 49), धारा 19, दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 197 – मंजूरी – नियमों के अंतर्गत विधि और विधायी कार्य विभाग मंजूरी प्रदान करने के लिए सशक्त है और मूल विभाग द्वारा मंजूरी प्रदान करने से मना करने का कोई परिणाम नहीं – मंजूरी प्रदान करने के लिए मामले का विचार करते समय विधि विभाग पर मूल विभाग का अभिमत

बंधनकारक नहीं – मंजूरी का आदेश स्वतः पूर्ण सकारण आदेश है – मंजूरी आदेश में कोई कमी या किसी अधिकारिता की त्रुटि नहीं – याचिकायें खारिज। (ओम प्रकाश वर्मा वि. म.प्र. राज्य) **(DB)...1753**

Prevention of Corruption Act (49 of 1988), Section 19 – Sanction **– Held – Mere error, omission or irregularity in sanction is not considered fatal unless it has resulted in the failure of justice. [Karanveer Rana Vs. State of M.P.] (DB)...2418**

भ्रष्टाचार निवारण अधिनियम (1988 का 49), धारा 19 – मंजूरी – अभिनिर्धारित – मंजूरी में मात्र त्रुटि, लोप या अनियमितता को घातक नहीं माना जाता जब तक कि उसके परिणामस्वरुप न्याय की हानि ना हुई हो। (करणवीर राणा वि. म.प्र. राज्य) **(DB)...2418**

Prevention of Corruption Act (49 of 1988), Section 20 – Presumption **– Held – The provision cannot be overlooked – Further, once it is proved that the amount was recovered from the appellants possession, the burden of proof lies on the appellants to prove that they received the same bonafidely or for some other purpose. [Karanveer Rana Vs. State of M.P.] (DB)...2418**

भ्रष्टाचार निवारण अधिनियम (1988 का 49), धारा 20 – उपधारणा – अभिनिर्धारित – उपबंध को अनदेखा नहीं किया जा सकता – इसके अतिरिक्त, एक बार जब यह साबित हो जाता है कि रकम को अपीलार्थीगण के कब्जे से बरामद किया गया था, सबूत का भार अपीलार्थी पर होगा, यह साबित करने के लिये कि उन्होंने उसे सद्भाविक रुप से प्राप्त किया था या किसी अन्य प्रयोजन के लिये थी। (करणवीर राणा वि. म.प्र. राज्य) **(DB)...2418**

Protection of Children from Sexual Offences Act, (32 of 2012), Section 6 – See – Penal Code, 1860, Sections 302, 376-A, 363, 201 **[In Reference Vs. Arvind alias Chhotu Thakur] (DB)...2441**

लैंगिक अपराधों से बालकों का संरक्षण अधिनियम, (2012 का 32), धारा 6 – देखें – दण्ड संहिता, 1860, धाराऐं 302, 376-ए, 363, 201 (इन रेफ्रेन्स वि. अरविन्द उर्फ छोटू ठाकुर) **(DB)...2441**

Representation of the People Act (43 of 1951), Sub-clause (6) of Section 1 of Section 100 – See – Constitution – Article 329 **[Suresh Chandra Bhandari Vs. Commissioner, Election Commission of India] ...2076**

लोक प्रतिनिधित्व अधिनियम (1951 का 43) धारा 100 की धारा 1 का

उपखंड (6) – देखें – *संविधान – अनुच्छेद 329* (सुरेश चन्द्र भंडारी वि. कमिश्नर, इलेक्शन कमीशन ऑफ इंडिया) ...2076

Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act (33 of 1989), Section 3(1)(xi) – See – Penal Code, 1860, Section 376 **[Rajola Yadav Vs. State of M.P.] ...1905**

अनुसूचित जाति और अनुसूचित जनजाति (अत्याचार निवारण) अधिनियम (1989 का 33), धारा 3(1)(xi) – देखें – दण्ड संहिता, 1860, धारा 376 (राजोला यादव वि. म.प्र. राज्य) ...1905

Service Law – Age of retirement **– Petitioners who were initially appointed in a Co-operative Society were subsequently absorbed in the M.P. Electricity Board – After bifurcation of the Board they came in service of M.P. Poorva Kshetra Vidyut Vitran Co. – By the impugned order they were made to retire w.e.f. 30.11.2012 on attaining the age of 58 years – Held – If the petitioners are granted the benefit of extended age prescribed for the Co-operative Society, they would be entitled to continue up to the age of 60 years and in case the service condition available in the respondents establishment are made applicable, they will continue on the post up to the age of 60 years – Thus, impugned order cannot be sustained – Writ Petition is allowed. [Ram Sajeevan Tiwari Vs. M.P. State Electricity Board] ...*14**

सेवा विधि – सेवानिवृत्ति की आयु – याचीगण, जिन्हें आरंभ में सहकारी सोसायटी में नियुक्ति दी गयी थी उन्हें तत्पश्चात म.प्र. विद्युत बोर्ड में संविलयित किया गया – बोर्ड के द्विभाजन पश्चात वे म.प्र. पूर्व क्षेत्र विद्युत वितरण कम्पनी की सेवा में आये – आक्षेपित आदेश द्वारा उन्हें 58 वर्ष की आयु पूर्ण करने पर 30.11.2012 से प्रभावी रुप से सेवानिवृत्त किया गया – अभिनिर्धारित – बढ़ाई गई आयु का लाभ, जो सहकारी सोसायटी के लिये विहित है, यदि याचीगण को प्रदान किया जाता है, तब वे 60 वर्ष की आयु तक सेवारत रहने के लिये हकदार रहेंगे और यदि प्रत्यर्थी पर स्थापना में उपलब्ध सेवा शर्तों को लागू किया जाता है, वे पद पर 60 वर्ष की आयु तक बने रहेंगे – अतः आक्षेपित आदेश कायम नहीं रखा जा सकता – रिट याचिका मंजूर। (राम सजीवन तिवारी वि. एम.पी. स्टेट इलेक्ट्रिसिटी बोर्ड) ...*14

Service Law – Caste Certificate **– No employer can take an action of removal of an employee only on the allegation that the same is invalid – Such action can only be taken after getting the Caste or Tribe verified from the High Power Screening Committee. [Dhanraj Singh Pusam Vs. State of M.P.] ...1761**

सेवा विधि – जाति प्रमाण पत्र –केवल इसके अवैध होने के अभिकथन पर, कोई नियोक्ता किसी कर्मचारी को हटाये जाने की कार्यवाही नहीं कर सकता –उक्त कार्यवाही, केवल जाति या जनजाति को उच्च स्तरीय छानबीन समिति से सत्यापित कराये जाने के पश्चात ही की जा सकती है। (धनराज सिंह पूसम वि. म.प्र. राज्य) ...1761

Service Law – **Central Government formulated a scheme dated 31.12.2008 which provided that Central Assistance for implementing the scheme is also subject to the condition that the entire scheme of revision of pay scales together with all the conditions be adopted without any modification – State Government by order dt. 09.04.2010 took a decision to accord benefit of the same after approval from General Administration Department as well Finance Department – However, State issued other orders on 22.04.2010 and 22.04.2013 fixing cut off date for availing benefit of enhanced age of superannuation – Held – After having availed the financial assistance from the Central Government for implementation of the scheme and after accepting the recommendations vide order dated 09.04.2010, the State Government had no authority to pass order dated 22.04.2010 modifying the order dated 09.04.2010 – Order dated 22.04.2010 is quashed – Petitioner shall be entitled to the benefit of recommendation of VIth Pay Commission as well as the age of superannuation as directed by the State vide order dated 22.04.2013. [K.G. Choubey (Dr.) Vs. Jawahar Lal Nehru Krishi Vishwavidyalaya]** ...1838

सेवा विधि – केन्द्र सरकार ने स्कीम दि. 31.12.2008 बनायी जो यह उपबंधित करती है कि स्कीम के कार्यान्वयन हेतु केन्द्रीय सहायता इस शर्त के भी अधीन है कि वेतनमानों के पुनरीक्षण की संपूर्ण स्कीम को सभी शर्तों के साथ बिना किसी परिवर्तन के अंगीकृत की जायेगी – राज्य सरकार ने आदेश दि.09.04.2010 द्वारा निर्णय लिया कि उक्त का लाभ, सामान्य प्रशासन विभाग और साथ ही वित्त विभाग के अनुमोदन पश्चात दिया जाये – अपितु, राज्य ने आदेश दि. 22.04.2010 व 22.04.2013 द्वारा बढ़ायी गयी अधिवार्षिकी आयु का लाभ प्राप्त करने हेतु अंतिम तिथि नियत करते हुये जारी किये – अभिनिर्धारित – स्कीम के कार्यान्वयन हेतु केन्द्र सरकार से वित्तीय सहायता प्राप्त करने के पश्चात तथा आदेश दि.09.04.2010 द्वारा अनुशंसाओं को स्वीकार करने के पश्चात, राज्य सरकार को आदेश दि. 09.04.2010 को परिवर्तित करने का आदेश दि. 22.04.2010 पारित करने का कोई प्राधिकार नहीं – आदेश दि. 22.04.2010 अभिखंडित किया गया – याची, छठवें वेतन आयोग की अनुशंसा का लाभ और साथ ही अधिवार्षिकी आयु के लाभ का हकदार होगा जैसा कि राज्य द्वारा आदेश दि. 22.04.2013 द्वारा निदेशित किया गया है। (के.जी. चौबे (डॉ.) वि. जवाहर लाल नेहरू कृषि विश्वविद्यालय) ...1838

Service Law – Compassionate appointment – Basis of – Refusal to grant – **Appellant's husband died in harness – Appellant applied for compassionate appointment – The application rejected by respondents Bank – Held – Main criteria for appointment on compassionate basis should be the financial condition of the family of the deceased person – Unless the financial condition is entirely penury, such appointment cannot be made. [Nirmal Dubey (Smt.) Vs. Punjab National Bank]** **(DB)...1702**

सेवा विधि – अनुकम्पा नियुक्ति – का आधार – प्रदान करने से इंकार किया जाना – सेवा के दौरान अपीलार्थी के पति की मृत्यु – अपीलार्थी ने अनुकम्पा नियुक्ति के लिये आवेदन किया – प्रत्यर्थी बैंक द्वारा आवेदन अस्वीकार किया गया – अभिनिर्धारित – अनुकम्पा आधार पर नियुक्ति हेतु मुख्य मापदंड, मृतक के परिवार की आर्थिक स्थिति होना चाहिए – जब तक कि आर्थिक स्थिति पूर्णतः गरीबी की न हो, उक्त नियुक्ति नहीं दी जा सकती। (निर्मल दुबे (श्रीमती) वि. पंजाब नेशनल बैंक) **(DB)...1702**

Service Law – Compulsory retirement – **Compulsory retirement under Fundamental Rule 56(2) in public interest – Undisputedly the screening of the petitioner was not done properly – Facts which were not germane to the service career of the petitioner inasmuch as the penalty imposed to some one else, were taken note of by the Screening Committee – He was also considered and found fit for promotion in the year 1995 – Held – Petitioner would not have been compulsory retired if his ACRs were examined properly – The recent past is required to be seen to asses the requirement of compulsory retirement of an incumbent – Impugned order is quashed – Petitioner be treated to be in service for the period he was made to compulsory retired and be granted all the benefits of continuance in service including the pay and allowances of the post till the date of normal superannuation. [R.K. Mishra Vs. State of M.P.]** **...2048**

सेवा विधि – अनिवार्य सेवानिवृत्ति – मूलभूत नियम 56(2) के अंतर्गत लोक हित में अनिवार्य सेवानिवृत्ति – अविवादित रुप से याची की छानबीन उचित रुप से नहीं की गयी – तथ्य जो याची के सेवा वृत्ति से सुसंगत नहीं थे, चूंकि किसी और पर अधिरोपित शास्ति को छानबीन समिति द्वारा विचार में लिया गया – वर्ष 1995 में उसका विचार भी किया गया था और पदोन्नति हेतु योग्य भी पाया गया था – अभिनिर्धारित – यदि याची के वार्षिक गोपनीय प्रतिवेदनों का परीक्षण उचित रुप से किया गया होता, तब उसे अनिवार्य रुप से सेवानिवृत्त नहीं किया जाता – पदधारी की अनिवार्य सेवानिवृत्ति की आवश्यकता का निर्धारण करने के लिये अर्वाचिन अतीत को देखा जाना अपेक्षित है – आक्षेपित आदेश अभिखंडित – याची को उस अवधि के लिये सेवा में माना

जाये जिस अवधि में उसे अनिवार्य सेवानिवृत्त रखा गया था और सामान्य अधिवर्षिता की तिथि तक पद के वेतन एवं भत्तों के साथ सेवारत रहने के सभी लाभ प्रदान किये जायें। (आर.के. मिश्रा वि. म.प्र. राज्य) ...2048

Service Law – Disciplinary Authority – **Superintending Engineer is the Disciplinary Authority to take action against the Assistant Engineer who has been promoted under the Time Bound Promotion Scheme in view of the order dated 07.05.1999. [M.P. Electricity Board, Jabalpur Vs. S.K. Dubey] (FB)...1698**

सेवा विधि – अनुशासनिक प्राधिकारी – आदेश दि. 07.05.1999 को दृष्टिगत रखते हुए, समयबद्ध पदोन्नति योजना के अंतर्गत पदोन्नत किये गये सहायक अभियंता के विरुद्ध कार्यवाही करने के लिये अधीक्षक अभियंता अनुशासनिक प्राधिकारी है। (म.प्र. इलेक्ट्रिसिटी बोर्ड, जबलपुर वि. एस.के. दुबे) **(FB)...1698**

Service Law – Grant of benefits of Vth Pay Commission Recommendations **– To the employees of the M.P. Police Housing Corporation which is registered under Indian Companies Act – Board of Directors of Respondent No. 2 resolved to adopt the same – For which proposals were sent for approval to the State Government which were turned down by the impugned communications – Held – Since it is not clear that there was any requirement of Law to obtain prior approval for grant of any service conditions of the employees of the Corporation, there was no occasion for State to reject the resolution – If a Corporation has resolved to grant certain benefits to its employees at par with the employees of the State Government, Corporation's employee cannot automatically become the Government Employees – Therefore, rejection of proposal by the State cannot be sustained – Same is quashed – Corporation is free to resolve and implement the recommendations made by the different pay commissions to their employees. [G.M. Dubey Vs. State of M.P.] ...2054**

सेवा विधि – पांचवे वेतन आयोग की सिफारिशों के लाभ प्रदान किया जाना – म.प्र. पुलिस हाऊसिंग कार्पोरेशन के कर्मचारियों को जो भारतीय कम्पनी अधिनियम के अंतर्गत पंजीकृत है – प्रत्यर्थी क्र. 2 के निदेशक बोर्ड ने उक्त को अंगीकृत करने का संकल्प लिया – जिसके लिये राज्य सरकार के पास अनुमोदन हेतु प्रस्ताव भेजे गये जिन्हें आक्षेपित संसूचना द्वारा अस्वीकार किया गया था – अभिनिर्धारित – चूंकि यह स्पष्ट नहीं है कि कार्पोरेशन के कर्मचारियों की कोई सेवा शर्तें मंजूर करने हेतु पूर्व अनुमोदन अभिप्राप्त करने की किसी विधि की अपेक्षा है, संकल्प अस्वीकार करने का राज्य के पास कोई कारण नहीं था – यदि

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कार्पोरेशन ने अपने कर्मचारियों को राज्य सरकार के कर्मचारियों के समतुल्य कतिपय लाभ प्रदान करने का संकल्प लिया है, कार्पोरेशन के कर्मचारी अपने आप सरकारी कर्मचारी नहीं बन सकते – इसलिए, राज्य द्वारा प्रस्ताव की अस्वीकृति कायम नहीं रखी जा सकती – उक्त को अभिखंडित किया गया – कार्पोरेशन अपने कर्मचारियों को भिन्न वेतन आयोगों द्वारा की गयी सिफारिशों को संकल्प लेकर कार्यान्वित कर सकता है। (जी.एम. दुबे वि. म.प्र. राज्य) ...2054

Service Law, Labour Judicial (Recruitment & Conditions of Service), Rules, M.P. 2006, Rule 3(2)(c), Judicial Services Revision of Pay Rules, M.P. 2003, Rules 4,7,9 & 12 – Fixation of Pay – Grant of D.A. **– Petition against recovery and claiming the benefit of proper fixation of pension after the release of D.A. in terms of Rules 2003 – Held – Revision of pay of the petitioner was to be done in terms of Rule 4 and Rule 7 of Rules 2003, had it been done in appropriate manner, the petitioner would not have been subjected to any recovery whatsoever – Order of recovery is quashed. [Satish Shrivastava Vs. State of M.P.]** ...2299

सेवा विधि, श्रम न्यायिक (भर्ती और सेवा शर्तें), नियम, म.प्र. 2006, नियम 3(2)(सी), न्यायिक सेवा वेतन पुनरीक्षण नियम, म.प्र., 2003, नियम 4,7,9 व 12 – वेतन निर्धारण – मंहगाई भत्ता प्रदान किया जाना – वसूली के विरुद्ध और नियम 2003 के तारतम्य में मंहगाई भत्ता को विमुक्त किये जाने के पश्चात पेंशन का उचित निर्धारण के लाभ का दावा करते हुये याचिका – अभिनिर्धारित – याची के वेतन का पुनरीक्षण, नियम 2003 के नियम 4 व नियम 7 की शर्तोनुसार किया जाना था, यदि उसे उचित ढंग से किया जाता, याची किसी प्रकार की वसूली के अधीन नहीं आता – वसूली का आदेश अभिखंडित। (सतीश श्रीवास्तव वि. म.प्र. राज्य) ...2299

Service Law – Promotion **– Petition against withdrawal of promotion order on the ground that right has accrued in favour of the petitioner with the issuance of promotion – Same could not have been withdrawn without affording an opportunity of hearing – Held – Promotion was issued assuming that the promotional post is lying vacant – In fact there was no vacant post on the date when recommendation for promotion was made – Mistakes are mistakes and they can always be corrected – State was justified in withdrawing the sanction for promotion. [Sunil Datt Vs. State of M.P.]** ...1815

सेवा विधि – पदोन्नति – पदोन्नति आदेश वापिस लिये जाने के विरुद्ध याचिका इस आधार पर कि पदोन्नति जारी होने के साथ, याची के पक्ष में अधिकार प्रोद्भूत हुआ है – सुनवाई का अवसर प्रदान किये बिना उसे वापिस नहीं लिया जा

सकता था – अभिनिर्धारित – पदोन्नति इस धारणा के साथ दी गयी थी कि पदोन्नति का पद रिक्त है – वास्तव में, जिस तिथि को पदोन्नति हेतु अनुशंसा की गयी थी उस तिथि को पद रिक्त नहीं था – गलतियां, गलतियां होती हैं उन्हें सदैव सुधारा जा सकता है – पदोन्नति हेतु मंजूरी वापिस लेना राज्य के लिये न्यायोचित था। (सुनील दत्त वि. म.प्र. राज्य) ...1815

Service Law – Recovery of House Rent Allowance – **Petitioner lives with her husband who is receiving the House Rent Allowance, therefore, House Rent Allowance received by the petitioner, was directed to refund it with effect from 09.04.1981 – Held – There was no misrepresentation on the part of the petitioner – House Rent Allowance is paid to the petitioner for years together on account of no fault on her part – After 28 years there was no justification on the part of the respondent to initiate recovery proceedings as no Govt. accommodation allotted to the petitioner. [Nirmala Sonwane (Mrs.) Vs. State of M.P.]** ...1743

सेवा विधि – गृह भाड़ा भत्ता की वसूली – याची अपने पति के साथ रहती है, जो गृह भाड़ा भत्ता प्राप्त कर रहा है, इसलिए, याची द्वारा 09.04.1981 से प्रभावी रुप से प्राप्त किया गया गृह भाड़ा भत्ता, वापस करने के लिये निदेशित किया गया – अभिनिर्धारित – याची की ओर से कोई व्यपदेशन नहीं था – याची को इतने वर्षों तक गृह भाड़ा भत्ता उसकी ओर से कोई भूल ना होते हुए अदा किया गया है – प्रत्यर्थी की ओर से 28 वर्ष पश्चात वसूली की कार्यवाही आरंभ करने का कोई न्यायोचित्य नहीं था, क्योंकि याची को सरकारी निवास आवंटित नहीं था। (निर्मला सोनवाने (श्रीमती) वि. म.प्र. राज्य) ...1743

Service Law – Seniority – **Petitioner originally appointed as Lower Division Clerk in Small Savings and State Lotteries Department – Deputation of petitioner to Pension and Employees Welfare Department – Re-transfer of petitioner back to Small Savings and State Lotteries Department – Petitioner's seniority would be counted from her day of appointment in her parent department not from day of re-transfer back to her parent department. [Madhumati Joshi (Smt.) Vs. State of M.P.]** ...1771

सेवा विधि – वरिष्ठता – याची को मूलतः निम्न श्रेणी लिपिक के रुप में अल्प बचत एवं राज्य लॉटरी विभाग में नियुक्त किया गया था – पेंशन और कर्मचारी कल्याण विभाग में याची की प्रतिनियुक्ति – अल्प बचत एवं राज्य लॉटरी विभाग में याची को वापस पुनः अंतरित किया गया – याची की वरिष्ठता की गणना मूल विभाग में उसकी नियुक्ति की तिथि से होगी और न कि मूल विभाग में उसके पुनः अंतरण की तिथि से। (मधुमती जोशी (श्रीमती) वि. म.प्र. राज्य) ...1771

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Service Law – Termination from service – **Initial appointment of the petitioner was made on the vacant post of the driver for 89 days after selection process – Extension was granted, but before even completion of extended period he was regularized – Said post had fallen vacant due to promotion of one employee whose promotion order was subsequently quashed and he was again posted as driver –Thereafter, by impugned order petitioner was terminated – Although the said employee was again promoted and vacancy has again reoccurred – Held – Since earlier petition filed by the petitioner was disposed of directing the respondent to consider the case of the petitioner for appointment on the post of driver in preference why an advertisement was issued calling the application – It was also not put forth by the respondents that somebody more meritorious was considered and was found fit – Therefore, for the fault on the part of the respondent No. 1 the service career of a young person cannot be put in jeoparde – Petitioner be reinstated on the post of driver and be treated in continuous service for grant of seniority only without back wages. [Bahadur Singh Vs. District & Sessions Judge]** ...2037

सेवा विधि – सेवा समाप्ति – चयन प्रक्रिया के पश्चात, याची, की आरंभिक नियुक्ति 89 दिनों के लिये वाहन चालक के रिक्त पद पर की गयी थी – सेवावृद्धि प्रदान की गयी परन्तु बढ़ायी गयी अवधि पूर्ण होने के पूर्व ही उसे नियमित किया गया – उक्त पद, एक कर्मचारी की पदोन्नति के कारण रिक्त हुआ था, जिसकी पदोन्नति को बाद में अभिखंडित किया गया और उसे पुनः वाहन चालक के रुप में पदस्थ किया गया – तत्पश्चात, आक्षेपित आदेश द्वारा याची की सेवा समाप्त की गयी – यद्यपि उक्त कर्मचारी को पुनः पदोन्नत किया गया और पुनः रिक्ति हो गयी – अभिनिर्धारित – चूंकि याची द्वारा पूर्व में प्रस्तुत याचिका का निपटारा प्रत्यर्थी को इस निर्देश के साथ किया गया था कि वाहन चालक के पद पर नियुक्ति हेतु याची के प्रकरण को प्राधान्य देते हुये विचार किया जाये तब क्यों आवेदन आमंत्रित करने के लिये विज्ञापन जारी किया गया – प्रत्यर्थीगण द्वारा यह भी प्रस्तावित नहीं किया गया कि कोई और अधिक गुणवत्ता धारक का विचार किया गया और योग्य पाया गया था – इसीलिये, प्रत्यर्थी क्र. 1 की ओर से की गयी भूल के लिये एक युवक की सेवा वृत्ति को खतरे में नहीं डाला जा सकता – याची को वाहन चालक के पद पर बहाल किया जाये और केवल बिना पूर्व वेतन के वरिष्ठता प्रदान करने के लिये उसे निरंतर सेवा में माना जाये। (बहादुर सिंह वि. डिस्ट्रिक्ट एण्ड सेशंस जज) ...2037

Service Law – Time Bound Promotion – Effect – **Junior Engineer promoted to the post of Assistant Engineer under the Time Bound Promotion Scheme cannot be treated at par with the Assistant Engineer**

Promoted on regular basis. [M.P. Electricity Board, Jabalpur Vs. S.K. Dubey] (FB)...1698

सेवा विधि – समयबद्ध पदोन्नति – प्रभाव – समयबद्ध पदोन्नति योजना के अंतर्गत सहायक अभियंता के पद पर पदोन्नत किये गये कनिष्ठ अभियंता को नियमित आधार पर पदोन्नत किये गये सहायक अभियंता के समकक्ष नहीं माना जा सकता। (म.प्र. इलेक्ट्रिसिटी बोर्ड, जबलपुर वि. एस.के. दुबे) (FB)...1698

***Service Law – Writ of Quo Warranto* – The Writ of Quo Warranto can be issued only if it is found that a person has been appointed on a public post *dehors* the Rule or in violation of statutory provisions of law – Since nothing is spelt out as to how the appointment of respondent No. 5 is *dehors* the Rules or against the statutory provisions – No case is made out to invoke power by this court to grant a writ of quo warranto. [Dhanraj Singh Pusam Vs. State of M.P.] ...1761**

सेवा विधि – अधिकार-पृच्छा की रिट – अधिकार-पृच्छा की रिट केवल तब जारी की जा सकती है जब यह पाया जाये कि लोक पद पर व्यक्ति की नियुक्ति, नियम से असंबद्ध है या विधि के कानूनी उपबंधों के उल्लंघन में है – चूंकि कुछ भी प्रकट नहीं किया गया कि कैसे प्रत्यर्थी क्र. 5 की नियुक्ति नियम से असंबद्ध है या कानूनी उपबंधों के विपरीत है – अधिकार-पृच्छा की रिट प्रदान करने के लिये इस न्यायालय की शक्ति का अवलम्ब लेने के लिये प्रकरण नहीं बनता। (धनराज सिंह पूसम वि. म.प्र. राज्य) ...1761

***Society Registrikaran Adhiniyam, M.P. (44 of 1973), Section 2, Prakoshtha Swamitva Adhiniyam, M.P. 2000 (15 of 2001), Sections 22 & 43(2) –Management & Maintenance by Society* – Provisions contained under Section 22 of 2000 Act aims at having that the management and maintenance of Apartments vests with a single association and not with various association – Various groups of association may exist, but if they have not formed a Federal Association as provided under Section 22 of 2000 Act, they cannot claim separate management and maintenance of the apartment – Therefore, same has rightly been vested with Lake View Enclave Apartment Owners Welfare Association. [Ansal Welfare Vs. State of M.P.] ...1798**

सोसायटी रजिस्ट्रीकरण अधिनियम, म.प्र. (1973 का 44), धारा 2, प्रकोष्ठ स्वामित्व अधिनियम, म.प्र., 2000 (2001 का 15), धाराऐं 22 व 43(2) – सोसायटी द्वारा प्रबंधन एवं रखरखाव – अधिनियम 2000 की धारा 22 के अंतर्गत उपबंधित प्रावधानों का उद्देश्य यह है कि भवनों का प्रबंधन और रखरखाव एकल संगम में

निहित करना है और न कि विभिन्न संगमों में – संगम के विभिन्न गुट विद्यमान हो सकते हैं किन्तु यदि उन्होंने परिसंघीय संगम नहीं बनाया है जैसा कि अधिनियम, 2000 की धारा 22 के अंतर्गत उपबंधित किया गया है, तब वे भवन के पृथक प्रबंधन एवं रखरखाव का दावा नहीं कर सकते – अतः उक्त को उचित रुप से लेक व्यू एनक्लेव अपार्टमेंट ओनर्स वेलफेयर एशोसियेशन में निहित किया गया है। (अंसल वेलफेयर वि. म.प्र. राज्य) ...1798

Society Registrikaran Adhiniyam, M.P. (44 of 1973), Section 2, Prakoshtha Swamitva Adhiniyam, M.P. 2000 (15 of 2001), Sections 22 & 43(2) – Registration of Society – **Where association of persons constitutes the society and get it registered under 1973 Adhiniyam to achieve the objects, the same cannot be questioned – Merely because the said society has taken up work of management and maintenance of apartments for the purpose of Act of 2000 and merely because as alleged one association of apartment owners can look after management and maintenance of the apartment ipso facto will not render the registration of Ansal Welfare Society illegal. [Ansal Welfare Vs. State of M.P.]** ...1798

सोसायटी रजिस्ट्रीकरण अधिनियम, म.प्र. (1973 का 44), धारा 2, प्रकोष्ठ स्वामित्व अधिनियम, म.प्र., 2000 (2001 का 15), धाराऐं 22 व 43(2) – सोसायटी का रजिस्ट्रीकरण – जब व्यक्तियों का सहयोजन, सोसायटी गठित करता है और उसे 1973 के अधिनियम के अंतर्गत उद्देश्यों की प्राप्ति के लिये रजिस्ट्रीकृत कराया जाता है, उक्त पर प्रश्न नहीं उठाया जा सकता – मात्र इसलिये कि उक्त सोसायटी ने अधिनियम 2000 के प्रयोजन हेतु भवनों का प्रबंधन एवं रखरखाव का कार्य ले लिया है और मात्र इसलिये कि जैसा कि अभिकथित किया गया कि भवन स्वामियों का एक संगम भवन के प्रबंधन और रखरखाव को देख सकता है, स्वयंमेव ही अंसल वेलफेयर सोसायटी के रजिस्ट्रीकरण को अवैध नहीं बना सकेगा। (अंसल वेलफेयर वि. म.प्र. राज्य) ...1798

Society Registrikaran Adhiniyam, M.P. (44 of 1973), Section 32(2) – **Membership granted by the M.P. Cricket Association to its new members between the period 2008-09 to 2011-12 was held to be void by the impugned order – Assistant Registrar initiated inquiry on the complaint of single member – Held – Section 32(2) of the Act, requires the application together with an affidavit in support of its contents by a majority of the members of the governing body of the Society – Not less than 1/3 of the total number of members of the Society – Complaint did not satisfy the requirement of Section 32(2) of the Act – Impugned order cannot be sustained, hence quashed. [Madhya**

Pradesh Cricket Association Vs. Shri B.S. Solanki] ...1820

सोसायटी रजिस्ट्रीकरण अधिनियम, म.प्र. (1973 का 44), धारा 32(2) – आक्षेपित आदेश द्वारा 2008–09 से 2011–12 की अवधि के बीच म.प्र. क्रिकेट एशोसियेशन द्वारा अपने नये सदस्यों को प्रदान की गयी सदस्यता शून्य अभिनिर्धारित की गयी – सहायक पंजीयक ने एक सदस्य की शिकायत पर जांच आरंभ की – अभिनिर्धारित – अधिनियम की धारा 32(2) के अनुसार आवेदन के साथ सोसायटी के शासन निकाय (गवर्निंग बॉडी) के सदस्यों के बहुमत द्वारा उसकी अंतर्वस्तु के समर्थन में शपथपत्र अपेक्षित है – सोसायटी के कुल सदस्यों के 1/3 से कम न हो – शिकायत, अधिनियम की धारा 32(2) की अपेक्षा को संतुष्ट नहीं करती – आक्षेपित आदेश कायम नहीं रखा जा सकता, अतः अभिखंडित। (मध्य प्रदेश क्रिकेट एसोसिएशन वि. श्री बी.एस. सोलंकी) ...1820

Specific Relief Act (47 of 1963), Section 34 – See – Civil Procedure Code, 1908, Section 100 **[Vijay Bahadur Singh Vs. Rameshwar] ...1879**

विनिर्दिष्ट अनुतोष अधिनियम (1963 का 47), धारा 34 – देखें – सिविल प्रक्रिया संहिता, 1908, धारा 100 (विजय बहादुर सिंह वि. रामेश्वर) ...1879

Specific Relief Act (47 of 1963), Section 34 **– The suit filed by plaintiff is hit by proviso to Section 34 of Specific Relief Act – Appeals are dismissed. [Vijay Bahadur Singh Vs. Rameshwar] ...1879**

विनिर्दिष्ट अनुतोष अधिनियम (1963 का 47), धारा 34 – विनिर्दिष्ट अनुतोष अधिनियम की धारा 34 के परंतुक द्वारा वादी द्वारा प्रस्तुत वाद प्रभावित होता है – अपीलें खारिज। (विजय बहादुर सिंह वि. रामेश्वर) ...1879

Stamp Act (2 of 1899), Article 23 – Schedule I-A **– Petition against rejection of application praying that the document dt. 30.05.1993 be impounded and sent to Collector of Stamps – Agreement was on stamp paper of Rs. 10 – There is recital in the agreement relating to possession – Right of ownership was also given – Respondent was also permitted to use the property in its own manner – Held – A party cannot be permitted to approbate and reprobate – One cannot claim the 'benefits' under the document – By contending that it is a duly executed document, but at the same time contend that the 'document' is not conveyance, respondent cannot escape liability to pay duty and penalty – Court below is directed to impound the document and send it to Collector of Stamp for assessment of duty and penalty if any. [Mohd. Ayyub Khan Vs. Laxman Gawli] ...2044**

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स्टाम्प अधिनियम (1899 का 2), अनुच्छेद 23 – अनुसूची I-ए – आवेदन की खारिजी के विरुद्ध याचिका इस प्रार्थना के साथ कि दस्तावेज दि. 30.05.1993 को परिबद्ध किया जाये और स्टाम्प कलेक्टर को भेजा जाये – करार रु. 10/– के स्टाम्प पेपर पर था – कब्जे के संबंध में करार में उपकथन है – स्वामित्व का अधिकार भी दिया गया – प्रत्यर्थी को सम्पत्ति अपने ढंग से उपयोग करने की भी अनुमति दी गयी थी – अभिनिर्धारित – पक्षकार को अनुमोदन करने और निरनुमोदन करने की अनुमति नहीं दी जा सकती – दस्तावेज के अंतर्गत "लाभ" का दावा कोई नहीं कर सकता – यह तर्क करके कि वह सम्यक् रुप से निष्पादित दस्तावेज है, परन्तु उसी समय तर्क करना कि "दस्तावेज" हस्तांतरण पत्र नहीं, प्रत्यर्थी शुल्क और शास्ति का भुगतान करने के दायित्व से बच नहीं सकता – निचले न्यायालय को दस्तावेज परिबद्ध करने और स्टाम्प कलेक्टर को शुल्क और शास्ति, यदि कोई हो तो, का निर्धारण करने हेतु प्रेषित करने के लिये निदेशित किया गया। (मो. अयूब खान वि. लक्ष्मण गवली) ...2044

Stamp Act (2 of 1899), Section 4 & Article 5(e)(i) of Schedule 1A – Agreement to sell – Insufficiently stamped – Admissibility – **In agreement to sell, there is recital of handing over the possession and document is not properly stamped – Document cannot be admitted in evidence for any purpose including collateral purposes. [Kailashchandra Vs. Dwarkadhees]** ...2295

स्टाम्प अधिनियम (1899 का 2), धारा 4 व अनुसूची 1ए के अनुच्छेद 5(ई)(i) – विक्रय का करार – अपर्याप्त रुप से स्टाम्पित – ग्रहयता – विक्रय के करार में कब्जा हस्तांतरित किया जाना लिखा गया है और दस्तावेज उचित रुप से स्टाम्पित नहीं है – दस्तावेज को साक्ष्य में, किसी प्रयोजन हेतु जिसमें सांपार्श्विक प्रयोजन भी समाविष्ट है, स्वीकार नहीं किया जा सकता। (कैलाशचन्द्र वि. द्वारकाधीश) ...2295

Stamp Act (2 of 1899), Sections 31 & 40 – Penalty – **While imposing the penalty the Collector of Stamps has not applied its mind that whether the imposition of penalty is just and proper, especially in a case where petitioner himself had approached the authority, as it was the award which was passed by the Arbitrator on a Stamp paper of Rs. 100/- for which the petitioner cannot be held responsible – Impugned order is set aside to the extent whereby penalty has been imposed – Authority is directed to re-decide the imposition of penalty by passing a reasoned order after giving an opportunity of hearing to the petitioner. [Bridge Stone India Pvt. Ltd. Vs. State of M.P.]** ...2307

स्टाम्प अधिनियम (1899 का 2), धाराऐं 31 व 40 – शास्ति – स्टाम्प कलेक्टर ने शास्ति अधिरोपित करते समय मस्तिष्क का प्रयोग नहीं किया कि क्या शास्ति का अधिरोपण

न्यायसंगत और उचित है, विशेष रुप से ऐसे प्रकरण में जहां याची स्वयं प्राधिकारी के पास आया, जैसा कि वह ऐसा अवार्ड था जिसे माध्यस्थम द्वारा रु. 100/– के स्टाम्प पेपर पर पारित किया गया था, जिसके लिये याची को जिम्मेदार नहीं ठहराया जा सकता – शास्ति अधिरोपित करने की सीमा तक आक्षेपित आदेश अपास्त – प्राधिकारी को याची को सुनवाई का अवसर देने के पश्चात सकारण आदेश पारित करके शास्ति के अधिरोपण को पुनः निर्णित करने के लिए निदेशित किया गया। (ब्रिज स्टोन इंडिया प्रा.लि. वि. म.प्र. राज्य) ...2307

Succession Act (39 of 1925), Sections 371 & 372 – See – Civil Procedure Code, 1908, Sections 15 to 20 **[Jag Mohan Tripathi Vs. Baba Annapurna Das Katthiya Baba] ...2311**

उत्तराधिकार अधिनियम (1925 का 39), धाराऐं 371 व 372 – देखें – सिविल प्रक्रिया संहिता, 1908, धाराऐं 15 से 20 (जग मोहन त्रिपाठी वि. बाबा अन्नपूर्णा दास कत्थिया बाबा) ...2311

Tort – Death due to electrocution **– Death of two minor children due to electrocution – Trial court rightly assessed the amount of compensation to the tune of Rs. 1,10,000/-. [M.P. Electricity Board, Jabalpur Vs. Laxman] ...1872**

अपकृत्य – विद्युत आघात से मृत्यु – विद्युत आघात से दो अल्पवयस्क बच्चों की मृत्यु – विचारण न्यायालय ने रु. 1,10,000/– प्रतिकर का उचित रुप में निर्धारण किया। (म.प्र. इलेक्ट्रिसिटी बोर्ड, जबलपुर वि. लक्ष्मण) ...1872

Wakf Act (43 of 1995), Section 83(a) – Revision **– On the date of filing of the suit, it was alleged that the Committee was not having any locus standi to file the suit because the tenure of the Committee was already over on 23.07.2012 and the same was renewed vide order of the respondent No.2 dated 06.02.2013 – Held – The Committee which was functioning during its tenure in the absence of Constitution of new Committee shall be deemed to be continued for such property. [Moin Akhtar Vs. Mutawalli Committee Chandal Bhata Masjid] ...1965**

वक्फ अधिनियम (1995 का 43), धारा 83(ए) – पुनरीक्षण – वाद प्रस्तुत करने की तिथि को यह अभिकथन किया गया था कि समिति को वाद प्रस्तुत करने के लिये सुने जाने का कोई अधिकार नहीं क्योंकि समिति का कार्यकाल पहले ही 23.07.2012 को समाप्त हो चुका है और प्रत्यर्थी क्र. 2 के आदेश दि. 06.02.2013 द्वारा उक्त का नवीनीकरण किया गया है – अभिनिर्धारित – वह समिति जो नयी समिति के गठन की अनुपस्थिति में अपने कार्यकाल के दौरान कार्यरत थी, उसे उक्त सम्पत्ति हेतु, बनी रहना समझा जायेगा। (मोइन अख्तर वि. मुतावली कमेटी चंडाल भाटा मस्जिद) ...1965

Workmen's Compensation Act (8 of 1923), Section 10, Motor

Vehicles Act (59 of 1988), Section 166 – Res-judicata **– Claimants filed claim petition before Motor Accident Claims Tribunal which was dismissed with finding that as driver/son of claimants himself was at fault therefore they are not entitled for compensation – Further liberty was given by Tribunal that of claimants want they can approach Commissioner under Workmen's Compensation Act as MACT does not have any jurisdiction in matter – Commissioner dismissed the claim as barred by principle of Res-judicata – Held – Commissioner committed error by holding that order passed by MACT amounts to Res-judicata – Claim was maintainable. [Mahabir Sen Vs. Vijay Singh] ...2365**

कर्मकार प्रतिकर अधिनियम (1923 का 8), धारा 10, मोटर यान अधिनियम (1988 का 59), धारा 166 – पूर्व न्याय – दावाकर्ताओं ने मोटर दुर्घटना दावा अधिकरण के समक्ष दावा याचिका प्रस्तुत की जिसे इस निष्कर्ष के साथ खारिज किया गया कि, चूंकि वाहन चालक/दावाकर्ताओं का पुत्र स्वयं दोषी था, इसलिए वे प्रतिकर के हकदार नहीं – अधिकरण द्वारा इसके अतिरिक्त यह स्वतंत्रता दी गई कि यदि दावाकर्ता चाहे तो वे कर्मकार प्रतिकर अधिनियम के अंतर्गत आयुक्त के समक्ष जा सकते हैं क्योंकि मामले में मोटर दुर्घटना दावा अधिकरण को कोई अधिकारिता नहीं – पूर्व न्याय के सिद्धांत द्वारा वर्जित मानते हुए आयुक्त ने दावा खारिज किया – अभिनिर्धारित – आयुक्त ने मोटर दुर्घटना दावा अधिकरण द्वारा पारित किये गये आदेश को पूर्व न्याय की कोटि में आना अभिनिर्धारित करके भूल कारित की है – दावा पोषणीय था। (महावीर सेन वि. विजय सिंह) ...2365

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JOURNAL SECTION

IMPORTANT ACTS, AMENDMENTS, CIRCULARS, NOTIFICATIONS AND STANDING ORDERS.

MADHYA PRADESH ACT
NO. 5 OF 2014
THE MADHYA PRADESH VIDHAN MANDAL SADASYA NIRARHATA NIVARAN (SANSHODHAN) ADHINIYAM, 2014

(Received the assent of the Governor on the 11th February, 2014 assent first published in the "Madhya Pradesh Gazette (Extra-ordinary)", dated the 11th February, 2014)

An Act further to amend the Madhya Pradesh Vidhan Mandal Sadasya Nirarhata Nivaran Adhiniyam, 1967.

Be it enacted by the Madhya Pradesh Legislature in the Sixty-fourth year of the Republic of India as follows:—

1. **Short title.**- This Act may be called the Madhya Pradesh Vidhan Mandal Sadasya Nirarhata Nivaran (Sanshodhan) Adhiniyam, 2014.

2. **Amendment of Schedule.** – In the Schedule to the Madhya Pradesh Vidhan Mandal Sadasya Nirarhata Nivaran Adhiniyam, 1967 (No. 16 of 1967), –

(i) in item 98, after the word "Chairman", the words "and Vice-Chairman" shall be inserted;

(ii) after item 98, the following items shall be added, namely:—

"99. The Chairman and Vice-Chairman of the Madhya Pradesh State Mining Corporation;

100. The Chairman and Vice-Chairman of the Madhya Pradesh Urja Vikas Nigam;

101. The Chairman and Vice-Chairman of the Madhya Pradesh Mela Pradhikaran;

102. The Chairman and Vice-Chairman of the Madhya Pradesh Jal Nigam Maryadit;

103. The Chairman and Vice-Chairman of the Bhopal Development Authority.".

3. **Repeal and saving.**- (1) The Madhya Pradesh Vidhan Mandal Sadasya Nirarhata Nivaran (Sanshodhan) Adhyadesh, 2013 (No. 4 of 2013) is hereby repealed.

(2) Notwithstanding the repeal of the said Ordinance anything done or any action taken under the said Ordinance shall be deemed to have been done or taken under the corresponding provision of this Act.

MADHYA PRADESH ACT NO. 13 OF 2014
THE MADHYA PRADESH LOCAL AUTHORITIES (ELECTORAL OFFENCES) AMENDMENT ACT, 2014

(Received the assent of the Governor on the 5th August, 2014; assent first published in the "Madhya Pradesh Gazette (Extra-ordinary)", dated the 6th August, 2014)

An Act further to amend the Madhya Pradesh Local Authorities (Electoral Offences) Act, 1964.

Be it enacted by the Madhya Pradesh Legislature in the sixty-fifth year of the Republic of India as follows:—

1. **Short title.**- This Act may be called the Madhya Pradesh Local Authorities (Electoral Offences) Amendment Act, 2014.

2. **Amendment of long title.**- In the long title of the Madhya Pradesh Local Authorities (Electoral Offences) Act, 1964 (No. 13 of 1964) (hereinafter referred to as the principal Act), for the words "Nagar Panchayats", the words "Nagar Parishads" shall be substituted.

3. **Amendment of Section 2.**- In Section 2 of the principal Act,—

(a) in clause (1),—

(i) in sub-clause (a), for the words "councillor", the words "Mayor and councillor" shall be substituted;

(ii) in sub-clause (b), for the words "Nagar Panchayat", the words "Nagar Parishad" shall be substituted and for the word "councillor", the words "President and councillor" shall be substituted;

(b) in clause (2),(3) and (4), for the words "Nagar Panchayat", the words "Nagar Parishad" shall be substituted.

4. **Substitution of Section 3.-** For Section 3 of the principal Act, the following section shall be substituted, namely :—

"3. **Prohibition of public meetings etc. during period of forty-eight hours ending with hour fixed for conclusion of poll.-** (1) No person shall, during the period of forty-eight hours ending with the hour fixed for completion of the poll for any election in any polling area,—

(a) convene, hold, attend, join or address any public meeting or procession in connection with an election; or

(b) display to the public any election matter by means of cinematography, electronic or print media or any other means; or

(c) propagate any election matter to the public by holding, or by arranging the holding of, any musical concert or any theatrical performance or by way of amusement or any other means of entertainment with a purpose to attracting the voters.

(2) Any person who contravenes the provisions of sub-

section (1) shall be punishable with imprisonment for a term which may extend to two years or with fine which may extend to two thousand rupees, or with both.

Explanation.—For the purpose of this section, the expression "election matter" means any matter intended or calculated to influence or affect the result of an election.".

5. **Substitution of Section 4.-** For Section 4 of the principal Act, the following section shall be substituted, namely :—

"4. **Disturbances at election meetings.** – (1) Any person who at a public meeting to which this section applies, acts, or incites others to act, in a disorderly manner for the purpose of preventing the transaction of the business for which the meeting was called together, shall be punishable with imprisonment for a term which may extend to six months or with fine which may extend to two thousand rupees or with both.

(2) An offence punishable under sub-section (1) shall be cognizable.

(3) This section applies to any public meeting of a political character held in any constituency between the date of the issue of a notification under this Act calling upon the constituency to elect a member or members and the date on which such election is held.

(4) If any police officer reasonably suspects any person of committing an offence under sub-section (1), he may, if requested so to do by the chairman of the meeting, require that person to declare to him immediately his name and address and, if that person refuses or fails to declare the same, or if the police officer reasonably suspects him of giving a false declaration, the police officer may arrest him without warrant.".

6. **Insertion of Section 6A.-** After Section 6 of the principal Act, the following section shall be inserted, namely :—

"6A. **Penalty for failure to observe procedure for voting.–** If any elector to whom a ballot paper has been issued, refuse to observe the procedure prescribed for voting the ballot paper issued to him shall be liable for cancellation.".

7. **Substitution of Section 10.-** For Section 10 of the principal Act, the following section shall be substituted, namely :—

"10. **Removal of ballot papers from polling station to be an offence.-** (1) Any person who at any election unauthorizedly takes or attempts to take a ballot paper, election documents or the Electronic Voting Machine out of a polling station, or willfully aids or abets the doing of any such act, shall be punishable with imprisonment for a term which may extend to one year or with fine which may extend to five hundred rupees or with both.

(2) If the presiding officer of a polling station has reasons to believe that any person is committing or has committed an offence punishable under sub-section (1), such officer may, before such person leaves the polling station, arrest or direct a police officer to arrest such person and may search such person or cause him to be searched by a police officer :

Provided that when it is necessary to cause a woman to be searched, the search shall be made by another woman with strict regard to decency.

(3) Any ballot paper, election documents or Electronic Voting Machine found upon the person arrested on search, shall be made over for safe custody to a police officer by the presiding officer, or where the search is made by a police officer, the same shall be kept by such officer in safe custody.

(4) An offence punishable under sub-section (1) shall be

cognizable.".

8. **Insertion of Section 14E and 14F.-** After Section 14D of the principal Act, the following sections shall be inserted, namely :—

"14E. **Prohibition of going armed to or near a polling station.-** (1) No person, other than the returning officer, the Presiding officer, any police officer and any other person appointed to maintain peace and order, at a polling station who is on duty at the polling station, shall, on a polling day, go armed with arms, as defined in the Arms Act,1959(54 of 1959), of any kind within the neighborhood of a polling station.

(2) If any person contravenes the provisions of sub-section (1), he shall be punishable with imprisonment for a term which may extend to two years, or with fine, or with both.

(3) Where a person is convicted of an offence under this section, the arms as defined in the provisions of the Arms Act,1959(54 of 1959) and notification issued thereunder, found in his possession shall be liable to confiscation and the license granted in relation to such arms shall be deemed to have been revoked under section 17 of that Act.

(4) An offence under sub-section (2) shall be cognizable.

14F. **Liquor not to be sold, given or distributed on polling day.-** (1) No spirituous, fermented or intoxicating liquors or other substances of a like nature shall be sold, given or distributed at a hotel, eating house, tavern, shop or any other place, public or private, within a polling area during the period of forty-eight hours ending with the hour fixed for the conclusion of the poll for any election in that polling area.

(2) Any person who contravenes the provisions of sub-section (1), shall be punishable with imprisonment for a term which may extend to six months or with fine

which may extend to two thousand rupees or with both.

(3) Where a person is convicted of an offence under this section, the spirituous, fermented or intoxicating liquors or other substances of a like nature found in his possession shall be liable to confiscation and the same shall be disposed of in such manner as may be prescribed.".

THE HIGH COURT OF MADHYA PRADESH DIGITIZATION OF RECORDS RULES, 2014

[Notification No.4, published in Madhya Pradesh Gazette Extra-ordinary dated 21st April, 2014, page nos. 366(4) to 366 (11)

In exercise of the powers conferred by Article 225 of the Constitution of India, Section 54 of the States Reorganisation Act, 1956, clauses 27 & 28 of the Letters Patent, the High Court of Madhya Pradesh makes The High Court of Madhya Pradesh Digitization of Records Rules, '2014; as annexed, which shall come into force from the date of notification in the Madhya Pradesh official Gazette (Extra-ordinary).

(VED PRAKASH)
REGISTRAR GENERAL

Rules :- **The High Court of Madhya Pradesh Digitization of Records Rules, 2014.**

Prefatory Note-Statement of Objects and Reasons:-

There is an urgent need to cope with the need for creation of user-friendly database with features for text, context, keyword based searching and for purpose of safe custody and creation of space for records. The Digitization solution will be an integrated web technology based solution capable of running seamlessly over Intranet, Virtual Private Network (VPN) as well as on the Internet that allows the High Court of Madhya Pradesh to scan and integrate all types of records, Judgments / Order and enable the end users to search quickly and comprehensively across different media from the vast database available at the High Court of Madhya Pradesh.

CHAPTER-I

1. **Nomenclature**:-These Rules may be called the "High Court of Madhya Pradesh Digitization of Records Rules. 2014".

2. **Application**.:-These Rules shall come into force with immediate effect from the date of notification.

3. **Definition**

1) **Digitization** means the process of converting analog signals or information in any form into a digital and un-editable format that can be understood by computer systems or electronic devices.

2) Digitized/electronic records shall bear the same meaning as assigned under the Information Technology Act, 2000.

3) **Microfilming** means a film bearing a photographic record on a reduced scale of printed or other graphic matter.

4) **Repository** means a central place where data is stored and maintained and this data comprises of collection of electronic records.

5) **Digitization of the High Court records** means conversion of all physical files including Judicial records of disposed of, pending and freshly filed cases, administrative records, ILR publications, gazette notifications /publications, old books, all registers etc. into digital form capable of being understand by computer systems or an electronic device.

6) **Official** means the officer and employees of the High Court of Madhya Pradesh

7) **Application software** means a program or group

of programs designed for end users. The application software includes database programs, word processors, spreadsheets, etc.

8) **Local Area Network** means a computer network that interconnects computers in a limited area such as a home, school, computer laboratory or office building using network media.

9) The words and phrases not mentioned herein shall bear the same meaning as assigned under the High Court of Madhya Pradesh, Rules 2008;

CHAPTER-II

PRESENTATION OF MATTERS AT THE FILING COUNTER

Notwithstanding anything to the contrary contained in Rule 1 Chapter 11 High Court of M.P. Rules, 2008.

(a) Any main case, interlocutory application or any other document in a main case may be presented at the presentation centre of the High Court during working hours in soft copy *(pdf format)* by any party or his recognized agent or counsel in person.

(b) On such presentation, the advocate/party shall be given the facility of listing of his/her case on next working day after removal of default.

(c) In case the advocates/parties are submitting the hard copy of paper book the same will be scanned at scanning center by the scanning team of the High Court or by the vendor appointed by the High Court for the said purpose.

(d) The scanned files and the soft copy shall be uploaded on the Server added in the repository.

(e) All subsequent orders, memo's, reminders, rejoinders shall be appended/added in the scanned digital file either through scanning process or digitally attaching the documents with the relevant

file/case.

(f) Any additional amendment submitted later by the parties/advocates at filing center either in the hard copy or soft copy shall be tagged with the relevant file / case in sequential order.

CHAPTER-III

Preservation and Elimination of Records

1) All the original documents after digitization shall be returned to the parties after giving them three months notice to receive the documents and in case the parties do cot collect the documents within a period of three months, those documents shall be destroyed in accordance with the provisions of Chapter XIX of the Rules 2008 under the general superintendence of the Registrar (IT), by the supervising Officer(s) as may be appointed by Hon'ble the Chief Justice for that purpose. Record to be digitized and preserved permanently in the un-editable digitized format.

2) Notwithstanding anything contained in Rule 23 to 31 Chapter XIX High Court of MP Rules 2008, the entire judicial record of every case filed in and disposed of by the High Court shall be digitized and preserved permanently in the un-editable format and the digitization of current cases shall be carried out and updated from time to time as may be necessary under the, general superintendence of the Registrar (IT) and the supervising officer(s) as may be appointed by the Hon'ble Chief justice for that purpose.

3) The official digitizing the record of the High Court shall certify that the entire judicial record of the given case has been digitized. The supervising officer shall then as soon as possible give a certificate under his physical and digital signatures, that the entire judicial

record of the given case is available in the un-editable digitized format.

4) The scanned images of the judicial records after sign-off from High Court quality control team will be written on Un-perforated rolls of 16mm of microfilm for archival purpose as per the technical specification specified by Hon'ble the Chief Justice.

5) The judicial records of the given case which has been digitized the under-mentioned judicial record alone thereof shall be preserved for the period specified in Rules 23 to 31 of chapter XIX (records) of the High Court of Madhya Pradesh, Rules 2008 in the physical form.

In Civil Cases inducing Civil Writs:

i. The interim/final signed judgment of the High Court.

ii. The signed/certified Decree of the High Court.

iii. Unreturned original deeds of title.

iv, The affirmation/verification part of all the affidavits on record.

v. All order sheets duly signed or initiated by the Judges.

vi. Original Power of Attorney (Vakalatnama).

vii. Last page of the pleadings in the main matter as well as in the applications which bear Signatures/ affirmation/verification of the Parties/Advocates.

viii. Such papers, in case of historical, sociological and scientific value, as in the opinion of the Court, should be permanently preserved.

In Criminal cases including criminal Writ Petitions:

The interim/final judgment of the High Court.

i. Unreturned original deeds of title.

ii. All order sheets duly signed or initiated by the Judges.

iii. Original Power of Attorney(Vakalatnama).

iv. Last page of the pleadings in the main matter as well as in the applications and memorandum of appeal, which bear signatures/affirmation/ verification of the parties/Advocates.

v. Such papers, in case of historical, sociological and scientific value, as in the opinion of the Court, should be permanently preserved.

6). After digitization of the disposed of cases, all the judicial records in the physical form except the judicial record as mentioned in rules of the chapter XIX of High Court of Madhya Pradesh Rules, 2008 supra shall be destroyed and destruction shall be carried out from time to time as may be necessary in accordance with the provisions of rules of chapter XIX of High Court of Madhya Pradesh rules 2008 under the general superintendence of the Registrar (IT) by the supervising Officer(s) as may be appointed by Hon'ble the Chief Justice for that purpose.

CHAPTER-IV

Digitization of Registers, Administrative Records, Others papers and Publications:

1. Digitization of Registers & Administrative Records

a. All the administrative records / files and Registers are to be digitized aid preserved permanently in the digitized form by the supervising Officer(s) as may be appointed by Hon'ble the Chief Justice for that purpose and under the general superintendence of the Registrar (IT). For the digitization of Registers

related to judicial branch, the digitization will be done by the supervising Officer(s) as may be appointed by Hon'ble the Chief justice for that purpose and under the general superintendence of the Registrar (IT).

b The official of the IT section digitizing the register shall certify that the entire Administrative Records/ Files and Registers has been digitized. The supervising officer shall then as soon as possible give a certificate under his physical and digital signatures that the entire Administrative Records/ Files Register is available in the digitized form.

c The registers mentioned in part II of chapter XIX of High Court of Madhya Pradesh Rules, 2008 of which have been duly digitized and certified by the supervising officer, shall be eliminated. The destruction shall be progressively carried out from time to time in accordance with the provisions of rule 42 (3) of chapter XIX of High Court of Madhya Pradesh Rules, 2008 under the general superintendence of the Registrar (Admin) and Registrar (IT).For the digitization of Registers related to judicial branch by the supervising Officer(s) as may be appointed by Hon'ble the Chief Justice for that purpose.

d The administrative records / files which have been duly digitized and certified by the supervising officer, shall be destroyed. The destruction process shall be carried out as per the directions of Hon'ble the Chief Justice. The general superintendence of Registrar (Admin) shall be there under the supervising Officer(s) as may be appointed by Hon'ble the Chief Justice for that purpose.

2. Digitization of all other papers:-

a All the other papers as per directions of Hon'ble

the Chief Justice shall be digitized and preserved permanently in the digitized form under the general superintandence of the Registrar(IT) by the supervising Officer(s) as may be appointed by Hon'ble the Chief Justice for that purpose.

b The official of the IT department digitizing the papers shall certify that the entire papers have been digitized. The supervising officer shall then as soon as possible give a certificate under his physical and digital signatures that all the said papers are available in the digitized form.

c All the papers which have been duly digitized and certified by the supervising officer, shall be destroyed except the papers of the current year which shall be preserved in physical form. The destruction shall be progressively carried out from time to time in accordance with orders of Hon'ble the Chief Justice under the general superintendence of the Deputy Registrar (Judicial) by the supervising officer(s) as may be appointed by Hon'ble the Chief Justice for that purpose.

Short Note

****(15)***

Before Mr. Justice K.K. Trivedi

W.P.(S) No. 6760/2004 (Jabalpur) decided on 30 July, 2013

ABID HASSAN ...Petitioner

Vs.

MADHYA PRADESH STATE ELECTRICITY BOARD ...Respondent

Constitution - Article 16 - Higher Pay Scale - Scheme for - Employee **who had completed 9 years of service on same post without promotion - Denial to petitioner on ground of adverse entries recorded against him in his ACR - Industrial Court in its order stated that there was no reason to record adverse entries against petitioner - Said order was affirmed by High Court - Denial not proper - Direction given to respondent to consider case of petitioner for grant of benefit of higher pay scale.**

संविधान – अनुच्छेद 16 – उच्चतर वेतनमान – के लिये योजना – कर्मचारी जिसने बिना पदोन्नती उसी पद पर 9 वर्ष की सेवा पूर्ण कर ली है – याची को उसके विरुद्ध एसीआर मे प्रतिकूल प्रविष्टियों के आधार पर अस्वीकार किया जाना – औद्योगिक न्यायालय ने अपने आदेश में कहा कि याची के विरुद्ध प्रतिकूल प्रविष्टियां अभिलिखित करने का कोई कारण नहीं था – उक्त आदेश उच्च न्यायालय द्वारा अभिपुष्ट – अस्वीकृति उचित नहीं – प्रत्यर्थी को निदेश कि उच्चतर वेतनमान का लाभ प्रदान करने हेतु याची के प्रकरण पर विचार करें।

Arvind Soni, for the petitioner.

Anoop Nair and *K. Rohan,* for the respondent.

Short Note

****(16)***

Before Mr. Justice U.C. Maheshwari

W.P. No. 9978/2013 (Jabalpur) decided on 25 June, 2013

V.S. JIAMINI (DR.) ...Petitioner

Vs.

VINOD KUMAR SINGH & ors. ...Respondents

Constitution - Article 227 **- Trial Court imposed cost of Rs. 3,000/- for adjournment - Interference by High Court - Lower Court order within its jurisdiction - High Court should not interfere.**

Pradesh Police Regulations have broadly been considered by the learned Writ Court and it was only thereafter concluded that case of the appellant is governed under the M.P. Police Regulations under which the Superintendent of Police alone is the competent authority to initiate disciplinary proceedings/ issue charge-sheet for major penalties, against an Inspector of Police. Thus, after taking into consideration the entire matter alongwith relevant rules, this court is also with the agreement that the case of appellant is fully covered by the decision rendered in the case of *Arun Prakash Yadav* (supra) and is of the considered view that the findings given by the learned writ court are perfectly legal and not suffered from any infirmity or perversity. In other words, the order passed by the writ court is well merited calling for no interference by this court.

14. The appeal thus fails and is dismissed.

No order as to costs.

Appeal dismissed.

I.L.R. [2014] M.P., 2284
WRIT PETITION
Before Mr. Justice K.K. Trivedi
W.P. No. 3915/2013 (Jabalpur) decided on 26 April, 2013

MAHENDRA GUPTA ...Petitioner
Vs.
MOHD. YUNUS ...Respondent

Constitution - Article 227, Civil Procedure Code (5 of 1908), Order 6 Rule 17 **- Suit for eviction was filed by the respondent/plaintiff - After recording the evidence of the parties, application seeking amendment in the written statement - Nothing has been explained as to why such a pleading could not be raised at the relevant time - Held - Petitioner who was aware of all such happenings has deliberately not made any pleading in the written statement and virtually has admitted that he was the sole tenant in the suit premises - Withdrawal of admission made earlier by petitioner, which would cause prejudice to the case of plaintiff by way of amendment, cannot be permitted - Petition dismissed. (Para 8)**

संविधान – अनुच्छेद 227, सिविल प्रक्रिया संहिता (1908 का 5), आदेश 6

नियम 17 – प्रत्यर्थी/वादी द्वारा बेदखली हेतु वाद प्रस्तुत किया गया – पक्षकारों का साक्ष्य अभिलिखित किये जाने के पश्चात, लिखित कथन में संशोधन चाहते हुए आवेदन – कोई स्पष्टीकरण नहीं दिया गया कि उक्त अभिवचन को सुसंगत समय पर क्यों नहीं उठाया जा सका था – अभिनिर्धारित – याची जो उक्त सभी तथ्यों से अवगत था, उसने जानबूझकर लिखित कथन में कोई अभिवचन नहीं किये और व्यवहारिक रुप से स्वीकार किया कि वाद परिसर में वह एकमात्र किरायेदार था – याची द्वारा पूर्व में की गयी स्वीकृति को संशोधन द्वारा वापस लेने की अनुमति नहीं दी जा सकती जिससे वादी के प्रकरण पर प्रतिकूल प्रभाव कारित होगा – याचिका खारिज।

Cases referred :

2008 AIR SCW 3225, 2008 AIR SCW 4007, 2010 AIR SCW 300, 2012(1) MPLJ 710, (2009) 10 SCC 84.

Girish Shrivastava, for the petitioner.
Arvind Shrivastava, for the respondent.

ORDER

K.K.TRIVEDI, J. :- This petition under Article 227 of the Constitution of India is filed by the petitioner, who is a defendant in the suit filed by the respondent in the Court of II Civil Judge Class-I, Jabalpur, against the order dated 28.1.2013, passed in Civil Suit No.77-A/2012, rejecting the application of the petitioner made under Order 6 Rule 17 of the Code of Civil Procedure (hereinafter referred to as CPC for brevity) for amendment in the written statement. It is contended that a suit was filed by the respondent/plaintiff against the petitioner/ defendant for recovery of rent due, alleging that the petitioner/ defendant was tenant in Shop Nos.395/1 and 395/2 and was in arrears of rent, therefore, suit was required to be filed for eviction under the provisions of Section 12(1)(a) of the M.P. Accommodation Control Act, 1961. It is contended by the petitioner that by filing a written statement, such a claim made by the respondent/plaintiff was denied and it was categorically contended that the demise premises were in fact let out to two brothers, namely, the petitioner herein and his another brother, but the suit has been filed only against the petitioner. In the preliminary objection, it was said that in a Civil Suit earlier filed, a judgment and decree was passed and against the said judgment and decree, an appeal was preferred. The said judgment and decree will operate as *res judicata*. It is the case of the petitioner/ defendant that issues were framed and evidence of the parties was recorded. However, later on an

application was made by the petitioner seeking amendment in the written statement contending inter alia that specific pleas were to be raised in respect of tenancy and since such averments were required to be made, though pleas have been raised in the written statement in that respect to some extent, but amendment in the written statement would be necessary to clarify the stand taken by the petitioner/defendant. Such an application was opposed by the respondent/plaintiff and the same has been dismissed by the impugned order, therefore, this writ petition is required to be filed.

2. It is contended by learned counsel for the petitioner that amendment was not creating any hurdle in the way of the respondent/plaintiff as he was aware of the fact that there were two tenants in the suit premises and he was required to implead both of them as defendants in the suit. If that was the situation and if such a statement was made to some extent in the written statement, the Court below was not right in holding that a new plea is raised by the petitioner after the closure of trial of the suit by proposing the amendment in the written statement. Thus, it is contended that the approach of the Court below was incorrect and as such, the order impugned is liable to be set aside. The application for amendment in the written statement made by the petitioner is liable to be allowed.

3. Opposing such a claim made by the petitioner, learned counsel for the respondent has contended that specific pleadings were made in the plaint, copy of which is available on record as Annx.P/1. In paragraph 2 of the plaint, the respondent/plaintiff has categorically pleaded that the demise premises were let out to the petitioner/ defendant and his brother Deepak Gupta by one Smt. Idda Bi, on monthly rent of Rs.700/-. Though the shops were let out to two different persons, namely, the petitioner herein and his brother, yet the petitioner alone was running the shop in the name and style of Mahendra Kirana Store in both the shops by putting a door in the partition wall of the said shops. This particular averment made in the plaint was required to be denied by the petitioner/defendant in case he was of the view that shops were separately let out to the petitioner herein and to his younger brother. On the contrary, the petitioner has admitted the contents of para 2 of the plaint except that the door in the partition wall of two shops was put by the petitioner. He has stated that such a door was there right from the inception of tenancy. He has not objected to this that the shop in question was not let out to the petitioner only, but his brother was also a necessary party in the suit as the adjoining shop was let out to him. Nothing has been said in this respect in the

entire written statement even when the pleadings were raised in detail. It is contended that the petitioner was well aware of the fact that earlier there were suits filed against the petitioner and his brother and, thus, if the petitioner was of the view that the brother of the petitioner was also to be impleaded as a party if at all any effective decree is to be obtained, he should have taken this stand at the initial stage when the written statement was filed. Virtually by admitting the averments made in the plaint, the petitioner has accepted the correctness of the allegation that shops were in fact in possession of the petitioner only. Now after the closure of evidence of the parties, new plea is being raised by seeking amendment in the written statement stating that the respondent was required to file a separate suit in respect of shop No.395/1 which is in possession of Deepak Gupta, the brother of the petitioner/defendant. As the evidence of parties are closed, it will not be possible for the respondent/ plaintiff to meet out such averments unless effectively evidence is recorded and, therefore, a prejudice would be caused to the respondent. It is, thus, contended that in view of the well settled law, such a proposed amendment of the petitioner was not found bonafide and the same has been rejected rightly. The law laid down by the Apex Court and the law as considered by this Court has been pointed out by learned counsel for the respondent and it is contended that the writ petition being devoid of any substance deserves to be dismissed.

4. Heard learned counsel for the parties at length and perused the record.

5. First of all, it is to be seen whether there was any justified reason in making such a prayer for amendment in the written statement or not. Admittedly, the respondent was the landlord and he filed the suits earlier. The result of the suits for eviction, filed on different grounds were well known to the parties. It was considered by the respondent/ plaintiff that in fact the present suit for eviction was to be filed only and only against the petitioner herein. That being so, specific pleadings were made in paragraph 2. This fact has also been stated in paragraph 3 of the plaint by the respondent/plaintiff relating to filing of the suits against the petitioner herein and his brother, which was decreed by the trial Court, but the appellate Court set aside the judgment and decree of the trial Court in those suits. In paragraph 4 of the plaint, the respondent/plaintiff has categorically averred about sending of a notice of demand for payment of the rent for the last 33 months which was sent by a cheque on 25.9.2009, by the petitioner to respondent/plaintiff. The said cheque

was not encashed because of shortage of funds in the account of the petitioner. Thus, in fact the respondent/plaintiff has clearly indicated in the plaint that the suit is being filed against the petitioner/defendant only for recovery of the rent or for the eviction on the ground of non-payment of rent of both the demise shops. If at all the petitioner was of the view that he was tenant only in one shop and was responsible to pay rent only for one shop and such a suit filed against him for payment of rent of both the shops was not maintainable, the specific pleas were required to be raised by him in the written statement while denying such contentions made in the plaint by the respondent/ plaintiff. Instead of doing so, the petitioner has accepted the correctness of averments made in paragraph 2 of the plaint to some extent and denied the part of it only that too with respect to fixing of a door on the partition wall of the shops. The petitioner has not disputed the averments made in paragraph 4 of the plaint wherein averments were made in respect of demand of rent made from the petitioner and sending of a cheque on 25.9.2009 by the petitioner. Further, in the written statement, the specific pleas were not raised with respect to the non-joinder of necessary party or even filing of a composite suit against the two tenants, with respect to two different shops. This indicates that in fact the petitioner was not in a position to establish that shops were let out to two different persons and that being so, such pleas were not raised in the written statement. After the completion of the trial, only when the matter was fixed for final arguments of parties, such an application for amendment was made raising such grounds. Therefore, it cannot be said that application was made bonafidely by the petitioner.

6. The law is well settled in respect of amendment in pleadings. In the case of *Chander Kanta Bansal Vs. Rajinderr Singh Anand* [2008 AIR SCW 3225], the Apex Court has held that due diligence has to be shown and it has to be demonstrated that such facts which are sought to be brought on record by way of amendment were not within the knowledge of the party concerned on earlier occasions. If such a fact was well within the knowledge, but was not brought in the pleadings, it cannot be said that the party concerned was diligent. *"Due diligence"* means the diligence reasonably expected from, and ordinarily exercised by a person who seeks to satisfy a legal requirement or to discharge an obligation. *"Due diligence"* means doing everything reasonable, not everything possible. It further means such diligence as a prudent man would exercise in the conduct of his own affairs. Unless the party takes prompt steps, mere action cannot be accepted and a claim made

in such a respect after the conclusion of the trial, cannot be said to be a bonafide act. Further, in the case of *Rajkumar Gurawara (Dead) through L.Rs Vs. M/s S.K. Sarwagi & Co. Pvt. Ltd & another* [2008 AIR SCW 4007], the Apex Court has considered that the amendment in the pleadings after commencement of the trial is to be considered only if there is no prejudice caused to the other party. Similar is the view expressed by the Apex Court in the case of *Jaswant Kaur and another Vs. Subhash Paliwal and others* [2010 AIR SCW 300] where it has been said that if an admission is made in the written statement, the same cannot be withdrawn by seeking amendment in the written statement as it would amount to nothing but an introduction of a new story. This would naturally cause prejudice to the other party.

7. This Court in the case of *Pushpa Arora Vs. Anita Arora* [2012(1) M.P.L.J. 710], has dealt with such a question and has given the findings based on the law laid down by the Apex Court in the case of *Revajeetu Builders and Developers vs. Narayanaswamy and Sons and others,* [(2009) 10 SCC 84], and has taken note of various law laid down by the Apex Court as also by this Court and specifically has laid down the important factors which are to be taken note of while considering the application for amendment in the pleadings in the following manner :-

> "(i) Whether the amendment is necessary for proper and complete adjudication of the controversy involved in the suit.
>
> (ii) Whether the application has been made bona fide or with mala fide intention to protract the proceedings.
>
> (iii) Whether the proposed amendment, if allowed, would cause any prejudice to either side which cannot be compensated in terms of money.
>
> (iv) Whether by the proposed amendment a party is setting up a new case or cause of action which changes the nature and character of the case.
>
> (v) The application for amendment should not be rejected merely on the ground that delay alone, if the other side can be compensated in terms of cost.
>
> (vi) The amendment which is barred by limitation should not be allowed.

(vii) In case of post trial amendment, the Court has to come to the conclusion that in spite of due diligence party could not have raised the matter before the commencement of the trial."

8. Though the aforesaid illustration are only illustrative and not exhaustive, but still it has to be seen that the application for amendment in the pleadings are to be made bona fide and not with an intention to cause prejudice to the opposite party. Here in the case in hand, the petitioner who was aware of all such happenings and the pleadings, has deliberately not made any pleading in the written statement and virtually has admitted that he was the sole tenant in the suit premises. By way of amendment, the petitioner is trying to withdraw such an admission that too after closure of the trial. Nothing has been explained as to why such a pleading could not be raised at the relevant time by the petitioner. This being so, it cannot be said that the order passed by the Court below was not justified or correct.

9. In view of the discussions made herein above, the order passed by the Court below cannot be said to be bad in law. There is no substance in the writ petition. The same is dismissed. However, there shall be no order as to costs.

Petition dismissed.

I.L.R. [2014] M.P., 2290
WRIT PETITION
Before Mr. Justice K.K. Trivedi
W.P. No. 5592/2002 (Jabalpur) decided on 2 May, 2013

UNION OF INDIA ...Petitioner
Vs.
ASHOK KUMAR TIWARI & anr. ...Respondents

Constitution - Article 227 - Punishment - Judicial Review - Disproportionate **- If major penalty imposed on an employee is disproportionate to the charges levelled against him, Court can look in the penalty and interfere in the order of penalty - It cannot be said that in any circumstances, interference in the order of penalty was not justified however, it would not be justified to remit back the matter now to the disciplinary authority for imposing any punishment to respondent No.1 - It is directed that on reinstatement respondent No. 1 would get 75% of back wages and all other consequential benefit - Amount already paid would be adjusted from the amount payable. (Paras 7 & 10)**

संविधान – अनुच्छेद 227 – दण्ड – न्यायिक पुनर्विलोकन – अननुपातिक – यदि कर्मचारी पर अधिरोपित की गयी कठोर शास्ति, उस पर लगाये गये आरोपों के अननुपातित है, न्यायालय शास्ति पर विचार करके शास्ति के आदेश में हस्तक्षेप कर सकता है – यह नहीं कहा जा सकता कि किसी परिस्थिति में, शास्ति के आदेश में हस्तक्षेप न्यायोचित नहीं, अपितु, प्रत्यर्थी क्र. 1 पर किसी दण्ड को अधिरोपित किये जाने हेतु अनुशासनिक प्राधिकारी को अब मामला प्रतिप्रेषित करना न्यायोचित नहीं होगा – यह निदेशित किया गया कि बहाल होने पर प्रत्यर्थी क्र. 1 को पिछले वेतन का 75 प्रतिशत और अन्य परिणामिक लाभ मिलेगा – पहले अदा की गयी रकम को देय रकम में समायोजित किया जायेगा।

Cases referred :

AIR 1996 SC 484, (2007) 9 SCC 15, (2007) 4 SCC 627, AIR 2003 SC 1724, (2006) 5 SCC 201.

Mohan Sausarkar, for the petitioner.
Manish Datt with *Yogesh Soni,* for the respondent No.1.

ORDER

K.K.Trivedi, J. :- This writ petition under Article 227 of the Constitution of India is directed against the award dated 8.2.2002 passed by the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur (hereinafter referred to as CGIT for brevity) in Case No.219/1993, whereby answering the reference made by the competent Government, in favour of the workman, the respondent herein, the award has been passed.

2 Facts giving rise to filing of this petition in short are that the respondent, who was an employee of the petitioner working as Store keeper was charge sheeted on 18.7.1988 levelling against him certain charges of gross misconduct, mainly alleging by delay in counting of store item and keeping the item unaccounted for, for a considerable period. The other charge against the respondent No.1 was tampering with Government documents, so as to unbecoming of a Government servant. After the receipt of the charge sheet, the respondent No.1 submitted that because of the work pressure, certain articles could not be accounted for, but there was no deliberate omission on the part of the respondent No.1. No financial loss was caused to the employer. It was contended by him that the misconduct was not such that he should be punished in such an enquiry. However, without accepting the reply submitted by the respondent, after conducting the enquiry, a punishment of dismissal from the post was imposed on him. The reference against the dismissal was

made before the appropriate Government and since the appropriate Government referred the matter to the CGIT, the case aforesaid was registered. The reference was made in the following manner :-

> "Whether the action of the management of Vehicle Factory, Jabalpur (MP) in terminating the services of Shri Ashok Kumar Tiwari, Ex. Store Keeper w.e.f. 5.2.1992 is justified. If not, what relief he is entitled to ?"

3. The respondent No.1 filed his statement of claim and the petitioner also submitted the statement of claim. Affidavit in support of the statement of claims were filed by the petitioner. After completing the trial, the CGIT came to the conclusion that because of the work pressure on the respondent No.1, if certain acts were done by him of not making entries in the store records or erasing an entry to make the store record straight, such a major punishment of dismissal from service should not have been imposed on him. The CGIT reached to the conclusion that if an admission was made by the respondent No.1 in his reply, it was to be treated as a narration of correct facts with a view to explain the circumstances in which he has erased the entry made in the record. Thus, the CGIT reached to the conclusion that the respondent No.1 was punished improperly and while answering the reference in favour of respondent No.1 directed his reinstatement in service with all the backwages and other consequential benefits. This being so, the award passed by the CGIT is called in question in this writ petition.

4. It is, vehemently, contended by the learned counsel for the petitioner that when specifically a finding was given that the departmental enquiry was properly conducted against the respondent No.1, there was no question of interfering in the order of penalty and, therefore, the CGIT exceeded in exercise of its jurisdiction in answering the reference in favour of the respondent No.1. As such, it is contended that the award passed by the CGIT is bad in law. Referring various case laws learned counsel for the petitioner contended that if the settled position of law is examined, it would be clear that in such disciplinary proceedings, it was not open to the CGIT to interfere in the order of punishment and as such, the award is bad in law.

5. *Per contra,* it is contended by learned Senior counsel for the respondent No.1 that the respondent-workman has categorically pointed out in his reply the fact that he was working as a Store Keeper, was under the great pressure of work and in view of this, if there were certain minor mistakes

committed in not recording the articles kept in the store in the register or making an entry by correction or erasing of the entry in the register, it could not have been said that the respondent No.1 has dishonestly done so, so as to cause a loss to the employer. It is contended that the charge sheet should have been issued under the provisions of Central Civil Services (Classification Control and Appeal Rules, 1965 (hereinafter referred to as Rules for short) only in certain specific circumstances as indicated in Rule 14 of the aforesaid Rules. It is contended that if there was a theft of Government property, or was violation of the Standing Order, or failure to maintain absolute integrity or such a conduct of unbecoming of a Government servant, then only the regular charge sheet should have been issued. The fact remains that there was no shortage of articles in the store. There was nothing indicate that any loss was caused to the employer and, as such, it was not justified on the part of the petitioner to impose such a major punishment. If such findings were recorded by the CGIT that penalty was grossly disproportionate to the circumstances available in the case and the charges levelled against the respondent No.1 and the said penalty is interfered by the CGIT, it cannot be said that any illegality was committed by CGIT in granting award in favour of respondent No.1.

6. Heard learned counsel for the parties at length and perused the record.

7. True it is that on various occasion, the Apex Court has dealt with scope of interference in the enquiry and has categorically held, what should be the scope of interference in such a penalty, but it is also true that in all such cases, several factors were taken into consideration. It is also true that on occasion, the Apex Court has held that if major penalties imposed on an employee is disproportionate to the charges levelled against him, or if the Court feels that such penalty cannot be accepted by the Courts, or can be said to be such disproportionate that a man of prudent mind would not have accepted the same, the Court can look into the penalty and interfere in the order of penalty. The judicial review is not restricted in such a case. In case of *B.C. Chaturvedi Vs. Union of India* (AIR 1996 SC 484), the Apex Court has categorically laid down certain principles to be taken note of. Similar is the situation in other laws subsequently laid down by the Apex Court, therefore, it cannot be said that in any circumstances, interference in the order of penalty was not justified. Learned counsel for the petitioner has put his reliance in case of *Ramesh Chandra Sharma Vs. Punjab National Bank and another* [(2007) 9 SCC 15], wherein the Apex Court was dealing with a case where an employee who was serving in the bank stood superannuated and after

the superannuation, the penalty of dismissal from service was imposed on him. Since it was permissible in view of the specific regulations of the Bank, the Apex Court reached to the conclusion that interference in the order of punishment only because of the fact that the employee had stood superannuated was not permissible. Similar is the situation with respect to the other case relied on by learned counsel for the petitioner where in view of the specific circumstances, the interference in the order of punishment was said to be bad. Here the case in hand is that the CGIT has found that the punishment was disproportionate to the gravity of the misconduct and, therefore, the law laid down by the Apex Court in the case of *U.P.SRTC Vs. Ram Kishan Arora* [(2007) 4 SCC 627] would not be attracted. Similar is the situation with respect to the interference in an order of penalty as has been pointed out by the Apex Court in the case of *Mithilesh Singh Vs. Union of India and others* (AIR 2003 SC 1724), wherein also mitigating circumstances were not available to indicate that the penalty was disproportionate or shocking to the conscience of a prudent man. Almost identical is the situation in the case of *South Indian Cashew Factories Vs. Kerala State Cashew Development Corpn. Ltd. and others* [(2006) 5 SCC 201].

8. Here in the case in hand, these aspects are considered by the CGIT and it has been said that such a misconduct of the respondent No.1 should not have been treated to be such grave misconduct for which he should have been dismissed from the service. In the considered opinion of this Court, the law relied on by learned counsel for the petitioner defers from fact to fact involved in each case. In the present case, since there are specific finding recorded by the CGIT that the punishment of dismissal was disproportionate to the charges levelled against the respondent No.1, it was not correct on the part of the petitioner to say that such a findings could not have been given by the CGIT.

9. However, it is contended by learned counsel for the petitioner that in case the CGIT was of the view that the workman should not have imposed such a major punishment, it should have been remitted back the matter to the disciplinary authority for imposition of a minor penalty or any other suitable penalty looking to the misconduct of the respondent No.1. Simply answering the reference in favour of the respondent No.1 means that he is to be reinstated in service with all the backwages and other privileges even after acceptance and admission of misconduct. The alleged submission of learned counsel for the petitioner has some force, but it is to be seen that it was not the scope of reference made by the appropriate Government. If the penalty was not justified, there was no occasion for the CGIT

to remit back the matter to the disciplinary authority of petitioner for imposition of any other penalty on the respondent No.1. However, the facts as have been stated are taken note of. The punishment was awarded to the respondent No.1 on 5.2.1992 by his dismissal from service. Such order was ultimately set aside after 10 years by the CGIT in 2002. This petition has remained pending before this Court for a long period. The petitioner was directed to comply with the provisions of Section 17-B of the Industrial Disputes Act. It is not known whether such a compliance was done or not, and whether the respondent No.1 has been reinstated or paid the last pay drawn in compliance of interim order of this Court. It is still not clear whether the respondent No.1 has reached to the age of superannuation or not after 20 long years from the date of order of dismissal.

10. That being so, it would not be justified to remit back the matter now to the disciplinary authority for imposing any punishment on respondent No.1. However, the ends of justice would subserve in case the consequential benefits or back wages granted to the respondent No.1 by the CGIT are reduced to some extent which would cover up the penalty of minor nature coupled up with the sufferings of litigation for such long period. Consequently, it is directed that on reinstatement, the respondent No.1 would get 75% of back wages and all other consequential benefits. The amount already paid to the respondent No.1 by the petitioner, if any on interim stay of this Court, in compliance of provisions of Section 17-B of the Industrial Disputes Act, would be adjusted from the amount payable to the respondent No.1. The order of CGIT is modified to the extent indicated herein above and the petition is finally disposed of. There shall be no order as to costs.

Petition disposed of.

I.L.R. [2014] M.P., 2295
WRIT PETITION
Before Mr. Justice N.K. Mody
W.P. No. 10722/2012 (Indore) decided on 1 July, 2013

KAILASHCHANDRA ...Petitioner
Vs.
DWARKADHEES & anr. ...Respondents

Stamp Act (2 of 1899), Section 4 & Article 5(e)(i) of Schedule 1A - Agreement to sell - Insufficiently stamped - Admissibility - **In agreement to sell, there is recital of handing over the possession and**

document is not properly stamped - Document cannot be admitted in evidence for any purpose including collateral purposes. (Para 8)

स्टाम्प अधिनियम (1899 का 2), धारा 4 व अनुसूची 1ए के अनुच्छेद 5(ई)(i) – विक्रय का करार – अपर्याप्त रुप से स्टाम्पित – ग्राह्यता – विक्रय के करार में कब्जा हस्तांतरित किया जाना लिखा गया है और दस्तावेज उचित रुप से स्टाम्पित नहीं है – दस्तावेज को साक्ष्य में, किसी प्रयोजन हेतु जिसमें सांपार्श्विक प्रयोजन भी समाविष्ट है, स्वीकार नहीं किया जा सकता।

Case referred :

2009(3) MPHT 6 (SC).

D.M. Shah, for the petitioner.
Gaurav Chhabra, for the respondent No.2.

ORDER

N.K. Mody, J. :- Being aggrieved by the order dated 03/09/12 passed by IX ADJ, Indore in Civil Suit No.84-A/10 whereby application filed by petitioner under Section 151 CPC was dismissed, present petition has been filed.

2. Short facts of the case are that the petitioner filed a suit for specific performance alleging that the petitioner entered into an agreement to purchase the suit property from respondent No.1, for which agreement was executed on 22/06/07. It was alleged that as per agreement, balance consideration was to be paid within a period of two months. It was alleged that before expiry of that period of that period the respondent No.1 sold the property to the respondent No.2 on 03/08/07. It was alleged that the petitioner was always ready and willing to purchase the property, therefore, suit filed by the petitioner be allowed and respondents be directed to execute the sale deed in favour of petitioner. The suit was contested by the respondents. It was alleged on behalf of respondent No.1 that prior to agreement dated 22/06/07 which was in favour of petitioner, the respondent No.1 entered into an agreement to sale the suit property to the respondent No.2 vide agreement dated 10/02/07 and possession was also handed over to the respondent No.2. It was alleged that in compliance of agreement dated 10/02/07 sale deed was also executed by respondent No.1 in favour of respondent No.2 on 03/08/07. It was prayed that the suit be dismissed. After framing of issues and recording of evidence at the stage of evidence of the respondents an attempt was made to get the

agreement dated 10/02/07 exhibited. At that stage an application was filed by the petitioner under Section 151 CPC wherein it was prayed that the agreement dated 10/02/07 is not properly stamped, therefore, the same cannot be exhibited. The application was opposed by the respondents. After hearing the parties, learned Court below dismissed the application, hence this petition.

3. Learned counsel for the petitioner argued at length and submits that since the agreement dated 10/02/07 is not properly stamped as per Article 5(e)(i) of Schedule 1-A of Indian Stamp Act, therefore, the learned Court below was not justified in dismissing the application filed by petitioner. Article 5(e)(i) of Schedule 1-A of Indian Stamp Act reads as under which has came in force w.e.f. 13/08/02 :-

Art. 5. Agreement or memorandum of an agreement-

(e) If relating to sale of immovable property-

(i)When possession of the property is delivered or is agreed to be delivered without executing the conveyance.	The same duty as a conveyance (No.20) on the market value of the property.

4. Learned counsel placed reliance on a decision of Hon'ble Apex Court in the matter of *Avinash Kumar Chouhan Vs. Vijay Krishna Mishra,* 2009(3) MPHT 6(SC) wherein Hon'ble Apex Court held that Section 35 of the Stamp Act categorically provides that a document not duly stamped shall not be admitted for any purpose whatsoever. It is further observed by the Hon'ble Apex Court that the word 'for any purpose', if given their natural meaning, as they should, would include a collateral purpose as well. It is submitted that in view of this, petition filed by the petitioner be allowed and impugned order passed by the learned Court below be set aside.

5. Learned counsel for respondent No.2 submits that undisputedly the sale deed was executed in favour of respondent No.2 vide registered sale deed dated 03/08/07. It is submitted that in the sale deed also there is a recital about the agreement dated 10/02/07. It is submitted that as per Section 4 of Stamps Act, 1899 if various documents are executed for one transaction, then it is only the principal document is required to be duly stamped. It is submitted that since the principal document was sale deed which was duly stamped, therefore, learned Court below committed no error in dismissing

the application filed by the petitioner. It is submitted that even if it is assumed that the agreement dated 10/02/07 was not properly stamped, then too, for collateral purpose the same can be admitted in evidence and can also be exhibited. It is submitted that the petition filed by the petitioner has no merits and the same be dismissed.

6. Undisputedly the agreement with the petitioner is dated 22/06/07. Sale deed in favour of respondent No.2 is dated 03/08/207 and the alleged agreement between respondent Nos. 1 & 2 is dated 10/02/07. The only dispute is relating to the agreement dated 10/02/07which is not properly stamped. Section 4 of Stamp Act on which reliance is placed by respondent No.2 reads as under:-

> ***S. 4. Several instruments used in single transaction of sale, mortgage or settlement.-*** *(1) Where, in the case of any sale, mortgage or settlement, several instruments are employed for completing the transaction, the principal instrument only shall be chargeable with the duty prescribed in Schedule I for the conveyance, mortgage or settlement and each of the other instruments shall be chargeable with a duty of one rupee instead of the duty (if any), prescribed for it in that Schedule.*
>
> *2) The parties may determine for themselves which of the instruments so employed shall, for the purposes of sub-section (1), be deemed to be the principal instrument:*
>
> *Provided that the duty chargeable on the instrument so determined shall be the highest duty which would be chargeable in respect of any of the said instruments employed.*

7. From Section 4 of Stamp Act it is evident that the stamp duty prescribed for the conveyance, mortgage or settlement is chargeable with the duty prescribed in Schedule I of Stamp Act on the principal instrument only and it is the parties who has to determine themselves which of the instruments so employed be deemed to be the principal instrument. Thus from bare perusal of the aforesaid section it is evident that there should be several documents for completing the transaction, meaning thereby all the documents must have been executed at one time for completing the transaction.

8. In the present case it is not the situation. Since in the agreement dated 10/02/07 there is a recital of handing over the possession and the document is not properly stamped as per Article 5(e)(i) of Schedule 1A of Indian Stamp Act, therefore, it can safely be said that the document is not properly stamped. In the facts and circumstances of the case keeping in view the law laid down by the Hon'ble Apex Court in the matter of *Avinash Kumar Chouhan* (Supra) this Court finds that the learned Court below was not justified in allowing the document in evidence for any purpose including collateral purpose. In view of this, petition filed by the petitioner is allowed and impugned order is set aside with a direction that the agreement dated 10/02/07 cannot be allowed in evidence for any purpose.

9. With the aforesaid, petition stands disposed of.

Petition disposed of.

I.L.R. [2014] M.P., 2299
WRIT PETITION
Before Mr. Justice K.K. Trivedi
W.P. No. 3328/2012(S) (Jabalpur) decided on 18 July, 2013

SATISH SHRIVASTAVA ...Petitioner

Vs.

STATE OF MADHYA PRADESH & anr. ...Respondents

*A. **Service Law, Labour Judicial (Recruitment & Conditions of Service), Rules, M.P. 2006, Rule 3(2)(c), Judicial Services Revision of Pay Rules, M.P. 2003, Rules 4,7,9 & 12 - Fixation of Pay - Grant of D.A.*** - **Petition against recovery and claiming the benefit of proper fixation of pension after the release of D.A. in terms of Rules 2003 - Held - Revision of pay of the petitioner was to be done in terms of Rule 4 and Rule 7 of Rules 2003, had it been done in appropriate manner, the petitioner would not have been subjected to any recovery whatsoever - Order of recovery is quashed. (Para 8)**

क. सेवा विधि, श्रम न्यायिक (भर्ती और सेवा शर्तें), नियम, म.प्र. 2006, नियम 3(2)(सी), न्यायिक सेवा वेतन पुनरीक्षण नियम, म.प्र., 2003, नियम 4,7,9 व 12 – वेतन निर्धारण – मंहगाई भत्ता प्रदान किया जाना – वसूली के विरुद्ध और नियम 2003 के तारतम्य में मंहगाई भत्ता को विमुक्त किये जाने के पश्चात पेंशन

का उचित निर्धारण के लाभ का दावा करते हुये याचिका – अभिनिर्धारित – याची के वेतन का पुनरीक्षण, नियम 2003 के नियम 4 व नियम 7 की शर्तों नुसार किया जाना था, यदि उसे उचित ढंग से किया जाता, याची किसी प्रकार की वसूली के अधीन नहीं आता – वसूली का आदेश अभिखंडित।

***B. Judicial Services Revision of Pay Rules, M.P. 2003, Rule 9 - Fixation of Pay - Grant of D.A.* - In terms of Rule 9 of Rules, 2003 Judicial Officers shall be allowed D.A. from 1st July 1996 at the rate applicable to the Central Government Employees - Since this would be applicable to the Members of Labour Judiciary, the benefit is to be extended to the petitioner - Respondents are directed to fix the salary of the petitioner as per Fundamental Rule 22(D) in appropriate manner w.e.f. 28.08.2003 and to restore the payment of D.A. applicable to Central Government employees in terms of Rules 9 and 12 of Rules, 2003. (Paras 9 & 11)**

ख. न्यायिक सेवा वेतन पुनरीक्षण नियम, म.प्र., 2003, नियम 9 – वेतन निर्धारण – मंहगाई भत्ता प्रदान किया जाना – नियम 2003 के नियम 9 की शर्तों नुसार न्यायिक अधिकारियों को 1 जुलाई 1996 से, केन्द्र सरकार के कर्मचारियों को लागू की गई दर से मंहगाई भत्ता मंजूर होगा – चूंकि यह श्रम न्यायपालिका के सदस्यों को लागू होगा, यह लाभ याची को दिया जाना चाहिए – प्रत्यर्थीगण को निदेशित किया गया कि याची का वेतन निर्धारण उचित ढंग से मूलभूत नियम 22(डी) के अनुसार, 28.08.2003 से प्रभावी रुप से करें और नियम 2003 के नियम 9 व 12 की शर्तों नुसार केन्द्र सरकार के कर्मचारियों को लागू किया गया मंहगाई भत्ते के भुगतान को प्रत्यावर्तित करे।

Case referred :

2008 AIR SCW 4279.

Shobha Menon with *C.A. Thomas*, for the petitioner.
Amit Kumar Sharma, P.L. for the respondents/State.

ORDER

K.K TRIVEDI, J. :- The petitioner a retired Member Judge of Industrial Court, M.P. has approached this Court by way of filing this petition under Article 226 of Constitution of India, ventilating his grievance against the recovery order dated 28.06.2011 and also claiming the benefit of proper fixation of pension after the release of DA w.e.f. 01.04.2004 on the grounds that the petitioner was initially appointed in the Labour Judiciary under the provisions

of M.P. Industrial Relations Act, 1961 and the Rules made in the year 1965. In terms of the decisions taken by the respondents/State, after deciding certain writ petitions and after decision of the Apex Court, the petitioner was to be fixed in the pay scale of Rs. 16750-20500 notionally w.e.f. 01.01.1996 and accordingly his pension was to be fixed. While doing so, the DA which was to be paid to the petitioner in tune of the Rules made in the year 2003 was not added with his salary as a result the petitioner suffered the monetary loss. Even his pension after retirement has not been fixed properly, therefore, he is required to file the present writ petition.

2. It is contended that since the recovery has been ordered while issuing the Final Payment Order to him, such order of recovery is also bad in law and is liable to be quashed. It is contended that in terms of the rules made by the respondents themselves, the Presiding Officers of the Labour Judiciary are also to be treated at par with the Judicial Officers of the State Government and that being so, the petitioner would be entitled to proper fixation of salary after inclusion of the DA in appropriate manner. If this is worked out properly there would not be any recovery from the petitioner. On the other hand, he would be entitled to payment of arrears of salary and pension. Since after demand, this has not been done even after filing of the petition before this Court and even after a direction given by this Court, a contempt petition was filed by the petitioner but a frivolous stand was taken by the respondents in said petition. However, since the lawful claims of the petitioner have not yet been settled and the recovery has been illegally ordered, the petition is required to be filed.

3. Upon issuance of notices of the writ petition, respondents have filed their return and have contended that the relief claimed by the petitioner cannot be granted to him in view of the fact that the provisions of the Rules as contained in Annexure P/3 are not applicable to the Members of the Labour Judiciary Services and, therefore, the petitioner would not be entitled to such benefit. It is contended by the respondents that the services of the petitioner were governed under the M.P. Labour Judiciary Service (Gazetted) Recruitment Rules, 1965 (hereinafter referred to as Rules, 1965 for brevity), according to which Rules, the petitioner would not be entitled to the benefit as is claimed by him. The Provisions were made in the Rules subsequently framed known as 'M.P. Labour Judicial (Recruitment and Conditions of Service) Rules, 2006', which were framed after the retirement of the petitioner from service and,

therefore, the said Rule would not be applicable to the petitioner. That being so, it is contended that the writ petition is wholly misconceived and is thus liable to be dismissed.

4. A rejoinder has been filed by the petitioner but the facts as have been mentioned in the petition are reiterated. It is contended that in terms of the policies made by the State Government, pursuant to the decisions rendered by the Apex Court and this Court, the petitioner would be entitled to claim the parity with the Judicial Officers appointed by the State Government. The Rules made for the Judicial Officers would squarely be applicable to him also and, therefore, still the petitioner is entitled to the relief claimed in the petition. No additional return whatsoever has been filed by the respondents after filing of the rejoinder.

5. Heard learned counsel for the parties at length and perused the record.

6. It is seen from the record, as has rightly been pointed out by the learned senior counsel for the petitioner the first issue raised by the respondents in their return that the Rules framed for the Judicial Officers would not be applicable to the Members of Labour Judiciary, has been put at rest by this Court in earlier writ petition of the petitioner being W.P. No. 5446/2005 (s) which was decided by the Gwalior Bench of this Court on 12.08.2008. Comparing and referring to the provisions of Rules 1965, this Court has categorically held that in so far as the pay scales are concerned, the Presiding Officers of Labour Judiciary have been put at par with the Judicial Officers of the State by making the Rules. This Court in the aforesaid writ petition as held in paragraph 5, which reads thus :-

(abstracted by the Court)

> "The provisions of the recruitment rules clearly provides that the Presiding Officer of Labour Court shall be entitled for the similar pay scale to which a Civil Judge is entitled to and therefore, there appears to no justification in not granting the pay scale of the post i.e. to the Presiding Officer specifically keeping in view the provisions of recruitment rules, 1965 and also under the amended provisions as amended in the year 2003. Similarly the post of Member Judge Industrial Court as per the provisions of the recruitment rules, 1965 (schedule I) also carries a pay scale equivalent to the post of District Judge

and the amendment made in the year 2003 has also clarifies the same position and schedule appended to the amendment of the year 2003 also reflects that the Member Judge, Industrial Court shall be entitled to the same pay scale which has been granted to the post of District Judge and therefore, there appears to be no justification in not granting the same pay scale to the petitioner or to other Presiding Officers or Member Judge, Industrial Court. In the present case the petitioner was promoted to the post of Member Judge Industrial Court however, while issuing the promotion order he has been granted pre-revised pay scale of District Judge and also not granted the benefit of revised pay scale w.e.f. 01.01.1996 and therefore, once the revision of pay scale has been granted to the District Judges, the member of labour judiciary are also entitled for the same. The recruitment rules provides that the Member to the Labour Judiciary Service will be entitled for the same pay scale at par with the State Judiciary Services and the same benefit has to be extended to the Members of Labour Judiciary. Similarly the petitioner is entitled for revise pay scale form the date of his promotion as Member Judge Industrial Court. Further grievance of the petitioner is that he was already enjoining the pay scale of Rs. 3700-5000/- and this pay scale was granted to him w.e.f. 16.05.1990 and corresponding revised pay scale and as the petitioner was having requisite number of years of service, he was entitled for the pay scale of Rs.16750-20500/-, which is the higher pay scale given to the post of Civil Judge. Once the petitioner was receiving the same pre-revised pay scale, there appears to be no justification in not granting him the revised pay scale from the date he was placed in the pay scale of Rs. 3700-5000/-. Resultantly keeping in view the recruitment rules and also keeping in view the revision of pay rules, the petitioner is entitled for the pay scale of Rs.16750-20500/- w.e.f. 01.01.1996 i.e. from the date the benefit of revised pay scale has been extended to the Judges of State Judiciary subject to fulfillment of all other conditions."

7. This Court has further taken note of the decision rendered by the

Apex Court in the case of *State of Kerela Vs. B. Renjith Kumar & Ors.* 2008 AIR SCW 4279, and has further categorically held that in view of the law laid down by the Apex Court, the Officers Presiding over the Industrial Tribunal cannot be differently treated from the District Judges in the matter of pay scale as the same would be violative of Article 14 of the Constitution of India. Now as far as other part with respect to the application of the Rules is concerned, this Court has already examined the validity of the Rules and there applicability and scope. While allowing the writ petition of petitioner, this Court has categorically held that such a benefit would be applicable to the petitioner as well. The order passed by the Writ Court was challenged in Writ Appeal unsuccessfully. The petitioner herein also challenged the said order. The appeal of the petitioner was allowed partly and he was granted the benefit of revised pay scale w.e.f. 01.01.1996. The Division Bench order of this Court was challenged in SLP before the Apex Court by the State Government, but the same has been dismissed. Pursuant to which consequential orders were required to be issued.

8. It appears that the respondents have not taken note of the fact that how revision of pay was to be done and how the benefit was to be extended to the petitioner for grant of DA. Rule 4 of M.P. Judicial Services Revision of Pay Rules, 2003 (hereinafter referred to as Rules, 2003 for brevity) specifically prescribed that the notional pay fixation is to be done w.e.f. 01.01.1996, and it is further categorically said that the actual benefit as accrued w.e.f. 1st July, 1996 is to be paid. In Rule 7 of Rules, 2003, it is again reiterated that fixation of salary is to be done w.e.f. 1st January, 1996. The DA is also to be allowed w.e.f. 1st July 1996. The revised pay scales have been shown in the schedule appended to the Rules. As per the law laid down by this Court in the case of petitioner as also in other cases, the revision of pay of the petitioner was to be done in the like manner. If it is done in that way, the petitioner would not be liable to refund any amount as is directed. Further when the Rules were made in the year 2006, Known as M.P. Labour Judicial (Recruitment and Conditions of Service) Rules, 2006, (hereinafter referred to as Rules 2006 for brevity), it was reiterated by the State in Rule 3 (2)(c) that the pay scale mentioned above are as per M.P. Judicial (Pension and other recruitments benefits) Rules, 2003. Rule 14 of these Rules further prescribed that Rules and orders relating to pay allowances and other conditions of service applicable to the Government servant of the

corresponding grade in general and not inconsistent with these Rules, were made applicable to the Members of the service. This leave no doubt that the petitioner was to be extended the benefit of Rules, 2003, in appropriate manner. Had it been done in appropriate manner, the petitioner would not have been subjected to any recovery whatsoever. That being so, the order of recovery directed against the petitioner cannot be sustained. The said order is thus bad in law and is quashed.

9. Now the question would be whether the petitioner is entitled to 50% DA or not as was given to the Central Government employees. If the Rules are seen, everywhere it is said that the DA would be applicable as is applicable to the Central Government employees. Rule 9 of Rules, 2003, categorically deals with such extension of benefit to the Judicial Officers in unequivocal words. The Judicial Officers shall be allowed DA from 1st July, 1996 at the rate as applicable to the Central Government employees. It has already been held by this Court that the said Rules are applicable to the Members of the Labour Judiciary and since this would be applicable to the Members of the Labour Judiciary, the benefit is to be extended to the petitioner as well. In the W.A. No. 784/2009, the Division Bench of this Court has held on 21.10.2009 that the Members of the Labour Judiciary are entitled to the same pay scale as is made applicable to the District Judges of the State Judiciary. The Division Bench has categorically held in paragraph 6 and 7, which reads thus : -

> "6. Accordingly, we are inclined to hold that the case of the present appellant is squarely covered by the judgment passed by the Division Bench of this Court in case of *Satish Shrivastava* (supra). In view of the aforesaid, were are inclined to allow the present writ appeal and direct the State Govt. to fix the revised pension of the present appellant with effect from 01.07.1996 in terms to Rule 11-A(2) of M.P. Judicial Service Pay Revision, Pension and other Retirement Benefit Rules, 2003 along with arrears which will be calculated and paid within a period of three months form the date the certified copy of this order is submitted by the appellant to the respondents.
>
> 7. However, before parting we would like to further mention that when the Division Bench of this Court has already taken a view that the Presiding Officers and member Judge of

Industrial Court are entitled to the same pay scale as that of a District Judge and the members of the lower labour judiciary are entitled to the pay scale equivalent to that of a Civil Judge then the same equivalent then the same should be taken note of by the respondents for conferral of the benefit to the officers belonging to the labour judiciary so that they are not forced to approach the Courts for their rights which has already been adjudicated upon by this Court."

10. It is further pointed out that since certain orders issued by this Court were not being complied with, the benefit was not being extended, the contempt case has been filed before the Division Bench of this Court by some of the similarly placed employees in which a very detailed order is passed by the Division Bench of this Court, again reiterating the similar provisions as has been referred to hereinabove and it has been held that the Presiding Officer and Member of the Industrial Court are entitled to the same pay scale as that of the District Judges of the State Judiciary and this has to be conferred on them by the State Government. It will not be out of place to mention here that even after a judicial pronouncement of such claim by this Court, which has been upheld up to such final stage of filing SLP in the Apex Court, the respondents are insisting on the same stand which has been negatived by all the Courts. It is really unfortunate, if such a conduct of the respondents is seriously viewed.

11. In view of the discussion hereinabove, the writ petition is allowed. The order of recovery as directed against the petitioner vide PPO dated 28th June, 2011 (Annexure P/17) amounting to Rs. 77,321/- (Rs. Seventy Seven Thousand Three Hundred Twenty One) is hereby quashed. The respondents are directed to fixed (sic:fix) the salary of the petitioner in accordance to the provisions of fundamental Rule 22 (D) in appropriate manner w.e.f. 28.08.2003 and to restore the payment of DA as per notification and DA applicable to the Central Government employees in terms of the Rules 9 and 12 of Rules, 2003. After revising the salary in the appropriate manner, the arrears be paid to the petitioner w.e.f. 01.04.2004 and pension of the petitioner be calculated accordingly and fresh PPO be issued to the petitioner within a period of two months from the date of receipt of certified copy of the order passed today. If any amount is due to be paid as arrears to the petitioner, the same be paid within the aforesaid period.

12. The writ petition is allowed to the extent indicated hereinabove. However, in the facts and circumstances of the case, there shall be no order as to costs.

Petition allowed.

I.L.R. [2014] M.P., 2307
WRIT PETITION
Before Mr. Justice N.K. Mody
W.P. No. 8943/2013 (Indore) decided on 31 July, 2013

BRIDGE STONE INDIA PVT. LTD. ...Petitioner
Vs.
STATE OF M.P. & anr. ...Respondents

Stamp Act (2 of 1899), Sections 31 & 40 - Penalty - **While imposing the penalty the Collector of Stamps has not applied its mind that whether the imposition of penalty is just and proper, especially in a case where petitioner himself had approached the authority, as it was the award which was passed by the Arbitrator on a Stamp paper of Rs. 100/- for which the petitioner cannot be held responsible - Impugned order is set aside to the extent whereby penalty has been imposed - Authority is directed to re-decide the imposition of penalty by passing a reasoned order after giving an opportunity of hearing to the petitioner. (Paras 4 & 5)**

स्टाम्प अधिनियम (1899 का 2), धाराऐं 31 व 40 – शास्ति – स्टाम्प कलेक्टर ने शास्ति अधिरोपित करते समय मस्तिष्क का प्रयोग नहीं किया कि क्या शास्ति का अधिरोपण न्यायसंगत और उचित है, विशेष रुप से ऐसे प्रकरण में जहां याची स्वयं प्राधिकारी के पास आया, जैसा कि वह ऐसा अवार्ड था जिसे माध्यस्थम द्वारा रु. 100/– के स्टाम्प पेपर पर पारित किया गया था, जिसके लिये याची को जिम्मेदार नहीं ठहराया जा सकता – शास्ति अधिरोपित करने की सीमा तक आक्षेपित आदेश अपास्त – प्राधिकारी को याची को सुनवाई का अवसर देने के पश्चात सकारण आदेश पारित करके शास्ति के अधिरोपण को पुनः निर्णित करने के लिए निदेशित किया गया।

K. Bhargava, for the petitioner.
Vinita Phaye, G.A. for the respondent No.1.

ORDER

N.K. Mody, J. :- Being aggrieved by the order dated 4/4/2013 passed by Collector of Stamps, Indore in case No.62/B-103/12-13/33

whereby the petitioner is directed to pay the stamp duty of Rs.1,14,889/- @ 2% of the awarded amount of Rs.57,49,439/- and to pay the penalty of Rs.1,14,889/- under section 40 of the Act, the present petition has been filed.

2. Short facts of the case are that petitioner/company moved an application under section 31 of the Indian Stamp Act alleging that an award has been passed in favour of the petitioner in Arbitration case NO.2/2008 whereby a sum of Rs.57,49,439/- has been awarded in favour of the petitioner. In the application it was alleged that since the original award is on the stamp duty of Rs. 100/- which is not the proper stamp duty, therefore, the stamp duty be determined so that same can be deposited. After hearing the petitioner by the impugned order, the Collector of Stamps directed to pay the stamp duty along with penalty.

3. Learned counsel for petitioner submits that stamp duty of Rs.1,40,940/- has been deposited by the petitioner with the State Bank of India on 1/7/2013. The contention of the petitioner is that imposition of the penalty is illegal and against the law.

4. Section 40 deals with the Collector's power to stamp instruments impounded. According to clause(b) of sub-section(1) of Section 40 of the Act, if the Collector of Stamp is of the opinion that such instrument is chargeable with duty stamped, he shall require the payment of the proper duty or the amount required to make up the same, together with a penalty of five rupees, or if he thinks fit, an amount not exceeding ten times the amount of the proper duty or of the deficient portion thereof. It appears that before imposing the penalty under section 40 of the Act, the Collector of Stamps has not taken into consideration whether such penalty can be imposed when the application is filed under section 31 of the Act as penalty can be imposed under section 40 of the Act when the instrument is impounded under section 33 of the Act. Similarly, it appears that before imposing the penalty the Collector of Stamps has not applied its mind that the imposition of penalty is just and proper especially in a case where petitioner himself had approached the authority for adjudication as it was the award which was passed by the arbitrator on a stamp paper of Rs.100/- for which the petitioner cannot be held responsible.

5. In view of this, the petition filed by the petitioner is allowed and impugned order is set aside to the extent whereby penalty has been imposed, with a direction to re-decide the imposition of penalty by passing a reasoned

order preferably within a period of three months after giving an opportunity of hearing to the petitioner.

C.c. as per rules.

Petition allowed.

I.L.R. [2014] M.P., 2309
WRIT PETITION
Before Mr. Justice U.C. Maheshwari
W.P. No. 4505/2013 (Jabalpur) decided on 2 September, 2013

ABDUL RAJJAK ...Petitioner
Vs.
SMT. ARCHANA ...Respondent

Civil Procedure Code (5 of 1908), Order 1 Rule 10 - Necessary party **- On the date of filing the suit, no cause of action was stated in the plaint against the proposed defendant - Held - No averment regarding any date or specific cause of action which is available to the petitioner against the proposed defendant, has been pleaded - In the lack of any cause of action against the proposed defendant, such person could not be said to be the necessary party to adjudicate the present suit.** **(Paras 3 & 4)**

सिविल प्रक्रिया संहिता (1908 का 5), आदेश 1 नियम 10 – आवश्यक पक्षकार – वाद प्रस्तुतीकरण की तिथि को, प्रस्तावित प्रतिवादी के विरुद्ध वादपत्र में कोई वाद कारण उल्लिखित नहीं – अभिनिर्धारित – प्रस्तावित प्रतिवादी के विरुद्ध याची के पास उपलब्ध किसी तिथि या विनिर्दिष्ट वाद कारण के संबंध में प्रक्कथन का अभिवाक् नहीं – प्रस्तावित प्रतिवादी के विरुद्ध किसी वाद कारण के अभाव में, उक्त व्यक्ति को, वर्तमान वाद न्यायनिर्णित करने के लिये आवश्यक पक्षकार नहीं कहा जा सकता।

Devesh Khatri, for the petitioner.
Avinash Zargar, for the respondent No.1.
Vivek Agarwal, G.A. for the respondent No.2.

ORDER

U.C. MAHESHWARI, J. :- The petitioner/ plaintiff has filed this petition under Article 227 of the Constitution of India being aggrieved by the order dated 25.2.13 passed by I Civil Judge-I, Khandwa in Civil Suit No.112-A/

08, whereby his application filed under Order 1 rule 10 of the CPC to implead Santosh Kumar Shukla, the husband of respondent No.1 as defendant in the impugned suit, has been dismissed.

2. Petitioner counsel after taking me through the papers placed on the record along with the impugned order by referring the averments of the impugned application filed under Order 1 rule 10 of the CPC to implead Santosh Kumar Shukla as defendant in the suit argued that besides his application he has also filed an application for amendment of the plaint to plead that the part of the disputed land was sold to respondent No.1 and some part of the land was sold to the proposed defendant and such transaction of sale being contrary to the existing legal position was not binding on the petitioner. Such amendment was allowed by the trial court. Subsequent to allowing such application, the impugned application under Order 1 rule 10 of the CPC was filed contending that Santosh Kumar Shukla being the party of the said sale deed, his presence is also required to adjudicate the impugned suit and in his absence the suit could not be adjudicated on merits on account of non-joining the necessary party in the matter. In continuation, by referring para-4 of the plaint, he said that in the light of this pleading of the petitioner, the trial court ought to have allowed the aforesaid application and permit the petitioner to implead Santosh Kumar Shukla as proposed defendant in the matter but such IA has been dismissed by the trial court under wrong premises and prayed to allow the aforesaid application by admitting and allowing this petition.

3. On the other hand, Shri Avinash Zargar, by justifying the impugned order said that the same being based on proper appreciation of factual matrix stated in the plaint, in the available circumstances of the case, does not require any interference at this stage. In continuation, he said that on the date of filing the suit, no cause of action was stated in the plaint against the proposed defendant and even on amending the aforesaid by way of the aforesaid application, no such date regarding cause of action against the proposed defendant is mentioned in the plaint. It was also said that the date of execution of the sale deed in favor of the proposed defendant has neither been pleaded nor any document is annexed either in the amendment application or with the impugned application filed under Order 1 rule 10 of the CPC. So, in such premises, in the lack of the pleading regarding cause of action in the plaint against the proposed defendant, the trial court has not committed any error in dismissing the application and extending the liberty to the petitioner to file

separate civil suit. With this submission he prayed to dismiss this petition.

4. Having heard, keeping in view the arguments advanced, I have carefully gone through the aforesaid papers along with the impugned order. It is apparent from the plaint that from the initial stage till today, no averment regarding any date or specific cause of action which is available to the petitioner against the proposed defendant, has been pleaded. In the lack of any cause of action against the proposed defendant, such person could not be said to be the necessary party to adjudicate the present suit. As such, the present suit could be decided taking into consideration the stated date of cause of action effectively only in presence of the petitioner and respondent No.1 and presence of the proposed defendant is not required. Besides this, in the lack of any copy of the sale deed or its date, mere on vague allegations, it could not be deemed or assumed that any document like sale deed was executed by the petitioner in favor of the proposed defendant and such cause of action is available to the petitioner in the present suit to implead him as defendant in the matter. So, in such premises, I have not found any perversity, illegality or anything against the propriety of the law in the order impugned dismissing the application of the petitioner. Consequently, this petition being devoid of any merits deserves to be and is hereby dismissed.

Petition dismissed.

I.L.R. [2014] M.P., 2311
WRIT PETITION
Before Mr. Justice U.C. Maheshwari
W.P. No. 11535/2013 (Jabalpur) decided on 3 September, 2013

JAG MOHAN TRIPATHI ...Petitioner
Vs.
BABA ANNAPURNA DAS KATTHIYA BABA ...Respondents

Civil Procedure Code (5 of 1908), Sections 15 to 20 & Succession Act (39 of 1925), Sections 371 & 372 - Jurisdiction of the Succession Court to grant certificate **- Held - For conferring jurisdiction upon a succession court, claimant is required to satisfy the court that the deceased at the time of his death was residing permanently/ordinarily within the local jurisdiction of that court or the property of the deceased is situated within the local jurisdiction of that court and he at the time of his death had no fixed place of residence - Deceased was found to be resident of**

two places and having property at both the places - Both the court is having jurisdiction to grant succession certificate. (Paras 7 & 8)

सिविल प्रक्रिया संहिता (1908 का 5), धाराऐं 15 से 20 व उत्तराधिकार अधिनियम (1925 का 39), धाराऐं 371 व 372 – उत्तराधिकार न्यायालय की प्रमाण पत्र प्रदान करने की अधिकारिता – अभिनिर्धारित – उत्तराधिकार न्यायालय की अधिकारिता दर्शाने हेतु, दावाकर्ता को न्यायालय की संतुष्टि करनी चाहिये कि मृतक अपनी मृत्यु के समय उस न्यायालय की स्थानीय अधिकारिता में स्थाई/सामान्य रुप से निवासरत था या मृतक की सम्पत्ति उक्त न्यायालय की स्थानीय अधिकारिता के भीतर स्थित है और मृत्यु के समय उसके पास निवास का कोई निश्चित स्थान नहीं था – मृतक को दो स्थानों का निवासी पाया गया और दोनों स्थानों पर उसके पास सम्पत्ति थी – दोनों न्यायालयों को उत्तराधिकार प्रमाण पत्र प्रदान करने की अधिकारिता है।

Case referred :

1999 (2) JLJ 51,

Shailesh Mishra, for the petitioner.
Ravi Ranjan, for the respondent.

O R D E R

U.C. MAHESHWARI, J. :- The petitioner/objector later who became the non-applicant in the matter before the Trial Court has filed this petition under Article 227 of the Constitution of India being aggrieved by the order dated 18.05.2013 passed by the IV Civil Judge Class-I, Jabalpur in Succession Case No.56/2012 whereby his application Annexure P-2 filed under Section 371 of the Indian Succession Act (in short the Act) read with Section 20 read with Section 151 of Code of Civil Procedure, either to transfer the case to some competent Court of District Umaria or to return the case filed by the respondent No.1 herein under Section 372 of the Act to such respondent to file the same before the competent Court of Umaria, has been dismissed.

2. Petitioner's counsel after taking me through the averments of the petition along with the papers placed on record so also the impugned order argued that the deceased Baba Sukhdeo Das Katthiya was neither the resident of Jabalpur nor was having any substantial property in his own name at Jabalpur, in fact he being the resident of Chandia District Umaria in his life time was having the Ashram and other properties there. He has given his address to all the concerning Banks of the aforesaid place of Chandia, District Umaria and the maximum amount of

the deceased has been deposited in different Banks of Chandia. His name is also recorded in the voter-list of Chandia. Even on his demise, his funeral was also carried out at Chandia and thereafter, in his memory some construction was also made in Chandia. So in such premises, merely on account of his some fixed deposit amount receipt of some Bank of Jabalpur does not give any right to respondent to file the proceeding for succession certificate at Jabalpur. He further stated that as per the available record, the name of deceased Baba Sukhdeo Das Katthiya is recorded in Khasra of the land situated in District Umaria. The electricity bill of the said place was also annexed with the petition and prayed that in such a situation the impugned case of the respondent No.1 was wrongly entertained by the Trial court at Jabalpur and prayed to allow his application Annexure P-2 by setting aside the impugned order of the Trial Court by admitting and allowing this petition. In support of his contention he has also placed reliance on the decision of this Court in the matter of *Chandrakala Doble (Smt.) and others V. Shyam Rao Doble and others* 1999 (2) JLJ 51.

3. Keeping in view the arguments advanced by the arguing counsel, I have carefully gone through the papers placed on record and averments made in the petition as well as the impugned order. It is settled proposition of law that the question relating jurisdiction of the Court over the matter is considered keeping in view the provision of Sections 15 to 20 of C.P.C. if no specific provision is available under the specific enactment on the basis of the averments made in the plaint or the application of the plaintiff or the applicant, as the case may be, such question is also decided by the Court taking into consideration the specific provisions of the concerned Act in which the proceeding is filed. If such Act provides the provisions that which Court shall entertain such proceedings. In the case at hand, the Court has to examine the aforesaid question keeping in view the provision of Section 371 of the Act so also the provisions of Sections 15 to 20 of the C.P.C. Before proceeding further, I deem fit to reproduce Section 371 of the Act, for ready reference. The same is read as under :-

> **"371. Court having jurisdiction to grant certificate :-** The District Judge within whose jurisdiction the deceased ordinarily resided at the time of his death, or, if at that time he had no fixed place of residence, the District Judge, within whose jurisdiction any part of the property of the deceased may be found, may grant a certificate under this Part."

4. It is undisputed fact in the matter that the deceased Baba Sukhdeo Das Kathiya was having his immovable and movable property along with some Bank

account at Chandia District Umaria. His last rites was also carried out at Umaria by the petitioner as alleged by the petitioner, but simultaneously it appears from the papers available on record which was impliedly admitted on behalf of the petitioner that the deceased was having some of the fixed deposit receipt of the Bank at Jabalpur, so in such premises, the part of the property of the deceased at the time of his death was at Jabalpur also though it was a movable property. It also appears from the principle application of the respondent No.1 that besides the aforesaid property of Chandia the deceased Baba Sukhdeo Das Kathiya was having some Ashram at Gwarighat, Jabalpur where he used to reside in his life time. In such premises, it is apparent that as per the averments of the impugned application of the respondent filed under Section 372 of the Act, the deceased was having some property at Jabalpur besides the property at Chandia District Umaria as argued by the learned counsel for the petitioner.

5. So in view of aforesaid factual matrix, the case at hand is examined taking into consideration the provision of Section 371 of the Indian Succession Act then the impugned case of respondent No.1 falls under the second limb of said Section because in the matter both the parties have filed the documents to show that the aforesaid deceased Baba Sukhdeo Das Kathiya was ordinarily residing at Chandia as per the petitioner and at Gwarighat, Jabalpur as per the respondent No1 and there are documents on record to show that the deceased Baba Sukhdeo Das kathiya was having Ashram at both the places and it is undisputed fact that he was a *Sanyasi*. He became *Sanyasi* after leaving all affairs of the world. So when there is *prima facie* circumstances in the impugned matter to show that the aforesaid Baba Sukhdeo Das Kathiya was resident of Jabalpur also and was also having the Ashram and some fixed deposit receipt of the Bank at Jabalpur so in such circumstances, the Jabalpur Court in which the respondent has filed the impugned application under Section 372 of the Act has the jurisdiction to entertain and decide the same.

6. There is no dispute that in the available circumstances of the case, the Court of Umariya is also having the jurisdiction over the matter but as per the provision of Section 18 of the C.P.C. whenever and wherever in respect of any case the two Courts of different places are having the jurisdiction over the matter, then the party has a right to file the case in any of such Court according to his choice so in such premises also the impugned order does not require any interference at the stage.

7. So far as the case law cited on behalf of the petitioner in the matter of

Chandrakala Doble (Smt.) (supra) is concerned, I do not have any dispute regarding principles laid down in such case but in view of the aforesaid discussion this citation is also not helping the applicant to allow the application or to allow the petition for setting aside the impugned order because in such citation taking into consideration Section 371 of the Indian Succession Act it was held that in view of such specific provision of such enactment the provisions of Section 20 C.P.C. is not applicable and pursuant to it in view of the provision aforesaid Section 371 it was held that for conerring (sic:conferring) jurisdiction upon the a Succession Court, a claimant is required to satisfy the Court that the deceased at the time of his death was residing permanently/ordinarily within the local jurisdiction of that Court or that the Court would have jurisdiction because the property of the deceased is situated within the local jurisdiction of that Court and the deceased at the time of his death had no fixed place of residence. As per the aforesaid discussion, it is apparent from the case at hand that the deceased was found to be resident of both the places and the properties are also found to be at both places that is District Umaria as well as Jabalpur, so the approach of the Trial Court is also in accordance with the approach of the cited case.

8. In view of the aforesaid discussion, I do not find any illegality, irregularity and perversity or anything against the propriety of law in the impugned order. Consequently, this petition being devoid of merits deserves to be and is hereby dismissed at the stage of motion hearing.

Petition dismissed.

I.L.R. [2014] M.P., 2315
WRIT PETITION
Before Mr. Justice Sanjay Yadav
W.P. No. 9998/2008(S) (Jabalpur) decided on 30 September, 2013

MUNICIPAL CORPORATION, BURHANPUR ...Petitioner
Vs.
NATHU ... Respondent

(and W.P. Nos. 9999/2008(S), 10000/2008(S))

***Payment of Gratuity Act (39 of 1972), Section 14, Municipal Services (Pension) Rules, M.P., 1980, Rule 1 - Gratuity* - Employees of Municipal Corporation are entitled to payment of gratuity - Whether they had opted for pension or not ? (Para 13)**

उपदान संदाय अधिनियम (1972 का 39), धारा 14, नगरपालिक सेवा (पेंशन) नियम, म.प्र. 1980, नियम 1 – उपदान – नगरपालिक निगम के कर्मचारी, उपदान के भुगतान के हकदार है – भले ही उन्होंने पेंशन चुनी हो अथवा नहीं।

Cases referred :

AIR 1999 SC 293, 1991 MPLJ 355.

Atulanand Awasthy, for the petitioner.
M.S. Bhatti, for the respondent.

ORDER

SANJAY YADAV, J. :- Common question raised vide these petitions are as to whether in view of Madhya Pradesh Municipal Services (Pension) Rules, 1980, provisions of Payment of Gratuity Act, 1972 would be applicable to the employees belonging to Municipal Corporation. These petitions were accordingly heard and are decided by this common order.

2. Relevant facts not in dispute briefly are that, the respondents while in employment with the Municipal Corporation, Burhanpur, retired from service on attaining the age of superannuation and being aggrieved by non-settlement of gratuity preferred an application before the Controlling Authority under Section 7 of Payment of Gratuity Act, 1972 read with Rule 10 of Madhya Pradesh Payment of Gratuity Rules, 1973.

3. That, objections were raised on behalf of employer Municipal Corporation as to tenability of such application in view of existence of Madhya Pradesh Municipal Service (Pension) Rules, 1980. The Controlling Authority while dispelling the contentions, held that the respondent workmen are entitled for gratuity under the Payment of Gratuity Act, 1972, by order dated 6.4.1998.

4. Aggrieved by the order passed by Controlling Authority, the petitioner, Municipal Corporation, preferred an appeal under sub-section (7) of Section 7 of 1972 Act; whereon, appellate authority by order dated 29.10.2007 dismissed the appeal holding that the provisions of Payment of Gratuity Act, 1972 are applicable to the Municipal Corporation and that even if no option has been tendered by the existing municipal employees under M.P. Municipal Services (Pension) Rules, 1980, will not dis-entitle them for gratuity at the rate as stipulated under the Act of 1972.

5. In the aforesaid factual back-drop the issue exposited in the beginning

has arisen for consideration.

6. The Payment of Gratuity Act, 1972 was enacted to provide scheme for the payment of gratuity to employees engaged in factories, mines, oilfields, plantations, ports, railway companies, shops or other establishments and for matters connected therewith or incidental thereto.

7. Section 2 (e) defines "employee" to mean any person (other than an apprentice) employed on wages, in any establishment, factory, mine, oilfield, plantation, port, railway company or shop, to do any skilled, semi-skilled, or unskilled, manual, supervisory, technical or clerical work, whether the terms of such employment are express or implied, and whether or not such person is employed in a managerial or administrative capacity, but does not include any such person who holds a post under the Central Government or a State Government and is governed by any other Act or by any rules providing for payment of gratuity.

8. The expression 'employer' finds its definition under Section 2 (f) in the following manner:

> 2 (f) "employer" means, in relation to any establishment, factory, mine, oilfield, plantation, port, railway company or shop-
>
> (i) belonging to, or under the control of, the Central Government or a State Government, a person or authority appointed by the appropriate Government for the supervision and control of employees, or where no person or authority has been so appointed, the head of the Ministry or the Department concerned,
>
> (ii) belonging to, or under the control of, any local authority, the person appointed by such authority for the supervision and control of employees or where no person has been so appointed, the chief executive office of the local authority,
>
> (iii) in any other case, the person, who, or the authority which, has the ultimate control over the affairs of the establishment, factory, mine, oilfield, plantation, port, railway company or shop, and where the said affairs are entrusted to any other person, whether called a manager, managing director

or by any other name, such person ;"

9. Section 4 stipulates that Gratuity shall be payable to an employee on the termination of his employment after he has rendered continuous service for not less than five years on his superannuation, or on his retirement or resignation, or on his death or disablement due to accident or disease.

10. Section 5 of the 1972 Act empowers the appropriate Government to exempt, subject to conditions as may be specified in the notification any any establishment, factory, mine, oilfield, plantation, port, railway company or shop to which Act applies from the operation of its provisions.

11. It is not in dispute that the Central Government vide notification No. SO 239 dated 8th January 1982 published in Central Government Gazette of India dated 23rd January 1982 in exercise of its powers conferred by clause (c) of sub-section 3 of Section 1 of the Payment of Gratuity Act, 1972 specified "Local Bodies" in which ten or more persons are employed or were employed on any day of the preceding 12 months as a class of establishment to which the said act shall apply with effect from the date of publication. It being not in dispute that the petitioner Municipal Corporation being a local body, the provisions of Payment of Gratuity Act, 1972 are applicable in full force.

12. Section 14 of 1972 Act provides for :

> 14. Act to override other enactments, etc. - The provisions of this Act or any rule made thereunder shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than this Act or in any instrument or contract having effect by virtue of any enactment other than this Act.

13. While dwelling upon the issue as to applicability of provisions of Payment of Gratuity Act to the employees of Municipal Council/Corporation, it has been held by Supreme Court in *Municipal Corporation of Delhi v. Dharam Prakash Sharma and another* (AIR 1999 SC 293):

> 2. The short question that arises for consideration is whether an employee of the MCD would be entitled to payment of gratuity under the Payment of Gratuity Act when the MCD itself has adopted the provisions of the CCS (Pension) Rules, 1972 (hereinafter referred to as "the Pension Rules"), whereunder there

is a provision both for payment of pension as well as of gratuity. The contention of the learned counsel appearing for the appellant in this Court is that the payment of pension and gratuity under the Pension Rules is a package by itself and once that package is made applicable to the employees of the MCD, the provisions of payment of gratuity under the Payment of Gratuity Act cannot be held applicable. We have examined carefully the provisions of the Pension Rules as well as the provisions of the Payment of Gratuity Act. The Payment of Gratuity Act being a special provision for payment of gratuity, unless there is any provision therein which excludes its applicability to an employee who is otherwise governed by the provisions of the Pension Rules, it is not possible for us to hold that the respondent is not entitled to the gratuity under the Payment of Gratuity Act. The only provision which was pointed out is the definition of "employee" in Section 2(e) which excludes the employees of the Central Government and State Governments receiving pension and gratuity under the Pension Rules but not an employee of the MCD. The MCD employee, therefore, would be entitled to the payment of gratuity under the Payment of Gratuity Act. The mere fact that the gratuity is provided for under the Pension Rules will not disentitle him to get the payment of gratuity under the Payment of Gratuity Act. In view of the overriding provisions contained in Section 14 of the Payment of Gratuity Act, the provision for gratuity under the Pension Rules will have no effect. Possibly for this reason, Section 5 of the Payment of Gratuity Act has conferred authority on the appropriate Government to exempt any establishment from the operation of the provisions of the Act, if in its opinion the employees of such establishment are in receipt of gratuity or pensionary benefits not less favourable than the benefits conferred under this Act. Admittedly MCD has not taken any steps to invoke the power of the Central Government under Section 5 of the Payment of Gratuity Act. In the aforesaid premises, we are of the considered opinion that the employees of the MCD would be entitled to the payment of gratuity under the Payment of Gratuity Act notwithstanding the fact that the provisions of the Pension Rules have been made applicable to them for the purpose of

determining the pension. Needless to mention that the employees cannot claim gratuity available under the Pension Rules.

14. Therefore, in view of the notification dated 8.1.1982 and the provisions contained under Payment of Gratuity Act, 1972 and as per the law laid down by the Supreme Court in the case of *Municipal Corporation of Delhi v. Dharam Prakash Sharma and another* (supra), it is beyond any iota of doubt that the provisions of Payment of Gratuity Act, 1972 are applicable to the petitioner Municipal Corporation and the employees are entitled to seek benefit thereunder.

15. Next contention of the learned counsel for the petitioner is that under 1980 Rules imperative it was for the employees to have opted for pension scheme as were brought in vogue by the Rules of 1980. It is urged that since the respondents employees did not opt for pension scheme no benefit could enure to them under Rule 1980. Therefore, they are not entitled to claim any gratuity before the controlling authority. The contentions are noted to be rejected at the outset for the reasons that Payment of Gratuity Act, 1972 has been made applicable to the local bodies w.e.f 23.1.1982. Even if the employees of Municipal Corporation have not opted for the pension under 1980 Rules will not deprive them of availing the remedy under 1972 Act.

16. Contention regarding as to delayed claim, the appellate authority has aptly dwelt upon the same in paragraph 2 of the appellate order (वाद प्रश्न क्रमांक–2 के संबंध मे वैधानिक स्थिति यह है कि नियम 7(1) के अनुसार सेवा के पर्यावसान के पश्चात 30 दिन के अंदर आवेदक द्वारा अनावेदक को ग्रेच्युटी भुगतान अधिनियम ग्रेज्युटी भुगतान अधिनियम 1972 एक सामाजिक कानून है और इसे ही मददेनजर रखते हुये नियम 7 (5) में यह प्रावधानित है कि ग्रेज्युटी का कोई दावा मात्र इसलिये अविधि मान्य नहीं होगा की दावेदर ने अपना आवेदन निर्दिष्ट कालावधि में अन्द प्रस्तुत नहीं किया था। माननीय उच्च न्यायालय द्वारा मोहनलाल पिता नानुमल विरूऋ अपीलेन्ट ऑथारिटी पेमेन्ट ऑफ ग्रेज्युटी एक (1991–एम.पी. एफ.जे.–355) में पारित निर्णय के अनुसार यह आदेशात्मक नहीं है। अतः उपादान भुगतान अधिनियम 1972 के अन्तर्गत आवेदक का आवेदन पर कोई विपरीत प्रभाव नहीं पडेगा एवं आवेदक का आवेदन स्वीकार किया जाता है।) In this context reference can be had of decision in *Mohanlal v. Appellate Authority Under Payment of Gratuity Act, Bhopal and others* [1991 MPLJ 355] wherein it is held

> 6. We revert to the other ground which prevailed with the Appellate Authority in holding that the claim-petition

was not maintainable because application filed with the employer by the employee under under Rule 7 (1) was time barred. That has a short and also a long answer. Sub-Rule (5) of Rule 7 effectively rebuffs that contention. It provides that on the sole ground that gratuity was claimed late and application was not made within specified period to the employer the claim shall not be treated invalid. However, the same provision also contemplates that if there is any dispute and if there is any controversy in regard to belated application that shall be resolved by the Controlling Authority. Evidently, for the first time in appeal, the ground was urged to deprive the Controlling Authority of its jurisdiction envisaged under Rule 7 (5) to deal and decide the controversy. That, apart, it has been rightly urged by Shri Lahoti, appearing for the petitioner/employee, that neither section 7 (1) nor Rule 7 (1) is mandatory. That is made clear not only by sub-rule (5) of Rule 7, but by the other parts of the parent provisions contained in section 7. Sub-section (2) makes it employer's duty to determine the amount of gratuity and to give notice in writing to the employee of the gratuity payable "whether an application referred to in sub-section (1) has been made or not". Sub-section (3) obligates the employer to arrange payment of the gratuity within the time prescribed an by sub-rule (4) he is required to deposit with the Controlling Authority such amount as he admits to be payable by him against gratuity. It is noteworthy that neither clause (a) of sub-section (4) nor the explanation appended to it prescribes any period of limitation for making application to the Controlling Authority for deciding dispute of non-payment of gratuity."

17. In view whereof having thus considered this Court do not find any substance in the challenge put-forth by Municipal Corporation in the order passed by the Controlling Authority under Payment of Gratuity Act and its affirmtion by appellate authority.

18. In the result petition fails and is hereby dismissed. No costs.

Petition dismissed.

I.L.R. [2014] M.P., 2322
WRIT PETITION

Before Mr. Justice S.K. Seth & Mr. Justice P.K. Jaiswal
W.P. No. 11367/2013 (Indore) decided on 9 October, 2013

RUCHI JAIN ...Petitioner
Vs.
STATE OF M.P. & ors. ...Respondents

A. ***Medical and Dental Post Graduate Course Entrance Examination Rules, M.P., 2013, Rule 11 - Education and Universities - Medical Colleges/Education - Admission - Irregular/Illegal admission*** **- Inaccurate, inefficient and improper admissions process defeating Rule of merit - Meritorious candidate not getting admission in her preferred course - Held - Petitioner is not at fault and she pursued her rights and remedies as expeditiously as possible - The petitioner was a candidate placed higher in the merit list - There is fault on the part of the authorities and apparent breach of Rule 11 of the Rules of 2013 in granting admission to respondent No. 5 - The career of meritorious youth is at stake, when there is conflict between the Rules and executive instructions, the Rules will prevail - Executive instructions cannot be made or given effect in violation of what is mandated by the Rules - Admission of respondent No. 5 quashed and respondents directed to grant admission to the petitioner. (Paras 35, 36 & 37)**

क. चिकित्सा और दंत स्नातकोत्तर पाठ्यक्रम प्रवेश परीक्षा नियम, म.प्र. 2013, नियम 11 – शिक्षा और विश्वविद्यालय – चिकित्सा महाविद्यालय/शिक्षा – प्रवेश – अनियमित/अवैध प्रवेश – गुणवत्ता के नियम को विफल करते हुए त्रुटिपूर्ण, अयोग्य एवं अनुचित प्रवेश प्रक्रिया – गुणवत्ता धारक अभ्यर्थी को उसके पसंद के पाठ्यक्रम में प्रवेश नहीं मिला – अभिनिर्धारित – याची की ओर से कोई त्रुटि नहीं और उसने अपने अधिकारों और उपचारों का उपयोग यथासंभव शीघ्रता से किया – याची गुणवत्ता सूची में उच्चतर स्थान पर थी – प्राधिकारियों की ओर से त्रुटि है और प्रत्यर्थी क्र. 5 को प्रवेश प्रदान करने में नियम 2013 के नियम 11 का प्रकट रुप से भंग है – गुणवत्ता धारक युवती का भविष्य दांव पर है, जब नियम और कार्यपालिक अनुदेशों के बीच टकराव होता है, नियम अभिभावी होंगे – नियमों द्वारा जो आज्ञापक है, उसके अतिलंघन में कार्यपालिक अनुदेशों को बनाया या प्रभावशील नहीं किया जा सकता – प्रत्यर्थी क्र. 5 का प्रवेश अभिखंडित और प्रत्यर्थीगण को निदेश कि याची को प्रवेश प्रदान किया जाये।

B. ***Executive instructions*** **- Executive instructions cannot be made or given effect in violation of what is mandated by the Rules - In case of conflict, Rules will prevail. (Para 35)**

ख. कार्यपालिक अनुदेश – नियमों द्वारा जो आज्ञापक है, उसके अतिलंघन में कार्यपालिक अनुदेशों को बनाया या प्रभावशील नहीं किया जा सकता – टकराव की स्थिति में, नियम अभिभावी होगा।

Case referred :

(2012) 7 SCC 389.

Meena Chaphekar, for the petitioner.
C.S. Ujjainiya, P.L. for the respondent No.1.
Mini Ravindran, Dy. G.A. for the respondent No.2./State alongwith Dr. Nirbhay Shrivastava, Director Medical Education Department, present in person.
S. Samvatsar, for the respondent No.3.
Piyush Mathur with *M.S. Dwivedi,* for the respondent No.5.
None for the respondent No.4.

ORDER

The Order of the Court was delivered by :
P.K. JAISWAL, J. :- By this writ petition under Article 226 of the Constitution of India, the petitioner is challenging the action of the respondent No.1 while conducting the third round of online Counselling Programme held on w.e.f. 18.9.2013 to 21.9.2013 for P.G. Degree/Diploma Courses on State Government Quota Seats in Private Medical/Dental Colleges of Madhya Pradesh, pursuant to the directions issued on 9.9.2013 in Writ Petition (Civil) No.433/2013 by the Hon'ble Supreme Court despite being Higher in the merit list then the respondent No.5 as prepared by the Examining body in the NEET – 2013 has not been allotted the seat at Shree Aurobindo Dental College, Indore in the subject of "Conservative Dentistry" which is her choice subject and it has been allotted to respondent No.5 as per allotment letter (Annexure P/1). She is praying for issuance of writ of certiorari to quash the allotment of seat allotted to respondent No.5 – Somya Jain on 18.9.2013 and also prayed for issuance of writ of mandamus directing the respondents No.1 and 2 to allot the seat in "Conservative Dentistry" in Shree Aurobindo Dental College, Indore, on the ground that she is more meritorious then the respondent No.5.

2. For the admission in the Medical and Dental post graduate courses, the Central Government had taken a policy decision for adopting uniform admission procedure for Medical and Dental Colleges of India and, therefore, for its implementation of All India Common Entrance Test known as National Eligibility Cum Entrance Test (NEET-2013) was conducted for taking admissions to various MD/MS/DIPLOMA/MDS courses in Government/ Private Medical /Dental Colleges of all over India, which is conducted by the All India Institute of Medical Science, New Delhi. Petitioner as well as respondent no.5 had participated in the test for M.D.S. Course and both of them found eligible for unreserved seats. As per the result the **petitioner obtained 1145 All India Rank** and **the respondent No.5 got 1214 All India Rank.**

3. Since both of them are bonafide resident of Madhya Pradesh therefore, they have intentended to participate in the Counselling process commenced by the Director Medical Education of Madhya Pradesh by registering them as a candidates to get themselves registered online, since as per the guidelines only registered candidates shall be allowed to participate in the process of seat allotment.

4. The State Government framed Rules relating to entrance to Post Graduate Medical (MD & MS) Course, Post Graduate Medical Diploma and Posts Graduate Dental (MDS Course) in private unaided Medical and Dental Colleges in the State of M.P. These Rules are known as **'M.P. Medical and Dental Post Graduate Course Entrance Examination Rules 2013' (herein after Rules 2013).** These Rules came into force w.e.f. 21.5.2013. Rule 10, 11, 13 (1) & (2) and 14 deals with the counselling and admission are relevant which reads as under :-

> ***Rule 10. Admission to PG Dental Degree Courses.-*** *(1) Neet PG 2013 conducted by the National Board of Examination, New Delhi shall be the basis for admission to Pvt. Dental College of the State.*
>
> ***Seat Available for MD/MS/MDS.*** *- The distribution of seats for MDS/MD/MS/ Courses to be filled through NEET PG 2013 will be displayed at the time of counselling subject to permission by DCI/MCI/Government of India.*
>
> ***Rule 11. Declaration of Result.*** *- The National Board of*

Examination, New Delhi will conduct the examination, evaluate answer sheets, prepare the merit list and declare the result. ***The allotment of a seat to eligible candidate in subject / course / college will be done by online counselling on merit cum option basis.*** *Counselling will be done by online counselling through M.P. Online.*

Rule 13. Counselling.- *(1) The allotment of seats shall be made to the candidates through online counselling.* ***The rules and programme of Counselling will be declared separately.***

(2) The Programe for conselling will be advertised in the leading newspapers of the State.

(14) Admission. *- Consequent upon a candidate's allotment for a subject, course and a college by counselling:-*

(1) A candidate so admitted to a particular subject, course/category and college will not be entitled for any change on any ground.

(2) No admission in P.G. course/subject/college will be made after 31st May, 2013 as per guidelines issued by MCI in pursuance of direction laid down by Hon'ble Supreme Court Judgment dated 11.9.2002 MCI V/s. Madhu Singh & Ors.

(3) Fee refund – As will be decided by the admission and Fee regulatory Committee.

5. The respondent No.2 under Rule 13 (1) of the Rules of 2013 framed instructions and programme for conducting counselling for admission to P.G. Courses to (MD/MS/Diploma/MDS) course Post Graduate Diploma in Dental (MDS course) in Govt/Private Medical and Dental Colleges in the State of Madhya Pradesh. As per the instructions an admission to MD/MS Diploma/ MDS Course in Government / Private Medical / Dental Colleges will be done on the basis of NEET P.G. 2013/MDS Entrance Exam 2013 through online counselling. Notification for the first round and second round counselling was issued on 26.6.2013.

For Government Dental and Private Medical/Dental Colleges

Schedule of 1st Round of Counselling

Sr.No.	Subject	Date and Time	Days
1	Registration and Choice filling	From 27.6.2013 to 02.7.2013 upto to 12-00 Mid Night	6 days

Schedule of IInd Round of Counselling

Sr.No.	Subject	Date and Time	Days
1	Processing of Seat allotment for Vacant Seats remaining after 1st round of counselling	From 27.7.2013 to 28.7.2013	2 days

6. Clause (A) of Instructions deals with **online registration,** and Clause (B) deals with **finalising order, preference of College and course by the candidate and payment of fee.** Clause 2.1 (internal page 7 of Annexure R2/2) deals with unreserved candidate which reads as under :-

> ***Clause 2.1. For the unreserved candidate out of all the choices filled up by the candidate, those choices of subjects and college that are of higher preference (option) according to the candidate's common merit if available will be allotted to the candidate."***

7. Instructions No.2 (Internal page 8 of Annexure R2/2) deals with **steps for online choice/preference filing** . Clause 2.1 and 2.5 and 2.6 are relevant which reads as under :-

> **2. Steps for Online Choice / Preference Filling**
>
> ***"2.1 Candidates will be able to choose course/subject/ colleges according to their preference and priorities. Candidate has to follow following steps:-***
>
> ***2.2*****.....**

2.3.....

2.4.....

2.5. The seat will be allotted according to the choice/ option filled by the candidate. If the candidate commits any mistake in the selection of option, the seat will be allotted accordingly and its sole responsibility will be of the candidate. Therefore, choose your option very carefully and then only lock your choice.

2.6. The seat will be allotted to the eligible candidates according to the merit as per their eligibility."

8. **Clause (C)** of instructions deal with **online allotment.** Clause c,d and 3 are relevant which reads as under :-

"C. In private Medical/Dental Colleges according to the preference filled by the candidate, the allotment of seat will be done as per the unreserved/All India common merit list for UR category candidates and for reserved category candidates as per M.P. State merit list of NEET P.G. 2013/NEET MDS 2013.

d. For those candidates who have taken admission on the seat allotted in 1st round of counselling there shall be no provision of Upgradation/Change and such candidates will not be considered eligible for 2nd round of counselling.

e. Candidate has to take admission in the course & college allotted to him/her within the stipulated time, otherwise his/her admission shall be automatically cancelled & seat allotted to him/her will be made available for the allotment to other eligible candidates in the next round of counselling considering it as vacant. Such candidate failing to take admission on allotted seat after first round of counselling will not be eligible for next round of counselling."

"NOTE: If the candidate is allotted a seat and if he/she fails to take admission in the allotted course/college, then he/she will not be

eligible for second round of counselling."

9. From the perusal of the aforesaid, it is clear that the candidates who have taken admission on the seat allotted in the first round of counselling there shall be no provision of Up gradation/change and such candidate will not be eligible for second round of counselling. As per note appended to Clause (e) if the candidate is allotted a seat and if he/she fails to take admission in allotted course college then he/she will not be eligible for second round of counselling.

10. Clause (d) of the instruction deals with second round of counselling. Clause 2 of instruction (d) of second round of counselling is relevant which reads as under :-

> *"2. For private Medical/Dental Colleges, second round of Counselling will be done for vacant seat of first round of counselling.* ***All eligible candidates who have not been allotted any seat in the first round of counselling, will be considered eligible in the second round of counselling."***

11. Important information to instructions for online counselling, 2013 issued on 26.6.2013, which is at page 18 of Annexure P/11 is relevant which reads as under :-

> **"Important Information**
>
> **Directorate Medical Education has not received All India Merit List of NEET PG 2013 and M.P. State and All India Merit list of NEET MDS 2013 till date. Hence the instructions for Online counselling 2013 for private Medical Colleges and Government and Private Dental Colleges will be issued later separately.**
>
> **Candidates are advised to register themselves for Private Medical Colleges and Government and Private Dental Colleges seats separately on the dates specified in the counselling programme.**

12. On 12.7.2013 Director Medical Education, Bhopal issued important notice regarding up-gradation for MD/MS & MDS in private Medical/Dental

Colleges, which reads as under :-

> *"On the request of students and availability of unfilled seats in the reserved category in private colleges it has been decided to provide chance of* ***upgradation*** *for the students allotted seats in the first round of online counselling in private Medical/Dental colleges, on the line of* ***upgradation*** *option given in the government colleges.*
>
> *Only* ***those candidates who are allotted seats in the first round of counselling and have joined in the allotted college will be eligible for upgradation options for the second round of counselling.*** *If the candidate has been allotted a seat and does not take admission on the allotted seat he/she will not be eligible for the* ***upgradation*** *as well as for second round of counselling.*
>
> *In case a seat is allotted through* ***upgradation*** *in the second round of counselling, the candidate has to join the* ***upgraded*** *option and His/Her earlier allotted seat shall be cancelled automatically and will be allotted to other eligible candidate as per merit.*
>
> *10% of the Tuitio(sic:Tuition) fee of the* ***upgraded*** *candidate will be deducted as a processing fee, by the college and remaining amount of tuition and other fees shall be refunded in case the institution is changed in* ***upgradation*** *process.*
>
> *If the candidate is not interested in* ***upgradation*** *or change of the seat allotted to him/her in the first round of counselling, He/She can give satisfied option and He/ She has to take admission on the allotted seat and such candidate shall not be eligible to participate in the second round of counselling."*

13. The first round of counselling was held between 27.6.2013 to 18.7.2013, the petitioner as well as respondent No.5 had not been secured/ allotted any seats. The second round of counselling was started w.e.f.

27.7.2013 and the last date of second round counselling was 31.7.2013. In the second round of counselling on 29.7.2013 the petitioner had allotted a seat in the 'Periodontics' subject at Modern Dental College, Indore and the respondent No.5 had been allotted seat in the subject of 'Periodontics' in the Rishiraj Dental College, Bhopal, as per their All India ranks and the choice given at the time of online counselling.

14. According to Clause (e) of online allotment instructions (C) the candidate has to take admission in the course and college allotted to him/her, and if he/she fails to take admission then he/she will not be eligible for the next round of counselling. It is so prescribed that allotted seat may not be kept vacant in case the candidate who has been allotted that seat opts for upgradation in the next round of counselling then the next candidate in the waiting list may be allotted that seat and that seat may not be kept vacant and may be filled up.

15. It is not in dispute that petitioner has participated in second round of counselling dated 29.7.2013, wherein petitioner has been allotted the seat in the subject of 'Periodontics' in the Modern Dental College, Indore, but petitioner had not taken admission in the aforementioned college, i.e., to say that the petitioner did not complete the admission process. She opted for the up-gradation in the second round of counselling and, therefore, she gave up her seat which has been allotted to her in second round of counselling on 29.7.2013. The respondent No.5 also participated in the second round of counselling dated 29.7.2013 wherein she was allotted the seat in the subject of 'Periodontics' in the Rishiraj Dental College, Bhopal. She had taken the admission and also opted for upgradation, as per instructions dated 26.6.2013 and amended instructions dated 12.7.2013.

16. As per the directions of the Hon'ble Supreme Court only first and second counselling is permissible and, therefore, the Director Medical Education framed instructions under Rule 13 (1) of the Rules of 2013, for first and second counselling only. Second round of counselling should be final counselling and third counselling is not contemplated or permitted under the entire process of selection/grant of admission to these professional courses. If any seats remained vacant after first and second counselling or surrender from All India quota they should be positively allotted and admission granted strictly as per merit by 15th September of relevant order and not by holding an extent counselling.

The remaining time will be limited to the filing up of the vacant seats resulting from exceptional circumstances or surrender of seats. All the candidates should join the academic courses by 30th September, 2013 of the Academic year.

17. On 31st August, 2013, the respondent No.1 – State has filed an application for directions before the Supreme Court vide Annexure P/7 in pending W.P. (Civil No.433/2013) on the ground that for the academic session 2013-14 out of 50% State quota seats in private medical and dental colleges for Post Graduate Medical Courses are still remained vacant and in view of the vacancy arising out of State quota in private medical and dental colleges for Post Graduate Medical and Dental Courses, the State may be permitted to fill these vacant seats up to 30th September, 2013. Considering the fact that large number of Post Graduate Seats in the State quota remained unfilled the Hon'ble Supreme Court extended the time till 25th September, 2013 for filling up the vacant seats in MD/MS & MDS through State quota by order dated 9.9.2013 Annexure P/8. The application was allowed on the ground that large number of meritorious students are waiting to get admission to this post graduate seats.

18. In pursuance to the Hon'ble Supreme Court order dated 9.9.2013, the respondent No.2 issued counselling programme for Post Graduate / Diploma Course of State Government quota seats in private medical colleges on 17.9.2013. As per Schedule for online counselling in Private Medical / Dental colleges, the declaration of seat allotment will be done as per the choices filled by the candidates in the previous rounds of online counselling. Relevant para of counselling programme reads as under :-

No.3099/PG/4/DME/2013 Date 17/09/2013

Counselling Programme for P.G. Degree/Diploma Courses on State Government Quota Seats in Private Medical /Dental Colleges of Madhya Pradesh

19. As per Hon'ble Supreme Court order, the final round of Counselling for P.G. Degree/Diploma Courses on State Government Quota Seats in Private Medical /Dental Colleges of Madhya Pradesh is going to be held online/Off-line as per schedule given below:-

Schedule for On-line Counseling

Sr.No.	Subject	Date & time	Days
1	**Declaration of seat Allotment***	**On 18/09/2013**	**01 days**
2	**Admission at the allotted Medical/Dental College & verification of Original documents**	**On 18/09/2013 From 10.30 AM till 21/09/2013 up to 5.00 PM**	**04 days**

***Seat Allotment will be done as per the choice filled by the candidates in the previous rounds of online counselling.**

20. The said counselling programme dated 17.9.2013 appended with important instructions for candidates. As per note only registered candidates will be eligible to participate as per the eligibility criteria on third final counselling. Clause 2 and 3 of instructions dated 17.9.2013 are relevant which read as under :-

> *"(2) Previously registered candidates will only be eligible to participate in the counselling.*
>
> *(3) Candidate who have given satisfied option in the earlier rounds of counselling and taken admission on the allotted seats are not eligible to participate in these rounds of counselling."*

21. The petitioner opted for up-gradation and as per instructions No.2 and 3 of final round of counselling dated 17th September, 2013, petitioner is more meritorious and eligible for the allotment of seat at Shree Aurobindo Dental College, Indore in "Conservative Dentistry" subject, but the same has not been allotted to her and was allotted to respondent No.5 on 18.9.2013.

22. She challenged the said action by filling writ petition on 19.9.2013, on the ground that as per instructions issued on 26.6.2013 under Rule 13 (1) of 2013 Rules and further instructions issued on 17.9.2013 by the Director Medical Education the criteria for selection has to be merit alone and she being more meritorious thus, afore mentioned seat has to be allotted to her. The allotment of seat to respondent No.5 is contrary to law laid down by the Apex Court as well as Rule 11 of the Rules of 2013 and guidelines framed

there under.

23. The stand of the respondent No.5 is that instructions dated 26.6.2013 has been modified by the Director of Medical Education with regard to up-gradation on 12.7.2013, mentioning therein that in private colleges, it has been decided to provide chance of up-gradation to only those candidates who are allotted seat and had taken admissions in the colleges, but if the candidate is allotted seat and does not take admission on the allotted seat, he will not be eligible for the up-gradation as well as for participating in the second round of counselling.

24. The plea of the respondent No.5 is that in pursuance to the important information, the Director Medical Education issued important instructions on 12.7.2013. As per instruction dated 12.7.2013 she opted for up-gradation in the second round of counselling and also taken admission in allotted college therefore, she was found eligible on 18.9.2013 in the third round of counselling, as per instructions (dated 12.7.2013) issued by DME with this regard and after participating in counselling she was allotted new college and subject ie, Shree Aurobindo Dental College, Indore for "Conservative Dentistry" vide allotment letter dated 18.9.2013, there after DME had issued slip on 29.9.2013 for being admitted at Shree Aurobindo Dental College, Indore, after cancelling the allotted seat at the previous college. Pursuance to issuance of admission slip respondent No.5 had taken the admission in new college by depositing the requisite fees on 20.9.2013.

25. It is also submitted by the respondent No.5 that the instructions issued on 12.7.2013 by the DME provides for upgradation wherein, it has been mentioned that if in case a seat is allotted through up-gradation in the second round of counselling the candidate has to join the upgraded option else the earlier allotted seat shall be cancelled automatically and will be allotted to other eligible candidates as per merit and the 10% of the Tuition fee of the upgraded candidate will be deducted as a processing fee, by the college and remaining amount of tuition and other fees shall be refunded in case the institution is changed in-upgradation process. It is further submitted that the petitioner was allotted seat in the second round of counselling which was held on 27.7.2013 in 'Periodontics', but she had not taken admission in allotted College within the stipulated time period by depositing the prescribed fees and, therefore, as per institutions issued on 26.6.2013 and 12.7.2013, she has been rightly denied the seat in question because she had not taken admission

in the afore mentioned college and did not obtained the printed admission cards nor she deposited fees and original documents, the up-gradation was not permissible as per the programme of online counselling and she has been rightly denied seat in question in the counselling, which was held on 18.9.2013 and prayed for dismissal of the writ petition.

26. The respondents No.1 and 2 filed their return supported with the affidavit of Director, Medical Education, Bhopal. It has not been disputed by the State that petitioner is more meritorious then the respondent No.5. It is also not disputed that petitioner and respondent No.5 have participated in the first round of counselling, but no seat has been allotted to them and then they participated in second round of counselling on 29.7.2013, wherein petitioner as well as respondent No.5 were allotted seats in the subject **"PEDODONTICS"** in the Modern Dental College, Indore and Rishiraj College of Dental Science, Bhopal, respectively. The petitioner inspite of allotment of seat in the second round of counselling opted for up-gradation, but as her admission was not completed in the allotted seat, therefore, computer program did not accept her request for up-gradation, therefore, the petitioner was not eligible to participate in the next round of counselling and as such she was out of race. The stand of the State that petitioner was participated in the second round of counselling though she had opted for up-gradation through online, but no seat was allotted to her as per computer sheet dated 29.9.2013 Annexure R/2-3. In respect of respondent No.5, the stand is that in second round of counselling she was allotted seat in the subject of 'Periodontics' in the Rishiraj Dental College, Bhopal, she had taken admission and also opted for up-gradation and, therefore, she has been allotted the seat in the subject of "Conservative Dentistry" Hospital at Shree Aurobindo Dental College, Indore, in the counselling dated 18.9.2013, which has been held as per the directions of the Hon'ble Supreme Court in Civil Appeal No.433/2013 in the case of *Dr. Fraz Naseem & Ors v/s. Union of India & Ors.* It is also stated that only one seat was available in the subject of "Conservative Dentistry" in Shree Aurobindo Dental College, Indore, which has been reverted back as any candidate might have left that seat.

27. As per the stand of the respondents No.1 and 2 the petitioner had not taken admission on the allotted seat and, therefore, on 18.9.2013 no seat has been allotted to her. When we asked certain queries from Dr. Nirbhay Shrivastava, Director Medical Education – respondent No.2 who was present in person, he very categorically stated that for 18.9.2013 counselling no further

application is required to be filled and up-gradation of the petitioner was there. She also gave her choice for up-gradation in the second round of counselling at the time of allotment of seat in the subject of 'Periodontics' in the Modern Dental College, Indore. He also admitted that on 18.9.2013, she clicked to find out her status about the upgradation, but as she had not taken the admission on allotted seat, therefore, the computer programme did not accept her request for upgradation. He admitted that petitioner opted for upgradation and was eligible to participate in the third round of counselling, which was held on 18.9.2013 in pursuance to the order passed by the Hon'ble Supreme Court on 9.9.2013.

28. Shri Sumeet Samvatsar, learned counsel for the respondent No.3 submitted that admission has been granted to the respondent No.5 provisionally subject to the final outcome of this writ petition. He also filed admission slip along with undertaking furnished by the respondent No.5 wherein, she admitted that she has been granted admission provisionally during the pendency of the writ petition.

29. The respondents No.5 is solely relying on the instructions issued by the respondent No.2 on 12.7.2013. If we read the instructions along with the Clause (d) and (a) of the online allotment instructions, we are of the view that the same will be applicable to those candidates only who are allotted seats in the first round of counselling. If they joined in the allotted college, they will be eligible for the up-gradation option for the second round of counselling. In the case in hand, no seats were allotted to the petitioner and respondent No.5 in the first round of counselling. They have been allotted the seat in the second round of counselling on 29.7.2013. Thus, the respondent No.5 will not get any benefit on the basis of instructions dated 12.7.2013. The reply of the Director of Medical Education on this issue is silent. The respondent No.2 in his reply has not stated anything about instruction dated 12.7.2013 as is evident from para 8 of the reply. As per Rule 11 of the Rules of 2013, the allotment of seat to the eligible candidates will be done on merit cum option basis. The instructions issued on 26.6.2013 and 12.7.2013 nowhere provides that they will be applicable in the third round of counselling because as per the law laid down by the Apex Court from time to time third round counselling is not permitted. The second round counselling is final round counselling. In the present case, the Hon'ble Supreme Court by order

dated 9.9.2013, considering the fact that there are 29 vacant seats in the MD/MS course and 8 vacant seats in MDS course in the State of quota in varius private colleges in the State of Madhya Pradesh and, therefore, extended the time for filling up the aforesaid vacant seats in MD/MS and MDS through State quota till September 25, 2013. The Hon'ble Supreme Court while passing the order also observed that large number of meritorious students are awaiting to get the admissions to those Post Graduate Seats. Thus, the contention of the learned counsel for the respondents No.1,2 and 5 has no force.

30. The Apex Court in the case of *Asha v/s. PT. B.D. Sharma University of Health Science & Ors,* reported as (2012) 7 SCC 389 held that the criteria for selection has to be merit alone. In fact, merit, fairness and transparency are the ethos of the process for admission to such courses. It will be travesty of the scheme formulated by this Court and duly notified by the states, if the Rule of Merit is defeated by inefficiency, inaccuracy or improper methods of admission. There cannot be any circumstance where the Rule of merit can be compromised . The Apex Court also held that merit alone is the criteria for such admission and circumvention of merit is not only impermissible but is also abuse of the process of law . The Hon'ble Supreme Court also observed in para 24 that it is one of their primary obligations of the authority to see that a candidate of a higher merit is not denied seat to the appropriate course and college, as per his preference. No doubt the process of admission is a cumbersome task for the authorities but that per se cannot be a ground for compromising merit. The authorities concerned are expected to perform certain functions, which may performed in a fair and proper manner, ie., strictly in consonance with the relevant rules and regulations .

31. This Court cannot ignore the fact that these admissions relate to professional courses and entire life of the student depends upon his admission to a particular course. Every candidate of higher merit would always aspire admission to the course which is more promising. Thus, we are of the view that the allotment of seat would be made according to the merit and preference exercised by the candidates at the time of counselling. Undoubtedly, any candidate would prefer course of given the high-competitiveness in the present times, where on a fraction of a mark, the admission to course could vary. Higher the competition, greater is the duty on the part of the concerned

authorities to act with utmost caution to ensure transparency and fairness.

32. The respondent No.5 had taken admission in the second round of counselling and there is no provision, which permit her for her up-gradation, the learned authority granted admission to her, contrary to Rules of 2013 and instructions whereas, as per Clause 2 of the instructions dated 17.9.2013, the previously registered candidates will only be eligible to participate in the counselling. As per Clause 3 of instructions dated 17.9.2013, the candidates who have given satisfied option in the earlier round of counselling and taken admission on the allotted seat are not eligible to participate in these rounds of the counselling.

33. The case of the petitioner is entirely different from the case of the respondent No.5. The petitioner has not taken admission in the course and college allotted to her in the second round of counselling and opted for up-gradation and, therefore, the seat which was allotted to her in the second round of counselling was allotted to someone else. As per rule 11 of the Rules of 2013, the allotment of seat to the eligible candidates will be done by online counselling of merit cum option basis. As per Rule 14 (1) of the Rules of 2013, the candidate was admitted to a particular subject and college will not be entitled for any change on any ground. Thus, the respondent No.5 had been wrongly permitted for up-gradation and Director of Medical Education contrary to the Rules of 2013 and instructions dated 17.9.2013, wrongly allotted the seat to her on September 18, 2013, relying on the instructions dated July 12, 2013, which was applicable only in first and second round of counselling and as per the aforesaid instructions the up-gradation was permissible only in the first round of counselling. The instructions dated June 26, 2013 and July 12, 2013 have been issued by the Director, Medical Education, under Rule 13 (1) of the Rules of 2013. It is settled principle of law that instructions of Rules has to be in conformity therewith. The instructions cannot in any way wipe out provision of any rules.

34. As per instructions dated September 17, 2013, the last date for admission to the allotted medical college is September 25, 2013 and the declaration of last date for seat allotment is September 20, 2013. Thereafter, only in exceptional cases of unequivocal cases of discrimination or arbitrariness, admission may be permissible, but such power may preferably be exercised by the Court, held by the Apex Court in the matter of *Asha v/s. PT. B.D.*

Sharma University of Health Science & Ors (Supra).

35. In the present case, the petitioner is not at fault and she pursued her rights and remedies as expeditiously as possible. The petitioner was a candidate placed higher in the merit list. There is fault on the part of the authorities and apparent breach of Rule 11 of the Rules of 2013 in granting admission to respondent No.5. The career of meritorious youth is at stake. When there is conflict between the Rules and executive instructions, the Rules will prevail. Executive instructions cannot be made or given effect in violation of what is mandated by the Rules.

36. For the above-mentioned reasons, we quash the admission of respondent No.5 in the subject of "Conservative Dentistry" dated September 18, 2013, in M.D.S. Course at Shree Aurobindo Dental College, Indore and direct the respondents No.1,2 and 3 to grant admission to the petitioner in the subject of "Conservative Dentistry" in Shree Aurobindo Dental College, Indore, forthwith.

37. In the result, the writ petition is allowed, but without any orders as to costs.

Petition allowed.

I.L.R. [2014] M.P., 2338
WRIT PETITION
Before Mr. Justice Sujoy Paul
W.P. No. 6797/2012 (Gwalior) decided on 10 July, 2014

JAGDISH SINGH SANKHWAR ...Petitioner
Vs.
ARCHANA ...Respondent

A. ***Hindu Marriage Act (25 of 1955), Section 24 - Second Wife - Entitlement*** **- Where a woman marries a man with full knowledge of subsistence of his first marriage, provision of Section 24 would not apply.** **(Para 5)**

क. *हिन्दू विवाह अधिनियम (1955 का 25), धारा 24 – द्वितीय पत्नी – हकदारी* – जब एक स्त्री एक पुरुष से विवाह करती है, उसका प्रथम विवाह विद्यमान होने की पूरी जानकारी के साथ, तब धारा 24 का उपबंध लागू नहीं होगा।

B. ***Constitution - Article 227, Hindu Marriage Act (25 of***

***1955); Section 24 - Interim maintenance* - Power of Superintendence - Where the interlocutory order stood merged in the final order passed by the court below and that final order is upheld by this court - No justification for interference. (Para 7)**

ख. संविधान – अनुच्छेद 227, हिन्दू विवाह अधिनियम (1955 का 25), धारा 24 – अंतरिम भरण.पोषण – अधीक्षण की शक्ति – जब निचले न्यायालय द्वारा पारित किये गये अंतिम आदेश में अंतर्वर्ती आदेश का विलय होता है और उस अंतिम आदेश को इस न्यायालय द्वारा अभिपुष्ट किया जाता है – हस्तक्षेप करना न्यायोचित नहीं।

Cases referred :

(2005) 3 SCC 636, (2010) 10 SCC 469, ILR (2013) MP 956, 2002(1) MPWN 239, (2014) 1 SCC 188, (1988) 1 SCC 530.

H.K. Shukla, for the petitioner.
Vijay Sundaram, for the respondent.

ORDER

Sujoy Paul, J. :- This petition filed under Article 227 of the Constitution is directed against the order dated 22.6.2012 (Annexure P-1), whereby the Court below has accepted the application of the respondent preferred under Section 24 of Hindu Marriage Act and directed the present petitioner to pay Rs.3000/- per month as interim maintenance. This is an admitted fact between the parties that during the pendency of this petition the Case No. 230A/11 HMA in which interlocutory order Annexure P-1 is passed is finally decided. Against the said judgment, appeal was filed before this Court which has already been dismissed.

2. The singular ground of attack of Shri H.K.Shukla is based on (2005) 3 SCC 636 *(Savitaben Somabhai Bhatiya Vs. State of Gujarat and others),* (2010) 10 SCC 469 *(D. Velusamy Vs. D. Patchaiammal)* and judgment of this Court in I.L.R. (2013) M.P. 956 *(Tarachand Vishwakarma Vs. Smt. Pushpa Devi Vishwarkama)*. On the basis of these judgments, it is urged that the petitioner has a living spouse. His earlier wife is already living and the marriage tie with her is still intact. Thus, alleged second marriage with present respondent is a void marriage and no benefit can be claimed on the basis of the said second marriage, which is not legal or lawful.

3. Per contra, Shri Vijay Sundaram, learned counsel for the respondent relied on 2002(1) MPWN 239 *(Mohanlal Vs. Chief Executive Executive Officer)*. This is relied upon to submit that the writ petition against the interim order becomes infructuous on decision of main case by the trial Court. The interim order stood merged in final order passed by the trial Court.

4. I have heard the learned counsel for the parties and perused the record.

5. The judgment of this Court in *Tarachand* (supra) is based on judgment of Supreme Court in *D. Velusamy* (supra). However, the Apex Court in a recent judgment reported in (2014)1 SCC 188 *(Badshah Vs. Urmila Badshah Godse and another)* reconsidered the issue regarding the claim of maintenance arising of out Section 24 of Hindu Marriage Act in favour of second wife. The Apex Court after considering earlier judgments of Supreme Court including *Savitaben* (supra) distinguished those judgments and opined that the ratio arising out of *Yamunabai Anantrao Adhav Vs. Anantrao Shivram Adhav* (1988) 1 SCC 530 and *Saivtaben(sic:Savitaben)* (supra) would apply only in those cases where a woman marries a man with full knowledge of subsistence of his first marriage.

6. In the written statement filed before the Court below (Annexure P-3), the respondent has specifically pleaded that the present petitioner has solemnized marriage with respondent by suppressing the fact that he had already solemnized marriage earlier. Thus, the present case is covered by the recent judgment of Supreme Court in the Case of *Badshah* (supra). The ratio of the judgments cited by Shri Shukla are considered by Supreme Court in recent judgment in *Badshah* (supra). Thus, the said judgments are distinguishable in the facts and circumstances of the present petition.

7. Apart from this, admittedly, the main case in which Annexure P-1 is passed is already dismissed. The said order is affirmed by the High Court. The interlocutory order Annexure P-1 stood merged in the final order passed by the Court below. The final order is upheld by this Court. For these cumulative reasons, I find no justification for interference.

Petition fails and is hereby dismissed. No cost.

Petition dismissed.

I.L.R. [2014] M.P., 2341
WRIT PETITION
Before Mr. Justice Sujoy Paul
W.P. No. 8528/2012 (Gwalior) decided on 11 July, 2014

BISMILLA BEE ...Petitioner
Vs.
ARJUMAN AARA & ors. ...Respondents

Civil Procedure Code (5 of 1908), Order 8 Rule 1 - Written Statement - Extension of Time **- Object is to expedite the hearing and not to scuttle the same - Provision is a part of procedural law and directory in nature - Permission cannot be granted as a matter of routine - Order extending time to file written statement set aside - Petition allowed. (Paras 7 & 12)**

सिविल प्रक्रिया संहिता (1908 का 5), आदेश 8 नियम 1 – लिखित कथन – समय बढ़ाया जाना – शीघ्रता से सुनवाई करना उद्देश्य है और न कि उसे विफल करना – उपबंध, प्रक्रियात्मक विधि का एक भाग है और निदेशात्मक स्वरुप का है – सामान्य रुप से अनुज्ञा प्रदान नहीं की जा सकती – लिखित कथन प्रस्तुत करने हेतु समय बढ़ाने का आदेश अपास्त – याचिका मंजूर।

Cases referred :

2005(4) SCC 480, 2007(6) SCC 420, 2009(3) SCC 513, 2009(1) MPWN SN 34, 2013(3) SC 594, AIR 1984 SC 38, 2005(6) SCC 344, (2007) 14 SCC 431, 2014(2) SCC 302,

Abhishek Bhadoriya, for the petitioner.
A.V. Bhardwaj, for the respondents No. 1 to 6.

ORDER

Sujoy Paul, J. :- This petition filed under Article 227 of the Constitution challenges the order dated 12.10.2011 passed in COS No.73-A/2011. The Court below by the impugned order allowed the application dated 28.08.2012 (Annexure P/7) which was filed by the defendants No. 1 to 5 by imposing Rs.500/- as costs and permitted the said defendants to file their written statements.

FACTS :-

2. The petitioner instituted a suit for declaration of title and permanent injunction against the respondent / defendants. It was prayed therein that the plaintiff be declared as 1/5 share holder in the suit land after partition. Permanent injunction was also prayed for to restrain the defendants from alienating the property and from making any interference in joint possession of the plaintiff over the suit land. The Court below issued notices to the defendants. Defendants entered appearance before the Court. Out of seven defendants, only defendants No. 6 and 7 filed their separate written statements. It is submitted by Shri Abhishek Bhadoriya that defendants No. 2 to 6 are real sisters and are represented before Court below through a common and single Advocate namely Shri L.N. Dandotiya. It is urged that said counsel is representing all the defendants continuously. Copies of order sheets indicating the same are filed as Annexure P/5.

3 In the said civil suit application filed under Order 39 Rule 1 & 2 C.P.C was decided in presence of defendants No. 1 to 6 and thereafter evidence of plaintiff was started and closed in the presence of defendants. Defendants were given due opportunity of cross-examination. Defendants No. 1 to 6 had cross-examined the plaintiff and her witnesses through the said counsel Shri Dandotiya. Copy of document showing said cross-examination is filed as Annexure P/6. After closing of the evidence of plaintiff, defendants No. 1 to 6 have started leading evidence. The affidavits under Order 18 Rule 4 C.P.C. of defendants No. 3 and 6 were submitted on 13.03.2012. The defendant No.3 has already been cross-examined and defendant No.6 is yet to be cross-examined. The grievance of the petitioner is that at this stage an application under Section 151 C.P.C dated 28.08.2012 was filed on behalf of defendants No. 1 to 5 seeking permission to file written statement. This application is Annexure P/7. The petitioner opposed the said application by filing reply (Annexure P/8).

4. Court below after hearing arguments on this application allowed the said application and permitted the said defendants to file written statement. Impugning this order, Shri Bhadoriya submtis that reasons mentioned in the application (Annexure P/7) cannot be basis for permitting them to file written statement at belated stage. He submits that after the amendment in Order 8 Rule 1 C.P.C in the year 2002, in mechanical manner permission to file written statement cannot be granted at belated stage. He further submits that any

extension of time can be granted only in exceptional circumstances. It cannot be done in a routine and mechanical manner. He strenuously contended that factual backdrop of this matter makes it clear that defendants No. 1 to 5 were fully aware of the pendency of the civil suit. They entered appearance through a common counsel and therefore, reasons assigned by them in application Annexure P/7 are unjust, unreasonable and cannot be a ground for granting time to file written statement. In support of his contention, he relied on 2005 (4) SCC 480 *(Kailash Vs. Nankhu and Ors.),* 2007 (6) SCC 420 *(R.N. Jadi & Borthers and Others)* and 2009 (3) SCC 513 *(Mohammad Yusuf Vs. Faij Mohammad & amp, Ors)*. In addition, he riled (sic:relied) on two unreported judgments of Delhi High Court on the same point.

5. Per Contra, Shri A.V. Bhardwaj, learned counsel for the respondents No. 1 to 6 submits that in view of judgment of Apex Court in *Kailash* (supra) it is clear that Order 8 Rule 1 C.P.C is directory in nature. Directory provisions are made to secure the ends of justice. Procedure and rules made for the said purpose are hand made of justice. Thus, a liberal view needs to be taken in such matters. The Court below has not committed any legal error in allowing the application Annexure P/7. Shri Bhardwaj relied on 2009(1) MPWN SN 34 *(Krishna Bai and others Vs. Arjun Singh and others)* and 2013 (3) SC 594 for this purpose. Reliance on AIR 1984 SC 38 *(Mohd. Yunus , Petitioner v. Mohd. Mustaqim and others)* was made to contend that even an erroneous order need not be interfered with in Article 227 proceedings. No other point is pressed by the parties.

6. I have heard learned counsel for the parties and perused the record.

7. The order 8 Rule 1 C.P.C was amended with effect from 01.07.2002. In the statement of object and reasons of said amendment, it is mentioned that it is introduced " to reduce delay in disposal of civil cases." As per new text of Order 8 Rule 1 C.P.C. it is clear that it is drafted in order to cast obligation on the defendant to file written statement within 30 days from the date of service of summons on him and within the extended time falling within 90 days. Object behind substituting order 8 Rule 1 C.P.C. is to curb the mischief of unscrupulous defendants adopting dilatory tactics, delaying the disposal of cases much to the chagrin of the plaintiffs and petitioners approaching the court for quick relief and also to the serious inconvenience of the court faced with frequent prayers for adjournments. The object is to

expedite the hearing and not to scuttle the same. Pausing here for a moment, it is apt to examine the reasons assigned in the application filed under Section 151 C.P.C (Annexure P/7). It is stated in the said application that erroneously no opportunity is given by court to defendants No. 1 to 5 to file their written statements. After deciding the application under Order 39 Rule 1 & 2 C.P.C, the suit is directly fixed for framing of issues and thereafter for recording of evidence. On 06.07.2012, the counsel for plaintiff raised objection that defendants No. 1 to 5 have not filed their written statements and on hearing that objection record was perused and then defendants came to know that written statement has not been filed by the defendants No. 1 to 5. On these grounds, permission was prayed for. The question is Whether the court below was required to fix the date for the purpose of filing written statement or whether party was obliged to file written statement on its own after receiving notices from the court below?

8. In the opinion of this Court, this point is dealt with in *Kailash* (supra) by the Apex Court. In para 42 the Apex Court opined that Ordinarily, the time schedule prescribed by Order 8 Rule 1 has to be honoured. The defendant should be vigilant. No sooner the writ of summons is served on him he should take steps for drafting his defence and filing the written statement on the appointed date of hearing without waiting for the arrival of the date appointed in the summons for his appearance in the court. The extension of time sought for by the defendant from the court whether within 30 days or 90 days, as the case may be, should not be granted just as a matter of routine and merely for the asking, more so, when the period of 90 days has expired. The extension can be only by way of an exception and for reasons assigned by the defendant and also recorded in writing by the court to its satisfaction. It must be spelled out that a departure from the time schedule prescribed by Order 8 Rule 1 of the Code was being allowed to be made because the circumstances were exceptional, occasioned by reasons beyond the control of the defendant and such extension was required in the interest of justice, and grave injustice would be occasioned if the time was not extended.

9. A plain reading of the finding in *Kailash* (supra) makes it clear that the defendant is obliged to take steps for drafting the defense and filing the written statement immediately upon receiving the writ of summons. This is not in dispute that defendants No. 1 to 5 had received the summons along with other defendants. It is not their case put forth in Annexure P/7 that either summons

were not served on them or were served belatedly. Thus, the contention that Court below had not granted any opportunity to them to file written statement runs contrary to legal position discussed above. At the cost of repetition, in my view whether or not the suit is fixed for filing written statement, it was obligatory on the part of defendant to take steps and file written statement without waiting for the arrival of the date appointed in the summons for his appearance in the court

10. In view of aforesaid, I am unable to hold that Court below in any manner deprived the defendants to file written statement in time. The second reason assigned in Annexure P/7 is totally untenable. Interestingly and admittedly, all the defendants were represented by a common counsel. The said counsel was fully aware as to for which defendants written statement have been filed and for which respondent he failed to file the same. I wonder, how this contention can be advanced that after the objection of plaintiff and on perusal of the record it was found by defendants No.1 to 5 that written statement is not filed by them. The counsel for defendants was the best person to know about factual status of filing of the written statement by the parties. The Court below after recording the reasons shown in Annexure P/7 held as under :-

> " ऐसी परिस्थिति में त्रुटी स्वयं प्रति0 क01 लगायत 5 के द्वारा की गई है एवं वह स्वयं अपने अधिकारों के प्रति जागरूक नहीं रहा है और न ही प्रकरण वादप्रश्नों के लिए नियत किये जाने के स्तर पर उसने इस संबंध में कोई आपत्ति की है किन्तु फिर भी न्यायहित में उभयपक्षों को समुचित सुनवाई का अवसर दिया जाना आवश्यक व न्यायिक मंशानुरूप प्रतीत होता है। अतः प्रकरण की परिस्थितियो पर विचार करते हुए प्रति0 क0 1 लगायत 5 की ओर से प्रस्तुत आवेदन अंतर्गत धारा 151 सी.पी.सी 500 रूपये परिव्यय पर इस निर्देश के साथ स्वीकार किया जाता है कि आगामी नियत दिनांक को प्रति0 क0 1 लगायत 5 अपना जवाबदावा अवश्य रूप से प्रस्तुत करें।"

11. The core issue is whether reasons assigned by the Court below in permitting the defendants No. 1 to 5 to file written statement is in accordance with law? In the opinion of this court, this point is no more res integra. In *Kailash* (supra) Apex Court opined as under :-

> "(v) Though Order 8 Rule 1 CPC is a part of procedural law and hence directory, keeping in view the need for expeditious trial of civil causes which persuaded Parliament to enact the

provision in its present form, it is held that ordinarily the time schedule contained in the provision is to be followed as a rule and departure therefrom would be by way of exception. A prayer for extension of time made by the defendant shall not be granted just as a matter of routine and merely for the asking, more so when the period of 90 days has expired. Extension of time may be allowed by way of an exception, for reasons to be assigned by the defendant and also be placed on record in writing, howsoever briefly, by the court on its being satisfied. Extension of time may be allowed if it is needed to be given for circumstances which are exceptional, occasioned by reasons beyond the control of the defendant and grave injustice would be occasioned if the time was not extended. Costs may be imposed and affidavit or documents in support of the grounds pleaded by the defendant for extension of time may be demanded, depending on the facts and circumstances of a given case."

(Emphasis supplied)

12. The Apex Court in no uncertain terms made it clear that although Order 8 Rule 1 C.P.C is part of procedural law and directory in nature, the permission to file written statement cannot be granted as a matter of routine and merely upon asking. The same view is taken by the Apex Court in 2005 (6) SCC 344 *(Salem Advocate Bar Association, T.N. Vs. Union of India).* The Apex court opined that the provision of Order 8 Rule 1 providing for upper limit of 90 days to file written statement is directory. Having said so, we wish to make it clear that the order extending time to file written statement cannot be made in routine. The time can be extended only in exceptionally hard cases. While extending time, it has to be borne in mind that the legislature has fixed the upper time limit of 90 days. The discretion of the court to extend the time shall not be so frequently and routinely exercised so as to nullify the period fixed by Order 8 Rule 1.

13. In (2007) 6 SCC 420 *(R.N. Jadi and Brothers and Ors. Vs. Subhash Chandra)* the Apex Court opined as under:-

15. A dispensation that makes Order 8 Rule 1 directory, leaving it to the courts to extend the time indiscriminately would tend

to defeat the object sought to be achieved by the amendments to the Code. It is, therefore, necessary to emphasise that the grant of extension of time beyond 30 days is not automatic, that it should be exercised with caution and for adequate reasons and that an extension of time beyond 90 days of the service of summons must be granted only based on a clear satisfaction of the justification for granting such extension, the court being conscious of the fact that even the power of the court for extension inhering in Section 148 of the Code, has also been restricted by the legislature. It would be proper to encourage the belief in litigants that the imperative of Order 8 Rule 1 must be adhered to and that only in rare and exceptional cases, will the breach thereof will be condoned. Such an approach by courts alone can carry forward the legislative intent of avoiding delays or at least in curtailing the delays in the disposal of suits filed in courts. The lament of Lord Denning in *Allen v. Sir Alfred McAlpine & Sons* reported in (1968) 2 QB 229 that law's delays have been intolerable and last so long as to turn justice sour, is true of our legal system as well. Should that state of affairs continue for all times?

14. In (2007) 14 SCC 431 *(Aditya Hotels (P) Ltd. Vs. Bombay Swadeshi Stores)* the Apex Court opined that the extension of time can be granted by way of exception and for reasons to be recorded in writing. It is important to note that Apex Court opined that in no case the defendants be permitted to seek extension of time when there is laxity or gross negligence on the part of the defendant or his counsel. In the present case there is laxity or gross negligence on the part of defendants No. 1 to 5 or his counsel. Judgment of *Kailash* (supra) is again considered in 2014(2) SCC 302 *(Sandeep Thapar Vs. SME Technologies (P) Ltd.)*. In the opinion of this Court, the reasons assigned in Annexure P/7 cannot be treated as exceptional or justifiable reasons. The finding of the court below reproduced in para 10 above shows that trial court has found that there is laxity on the part of defendants No. 1 to 5. No exceptional or special reasons are recorded by the court below while granting opportunity to file written statements. This runs contrary to settled legal position. On the basis of reasons assigned, permission cannot be granted. The impugned order shows that Court has mechanically granted the permission much after 90 days.

15. Although Shri A.V. Bhardwaj stated that the procedural law is handmade of justice and lenient view need to be taken, it is suffice to say that this aspect is dealt with in *Kailash* (supra) by Supreme Court (para 28 to 31). After considering those judgments, the Apex Court opined that the time to file reply cannot be granted as a matter of routine or merely on asking. This view is constantly followed in other judgments mentioned above.

16. On the basis of aforesaid, in my view, the Court below has legally erred in allowing the application Annexure P/7. The impugned order dated 12.10.2011 is accordingly set aside. Application Annexure P/7 is rejected. Petition is allowed. No Costs.

Petition allowed.

I.L.R. [2014] M.P., 2348
WRIT PETITION
Before Mr. Justice Sujoy Paul
W.P. No. 5903/2012 (Gwalior) decided on 11 July, 2014

DATARAM SINGH & ors. ...Petitioners
Vs.
BRINDAWAN SINGH & ors. ...Respondents

A. Constitution - Article 227 - Power of Superintendence **- Held - The basic purpose of exercising the said jurisdiction is to keep the courts below within the bounds of their authority - Interference can be made sparingly for the said purpose and not for correcting error of facts and law in a routine manner. (Para 11)**

क. संविधान – अनुच्छेद 227 – अधीक्षण की शक्ति – अभिनिर्धारित – उक्त अधिकारिता का प्रयोग करने का मूल प्रयोजन, निचले न्यायालयों को अपनी प्राधिकारिता की सीमाओं के भीतर रखना है – उक्त प्रयोजन हेतु हस्तक्षेप, मितव्ययी रुप से करना चाहिए और न कि नैत्यक रुप में तथ्यों और विधि की त्रुटि का सुधार करने के लिये।

B. Civil Procedure Code (5 of 1908), Order 2 Rule 2 - Second Counter Claim **- Court had directed to remove defects in the first counter claim - First counter claim was withdrawn and second counter claim was filed - Held - In view of direction given by Court to remove defects, second counter claim has implied permission of Court - Res-judicata also does not apply. (Para 9)**

ख. सिविल प्रक्रिया संहिता (1908 का 5), आदेश 2 नियम 2 – द्वितीय प्रति दावा – प्रथम प्रति दावा में न्यायालय ने त्रुटियां हटाने के लिये निदेशित किया था – प्रथम प्रति दावा वापस लिया गया और द्वितीय प्रति दावा प्रस्तुत किया गया – अभिनिर्धारित – त्रुटियां हटाने के लिये न्यायालय द्वारा दिये गये निदेश को दृष्टिगत रखते हुए, द्वितीय प्रति दावा को न्यायालय की विवक्षित अनुमति है – पूर्व न्याय भी लागू नहीं होता।

Cases referred :

AIR 1955 SC 425, 1975 (1) SCC 774, (1976) 1 SCC 719, (1984) 3 SCC 46, (2005) 4 SCC 480, (2010) 8 SCC 329.

N.K. Gupta, for the petitioners.
Harish Dixit, for the respondent No.1.

ORDER

SUJOY PAUL, J. :- Parties are in loggerhead on the same issue before this Court for the second time. The petitioners/plaintiffs filed a suit for declaration and permanent injunction. In the said suit, the respondent No.1 filed a fresh counter claim on 23.12.2005 and on the same date withdrew his earlier counter claim. The court below permitted the defendant to file second counter claim. Against the order dated 19.1.2006, whereby second counter claim was permitted to be filed, the present petitioners filed WP No.1940/2006. The order of trial court permitting the defendant to file second counter claim was challenged on the ground that the plaintiffs' objection was not taken into account and considered by the trial court. This Court allowed the petition on 5.4.2007 and opined that the petitioners raised a specific objection that counter claim was not maintainable in view of Order 11 Rules 2 and 3 and Order 23 Rule 1 (4) CPC. The trial court erred in not considering the said objection. The matter was remitted back to the trial court to decide the said application afresh keeping in view the observation made by this Court in WP No. 1940/2006.

2. The parties again advanced arguments on application filed under Order 7 Rule 11 CPC. By impugned order dated 9.7.2012, the said application is rejected and counter claim is permitted to be filed.

3. Shri N.K.Gupta, learned counsel for the petitioners submits that the counter claim needs to be treated as a plaint in view of Order 8 Rule 6-A(2) CPC. By placing reliance on Order 2 Rule 2 CPC, it is submitted that the defendants' second counter claim is hit by principle of *res judicata.* Lastly, it

is submitted that as per Order 23 Rule 1 (3) and (4), the court below has erred in permitting the defendants to file second counter claim. He submits that in absence of permission to file second claim at the time of withdrawal of first claim, filing of second claim was impermissible.

4. Per Contra, Shri Harish Dixit, learned counsel for the respondent No.1 supported the order passed by the court below. By drawing attention on the order sheets, Annexure P-2, it is submitted that the first counter claim had certain defects. The names of parties were not properly mentioned and, therefore, the trial court on 7.11.2005 directed the defendants to correct the same. In turn, on 23.12.2005, a proper counter claim with correct details was filed. After filing the second counter claim, earlier claim was not pressed on the same date. In this situation, Shri Dixit submits that Order 23 Rule 1 CPC has no application. No other point is pressed by the parties.

5. I have heard learned counsel for the parties and perused the record.

6. In the impugned order, the court below has recorded that on 7.11.2005, the defendant was directed to furnish complete details of the parties which must include the father's name and address etc. In turn, the defendant filed a new counter claim on 23.12.2005 and withdrew/ not pressed his earlier counter claim. The court below opined that in the aforesaid circumstances, it is clear that the second counter claim was filed pursuant to the directions of the court and, therefore, it cannot be assumed that second counter claim cannot be filed.

7. The order sheet dated 23.12.2005, Annexure P-2, shows that a fresh counter claim was filed by the defendants and copy thereof was supplied to the plaintiffs. Lateron, on the same day, the first counter claim was rejected as not pressed. Shri Gupta has not disputed the finding of court below inasmuch as it is recorded that the court below itself directed on 7.11.2005 to correct the counter claim. The defendants thought it proper to file a duly typed newcounter claim containing correct details of the parties. Thus, the second counter claim is in fact filed pursuant to the directions of the court dated 7.11.2005.

8. Order 23 Rule 1 (3) and (4) CPC reads as under :-

"Order 23 Rule 1 (3) - Where the Court is satisfied,--

(a) that a suit must fail by reason of some formal defect, or

(b) that there are sufficient grounds for allowing the plaintiff to institute a fresh suit for the subject-matter of a suit or part of a claim.

It may, on such terms as it thinks fit, grant the plaintiff permission to withdraw from such suit or such part of the claim with liberty to institute a fresh suit in respect of the subject-matter of such suit or such part of the claim.

(4) Where the plaintiff--

(a) abandons any suit or part of claim under sub-rule (1), or

(b) withdraws from a suit or part of a claim without the permission referred to in sub-rule (3),

he shall be liable for such costs as the Court may award and shall be precluded from instituting any fresh suit in respect of such subject-matter or such part of the claim."

9. No doubt, normally grant of permission to the plaintiff to withdraw from the suit is necessary. The liberty is also required to be given to institute another suit. However, in the peculiar facts of this case, it is clear that the second counter claim is filed to meet the direction of the court dated 7.11.2005. Thus, in this peculiar situation, it can be assumed that the second counter claim has an implied permission of the Court. In other words, the second counter claim is filed in order to remove the defects directed to be removed by court order dated 7.11.2005. Thus, in the peculiar facts of this case, it cannot be said that the court below has taken any incorrect view. The court below has also held that in the first counter claim, the names of parties were not properly described and, therefore, second counter claim was filed. Thus, neither principle of res judicata is attracted nor second counter claim is hit by Order 2 Rules 2 and 3 CPC.

10. In the opinion of this Court, the court below has taken a view to advance the cause of justice and did not permit itself to be strangulated by hyper-technicalities. This is settled in law that all the rules of procedure are the handmaid of justice. The Apex Court in AIR 1955 SC 425 *(Sangram Singh v. Election Tribunal, Kotah)* opined that A code of procedure must be regarded as such. It is "procedure", something designed to facilitate justice and further its ends: not a penal enactment for punishment and penalties; not a thing designed to trip people

up. Too technical a construction of sections that leaves no room for reasonable elasticity of interpretation should therefore be guarded against. The Apex Court in 1975 (1) SCC 774 *(Sushil Kumar Sen v. State of Bihar)* opined that the mortality of justice at the hands of law troubles a judge's conscience and points an angry interrogation at the law reformer. The processual law so dominates in certain systems as to overpower substantive rights and substantial justice. The humanist rule that procedure should be the handmaid, not the mistress, of legal justice compels consideration of vesting a residuary power in judges to act ex debito justitiae where the tragic sequel otherwise would be wholly inequitable. Justice is the goal of jurisprudence – processual, as much as substantive. In (1976) 1 SCC 719 *(State of Punjab v. Shamlal Murari)*, the Apex Court held that processual law is not to be a tyrant but a servant, not an obstruction but an aid to justice. Procedural prescriptions are the handmaid and not the mistress, a lubricant, not a resistant in the administration of justice. In (1984) 3 SCC 46 *(Ghanshyam Dass v. Dominion of India)* the Apex Court reiterated the need for interpreting a part of the adjective law dealing with procedure alone in such a manner as to subserve and advance the cause of justice rather than to defeat it as all the laws of procedure are based on this principle. In (2005) 4 SCC 480 *(Kailash vs. Nanhku and others)* the Apex Court held that the provisions of CPC or any other procedural enactment ought not to be construed in a manner which would leave the court helpless to meet extraordinary situations in the ends of justice.

11. In the light of aforesaid judgments, in the opinion of this Court, the court below has passed the impugned order in accordance with law in order to serve the cause of justice. The scope of interference under Article 227 of the Constitution is limited. Interference can be made if order is shown to be passed by a Court having no jurisdiction, it suffers from manifest procedural impropriety or perversity. Even an erroneous order is not required to be corrected in these proceedings under Article 227 of the Constitution. The basic purpose of exercising the said jurisdiction is to keep the courts below within the bounds of their authority. Interference can be made sparingly for the said purpose and not for correcting error of facts and law in a routine manner. Another view is possible, is not a ground for interference. This view is taken in *Shalini Shyam Shetty and another Vs. Rajendra Shankar Patil* reported in (2010) 8 SCC 329.

12. In the present case, there is no ingredient on which interference can be made. Petition fails and is hereby dismissed. No cost.

Petition dismissed.

I.L.R. [2014] M.P., 2353
WRIT PETITION
Before Mr. Justice Sujoy Paul
W.P. No. 4056/2014 (Gwalior) decided on 14 July, 2014

HOTEL ADITYAZ LIMITED ...Petitioner
Vs.
MADHYA PRADESH KSHETRA VIDYUT
VITRAN CO. LTD. & ors. ...Respondents

A. ***Constitution - Article 226 - Writ Jurisdiction*** **- Held - Highly disputed questions of fact cannot be adjudicated in a writ petition.**
(Para 25)

क. *संविधान – अनुच्छेद 226 – रिट अधिकारिता* – अभिनिर्धारित – रिट याचिका में तथ्यों के अत्याधिक विवादित प्रश्नों को न्यायनिर्णित नहीं किया जा सकता।

B. ***Electricity Act (36 of 2003), Sections 126 & 135 - Investigation and Enforcement*** **- Provision u/s 126 & 135 operates in different field - Theft is governed by Section 135 and not 126 - Petition dismissed.**
(Para 17)

ख. *विद्युत अधिनियम (2003 का 36), धाराऐं 126 व 135 – जांच और प्रवर्तन* – धारा 126 व 135 के उपबंध भिन्न क्षेत्र में प्रवर्तित होते हैं – चोरी, धारा 135 द्वारा शासित होती है और न कि 126 द्वारा – याचिका खारिज।

Cases referred :

1988 JLJ 110, 1982 MPLJ 623, 1992(2) MPWN 277, 1988 JLJ 450, Civil Appeal No. 4023/2014 decided on 26.03.2014, (2012) 2 SCC 108, 1993 MPLJ 901, (2000) 4 SCC 285, (1995) 2 SCC 570, 2011(3) MPHT 479.

D.K. Katare with *M.B. Mangal,* for the petitioner.
Vivek Jain, for the respondents.

ORDER

SUJOY PAUL, J. :- This petition filed under Article 226 of the Constitution challenges the supplementary electricity bill dated 1.7.2014

(Annexure P/1), the Panchnama (Annexure P/2) and the interim assessment of tariff (Annexure P/3).

2. The facts as canvassed by Shri D.K.Katare, learned counsel for the petitioner are that petitioner Hotel Adityas Ltd., is a registered company under the Companies Act, 1956. The petitioner obtained high tension connection of 300 KV through service connection. The petitioner is paying monthly electricity bill regularly. It is stated that while giving high tension connection of 300 KV to the hotel, the service meter is installed on the electric poll, which is near to the outer gate of hotel premises. It is situated in an open space and is near about 70 ft. away from the hotel premises. The height of electric poll is 20 ft. and it is on the public place, not approachable by particular individual. For installation and providing supply of high tension connection of 300 KV, it is essential to install the CT/PT Box. This box is installed at the height of 20 ft. and is attached with high tension line of 33 KV. It is submitted that the box is covered and sealed by the respondent-authorities, which cannot be approached by any individual except the expert authorities of respondent-company. It is the case of the petitioner that before approaching the CT/PT Box, 33 KV line needs to be shut down with the prior permission of Superintending Engineer. The CT/PT box was sealed by officials of the respondents. The respondents used to conduct regular inspection of the hotel. A MR report is submitted by the team of respondent-company. The latest MR reports for the months of May and June, 2014 are filed as Annexures P/5 and P/6. Relying on Annexures P/5 and P/6, it is contended that on the date of inspection, i.e., 1.5.2014 and 1.6.2014, no deficiency or fault was found which clearly demonstrates that there was no tampering in the service line or in CT/PT box. In addition, it is urged that annual inspections by higher authority of department were conducted and during these inspections also no fault was found in the premises. It is submitted that annual inspection report is not supplied to the petitioner.

3. Shri D.K.Katare, learned counsel for the petitioner has taken pains to submit that the documents Annexure R/5, dated 9.7.2013, 20.6.2014, 12.8.2011 and 24.4.2013 show that the sealing arrangement was found as "same". There are two heads in these documents, namely, HT meter checking/ testing proforma. The heads are "as found" and "as provided". Shri Katare submits that against the heading "as found", the team has given the finding that "it was same as provided". If continuously till 20.6.2014 (Annexure R/6) everything is found "same as provided", it is clear that there is some malicious

act because of which it is alleged by the respondents that there is some tampering in the secondary box of CT/PT unit. In addition, it is submitted that one Shri Nitin Manglik, Divisional Engineer of respondent-department organized a party in the petitioner hotel on 1.5.2013. There was some quarrel between Shri Manglik and the staff of hotel. Said Shri Manglik lodged a complaint before Consumer Forum, which was ultimately rejected by Forum on 13.9.2013. Shri Katare submits that Shri Manglik had threatened the employees of hotel that the hotel will have to face consequences for the said incident. It is submitted that the impugned documents are outcome of the said incident and an example of vengeance of Shri Manglik.

4. It is urged that on 30.6.2014, a Panchnama was allegedly prepared and on the next day, i.e. on 1.7.2014, the General Manager of the hotel was called in the office of the respondents. His signatures were obtained and copy of supplementary bill (Annexure P/1) was furnished to him. Thereafter, the petitioner submitted representation (Annexure P/8) for furnishing copy of MR report, annual report and documents on which signatures of Manager of petitioner company were obtained. Thereafter, the petitioner submitted another detailed representation dated 5.7.2014 stating that the whole action is based on malafide and ulterior motive to harm the petitioner.

5. Shri Katare further submits that on the date of inspection/raid, CT/PT box was not removed in the presence of any employee of the petitioner company. Shri Katare assailed the action on the grounds that the inspection report filed with the return makes it clear that everything was found in order. It was duly certified and, therefore, the whole action is per se illegal and malafide; the CT/PT box cannot be tampered by the petitioner. It is connected with 33 KV line. Unless the said line is shut down, nobody can approach the CT/PT box. The line can be shut down only by respondents and, therefore, the act of tampering in CT/PT box cannot be attributed to the petitioner. It is urged that there is no assessment by the electrical inspector and, therefore, the figure arrived at in supplementary bill, Annexure P-1, is bad in law. Reliance is placed on Clause 10.2.3.2 of M.P.Electricity Supply Code, 2014 (for brevity, the 'Code'). It is further submitted that the determination of the figure in Annexure P-1 is arbitrary and runs contrary to clause 10.2.3.2 of the Code. It is urged that the allegation of tampering in CT/PT box or breaking of the seal can be ascertained only after examination of CT/PT box by the laboratory. Before undertaking aforesaid exercise of examination by laboratory, the

assessment and imposition of a bill to the tune of Rs. 1,11,30,271. 33 paise is wholly arbitrary and impermissible. It is further submitted that the action of the respondents runs contrary to Section 126 of the Electricity Act, 2003 (for brevity, the 'Act') and clause 9.1.1 of the Code. Shri Katare submits that along with the return, the respondents have filed the document dated 9.7.2014 (Annexure R/1), whereby petitioner's representation dated 5.7.2014 is rejected. This runs contrary to Section 126(3) of the Act.

6. Lastly, it is urged that the petitioner has a right to run business and earn livelihood. This fundamental right flowing from Article 19(1)(g) of the Constitution is taken away by disconnecting the electricity supply since 30.6.2014. This seriously affects the business and livelihood of the employees dependent on the company. It is submitted that unless the petitioner is found guilty by a court of competent jurisdiction, the electricity supply cannot be disconnected. Shri Katare in support of his contentions relied on the judgments of Supreme Court, reported in 1988 JLJ 110 *(M.P.Electricity Board & others vs. Smt. Basanti Bai)*. He also relied on 1982 MPLJ 623 *(Hamidullah Khan vs. The Chairman, Madhya Pradesh Electricity Board and others)*. These judgments are relied on to bolster the contention that without referring the matter about correctness of recording of consumption by meter by electrical inspector, the action of Board in deciding that the meter was incorrect, is bad in law. He also relied on 1992 (2) MPWN 277 *(Hotel Utsav (M/s) v. M.P.E.B.)*. He also relied on 1988 JLJ 450 *(Maina Swamy (Smt.) v. State of MP and others)*. It is submitted that the dispute, which is of highly technical nature, must be decided by technical authority/ electrical inspector.

7. On the other hand, Shri Vivek Jain, learned counsel for the respondents submits that the CT/PT box and meter was installed inside the main gate of hotel premises on a structure of about 23 ft. height. The installation was in such a manner that 33 KV line approaches the DP structure and the lines do not go directly to the meter. As compared to it, low tension connection where the supply lines directly go to the meter and then to the load, in high tension connection the lines first go to CT/PT box, which diverts the power to the load and also diverts proportionate power to the meter. It is stated that in petitioner's hotel, the CT/PT box was installed at the top of DP structure whereas the meter was installed at low level of said structure at eye level. Wires/Cable comes from CT/PT to the meter. Any interference with CT/ PT has a direct effect on the amount of power coming to the meter and thus affects recording of meter consumption. It is specifically pleaded that the DP

structure, CT/PT box and meter are inside the hotel main gate and in the compound of the hotel. It cannot be approached by a common person or outsider without permission and knowledge of the hotel management. The installation report of CT/PT box is filed as Annexure R-1. At the time of installation, the CT/PT box was sealed by a lead seal as well as by a paper seal.

8. The respondents have stated that a theft of electricity was detected in the hotel premises during inspection carried out on 30.6.2014. The videography was undertaken and photographs of the entire happenings were also taken. An additional circuit was found attached to the secondary box of CT/PT Unit, from which the current and voltage going to the meter could be stopped and regulated. The photographs are filed as Annexure R/2 to demonstrate the height, location and size of CT/PT box. The photographs throw light as to how a tampering is made in the CT/PT secondary box. In Annexure R/2, a healthy CT/PT box is shown and below it, the tampered CT/PT box in question is shown. This contains an additional device by which alleged tampering had taken place. Shri Vivek Jain strenuously contended that the entire CT/PT box was taken out by means of a crane and sealed after seizure. The electrician of the hotel, namely, Sunil Sharma signed on the Panchnama. He denied the allegation of the petitioner that the entire exercise of 30.6.2014 was conducted behind the back of the petitioner\. He submits that Annexures R/5, R/6 and R/7, on which Shri Katare relied, contain the signatures of same Sunil Sharma, the hotel representative. Shri Jain submits that he is relying on reports, Annexures R/5 to R/7, submitting that these are correct and in hotel's favour but denying that nobody was present during preparation of Panchnama. By taking this Court to the Panchnama, Annexure P/2, it is submitted that same Sunil Sharma was present on behalf of the petitioner and he even obtained the copy of Panchnama. It is submitted that no physical visit as alleged had taken place in petitioner's premises every month. Now a days, meter reading is done every month by automatic meter reading instrument. This instrument sends data by modem to the concerned office of respondent. Physical visit to consumer premises is not required. By taking this Court to Annexures R/5 to R/7, Shri Vivek Jain submits that sealing arrangement is examined in relation to meter box (outer and inner), MD Knob, Meter Terminal Box, TTB and Meter Body. The CT/PT box is also called as ME Box. He submits that entry regarding ME Secondary Box and ME Body is kept blank, which shows that

there is no certification of its correctness or non-tampering by the respondents.

9. At this stage, this Court asked Shri Katare whether he is disputing that CT/PT box and ME Secondary Box/Body are same. He said that he is not disputing the same.

10. Shri Jain by taking this Court to various paragraphs of his reply stated that there is no illegality in the action of the respondents which warrants interference by this Court under Article 226 of the Constitution. He submits that the case of the petitioner falls within the ambit of Section 135 of the Act and not under Section 126 of the Act. It is stated that the disconnection of electricity is not without authority of law. He placed reliance on various sections of the Act. He submits that this being the case of theft and dishonesty, the petitioner is properly dealt with as per various provisions of the Act and Code. Dealing with the question of assessment, it is urged that the assessment of the unit has been done by taking the units at 1.5 times as mentioned in the assessment sheet itself. The billing of the units so obtained has to be made at twice rate as per Section 154 of the Act. The petitioner has erroneously interpreted it. The billing needs to be made at twice rate, while the units will be arrived at 1.5 times. Reliance is placed on Chapter 10 of the Code and Sections 155 and 154 of the Act. The allegations of malafide are specifically denied. It is submitted that there is no thread relation between the incident of Shri Manglik and the action impugned herein. It is submitted that Shri Manglik is Incharge of different projects and has no connection or control on the consumption related aspects of distribution and vigilance etc. Shri Jain also relied on certain judgments.

11. No other point is pressed by the parties.

12. I have heard learned counsel for the parties and perused the record.

13. In the aforesaid factual backdrop, the case can be divided into two compartments. The first compartment is regarding the facts of the matter. It is regarding the aspect whether the meter, CT/PT box etc. were found to be in order by the various inspection teams. The rival contentions advanced show that there is a diametrically opposite stand taken by the parties in this regard. Prima facie, Annexure R/5 to R/7 show that there is no certification by the respondents regarding CT/PT and its secondary box. This is a highly disputed question of fact, which can be established by leading evidence. Similarly, stand of petitioner that meter reading was done on periodical basis, inspection was

carried out and everything was found to be in order, is also specifically disputed. This is also a highly disputed question of fact. Similarly, in view of stand of Shri Jain that 33 KV line was shut down during last one year on many occasions, it is not possible to give any finding whether the alleged manipulation or act of dishonesty was done during this period or otherwise. The location of the poll, in which CT/PT box is installed etc. and whether inspection was carried out in presence of hotel staff and whether signatory of Panchnama and other documents has any relation with hotel are also purely questions of fact which needs to be established by the parties before the court of competent jurisdiction. This is trite in law that disputed questions of fact cannot be gone into and examined in a writ petition.

14. The second compartment is regarding legal and jurisdictional aspect. It is strenuously contended by Shri Katare that in the present case the mandate of Section 126 of the Act is not followed. The exorbitant supplementary bill is prepared, which runs contrary to the Act and Code. The electricity connection is disconnected without authority of law, which hits his fundamental right founded upon Article 19(1)(g) of the Constitution. This aspect needs consideration.

15. By relying on the judgments in *Smt. Basanti Bai, Hamidullah Khan and Hotel Utsav* (supra), it is urged that a dispute of technical nature can be decided only by technical inspector. In absence of a decision taken by technical inspector, the entire action is bad in law and impermissible. In the opinion of this Court, the aforesaid judgments relied by petitioner are based on erstwhile Electricity Act of 1910. On introduction of 2003 Act, the said Act is no more applicable. The interpretation of this Court in various judgments including in *Smt. Basanti Bai* (supra) is based on 1910 Act. However, the Apex Court opined as under :-

> *"If there is an allegation of fraud committed by the consumer in tampering with the meter or manipulating the supply line or breaking the body seal of the meter resulting in not registering the amount of energy supplied to the consumer or the electrical quantity contained in the supply, such a dispute does not fall within the purview of sub-section (6) of section 26. Such a dispute regarding the commission of fraud in tampering with the meter and breaking the body seal is outside the ambit of section 26(6)*

of the said Act. An Electrical Inspector has, therefore, no jurisdiction to decide such case of fraud."

16. The case of *Smt. Basanti Bai* (supra) is recently considered by Supreme Court in Civil Appeal No. 4023/2014 *(Western Elect. Supp.Co. Of Orissa vs. M/s Baba Baijnath Roller & Flour Ltd.)*, decided on 26.3.2014. The Apex Court opined as under :-

"Section 26 is relevant only when there is any difference or a dispute arises in connection with correctness of a meter, in that case the matter shall be decided, upon being applied by either party, by an Electrical Inspector and in the opinion of the Inspector if it is found that the meter is defective, the Inspector shall estimate the amount of energy supplied to the consumer or the electrical quantity contained in the supply during such time not exceeding six months but if there is a question of fraud in tampering with the meter, in that case there is no question of applicability of Section 26 of the said Act in such a matter.

In two decisions of this Court in M.P.Electricity Board v. Basantibai [1988 (1) SCC 23] and J.M.D. Alloys Ltd. v. Bihar SEB [2003 (5) SCC 226] it has been held that in cases of tampering or theft or pilferage of electricity, the demand raised falls outside the scope of section 26 of the Electricity Act. If that is so, neither the limitation period mentioned in Section 26 of the Electricity Act nor the procedure for raising demand for electricity consumed would arise at all. In this view of the matter, that part of the order of the Division Bench of the High Court, directing that there should be a reference to the Electrical Inspector, shall stand set aside."

In the light of this judgment also, it is clear that Section 26 of 1910 Act and Section 126 of 2003 Act have no application in cases of dishonesty and electricity theft.

17. It is profitable to mention here that in Electricity Act 2003, Section 126 finds place in Chapter – Part XII with the heading "Investigation and Enforcement", whereas Section 135 is in Part XIV under the heading "offences

and penalties". Upon their plain reading, the marked differences in the contents of Sections 126 and 135 of the 2003 Act are obvious. They are distinct and different provisions which operate in different fields and have no common premise in law. It can be noticed that Sections 126 and 127 of the 2003 Act read together constitute a complete code in themselves covering all relevant considerations for passing of an order of assessment in cases which do not fall under Section 135 of the 2003 Act. Section 135 of the 2003 Act falls under Part XIV relating to "offences and penalties" and title of the section is "theft of electricity". The section opens with the words "whoever, dishonesty" does any or all of the acts specified under clauses (a) to (e) of sub-section (1) of Section 135 of the 2003 Act so as to abstract or consume or use electricity shall be punishable for imprisonment for a term which may extend to three years or with fine or with both. Besides imposition of punishment as specified under these provisions or the proviso thereto, sub-section (1-A) of Section 135 of the 2003 Act provides that without prejudice to the provisions of the 2003 Act, the licensee or supplier, as the case may be, through officer of rank authorised in this behalf by the appropriate commission, may immediately disconnect the supply of electricity and even take other measures enumerated under sub-sections (2) to (4) of the said section. Section 126 of the 2003 Act would be applicable to the cases where there is no theft of electricity but the electricity is being consumed in violation of the terms and conditions of supply leading to malpractices which may squarely fall within the expression "unauthorised use of electricity". This assessment/proceedings would commence with the inspection of the premises by an assessing officer and recording of a finding that such consumer is indulging in an "unauthorised use of electricity". Then the assessing officer shall provisionally assess, to the best of his judgment, the electricity charges payable by such consumer, as well as pass a provisional assessment order in terms of Section 126(2) of the 2003 Act. Section 135 of the 2003 Act deals with an offence of theft of electricity and the penalty that can be imposed for such theft. This squarely falls within the dimensions of criminal jurisprudence and mens rea is one of the relevant factors for finding a case of theft. On the contrary, Section 126 of the 2003 Act does not speak of any criminal intendment and is primarily an action and remedy available under the civil law. Thus, it would be clear that the expression "unauthorised use of electricity" under Section 126 of the 2003 Act deals with cases of unauthorised use, even in the absence of intention. These cases would certainly be different from cases where there is dishonest abstraction

of electricity by any of the methods enlisted under Section 135 of the 2003 Act. A clear example would be, where a consumer has used excessive load as against the installed load simpliciter and there is violation of the terms and conditions of supply, then, the case would fall under Section 126 of the 2003 Act. On the other hand, where a consumer, by any of the means and methods as specified under Sections 135(a) to 135(e) of the 2003 Act, has abstracted energy with dishonest intention and without authorisation, like providing for a direct connection bypassing the installed meter, the case would fall under Section 135 of the Act. Therefore, there is a clear distinction between the cases that would fall under Section 126 of the 2003 Act on the one hand and Section 135 of the 2003 Act on the other. There is no commonality between them in law. They operate in different and distinct fields. The assessing officer has been vested with the powers to pass provisional and final order of assessment in cases of unauthorised use of electricity and cases of consumption of electricity beyond contracted load will squarely fall under such power. The legislative intention is to cover the cases of malpractices and unauthorised use of electricity and then theft which is governed by the provisions of Section 135 of the 2003 Act. This view is taken by Supreme Court in *Southern Electricity Supply Co. of Orissa Ltd. v. Sri Seetaram Rice Mill,* (2012) 2 SCC 108.

18. In the present case, it is apparent that the allegations against the petitioner fall within the ambit of Section 135 of the Act. The opening words of Section 135 are that "whoever, dishonestly does any or all of the acts specified under Section 135 of the Act". Since the impugned orders are in the realm of Section 135, Section 126 of the Act has no application in the present case. Thus, reliance on Section 26 of 1910 Act and Section 126 of 2003 Act is misconceived. Apart from this, under Section 135, there is no scope of preferring representation to respondents. Hence, decision on any such representation by Annexure R/11 dated 9.7.2011 is of no consequence. More so, when validity of this rejection is not called in question.

19. The Apex Court in *Sri Seetaram Rice Mill* (supra) has clarified the distinction between Sections 126 and 135 of 2003 Act. In Part XV of 2003 Act, Special Courts are constituted. Section 153 deals with constitution of Special Courts. Section 154 envisages the procedure and power of Special Courts. Sub-section (5) of Section 154 gives exclusive power to Special Court to determine the "civil liability" against consumer or a person in terms of money for theft of energy, which shall not be less than an amount equivalent to two

times of the tariff rate applicable for a period of 12 months preceding the date of detection of theft of energy or the exact period of theft if determined, whichever is less. The said Court needs to determine the amount of 'civil liability' for the purpose of its recovery. Sub-section (6) makes it clear that in the event amount so recovered is less than the determination, the excess amount can be recovered. If amount so recovered is more than the determination, it shall be refunded by the Board or licensee within fortnight. "Civil Liability" is defined in the Explanation appended to sub-section (5) aforesaid. It reads as under :-

> *"Explanation.- For the purposes of this section, "civil liability" means loss or damage incurred by the Board or licensee or the concerned person, as the case may be, due to the commission of an offence referred to in sections 135 to 139."*

20. A conjoint reading of Section 154 of the Act and clause 10.2.3.2 and 10.2.5 of the Code shows that the respondents are equipped with the power to prepare supplementary bill and determine the amount to be mentioned in the supplementary bill. The special provision is made in the Electricity Act whereby giving power to the Special Court to determine the quantum of "civil liability". The Special Court will determine the actual amount and in the event any excess amount is recovered from the customer, it needs to be refunded. This is settled in law that if a Statute provides that a thing needs to be done in a particular manner, it has to be done in the same manner. Since Section 126 of the Act has no application in the fact situation of this case, the grievance of the petitioner can be taken care of in Part XIV and XV of the aforesaid Act. In *Sri Seetaram Rice Mill* (supra), the Apex Court opined that writ courts normally should only deal with primary question of jurisdiction or the matter which goes to the very root of the jurisdiction and where the authorities have acted beyond the provisions of the Act. It is made clear in the said judgment that "it should only be for the specialized Tribunal or appellate authorities to examine the merit of assessment or even factual matrix of the case (para 86). In para 57, the Apex Court opined that it would have been proper for the High Court to remand the matter to competent authority for its adjudication on merits in accordance with law. The High Court is not obliged to determine the validity of the demand which squarely fell within the domain of specialized authority. At the cost of repetition, the Apex Court opined that High Court should have remanded the case to the concerned officer with a direction to

the consumer to file its objection including non-applicability of the tariff before the assessing authority and for determination in accordance with law.

21. Considering the aforesaid, I am not inclined to enter into the question of determination of amount and deem it proper to leave it for the Special Court to undertake this exercise.

22. Reliance is placed on 1993 MPLJ 901 *(Harsh Wood Products Pvt. Ltd. vs. State of Madhya Pradesh and others)*, to canvass that unless allegations of theft are established, electricity connection cannot be disconnected. In the opinion of this Court, this judgment is also based on certain provisions of Electricity Act (9 of 1910). In 2003 Act, a special provision is made in this regard, which reads as under:-

> *"(1A) Without prejudice to the provisions of this Act, the licensee or supplier, as the case may be, may, upon detection of such theft of electricity, immediately disconnect the supply of electricity;*
>
> *Provided that only such officer of the licensee or supplier, as authorised for the purpose by the Appropriate Commission or any other officer of the licensee or supplier, as the case may be, of the rank higher than the rank so authorised shall disconnect the supply line of electricity."*

The above quoted provision gives statutory power to the authorities to disconnect the connection in certain circumstances. This power is recognised by Supreme Court in *Sri Seetaram Rice Mill* (supra). At the time of decision of *Harsh Wood Products* (supra), 2003 Act did not come into force and there was no such enabling provision like (1A) aforesaid. In view of this enabling provision, I am unable to hold that action of respondent is without authority of law. The earlier judgment is clearly distinguishable.

23. The constitutionality of aforesaid enabling provision is not under challenge. This provision gives power of disconnection. This is settled in law that in absence of challenging the enabling provision, Courts must treat it a valid provision. See, (2000) 4 SCC 285 *(Molar Mal (Dead) Through Lrs. vs. Kay Iron Works (P) Ltd.)*.

24. So far allegation of malafide is concerned, there is no material on record to establish the relation between the incident of Shri Nitin Manglik with the

impugned orders/action: Shri Nitin Manglik is not impleaded eo nominae. In absence thereof, the allegation of malafide cannot be entertained. Kindly see, (1995) 2 SCC 570 *(State of Punjab and others vs. Chaman Lal Goyal)*. A Division Bench of this Court in 2011 (3) MPHT 479 *(Bhagwat Singh Verma vs. State of MP & others)* gave the same opinion.

25. In nutshell, the stand of the parties shows that there are highly disputed questions of fact involved, which cannot be adjudicated in a writ petition. Section 126 has no application in the present case. Section 135 squarely covers the matter. There are Special Courts established for deciding the cases relating to dishonesty and electricity theft. The petitioner will get full opportunity of defence in those proceedings. The said Special Court will determine the question of "civil liability". Thus, no case is made out for interference by this Court under Article 226 of the Constitution. It is made clear that this Court has not given any finding on the merits of the case.

26. For the reasons stated above, interference and admission is declined. Petition is dismissed. No costs.

Petition dismissed.

I.L.R. [2014] M.P., 2365
APPELLATE CIVIL
Before Mr. Justice M.C. Garg
M.A. No. 635/2004 (Jabalpur) decided on 18 March, 2013

MAHABIR SEN & anr. ...Appellants
Vs.
VIJAY SINGH & anr. ...Respondents

A. ***Workmen's Compensation Act (8 of 1923), Section 10, Motor Vehicles Act (59 of 1988), Section 166 - Res-judicata*** **- Claimants filed claim petition before Motor Accident Claims Tribunal which was dismissed with finding that as driver/son of claimants himself was at fault therefore they are not entitled for compensation - Further liberty was given by Tribunal that of claimants want they can approach Commissioner under Workmen's Compensation Act as MACT does not have any jurisdiction in matter - Commissioner dismissed the claim as barred by principle of Res-judicata - Held - Commissioner committed**

error by holding that order passed by MACT amounts to Res-judicata - Claim was maintainable. (Paras 15-18)

क. कर्मकार प्रतिकर अधिनियम(1923 का 8), धारा 10, मोटर यान अधिनियम (1988 का 59), धारा 166 – पूर्व न्याय – दावाकर्ताओं ने मोटर दुर्घटना दावा अधिकरण के समक्ष दावा याचिका प्रस्तुत की जिसे इस निष्कर्ष के साथ खारिज किया गया कि, चूंकि वाहन चालक/दावाकर्ताओं का पुत्र स्वयं दोषी था, इसलिए वे प्रतिकर के हकदार नहीं – अधिकरण द्वारा इसके अतिरिक्त यह स्वतंत्रता दी गई कि यदि दावाकर्ता चाहे तो वे कर्मकार प्रतिकर अधिनियम के अंतर्गत आयुक्त के समक्ष जा सकते हैं क्योंकि मामले में मोटर दुर्घटना दावा अधिकरण को कोई अधिकारिता नहीं – पूर्व न्याय के सिद्धांत द्वारा वर्जित मानते हुए आयुक्त ने दावा खारिज किया – अभिनिर्धारित – आयुक्त ने मोटर दुर्घटना दावा अधिकरण द्वारा पारित किये गये आदेश को पूर्व न्याय की कोटि में आना अभिनिर्धारित करके भूल कारित की है – दावा पोषणीय था।

***B. Limitation Act (36 of 1963), Sections 5 & 14 - Consideration of delay* - Since the issue has not been dealt with in the spirit of Section 14 of the Limitation Act - This question be decided by the Commissioner for Workmen's Compensation Act - Appeal is allowed - Parties are directed to appear before the Commissioner who would decide the claim petition on merits. (Para 19)**

ख. परिसीमा अधिनियम (1963 का 36), धाराऐं 5 व 14 – विलम्ब पर विचार – चूंकि विवाद्यक को परिसीमा अधिनियम की धारा 14 के आशय अनुसार नहीं निपटाया गया – इस प्रश्न को कर्मकार प्रतिकर अधिनियम हेतु आयुक्त द्वारा निर्णित किया जावे – अपील मंजूर – पक्षकारों को निदेशित किया गया कि वे आयुक्त के समक्ष उपस्थित होवें, जो दावा याचिका को गुणदोषों पर निर्णित करेगा।

Cases referred :

1995 ACJ 760, 2005 STPL (Comp.) 791 MP, AIR 1966 SC 1332(1).

Abhishek Gulati, for the appellants.
Kanak Gaharwar, for the respondent No. 1.
Amrit Ruprah, for the respondent No. 2.

ORDER

M.C. GARG, J. :- The appellant is aggrieved of the order passed by the Motor Accident Claims Tribunal, Rewa, who has been pleased to dismiss the claim petition as filed by the appellants on the ground of res-judicata and also on the ground that it was barred by limitation.

2. This Court while admitting the appeal framed following substantial question of law for deciding this appeal i.e: -

1. "Whether the learned Commissioner under Workmen's Compensation Act committed substantial error of law in holding that the order passed by Motor Accidents Claims Tribunal holding the application filed under Section 166 of the Motor Vehicles Act to be not maintainable amounts to res judicate(sic: judicata)?

2. Whether in view of Section 14 of the Indian Limitation Act, the claim petition filed under Workmen's compensation Act can be said to be barred by limitation? If so, whether the delay in view of Section 10 of Workmen's Compensation Act is liable to be condoned.

3. Whether the claim petition filed under Workmen's Compensation Act could be dismissed when the Commissioner has come to the conclusion that the accident has occurred arising out of and during the course of employment?

4. Whether the claim petition filed by appellants before the Commissioner was barred under Section 167 of Motor Vehicles Act?"

3. To appreciate the contention of the learned counsel for the parties it would be necessary to take note of some brief facts.

4. The appellants, who are the parents of Late Ramesh Sen @ Lalla claimed compensation under the Motor Vehicles Act before the Motor Accidents Claim Tribunal with respect to the compensation to be awarded on account of the death of Late Ramesh Sen @ Lalla, who was aged about 19 years when he succumbed to the fatal injuries, which were caused to him while driving Jeep No. MP 09 S 1781 during the course of his employment with the owner of the said Jeep being the first respondent. The deceased was having a valid driving licence issued by the R.T.O., Rewa. The appellants being the parents were totally dependent upon the income of the deceased son, who was being paid the salary of Rs.3,000/- per month by the respondent no.1. The accident took place on 09th December, 1996 at about 08:00 am at National Highway No.7 - Rewa-Mirzapur Road, when the Jeep being driven by Ramesh Sen dashed into a truck owned by the M.P. State Electricity Board.

5. The appellants then filed a claim case before the Motor Accidents Claims Tribunal, Rewa but on the advice of the said Tribunal, filed a case before the Commissioner for Workmen's Compensation under the Workmen's Compensation Act, 1923. The order giving such advice by the Tribunal is dated 30th October, 2002 and copy thereof is annexed with the present appeal as Annexure A-1.

6. The claim under the Workmen's Compensation Act was filed on 19th November, 2002, however, the learned Commissioner for Workmen's Compensation dismissed the claim petition on the ground of res judicata and being time barred vide order dated 10th February, 2004 (Annexure A-3). It is this order, which is being challenged in this appeal.

7. The learned counsel appearing for the appellants has submitted that the claim filed by the appellants before the Motor Accidents Claims Tribunal under Section 166, Motor Vehicle Act was not maintainable and in fact no such claim was decided on merits. It is, thus, submitted, that the decision given by the Motor Accident Claims Tribunal earlier i.e. in 2002 would not constitute res judicata in this case and therefore, the Commissioner, Workmen's Compensation has committed error in having dismissed the claim filed before the Commissioner, Workmen's Compensation, filed by the appellants under the Workmen's Compensation Act.

8. At this juncture it would be appropriate to take note of the order passed by the Motor Accident Claims Tribunal where the original petition was filed on behalf of the appellants and which was disposed of vide order dated 30th October, 2002, in Claim Case No.130/2002, which was instituted on 17.01.1997.

9. This claim case made under Section 166 of the Motor Vehicle Act. This claim was decided by the Motor Accident Claims Tribunal vide order dated 30th October, 2002.

10. In these proceedings, the first respondent had accepted that he was a registered owner of the Jeep bearing No. MP 09 S 1781, which was being driven by the son of the appellants, who at the relevant time was aged about 19 years and on account of the accident from the said vehicle on National Highway No.7, the said son of the appellants was expired. There is also no dispute that at the relevant time the deceased was earning Rs.3,000/- per month.

11. The Accidents Claims Tribunal had framed following issues in that case:-

1.	क्या मृतक लल्ला उर्फ रमेश सेन की मृत्यु दिनांक 9.12.96 को जीप क्र0 09–एस/1781 के परिपालन में दुर्घटनावश हो गई?	प्रमाणित नहीं
2.	क्या घटना के साथ मृतक अना0 क्र0–1 के नियोजन में वाहन चला रहा था।	प्रमाणित
3.	क्या वाहन अना0 क्र0–2 के पास बीणित था।	प्रमाणित
4.	क्या घटना के साथ मृतक के पास मृतक के पास वैद्य ड्राइविंग लायसेंस नहीं था।	प्रमाणित नहीं।
5.	क्या मृतक, बीमा की शर्तो के उल्लंघन में वाहन चला रहा था? यदि हो तो प्रभाव?	प्रमाणित नहीं
6.	(अ) क्या आवे0 गण, अना0 गण से प्रतिकर प्राप्त करने के अधिकारी हैं?	प्रमाणित नहीं
	(ब) यदि हां तो कितना?	
7.	सहायता एवं व्यय?	पद क्र. 13 के अनुसार निरस्त

That, claim was rejected because the Motor Accidents Claims Tribunal held as under: -

"i. That, from the evidence on record it is proved that the deceased was driving the vehicle under the employment of the respondent no.1.

ii. That, as the deceased hit a stationary truck the driver of the truck was not at fault. As the deceased died as a result of his own fault he is not entitled to claim any compensation from the respondents.

iii. That, the appellants have committed a mistake by presenting the application before the MACT. As the deceased was himself at fault the MACT does not have any jurisdiction in the matter and no relief can be granted to the applicants.

iv. That, if the appellants want they can approach the

Commissioner under the Workmen's Compensation Act, 1923. The time spent in pursuing the proceedings before the MACT would not come in their way. They are given two months time to present the application and if they do so delay would not come in their way."

The relevant paragraph are reproduced as under :-

"8. अनावेदक क्र0 –1 ने अपने जवाब दावा में यह स्वीकार किया है कि मृतक–लल्ला उर्फ रमेश उसकी जीप का ड्राइवर था, लेकिन उसका यह कहना है कि उसे मात्र 50/–रू0 रोजाना पर अस्थाई तौर पर कुछ दिनों के लिये रखा था, जबकि आवेदक गण का यह कहना है कि 3000/– रू0 महीना पर वह अनावेदक क्रमांक–1 की जीप में नियोजित चालक था। महावीर सेन (आ0 सा0 1) ने यह कहा है कि दुर्घटना के लगभग 3 महीने पूर्व से उसका लड़का जीप चला रहा था वह लगभग 3 वर्षो से वाहन चला रहा है। अनावेदक क्रमांक–1 ने महावीर सेन (अ0 सा0 1) के इस कथन को कोई चुनौती नही दी है। इस बिन्दू पर उसका कथन अखंडित है। विजय सिंह (अना0 सा0 1) जो वाहन स्वामी है, ने यह कहा है कि उसके वाहन को रमेश कुमार सेन चला रहा था, उसने अपने कथन में इस बिन्दू पर कोई साक्ष्य पेश नहीं की है कि मृतक उसके स्थाई नियोजन में नहीं था और उसने मृतक को स्थाई रूप से 50 /–रू0 रोज पर नियुक्त किया था। अतः प्रस्तुत साक्ष्य से मैं यह प्रमाणित पाता हूँ कि मृतक अनावेदक क्रंमाक–1 के नियोजिन में वाहन चला रहा था। अतः यह वाद प्रश्न आवेदक गण के पक्ष में एवं सकारात्मक निर्णित किया जाता है।

12. ऊपर के वाद प्रश्नों में प्राप्त निष्कर्ष के आधार पर यह पाया गया है कि मृतक लल्ला उर्फ रमेश सेन की मृत्यु स्वयं उसके द्वारा अनियंत्रित गति से वाहन चलाने के फलस्वरूप कारित हुई। दुर्घटना हेतु दूसरा वाहन खड़े ट्रक के चालक की कोई लापरवाही होना नहीं पाई गई है, ऐसी स्थिति में आवेदक स्वंय की त्रुटि से दुर्घटना कारित होने के फलस्वरूप अनावेदक गण से इस अधिकरण द्वारा कोई प्रतिकर का आदेश प्राप्त करने के अधिकारी होना नहीं पाए जाते हैं। तद्नुसार यह वाद प्रश्न निराकृत किया जाता है।

13. ऊपर प्राप्त निष्कर्ष के आधार पर यह पाता हूँ कि आवेदक गण द्वारा मोटर दावा दुर्घटना अधिकरण के समक्ष अपने पुत्र मृतक लल्ला उर्फ उमेश की मृत्यु से संबंधित क्षतिपूर्ति हेतु आवेदन–पत्र पेश कर त्रुटि की है। इस मामले में मृतक जिस वाहन को चला रहा था, वह वाहन सामने खड़े ट्रक से टकराया उस ट्रक के चालक की दुर्घटना में कोई लापरवाही नहीं पाई जाती है। मृतक लल्ला उर्फ रमेश जीप मालिक अनावेदक क्र0–1 के यहां नियोजन में था और वह दुर्घटनाग्रस्त जीप का चालक था। अतः यह प्रकरण वास्तव में कार्यपार क्षतिपूर्ति अधिनियम के अंतर्गत

लेबर कोर्ट में पेश किया जाना चाहिए था, जो गलती से इस अधिकरण के समक्ष पेश किया गया है। वास्तव में इस अधिकरण के क्षेत्राधिकार का यह मामला परिलक्षित नहीं होता है। अतः इस अधिकरण द्वारा आवेदक गण को कोई सहायता प्रदान नहीं की जा सकती है। आवेदक गण चाहें तो क्षतिपूर्ति हेतु कार्यवार क्षतिपूर्ति अधिनियम कें अतंर्गत श्रम न्यायालय में आवेदन पेश करें। आवेदक गण द्वारा इस अधिकरण के समक्ष इस प्रकारण को चलाने में जो समय व्यतीत किया गया है, उसकी 2 समयावधि की बाधा नहीं आएगी। आवेदक गण को इस हेतु दो माह का समय निर्धारित किया जाता है। दो माह के अंदर कार्यवाही करने पर उनका मामला समय वाधित नहीं होगा। इस प्रकरण का व्यय उभयपक्ष अपना–अपना वहन करेंगे। अधिवक्ता शुल्क 500/–रू0 निर्धारित किया जाता है। तद्नुसार व्यय तालिका बनाई जावे।

13. According to the appellants in view of the observations made by the Motor Accident Claims Tribunal, they immediately preferred claim before the Commissioner Workmen's Compensation along with application under Section 5 of the Limitation Act as also the application under Order 33 Rule 2, CPC for exemption from payment of Court Fees.

14. Vide impugned order the Commissioner, Workmen Compensation while dismissing the Claim preferred by the appellant held as under. -

i. That, there was no dispute between the parties as regard jurisdiction before the MACT. As on date of accident both MACT as well as the Commissioner for Workmen Compensation had jurisdiction to deal with the claim.

ii. That, the ratio of the Division Bench judgment in the case of *Jagdamba Prasad Soni Vs. State of MP and other* 2003 (2) MPLJ 584 is that the matter should have been adjudicated 'Stricto Sensu'. As per the Chambers Dictionary *'Stricto Sensu'* means as per procedure. As the claim was decided by the MACT after evidence and as per procedure on merits the claim is barred by res-judicata.

iii. That, the claim has been preferred 6 years after the date of accident and is barred by limitation.

The relevant paragraph is reproduced as under: -

"उभय पक्ष अधिवक्ता के तर्को पर विचार किया श्रीमती ईशाबेला जॉनशन वाले न्याय दृष्टांत में निष्काशन वाद के संदर्भ में मामला निर्णित किया गया जिसमें

निष्काशन संबंधी विवाद के निराकरण के लिये रेंटकन्ट्रोलर अथार्टी का एक्स क्यूसिवली क्षेत्राधिकार था सिविल कोर्ट को निष्काशन संबंधी विवाद का क्षेत्राधिकार न होने से क्षेत्राधिकार के आधार पर दावा खारिज किया गया था जबकि इस प्रकरण में उभयपक्षों के मध्य मोटर दावा अधिकरण के समक्ष क्षेत्राधिकार के संबंध में कोई विवाद नहीं था दिनांक 9.12.96 को दुर्घटना में वाहन एम0पी0–09 एस/1781 इनवाल्व थी। कमिश्नर अंडर वर्कमेन कंपनशेसन एक्ट के साथ ही साथ मोटर दावा अधिकरण को भी उनके समक्ष प्रस्तुत दावे को सुनने का क्षेत्राधिकार प्राप्त था और इसी कारण अधिकरण 4 ने दावे की सुनवाई कर दिनांक 30 अक्टूबर 2002 का आदेश पारित किया गया। कि मामला पूर्ववर्ती मुकदमें में "स्ट्रीक्टो सेंसू–में न्याय निर्णित किया जाना चाहिए, के दृष्टिकोण पर भी विचार किया जावे तो मोटर दावा अधिकरण में उनके समक्ष विचाराधीन मामले को स्ट्रीक्टो सेन्सू में न्याय निर्णित किया है। स्ट्रीक्टो शब्द का कैब्रिज डिक्सनरी में शब्दार्थ है कि स्ट्रिक्ट प्रोसिजर। अर्थात इसका तात्पर्य यह है कि मामले को गुण दोष पर स्ट्रिक्ट प्रोसीजर के तहत निराकरण किया जाना चाहिए। माननीय मोटर दावा दुर्घटना अधिकरण ने उनके समक्ष विचाराधीन मामले के तथ्यों के आधार पर वाद प्रश्न निर्मित किये हैं और साक्ष्य उपरांत प्रत्येक वाद प्रश्नों पर अपना निष्कर्ष है कि मृतक लल्ला उर्फ रमेश सेन की मृत्यु स्वयं उसके द्वारा अनियंत्रित गति से वाहन चलाने के फलस्वरूप कारित हुई। दुर्घटना हेतु दूसरा वाहन खड़े ट्रक के चालक की कोई लापरवाही नहीं पाई गई है ऐसी स्थिति में आवेदक स्वयं की त्रुटि से दुर्घटना कारित होने के फलस्वरूप अनावेदक गण से इस अधिकरण द्वारा कोई प्रतिकर का आदेश प्राप्त करने के लिए अधिकारी होना नहीं पाये जाते हैं। उपरोक्त से यह स्पष्ट है कि स्ट्रिक्ट प्रोसीजर द्वारा मृतक लल्ला उर्फ रमेश सेन की मृत्यु की क्षतिपूर्ति राशि की प्राप्ति का मामला गुण दोष पर निराकृत किया गया है। केवल क्षेत्राधिकार के बिंदु पर नहीं। क्षेत्राधिकार का तो उभयपक्ष के मध्य कोई विवाद ही नहीं था। प्रार्थीगण द्वारा उसे विधि अधिकरण द्वारा आफसन का उपयोग किया गया है और उन्हें मोटर दावा अधिकरण द्वारा पारित निर्णय के विरूद्ध अपील का अधिकारी प्राप्त है। प्रकरण की परिस्थितियों में इस न्यायालय के समक्ष क्षतिपूर्ति राशि हेतु प्रस्तुत दावा पर रेस्स जूडीकेटा का सिंद्धात लागू होने से सूनवाई योग्य नहीं है। न्याय दृष्टांत 2003 ए0सी0जे01751 के प्रकाश में मोटर दावा अधिकरण को कमिश्नर अंडर वर्कमेन कंपनशेसन एक्ट के न्यायालय में प्रार्थनापत्र प्रस्तुत करने के निर्देश देने का क्षेत्राधिकार प्राप्त नही है। इस न्यायालय के समक्ष दुर्घटना दिनांक से 6 वर्ष पश्चात् प्रस्तुत प्रार्थनापत्र स्पष्ट रूप से अवधिवाह्य है।

अतः उपरोक्त विवेचना के आधार पर प्रार्थनापत्र निरस्त किया जाता है। उभयपक्ष अपना अपना वाद व्यय वहन करेंगे।"

15. Learned counsel for the appellants submits that in the given facts, while the appellants could have approach the Motor Accident Claims Tribunal provided such claim would have been filed under Section 163-A of the Motor

Vehicle Act but he was not entitled to file a claim under Section 166 of the Motor Vehicle Act, there was nobody against whom negligence could have been averred and therefore, the only person from whom he could have claimed compensation was the owner of the Jeep under whose employment the deceased was working at the relevant time.

16. By relying upon the judgment of the Division Bench of Kerala High Court in the case of *New India Assurance Co. Ltd. V Pennamma Kurien* [1995ACJ 760] it has been contended that the appellants were not entitled to file claim under the Motor Vehicles Act in the present case and as such dismissal or rejection of their claim under Motor Vehicles Act would not prevent them to file a claim under the Workmen's Compensation Act. They have relied upon paragraphs 5 to 8 of the said judgment. Those paragraphs reads as under: -

> "5. Section 110 AA of the old Act is extracted below:
>
> **Notwithstanding anything contained in the Workmen's Compensation Act, 1923, where the death or bodily injury to any person gives rise to a claim 'for compensation under this Act and also under the Workmen's Compensation Act, 1923, the person entitled to compensation may, without prejudice to the provisions of Chapter VIIA, claim such compensation under either of those Acts but not under both."**
>
> **(It is the same as Section 167 of the new M.V. Act except that In the place of the words "without prejudice to the provisions of Chapter VII-A", the corresponding provision in the new M.V. Act contains the words "without prejudice to the provisions of Chapter X". This is because Chapter VII-A of the old M.V. Act corresponds to Chapter X of the new M.V. Act).**
>
> **6. Section 110 AA, even by a reading, conveys the message that one cannot have multiple or double advantage with the same cause of action. If a person has obtained a relief through the remedy provided in one of two statutes, he is debarred from availing of the remedy provided in the other statute. There can be no doubt on that proposition.**

7. But if the person who filed the application under one Act is non-suited on any ground, can it be held that he too would be debarred from filing the application under the other Act ? Dismissal of the application filed under one statute must be taken as the consequence of a finding that he has no valid claim to be made under that Act. If no valid claim can be made, its corollary is that it was not a claim recognisable under law. If so, there is no bar in making a claim under the other statute.

8. The said principle can be discerned from the words employed in Section 110AA itself, "where death of or bodily injury to any person gives rise to a claim for compensation under this Act and also under the W.C. Act," then only the claimant is debarred from making claims under both statutes as he is obliged to select only one of them. The bar would operate only if death or bodily injury to a person "gives rise to a claim" for compensation under both Acts. In other words, if death or bodily injury to a person does not give rise to a claim under any one of the Acts, there would be no bar in making a claim under the other Act even if he had made an unsuccessful move under the other Act earlier. Dismissal of an application under one of the Acts would tantamount to a finding that no legal claim arose under that Act."

It will also be relevant to take note of the facts of that case, which are *'Stricto Sensu'* applicable in the present case. The facts has been discussed in paragraph-9 of the judgment, i.e :-

> "9. A driver, who on account of his own negligence caused the accident, cannot get any valid claim for compensation under the M.V. Act (except under a claim of "no-fault liability'). If that driver had died in the accident his legal heirs would not get any betted claim under the Motor Vehicles Act."

Paragraph-13 of that judgment is also relevant.

> "13. Section 110AA of the old M.V. Act, after amendment through Act 47 of 1982, contained the words "without

> prejudice to the provisions of Chapter VIIA". Section 167 of the new M.V. Act is identical, to Section 110AA of the old Act as it stood after the amendment through Act 47, of 1982. It is, therefore, manifest that the interdict contained in the provision, is without prejudice to any claim that may be made under "no-fault liability". The scheme of Chapter VIIA (and also that of its corresponding chapter in the new Motor Vehicles Act) would reveal that the doctrine of no-fault liability is a new statutory innovation made by Parliament as distinguished from the pristine tortious liability which was based on the theory of, fault (vide *United India Insurance Co. Ltd. Padmavathy and others* 1990 ACJ 751 (Kerala). So the Parliament while foreclosing a claimant from making double benefit under two different statutes, has taken care to segregate the compensation received on the basis of the principle of "no fault liability". That amount remains different from any other compensation. So the claimants cannot be visited with any consequence for receiving any compensation amount towards "no-fault liability"

17. 'This judgment virtually takes care of even the submission of the learned counsel for the Insurance Company, who submitted that if the claim would have been filed under Section 163-A of the Motor Vehicle Act even in this case, the said claim would have been maintainable but it is not the case. The judgment, which have been relied upon delivered by Division Bench of this Court in the Case of *Shahjahan Begum & ors. Vs. Lakhan Pratap Sing & anr.*[2005 STPL (Comp.) 791 MP] has held as under:

> "4. On the pleadings of the parties, it is found that the accident took place due to rash and negligent driving of the jeep and not because of sudden defect, developing in the engine thereof, as alleged. Shabbir Khan was the driver of the jeep and Lakhan Pratap Singh, the owner thereof. Shabbir Khan died in this accident. The jeep was insured with the insurance company. However, claimants are not entitled to compensation because the driver himself was negligent in causing the accident and he cannot take advantage of his own negligence. Consequently, the claim petition has been rejected. It has been

found that the jeep was on hire with the District Small Produce Co-operative Union, Chhatarpur. Claimants can approach the Commissioner, Workmen's Compensation for compensation. The Tribunal has assessed the income of deceased at Rs. 4,000 per month against the claim of Rs. 6,000 per month. Claimants are not satisfied with this award, therefore, it has been challenged through this appeal.

5. The question for determination is how the accident has taken place and who is responsible for the same? F.I.R. has been lodged by Bhagwant Singh, AW 2. He has stated that the jeep was being driven rashly and negligently which caused the accident. It has been signed by him and exhibited by Shahjahan, AW 1, Bhagwant Singh, AW 2, has admitted lodging of F.I.R. and making of statement. With this background, it is difficult to accept his statement that the accident occurred due to mechanical defect. Therefore, finding of negligence on the part of driver by Claims Tribunal is sustainable and is upheld. Having come to the aforesaid conclusion, the claim petition is not maintainable. Claimants are entitled to approach the Commissioner for Workmen's Compensation, for compensation under the Workmen's Compensation Act, 1923. If they approach the Commissioner within a month, application shall be entertained and decided on merits in accordance with law at the earliest."

This answers substantial question no.1. The said question is answered in the positive by holding, that the Commissioner, Workmen's Compensation having dismissed the claim under the Workmen's Compensation Act, committed a serious error by holding that the order passed by the Motor Accident Claims Tribunal holding that 'the application filed by the appellant under Section 166, Motor Vehicle Act to be not maintainable, amounts to res-judicata.

18. Now, coming to the question as to whether finding returned by the Motor Accident Claims Tribunal in this case can be said to have created a res-judicata against the appellants having filed the accident claim case. The issue has been discussed by Hon'ble the Supreme Court in the case of *Sheodan Singh v. Daryao*

Kunar [AIR 1966 SC 1332 (1)]. The Hon'ble Supreme Court in that case has discussed as to what constitute res-judicata. Paragraph-13 of the judgment is relevant, which is reproduced here as under: -

> **"13. Re(iv):This brings us to the main point that has been urged in these appeals, namely, that the High Court had not heard and finally decided the appeals arising out of suits Nos. 77 and 91. One of the appeals was dismissed on the ground that it was filed beyond the period of limitation while the other appeal was dismissed on the ground that the appellant therein had not taken steps to print the records. It is therefore urged that the two appeals arising out of suits Nos. 77 and 91 had not been heard and finally decided by the High Court, and so the condition that the former suit must have been heard and finally decided was not satisfied in the present case. Reliance in this connection is placed on the well-settled principle that in order that a matter may be said to have been heard and finally decided, the decision in the former suit must have been on the merits. Where, for example, the former suit was dismissed by the trial court for want of jurisdiction, or for default of plaintiff's appearance, or on the ground of non-joinder of parties or misjoinder of parties or multifariousness, or on the ground that the suit was badly framed, or on the ground of a technical mistake, or for failure on the part of the plaintiff to produce probate or letters of administration or succession certificate when the same is required by law to entitle the plaintiff to a decree, or for failure to furnish security for costs, or on the ground of improper valuation or for failure to pay additional court fee on a plaint which was undervalued or for want of cause of action or on the ground that it is premature and the dismissal is confirmed in appeal (if any), the decision not being on the merits would not be res judicata in a subsequent suit. But none of these considerations apply in the present case, for the Additional Civil Judge decided all the four suits on the merits and decided the issue as to title on merits**

against the appellant and his father. It is true that the High Court dismissed the appeals arising out of suits Nos. 77 and 91 either on the ground that it was barred by limitation or on the ground that steps had not been taken for printing the records. Even so the fact remains that the result of the dismissal of the two appeals arising from suits Nos. 77 and 91 by the High Court on these grounds was that the decrees of the Additional Civil Judge who decided the issue as to title on merits stood confirmed by the order of the High Court. In such a case, even though the order of the High Court may itself not be on the merit the result of the High Court's decision is to confirm the decision on the issue of title which had been given on the merits by the Additional Civil Judge and thus in effect the High Court confirmed the decree of the trial court on the merits, whatever may be the reason for the dismissal of the appeals arising from suits Nos. 77 and 91. In these circumstances though the order of the High Court itself may not be on the merits, the decision of the High Court dismissing the appeals arising out of suits Nos. 77 and 91 was to uphold the decision on the merits as to issue of title and therefore it must be held that by dismissing the appeals arising out of suits Nos. 77 and 91 the High Court heard and finally decided the matter for it confirmed the judgment of the trial court on the issue of title arising between the parties and the decision of the trial court being on the merits the High Court's decision confirming that decision must also be deemed to be on the merits. To hold otherwise would make *res judicata* impossible in cases where the trial court decides the matter on merits but the appeal court dismisses the appeal on some preliminary ground thus confirming the decision of the trial court on the merits. it is well-settled that where a decree on the merits is appealed from, the decision of the trial court loses its character of finality and what was once *res judicata* again becomes res subjudice and it is the decree of the appeal court which will then be *res judicata*. But if the contention

of the appellant were to be accepted and it is held that if the appeal court dismisses the appeal on any preliminary ground, like limitation or default in printing, thus confirming into the trial court's decision given on merits, the appeal court's decree cannot be *res judicata*, the result would be that even though the decision of the trial court given on the merits is confirmed by the dismissal of the appeal on a preliminary ground there can never be *res judicata*. We cannot therefore accept the contention that even though the trial court may have decided the matter on the merits there can be no *res judicata* if the appeal court dismisses the appeal on a preliminary ground without going into the merits, even though the result of the dismissal of the appeal by the appeal court is confirmation of the decision of the trial court given on the merits. Acceptance of such a proposition will mean that all that the losing party has to do to destroy the effect of a decision given by the trial court on the merits is to file an appeal and let that appeal be dismissed on some preliminary ground, with the result that the decision given on the merits also becomes useless as between the parties. We are therefore of opinion that where a decision is given on the merits by the trial Court and the matter is taken in appeal and the appeal is dismissed on some preliminary ground, like limitation or default in printing, it must be held that such dismissal when it confirms the decision of the trial court on the merits itself amounts to the appeal being heard and finally decided on the merits whatever may be the ground for dismissal of the appeal."

This paragraph tells us as to what will constitute *res-judicata*. In the case in hand the decision given by the Motor Accidents Claims Tribunal was not a decision given on merits inasmuch as, while deciding issue no. 6 it was held:

> 12. ऊपर के वाद प्रश्नों में प्राप्त निष्कर्ष के आधार पर यह पाया गया है कि मृतक लल्ला उर्फ रमेश सेन की मृत्यु स्वयं उसके द्वारा अनियंत्रित गति से वाहन चलाने के फलस्वरूप कारित हुई।

दुर्घटना हेतु दूसरा वाहन खड़े ट्रक के चालक की कोई लापरवाही होना नहीं पाई गई है, ऐसी स्थिति में आवेदक स्वयं की त्रुटि से दुर्घटना कारित होने के फलस्वरूप अनावेदक गण से इस अधिकरण द्वारा कोई प्रतिकर का आदेश प्राप्त करने के अधिकारी होना नहीं पाए जाते हैं। तद्नुसार यह वाद प्रश्न निराकृत किया जाता है।

Paragraph-13 of the award is also relevant, which is also reproduced as under :-

"13. ऊपर प्राप्त निष्कर्ष के आधार पर यह पाता हूँ कि आवेदक गण द्वारा मोटर दावा दुर्घटना अधिकरण के समक्ष अपने पुत्र मृतक लल्ला उर्फ उमेश सेन की मृत्यु से संबंधित क्षतिपूर्ति हेतु आवेदन पत्र पेश कर त्रुटि की है। इस मामले में मृतक जिस वाहन को चला रहा था, वह वाहन सामने खड़े ट्रक से टकराया उस ट्रक के चालक की दुर्घटना में कोई लापरवाही नहीं पाई जाती है। मृतक लल्ला उर्फ रमेश जीप मालिक अनावेदक क्रं0–1 के यहां नियोजन में था। और वह दुर्घटना ग्रस्त जीप का चालक था। अतः यह प्रकरण वास्तव में कार्यपार क्षतिपूर्ति अधिनियम के अंर्तगत लेबर कोर्ट में पेश किया जाना चाहिए था, जो गल्ती से इस अधिकरण के समक्ष पेश किया गया है। वास्तव में इस अधिकरण के क्षेत्राधिकार का यह मामला परिलक्षित नहीं होता है। अतः इस अधिकरण द्वारा आवेदक गण को कोई सहायता प्रदान नहीं की जा सकती है। आवेदक गण चाहें तो क्षतिपूर्ति हेतु कार्यवार क्षतिपूर्ति अधिनियम के अतंगर्त श्रम न्यायालय में आवेदन पेश करें। आवेदक गण द्वारा इस अधिकरण के समक्ष इस प्रकरण को चलाने में जो समय व्यतीत किया गया है, उसकी 2 समयावधि की बाधा नहीं आएगी। आवेदक गण को इस हेतु दो माह का समय निर्धारित किया जाता है। दो माह के अंदर कार्यवाही करने पर उनका मामला समय वाधित नहीं होगा। इस प्रकरण का व्यय उभयपक्ष अपना–अपना वहन करेंगे। अधिवक्ता शुल्क 500/–रू0 निर्धारित किया जाता है। तद्नुसार व्यव तालिका बनाई जावे।

Thus, by making the aforesaid observations the Motor Accidents Claims Tribunal at that time decided that no suit under the Motor Vehicles Act could have been filed by the appellants because the deceased himself was the person liable for negligence and he himself was driving the vehicle which led to his death. It was not a case where the third party was involved and therefore, it could not have been said that it was a case covered by Section 166 of the Motor Vehicle Act, thus, by the aforesaid decision it could not be decided on merits that the appellant was not entitled to claim compensation from his

employer under the Workmen's Compensation Act, therefore, the principle of *res-judicata* regarding negligence which had been discussed only in relation to the liability to third party would not have been brought into the picture why the Commissioner, Workmen's Compensation dismissed the claim filed under the Workmen's Compensation Act. Thus, it cannot be said that the claim filed by the appellants under the Workmen's Compensation Act was very much maintainable. It could not have been dismissed on the principle of *res-judicata*. The question no.3 and 4 is decided accordingly.

19. Now, next issue no.2 i.e. consideration of delay. The learned counsel for the appellants submits that in this case the appellants were bona fidely prosecuting their claim under the Motor Vehicle Act and thus, were entitled to seek condonation of the period which transpired during the proceedings under the Motor Vehicle Act. On these, they were protected under the Section-14 of the Indian limitation Act, which reads as under: -

> "14. Exclusion of time of proceeding bona fide in court without jurisdiction -
>
> (1) In computing the period of limitation for any suit the time during which the plaintiff has been prosecuting with due diligence another civil proceeding, whether in a court of first instance or of the appeal or revision, against the defendant shall be excluded, where the proceeding relates to the same matter in issue and is prosecuted in good faith in a court which, from defect of jurisdiction or other cause of a like nature, is unable to entertain it.
>
> (2) In computing the period of limitation for any application, the time during which the applicant has been prosecuting with due diligence another civil proceeding, whether in a court of first instance or of appeal or revision, against the same party for the same relief shall be excluded, where such proceeding is prosecuted in good faith in a count of first instance or of appeal or revision, against the same party for the same relief shall be excluded, where such proceeding is prosecuted in good faith in a court which, from defect of jurisdiction or other cause of a like nature, is unable to entertain it.
>
> (3) Notwithstanding anything contained in rule 2 of Order

XXIII of the Code of Civil Procedure, 1908 (5 of 1908), the provisions of sub-section (1) shall apply in relation to a fresh suit instituted on permission granted by the court under rule of that Order, where such permission is granted on the ground that the first suit must fail by reason of a defect in the jurisdiction of the court of other cause of a like nature."

As far as this question is concerned, since, this issue has not been dealt with by the Motor Accident Claims Tribunal in the spirit of the aforesaid Section of the limitation Act, we leave this question to be decided by the Commissioner for Workmen's Compensation Act. This issue stands answered by the Division Bench Judgement of the Kerala High Court.

20. All these issues are accordingly decided against the respondents. With the aforesaid observation the appeal is allowed. Parties are directed to appear before the Commissioner for Workmen's Compensation, who would decide the claim petition on merits but as far as the issue of limitation is concerned, he would entitled to give his own, opinion to take into consideration the provisions contained under Section 14 of the limitation Act as stated above. Parties will appear before the Commissioner, Workmen's Compensation on 08.04.2013.

A copy of this order along with the record be sent to the Commissioner, Workmen's Compensation to proceed with the case in terms with the order passed by this Court and decide the matter expeditiously.

Appeal allowed.

I.L.R. [2014] M.P., 2382
APPELLATE CIVIL
Before Mr. Justice J.K. Maheshwari
M.A. No. 2034/2008 (Indore) decided on 3 April, 2013

NEW INDIA ASSURANCE CO. LTD. ...Appellant
Vs.
SMT. PREETI & ors. ...Respondents

(and M.A. No. 2573/2008)

A. Motor Vehicles Act (59 of 1988), Section 173 - Contributory Negligence **- Looking to the spot map and the evidence so brought on record by the claimants as well as by the driver of the offending vehicle, the contributory negligence of the offending vehicle**

and the vehicle driven, by the deceased is quantified by 80%-20% - Finding recorded by the Tribunal regarding negligence of the offending vehicle only is set-aside. (Para 7)

क. मोटर यान अधिनियम (1988 का 59), धारा 173 – योगदायी उपेक्षा – घटनास्थल नक्शा और आक्षेपित वाहन के चालक द्वारा एवं दावाकर्ताओं द्वारा अभिलेख पर लाये गये साक्ष्य को देखते हुए, आक्षेपित वाहन और मृतक द्वारा चलाया गये वाहन की योगदायी उपेक्षा 80 प्रतिशत से 20 प्रतिशत परिमाणित की गयी – अधिकरण द्वारा केवल आक्षेपित वाहन की उपेक्षा संबंधित अभिलिखित किया गया निष्कर्ष अपास्त।

***B. Motor Vehicles Act (59 of 1988), Section 173 - Compensation* - Documents of the business duly verified by the Chartered Accountant, who is a witness of the Insurance Company - Chartered Accountant also admitted that there was no manipulation in Income Tax return and accounts were maintained as per Rules - Income Tax returns should not be disbelieved - Income may be safely accepted as Rs. 9,00,000/- per annum - Since there are four dependents, 1/4 income is deducted towards personal expenses - Compensation enhanced from Rs. 65,88,106/- to Rs. 82,63,885/- - Enhanced amount shall carry interest @ 7.5% per annum from the date of filing the claim petition. (Paras 8,9, 10 & 11)**

ख. मोटर यान अधिनियम (1988 का 59), धारा 173 – प्रतिकर – कारोबार के दस्तावेजों को चार्टर्ड अकाउंटेन्ट द्वारा सम्यक् रुप से सत्यापित किया गया जो बीमा कम्पनी का साक्षी है – चार्टर्ड अकाउंटेन्ट ने यह भी स्वीकार किया कि आयकर रिटर्न में हेर–फेर नहीं था और खाते नियमानुसार संधारित थे – आयकर रिटर्न पर अविश्वास नहीं किया जा सकता – रु. 9,00,000/– प्रतिवर्ष आय, सुरक्षित रुप से स्वीकार की जा सकती है – चूंकि चार आश्रित हैं, 1/4 आय व्यक्तिगत खर्चे के रुप में घटायी गई – प्रतिकर को रु. 65,88,106/– से बढ़ाकर रु. 82,63,885/– किया गया – बढ़ायी गयी रकम पर, दावा याचिका प्रस्तुत करने की तिथि से 7.5 प्रतिशत प्रतिवर्ष की दर से ब्याज लगेगा।

Cases referred :

2006(3) MPLJ 22, 2009 ACJ 1298.

S.V. Dandwate, for the appellant.

G.K. Neema & Sourabh Neema, for the respondents No. 1 to 5.

ORDER

J.K. MAHESHWARI, J. :- Both these appeals are arising out of the award dated 08.05.2008, passed by 16th Additional Member, Motor Accident Claims Tribunal (Fast Track), Indore, in Claim Case No. 92/2006. Misc. Appeal No.2034/2008 has been filed by the Insurance Company on the point that the deceased was himself negligent to cause the accident and also assailing the award on the point of quantum while Misc. Appeal No. 2573/2008 has been filed by the claimants seeking enhancement.

2. As per the claim averments the claimant no.1 is the wife, claimants no.2 and 3 are the sons and claimants no.4 and 5 are the mother and father, of the deceased Pushpendra Bansal. On 09.04.2006 the deceased aged about 36 years and was in occupation of Commission Agent by Cotton Brokerage. On 08.04.2008 he along with Vivek Agrawal by an Indigo car bearing no. MP-09-HD 4626 went from Indore to Bhopal for business purpose. In the intervening night of 08.04.2006 - 09.04.2006 when they were coming from Bhopal to Indore at about 01:30 am after crossing Ashta by 10 kilometers ahead a Truck bearing no.MP.09-KC 3118 of the ownership of Shivram Bhalekar, driven by Narayan Prasad while overtaking the another vehicle dashed the car thereby Pushpendra Bansal received various injuries over the head and other parts of the body. However, after primary treatment at Ashta he was admitted to Bombay Hospital, Indore where he succumbed to the injuries on 16.04.2006 during treatment. It is said that the annual earning of the deceased was Rs.16,00,000/- per annum and due to his death in road accident the business has now been closed, therefore, compensation to the tune of Rs.5,00,00,000/- has been prayed for by filing the claim petition under Section 166 of the Motor Vehicle Act.

3. The owner and driver remained ex-parte and they have not filed any written statement before the Claims Tribunal. The Insurance Company has filed the written statement *inter-alia* contended that it is a case of head on collision of two vehicles i.e. truck and indigo car, however, the owner and driver of the car have not been joined as party to the proceeding though they are necessary party. It is further stated that the accident has taken place due to rash and negligent driving of the deceased himself, who was driving the car. It is also stated that the driver and owner of offending vehicle has not given any intimation to the Insurance Company and the verification of the document has also not been done. The driver of the vehicle was not possessing the valid

driving licence and the truck in question was driven in violation of the terms and condition of the Insurance policy. However, the Insurance Company is not liable to pay the amount of compensation.

4. Learned Claims Tribunal after considering the statement of the Vivek Agrawal (AW-1), who is an eye witness of the accident and the lodger of the FIR recorded a finding that it is the offending vehicle trucks negligent to cause accident wherein deceased Pushpendra Bansal received injuries and succumbed to death. The Tribunal has further recorded a finding that the earning of the deceased was Rs.6,00,000/- per annum, however, after deducting 1/3rd towards personal expenses, applying the multiplier of 16 awarded Rs.64,00,000/- in loss of dependency. In medical expenses Rs. 1,73,606/- has been awarded and in conventional heads Rs.14,500/- has been awarded making the total compensation Rs.65,88, 106/-.

5. Shri S.V Dandwate, learned counsel representing the Insurance Company has strenuously urged that in a case where the accident has taken place head on collision of two vehicles i.e. truck and Indigo car driven by the deceased in such a case looking to the evidence of Vivek Agrawal (AW-1) as well as the driver Narayan Prasad (DW-3), the Tribunal committed error to not to record the finding of the contributory negligence of the deceased. However, after recording the finding of contributory negligence the compensation awarded by the Tribunal may be reduced accordingly. In support of such contention reliance has been placed on the judgment of Hon'ble the Apex Court in the case of *Bijoy Kumar Dugar Vs. Bidyadhar Dutta and others* [2006 (3) M.PLJ. 22] wherein in a case of head on collision it is held that the deceased is also negligent. It is further contended by him that the earning so accepted by the Tribunal is on higher side looking to the statement of Suresh Keemti (DW-1), Chartered Accountant, who has verified the accounts of the business of the deceased and found that the net profit ratio has been drastically increased in the year 2005-2006, wherein the deceased was died and the return has been filed later on. In such circumstances accepting the earning as stated by him the quantum of compensation derived after calculation may be reasonably reduced. It is also contended by him that when the amount of compensation is on higher side and the dependency should be equal to the monthly interest to the amount which the claimants are receiving, however, the compensation should not be awarded more than such amount. It is also submitted by him that in a case of death the dependency reduced by

efflux of time, therefore, also applying the said principle the adequate, just and reasonable amount of compensation may be awarded as specified under Section 168 of the Motor Vehicle Act. In view of the foregoing, it is urged that the appeal filed by the Insurance Company may be allowed and the amount of compensation may be reasonably reduced.

6. Per contra Shri G.K. Neema and Shri Sourabh Neema, learned counsel appearing on behalf of the claimants has urged in support of the finding regarding occurrence of the accident as recorded by the Claims Tribunal and urged that the argument advanced by learned counsel for the Insurance Company with respect to negligence of the deceased is unsustainable in view of the statement of the eye witness Vivek Agrawal (AW-2). It is also submitted by them that the owner and driver has not filed any written statement and they are merely appeared in a witness box to support Insurance Company. The driver appearing in a witness box is unable to prove that the accident has taken place due to negligence of the deceased. During course of hearing my attention has been drawn to the spot map (Ex P-3) and contended that looking to the said spot map it is clear that the car which was going from Bhopal to Indore is on the extremely in left side. In such circumstances when the offending vehicle overtaking the another vehicle coming from opposite direction dashed the car coming towards wrong side, in that view of the matter the finding recorded by the Tribunal on the point of negligence do not warrant interference in an appeal filed by the insurance Company. On the point of enhancement it is submitted by him that even if the statement of defendant witness Vivek Agrawal (AW-2) is relied upon as per paragraph-4 of his examination-in-chief it is clear that the earning of the deceased was increased by every year from 2002 to 2006 in all income tax returns. Merely increasing the net profit would not be a criteria to calculate the compensation. The amount of compensation may be calculated on the basis of the income tax returns (Ex. P-50, Ex. P-51,Ex. P-52 & Ex. P-53), which is relied upon by the Tribunal. It is further submitted by him that the accident has taken place on 09.04.2006 immediate after the financial year 2005-2006, therefore, the income tax return was produced later on. As per the statement of the Accountant of the deceased Rajendra Mantri (AW-3) it is clear that all the documents of the income and expenditure has been supplied to Suresh Keemti (DW-2) assigned to verify the accounts of the business of the deceased by Insurance Company. After verifying those documents the witness of the Insurance Company found that there is no manipulation in the accounts and it has been maintained as per the

income tax rules. In such circumstances the income cannot be doubted, which is found prove by the witness of the Insurance Company itself. Thus, considering the said income the compensation ought to be awarded applying the appropriate multiplier. It is also submitted that the deceased was an income tax payee and the business has now been closed, therefore, the future prospect may also be awarded to the legal representatives. It is also contended that in the light of the judgment of Hon'ble the Apex Court in the case *Sarla Verma and others V Delhi Transport Corporation and another* [2009 ACJ 1298] personal expense of the deceased ought to be accepted as 1/4th and dependency 3/4th looking to the number of dependents. In view of the foregoing it is urged that the appeal filed by the claimants may be allowed and the appeal of the Insurance Company on the point of quantum may be dismissed.

7. After having heard leaned counsel appearing on behalf of the parties at length first of all the issue of contributory negligence raised by the Insurance Company requires consideration. As per the averments of the claim petition it is clear that the deceased driving the Indigo car MP-09-HE 4626 coming back from Bhopal to Indore at about 01:30 am, when they reached 10 kilometers ahead to Ashta they met with an accident, as collided with the Truck bearing no. MP-09-KC 3118 coming from opposite direction i.e. Indore to Bhopal. In the said context if the statement of Vivek Agrawal (AW-2) is seen then it is clear that he has seen the truck coming rashly and negligently from opposite direction overtaking the another vehicle. In paragraph-11 of his cross-examination it is admitted by him that both the vehicles have collided by head on. Simultaneously; the statement of the driver of the offending vehicle truck is also relevant whereby it is clear that the Indigo car coming from opposite direction rashly and negligently collided with the Truck. By conjoint reading of both these statements along with spot map (Ex. P-3) it is clear that the place of accident is in the left side of the road going towards Indore from Bhopal. The place where the Indigo car was lying is on left side of the road. In the statement of this witness it has also come on record that the accident has taken place from the driver side of both the vehicles. Considering the aforesaid, it is clear that the driver of the offending vehicle truck came to wrong direction but simultaneously; it cannot be ignored that in the night when it is seen by the eye witness sitting in a car that the offending vehicle coming rashly and negligently then taking safeguard they should have parked their vehicle at the left side if they were in a slow speed. It is clear from the record that the accident has taken place from in front by colliding of both these vehicles

though from the driver side and not directly by head on. In such circumstances looking to the spot map and the evidence so brought by the claimants as well as by the driver of the offending vehicle it cannot be ignored that the deceased was not negligent. Looking to the over all material brought on record the percentage of negligence on the side of the deceased may be lesser. He is also negligent to cause accident with the offending vehicle truck. In that view of the matter in the opinion of this Court finding recorded by the Claims Tribunal recording negligence of the offending vehicle only is set aside. After considering all the material on record and looking to the spot map the contributory negligence of the offending vehicle and the vehicle driven by the deceased is quantified by 80%-20%. Thus, the issue of contributory negligence is decided accordingly.

8. Now, to decide the issue regarding quantum of the compensation it is seen from the record that the deceased was dealing with the cotton brokerage business. He was an income tax payee and the returns of income tax from 2002-03 (Ex. P-50), 2003-04 (Ex. P-51), 2004-05 (Ex. P-52), 2005-06 (Ex. P-53) submitted after the death of the deceased by the family members are on record. As per the statement of the defendant witness Suresh Keemti (DW-1) the income of the deceased from brokerage has been increased by every year from 2002 up to 2006. The said witness of the Insurance Company found discrepancies in expenditure, however, the net profit ratio increased from the income in the return of 2005-2006 had been described by him. In his statement it is no where stated that the income of the deceased has not been increased. In his cross-examination it is specifically admitted by him that the Accountant of the deceased has supplied all the documents of the income and account papers to him after verification of those account papers he found no manipulation therein. It is also admitted by him that the accounts were maintained as per the income tax rules. In view of the aforesaid statement by the witness of the Insurance Company it is clear that the income derived from the business of the deceased up to the financial year 2005-06 cannot be doubted but the Tribunal has disbelieved the said return (Ex. P-53) because it has been filed after the death of the deceased. In the considered opinion of this Court when the date of accident is 09.04.2006 and the deceased died on 16.04.2006 immediate after the financial year it cannot be presumed that the return may be filed prior to his death. Once the document of the business has been verified by the chartered accountant, who is a witness of the Insurance Company without having any manipulation or by disbelieving the income in such a case

those income tax returns should not be disbelieved. In that view of the matter after considering the analogy adopted by the Tribunal if we take the mean of the three years of the earning of the income tax after adding the expenditure as incurred in the last year by the deceased then as per the statement of Suresh Keemti in the said context the net profit ratio may be accepted as Rs.9,42,669/- per annum. In the considered opinion of this Court the income of the deceased may be safely accepted as Rs.9,00,000/- per annum in round figure looking to the income tax returns Ex. P-50 to Ex. P-53.

9. In the present case it is clear that the wife and two sons are dependents from the evidence brought on record. It is also clear that both these sons were studying in Daily College and the annual fees is more than Rs.1,50,000/- to one child and the mother and father aged about 64 years were also claimants, however, ignoring the dependency of the father if we accept the wife of the deceased, two children and mother then four dependents may safely be accepted. In the facts of this case and as per the judgment of Hon'ble Apex Court in the case of *Sarla Verma and others V. Delhi Transport Corporation and another* (supra) if 1/4th is deducted towards personal expenses from the net earning then dependency comes to Rs.6,75,000/- per annum. The age of the deceased was 36 years, however, as per the said judgment the multiplier of 15 would be applicable thereby the loss of dependency comes to Rs.1,01,25,000/-. The Tribunal has further awarded Rs.1,73,606/- in medical expenses if we add the said amount then the sum comes to Rs.1,02,98,606/-. In view of the finding of contributory negligence i.e. 80%-20%, if 20% is reduced out of the said amount then the net amount comes to Rs.82 38, 885/-. If Rs.25,000/- is further added in conventional heads i.e. consortium, loss of estate, love and affection, funeral etc. then the sum comes to Rs.82,63,885/-.

10. At this stage the argument so advanced by the learned counsel appearing on behalf of the Insurance Company requires consideration that the amount of the compensation should not exceed then the amount of interest which may be received by legal representatives of the deceased. Simultaneously, the arguments as advanced by the learned counsel for the claimants that future prospects should also be awarded requires consideration. In the facts of the present case it is apparent that the deceased was doing the cotton brokerage business having net income in the year 2004-05 more than Rs.7,58,000/-. By the next year the earning was on higher side but because the expenditure were shown lesser, therefore, the net earning has been accepted Rs.9,00,000/- per annum. The compensation, which is being awarded is

approximately Rs.83,00,000/-. If we see the amount of compensation and the interest, which may be derived as per the bank rate then the per month to amount interest would not exceed the net income. Simultaneously, looking to the amount of compensation as calculated herein above and awarded by this order passed today looking to the family members and status, the compensation seems to be just and reasonable. In such circumstances the arguments as advanced by leaned counsel for the Insurance Company as well as the claimants is hereby turned down. In the considered opinion of this Court Rs.82,63,885/- would be adequate amount of compensation to the claimants in the facts and circumstances of the case.

11. Accordingly, Misc. Appeal No .2034/2008 and Misc. Appeal No. 2573/2008 both have been allowed in part. The deceased is also held negligent to the extent of 80% - 20% recording the 'finding of contributory negligence but by enhancing the amount of compensation the claimants are held entitled to receive the net amount of Rs.82,63,885/-. The amount, which is enhanced from the amount so awarded by the Claims Tribunal shall carry interest @ 7.5% per annum from the date of filing of the claim petition till its realization. In the facts parties to bear their own cost.

Appeal partly allowed.

I.L.R. [2014] M.P., 2390
APPELLATE CIVIL
Before Mr. Justice U.C. Maheshwari
M.A. No. 3503/2011 (Jabalpur) decided on 5 April, 2013

RADHIKA PRASAD NAMDEO ...Appellant
Vs.
DRIVER NARESH @ BHOORA ...Respondent

Motor Vehicles Act (59 of 1988), Section 173 - Appeal - For enhancement of award **- M.L.C. report, X-ray report and the X-ray plate placed on record - Same has been proved by appellant himself - Doctor has not been examined - Fracture of 9th ribs of the right side is there - Held - Law relating to the accident claim, being law of social welfare, Rules relating to the admissibility of the medical documents should not be followed strictly - If the medical documents appears to be bonafide and genuine appropriate relief should be given - In view of the available scenario, nature of injuries sustained award is enhanced**

from 7,000/- to Rs. 25,000/- with 7.5% interest from the date of filing the claim petition. (Paras 9 to 13)

मोटर यान अधिनियम (1988 का 59), धारा 173 – अपील – अवार्ड बढ़ाये जाने हेतु – एम.एल.सी. रिपोर्ट, एक्सरे रिपोर्ट और एक्सरे प्लेट अभिलेख पर प्रस्तुत – उक्त को स्वयं अपीलार्थी द्वारा साबित किया गया – चिकित्सक का परीक्षण नहीं किया गया – दाहिनी ओर की 9वीं पसली का अस्थिभंग है – अभिनिर्धारित – दुर्घटना दावा से संबंधित विधि, सामाजिक कल्याण की विधि होने के नाते, चिकित्सीय दस्तावेजों की ग्राहयता से संबंधित नियमों का कठोरता से पालन नहीं किया जाना चाहिये – यदि चिकित्सीय दस्तावेज सद्भाविक एवं वास्तविक प्रतीत होते हैं, समुचित अनुतोष दिया जाना चाहिये – उपलब्ध परिदृश्य में पहुंचाई गयी क्षतियों के स्वरुप को दृष्टिगत रखते हुये अवार्ड को रु. 7,000/– से रु. 25,000/–, दावा याचिका प्रस्तुती की तिथि से 7.5 प्रतिशत ब्याज के साथ बढ़ाया गया।

A.D. Mishra, for the appellant.
None for the respondents No. 1 & 2.
Aditya Narayan Sharma, for the respondent No.3/Insurer.

ORDER

U.C. MAHESHWARI, J. :- The appellant/claimant has filed this appeal under Section 173 of Motor Vehicles Act, 1988 (In short 'the Act') for further enhancement of the sum awarded by the IIIrd Additional Motor Accident Claims Tribunal (FTC) Katni, in Claim Case No. 11/09, vide dated 22.7.2011 whereby, his claim relating to the injuries sustained by him in the alleged vehicular accident has been awarded for the sum of Rs.7,000/- along with interest at the rate of 7.5% per annum from the date of filing the claim petition so also for the cost of the litigation against the respondents no.1 & 3 by saddling their joint and several liability to pay the same.

2. So far happening the alleged incident and sustaining the alleged injuries by the appellant in the vehicular accident is not under dispute between the parties. So, in such premises, mentioning the entire facts with respect of the alleged incident are not necessary in the present order. Consequently, this appeal is being decided by mentioning the facts necessary for adjudication of the same.

3. As per case of the appellant on dated 15.10.2007, along with other passengers he was traveling in a bus bearing registration No. MP-21-8766,

registered in the name of the respondent no.2 driven by the respondent no.1 in a rash and negligent manner resultantly it met an accident in the territorial jurisdiction of Police Station Sleemanabad, resultantly, the appellant sustained various simple injuries on his person. He was taken to Hospital where after carrying out the medical examination, his MLC report was prepared, and was advised for X-ray. On carrying out the same-ray, the fracture of 9th ribs of the right side was revealed. As per MLC report, he also sustained some other simple injuries. On receiving the information by the Police, a crime was registered against the respondent no.1. After holding the investigation, he was charge-sheeted in which all the relevant documents were filed. After obtaining the certified copy of the same along with such documents the appellant filed the impugned claim for the sum of Rs.4,50,000/-. According to claim petition on the date of incident the aforesaid offending vehicle was duly insured with the respondent no.3.

4. The respondents No.1 & 2 were proceeded exparte before the Tribunal in such premises they have also not filed their reply of the claim petition while, in the reply of the respondent no.3, by admitting the insurance of the bus with it, the facts regarding alleged accident have been denied. In addition to it, it was stated that the bus was plied by the respondent no.1 over loaded contrary to the terms and conditions of the Insurance policy and in such premises, no liability of the claim could be saddled against the respondent no.3/insurer and prayer for dismissal of the claim was made.

5. After framing the issues and recording the evidence, on appreciation of the same by holding that the alleged incident was the cause and consequence of rash and negligent driving of the aforesaid bus by the respondent no.1 resultantly, the appellant has sustained the simple injuries and in the lack of any deposition of the doctor in support of the MLC report, X-ray plate and it's report so also in the lack of certificate of the permanent disability, the claim of the appellant was awarded for the sum as mentioned above. Being dissatisfied with such award, the appellant has come to this Court for further enhancement of the sum.

6. It is undisputed fact on record that the impugned award has not been challenged on behalf of the Insurance Company by filing any appeal or through cross-objection in the present appeal.

7. Having heard the counsel at length, keeping in view their arguments, I

have carefully gone through the record of the Tribunal as well as of the award.

8. It is apparent from the impugned award that the appellant sustained the alleged injuries in the abovementioned accident which was the cause and consequence of rash and negligent driving of the aforesaid bus by respondent no.1 which was registered in the name of the respondent no.2 and was duly insured with the respondent no.3 and in such findings are not under challenge at the instance of any of the respondents. Therefore such questions do not require any further consideration at this stage. So, such findings are hereby affirmed and in such premises, the finings (sic:findings) of the impugned award saddling the joint and several liability to satisfy the same against the respondents no.1 & 3 is also not required any interference. This Court has to consider the only question for enhancement of the sum awarded by the Tribunal.

9. True it is, in support of the claim petition, the MLC report, X-ray report and the X-ray plate to show the alleged injury as well as the fracture of aforesaid 9th ribs of the right side of the appellant have been placed and proved on record, but in order to prove the same, none of the Doctor has been examined. The same has been proved by the appellant himself and in such premises, by holding that in the absence of examination of the doctor, the aforesaid papers could not be taken into consideration to hold that the appellant has sustained any permanent disability in the alleged accident and in such premises, by holding the alleged injuries of the appellant to be simple in nature, the claim was awarded for the aforesaid sum.

10. I am of the considered view that the law relating to the accident claim, being law of social welfare, the rules relating to admissibility of the documents specially the medical documents should not be followed strictly. But on appreciation of the available evidence, in the circumstances if any of the medical documents of the claimant/victim appears to be bonafide and genuine, then taking into consideration the same, appropriate relief should be given to the appellant. In the case at hand, it is apparent that subsequent to the incident the appellant was taken to the Government Hospital where his MLC report was prepared. He was advised for X-ray, the same was carried out in which, the alleged fracture was revealed for which he has also taken the treatment and in such premises, it could be assumed that he sustained some grievous injury and not the permanent disability and due to that, he could not have carried out the work for livelihood near about one month. Such medical documents being related to the Government Hospital proved by the appellant,

in the available circumstances, could not be disbelieved. Hence, I deem fit to consider such documents to assess the just and proper compensation for the appellant.

11. In view of the aforesaid discussions, it is held that the appellant has sustained the simple injuries and the aforesaid fracture in the alleged accident and in such premises, he is entitled for reasonable, just and proper compensation. Keeping in view the nature of aforesaid injuries of the appellant and it's line of treatment, the sum awarded by the Tribunal is held to be meager and lower side.

12. Thus, in view the available scenario of the matter and the nature of the injuries sustained by the appellant and it's line of treatment, including loss of income and etc., I deem fit to enhance the sum awarded by the Tribunal from Rs.7000/- to Rs.25,000/- and the same is ordered.

13. In view of the aforesaid discussions, this appeal is allowed in part and the sum awarded by the Tribunal, is enhanced from Rs.7000/- to Rs.25,000/-. The enhanced sum of Rs.18,000/- shall carry interest at the rate of 7.5% per annum from the date of filing the claim petition before the Tribunal. The liability to pay the enhanced sum is saddled against the respondents no.1 & 3 jointly and severally and they are directed to deposit the same within three months from today. There shall be no order as to the costs.

14. Appeal is allowed in part as indicated above.

Appeal partly allowed.

I.L.R. [2014] M.P., 2394
APPELLATE CRIMINAL
Before Mr. Justice N.K. Mody & Mr. Justice M.C. Garg
Cr. A. No. 1499/2010 (Indore) decided on 25 June, 2013

SHAKIR ...Appellant
Vs.
STATE OF M.P. ...Respondent

(Cr. A. Nos. 1018/2010, 1092/2010 & 874/2010)

Penal Code (45 of 1860), Sections 148, 149, 353/149 and 307/149 - Attempt to Murder **- Accused robbed P.W. 2 and killed his driver and looted Rs. 15,00,000/- - On receiving information of incident,**

Constable alongwith force intercepted accused persons - Appellants with intention to terrorise the Constable who was public servant came towards him and fired gun shot causing him injury - No indulgence called for - Appellants already convicted for killing driver and looting P.W. 2 - Sentence awarded in present case to run concurrently with sentence awarded in another case. (Paras 1,2 & 10)

दण्ड संहिता (1860 का 45), धाराऐं 148, 149, 353/149 व 307/149 – हत्या का प्रयत्न – अभियुक्त ने अ.सा. 2 को लूटा और उसके ड्राईवर की हत्या की व 15,00,000/– रुपये लूटे – घटना की सूचना मिलने पर, आरक्षक ने बल के साथ अभियुक्तगण को रोका – आरक्षक जो लोक सेवक था, को आतंकित करने के आशय से अपीलार्थीगण उसकी ओर आये और अग्नेयास्त्र से गोली चलाकर उसे आहत किया – लिप्तता की आवश्यकता नहीं – अपीलार्थीगण पहले से ड्राईवर की हत्या और अ.सा. 2 को लूटने के लिये दोषसिद्ध किये गये – वर्तमान प्रकरण में अवार्ड किया गया दण्डादेश, अन्य प्रकरण में अवार्ड किये गये दण्डादेश के साथ साथ भुगताया जायेगा।

P.K. Saxena with *Sunil Verma & Ashish Gupta* with *Anupam Chauhan,* for the appellant.

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

JUDGMENT

The Judgment of the Court was delivered by : **M.C. GARG, J. :-** These appeals are arising out of the judgment dated 21.7.2010 passed by the Upper Sessions Judge, Shajapur delivered in Sessions Case No.81/2008 in a case instituted by the State of Madhya Pradesh against appellants Rajjab Ali, Shakir, Abid Khan, Sitaram, Dharmendra Singh and Inqalab in relation to the incident which was held on 28.11.2007 at about 5:10 pm near jungle of Kupasa where, Rajjab Ali, Shakir, Abid Khan, Sitaram, Dharmendra Singh and Inqalab by using fire arms and with intention to create an unlawful assembly, they came towards Biramsingh, who was a public servant. With a view to terrorise him, they fired with katta and in this manner, caused grievous injuries to Biramsingh.

2. The intention in causing injuries was such that if, the death of Biramsingh would have taken place, then the appellants would have been guilty of offence under section 148, 149, 353/149 and 307/149 of IPC. This incident was subsequent to an incident which occurred on the same day and which was caused by the appellants only when they rob Manoj and murdered the driver

of his vehicle. Ramlal with fire arms and looted about Rs.15,00,000/-. A separate case being case No.80/2008 has been registered. In short, it is the case of the prosecution that:-

> 3. अभियोजन कथानक संक्षेप में इस प्रकार है कि–प्रधान आरक्षक वीरमसिंह दिनांक 28/11/07 को थाना सारंगपुर में पदस्थ था। उक्त दिनांक को उसको थाने पर सूचना प्राप्त हुई कि पाड़ल्या रोड पर डकैतों ने गोली चलाकर मनोज खण्डेलवाल व रामलाल कुशवाह को घायल कर 15,00000/–(पंद्रह लाख रूपय) लूट लिये हैं जो कि 6 बदमाश मारूती कार से भागे हैं जिस पर से वह हमराह फोर्स तथा महेन्द्रसिंह पिता हिम्मतसिंह सोलंकी निवासी–पाड़ल्या माता तथा मनोज पिता राधेश्याम पाटीदार के साथ उनके पीछा किया और कूपा के जंगल में पहुंचकर उसने सभी 6 बदमाशों को ललकारा और रूकने के लिये कहा तो उनमें से एक बदमाश ने बीरमसिंह को तथा पीछा करने वालों को जान से मारने की नियत से कट्टा निकालकर फायर किया जो उसके दाहिने हाथ में लगा। फिर भी उसने जान की परवाह न करते हुए उनका पीछा किया तथा आगे जंगल में रायफल से फायर कर बदमाशों को रोका और घेरा डालकर पकड़ा और उनसे नाम पता पूछा तो उन्होंने अपना नाम रज्जबअली पिता शेर मोहम्मद, 25 साल निवासी तेंदुआ सुल्तानपुर, दूसरे ने शाकिर पिता मुरादअली, 28 साल निवासी वघोना सुल्तानपुर, आबिद खां पिता शफीक खॉ मंसूरी, बड़ीखेल सारंगपुर, पिता फूलचंद कुम्हार, 25 साल छापीहेड़ा बताया तथा दो बदमाश जिनका नाम धर्मेन्द्र पिता बख्तावरसिंह निवासी सोनखेड़ा एवं इंकलाब सुल्तानपुर के फरार होना बताया। फरियादी बीरमसिंह की रिपोर्ट पर से आरोपीगण के विरूद्ध थाने पर अप.क्र.–710/07 अंतर्गत धारा–147,148,149,353,307 भा.दं.सं. का पंजीबद्ध किया गया।

3. The appellants / accused persons were arrested. The injuries were medically examined. Other steps towards investigation also taken and from the complainant, one 303 Bore (Rifle) and one 303 bore (fired kartoos) was also seized and challan after investigation was put up before the JMFC, Sarangpur and then committed to Sessions Judge, Shajapur. After the prosecution recorded statement of the appellants were also recorded under section 313 of Cr.P.C. in which they take general defence of the false implication, after only examining Dharmendra as witness. The Appellate Court had framed the following points for consideration:-

> 6. (1) क्या दिनांक 28.11.07 को शाम करीब 5.10 बजे कुपासा के जंगल में अभियुक्तगण रज्जब अली, शाकिर, आबिद, सीताराम, धर्मेन्द्र व इंकलाब ने साथ मिलकर विधि विरूद्ध समूह का गठन किया, जिनका सामान्य उद्देश्य बीरमसिंह की मारपीट व उसकी हत्या करने का था व उस जमाव के

उक्त सामान्य उद्देश्य को अग्रसर करने में बल और हिंसा का प्रयोग कर बल्वा कारित किया ?

(2) क्या अभियुक्तगण ने उक्त घटना, दिनांक, समय व स्थान पर उक्त अन्य सहअभियुक्तगण के साथ मिलकर विधि विरूद्ध जमाव समूह का गठन किया उसके सामान्य उद्देश्य के अग्रसरण में अभियुक्तगण ने घातक आयुध कट्टे से सुसज्जित होकर उक्त बीरमसिंह की मारपीट कर बल प्रयोग कर हिंसा किया व बल्वा कारित किया ?

(3) क्या अभियुक्तगण ने उक्त दिनांक, समय व स्थान पर उक्त विधि विरूद्ध जमाव के सामान्य उद्देश्य को अग्रसर करने में बीरमसिंह जो कि एक लोक सेवक था और इस नाते अपने कर्त्तव्य का निर्वहन कर रहा था, उसे उसके लोक कर्त्तव्य के निर्वहन से निवारित करने/भयोपरत करने के आशय से उस पर कट्टे से फायर कर आपराधिक बल प्रयोग किया उक्त विधि विरूद्ध जमाव के सामान्य उद्देश्य को अग्रसर किए जाने में ऐसा किया जाना संभाव्य था यह जानते हुए भी अभियुक्तगण उक्त जमाव के सदस्य बने रहे ?

(4) क्या अभियुक्तगण ने उक्त दिनांक, समय व स्थान पर उक्त विधि विरूद्ध जमाव के सामान्य उद्देश्य को अग्रसर करने में जमाव के अन्य सदस्यों ने उपहत बीरमसिंह पर घातक आयुध कट्टा चलाकर उसे उपहति इस आशय या ज्ञान से या ऐसी परिस्थितियों में कारित की कि यदि उससे उपहत बीरमसिंह की मृत्यु कारित कर देते तो अभियुक्तगण उसकी हत्या के दोषी होते व अन्य अभियुक्तगण उक्त जमाव के सामान्य उद्देश्य को अग्रसर करने में उक्त अपराध कारित होना संभाव्य जानते थे।

(5) क्या अभियुक्तगण के विरूद्ध कोई अपराध प्रमाणित है ? यदि हां, तो दण्ड ?

4. After recording the evidence laid on behalf of the prosecution which prima facie consisted statement of Biramsingh (PW-7), Dr. A.R. Havdiya (PW-4), Constable Anand Singh Sikarwar (PW-3), Rajpal singh Chauhan (PW-5), Manoj Patidar (PW-2) and Mahendra Singh (PW-1), the Court decided points No.1 and 2 in favour of the prosecution and held that from the evidence, which came on record, offence under section 147 and 148 could not be proved but while deciding point no.3 and, 4 it was held that the offence under section 353/34 and 307/34 was proved. On the point of sentence after hearing the appellants for the offence under section 307/34, life imprisonment was awarded to the appellants with fine of Rs.1000/- each, towards 353/34 two years' RI was awarded besides payment of fine of Rs.1000/- each. In

default of non-payment of fine, RI for 100 days was additionally awarded. All the sentences have been directed to run concurrently.

5. Injuries which were caused have been proved by Dr. A.R. Havdiya which are as under:-

> 11. 1. अंडाकार गड्डानुमा क्रंट्यूजन–जिससे खून रिस रहा था–किनाने लालिमा लिये हुये थे–आकार लगभग 3 मिलीमीटर व्यास का था। दाहिने हाथ के अंगूठे और तर्जनी अंगुली के मध्य में हथेली के पिछले हिस्से पर स्थित था।

6. According to the Dr. A.R. Havdiya, the aforesaid injuries must have been caused with a Bandooknuma weapon and must have been caused within 24 hours. He proved his report (Ex.P-7) and his opinion (Ex.P-8/A).

7. As far as Biramsingh is concerned, he narrated the entire story which is lying with the case of the prosecution. The details have been mentioned in paragraph 8 and 9 of the judgment which are reads as under:-

> 8. फरियादी बीरमसिंह (अ.सा.–7) का कथन है कि दिनांक 28.11.2007 को वह थाना सारंगपुर में प्रधान आरक्षक के पद पर पदस्थ था। उक्त दिनांक को दिन के करीब 2.50 बजे थाने पर जरिये टेलीफोन सूचना मिली कि पाडल्या रोड़ कड़लावद जोड़ के पास 6 बदमाशों ने सण्डावता के व्यापारी मनोज खण्डेलवाल व उसके चालक रामलाल कुशवाह को गोली मारकर उनकी ट्रेक्स में हरे रंग के थैले में रखे पंद्रह लाख रूपये लेकर बदमाश मारूती कार से सारंगपुर तरफ भागे हैं। यह सूचना शांतिलाल बंजारा निवासी–जमनागंज द्वारा दी गई थी। उक्त सूचना पर वह मय फोर्स आर्म्स एम्यूनिशन के तत्काल 2.55 बजे मोटर सायकलों से रवाना होकर घटना स्थल पर पहुंचे। उन्हें रास्ते में मारूती सारंगपुर आते हुए नहीं दिखी। घटना स्थल पर उन्हें रक्षा समिति के श्याम सोनी और फेजल खान मिले। इस साक्षी ने अनुमान लगाया कि बदमाश बिगनोदीपुरा जोड़ से अंदर कच्चे रास्ते जा सकते हैं तो वे घटनास्थल से वापस बिगनोदीपुरा जोड़ आये जहां उन्हें महेन्द्रसिंह पिता हिम्मतसिंह सोलंकी मिला। वह भी उनके साथ मोटर सायकल से बिगनोदीपुरा गांव के लिये साथ हो लिया। कच्चे रास्ते पर वे मारूति कार के पहिये के निशान देखते हुये आगे बढ़ते गये। ब्यावरा माण्डू गांव में पहुंचे तो पूछताछ करने पर गांव वालों ने बताया कि कुछ समय पहले की एक मारूति सफेद कलर की बहुत तेज गति से निकल गई है उसके पीछे एक यामहा मोटर सायकिल कत्थई कलर की जिस पर दो व्यक्ति बैठे थे, वो भी उनके पीछे गई है। फरियादी के कथनानुसार वे वहां से मोटर सायकिलों से रवाना होकर तत्काल कूपा के रास्ते पर आ गये व जंगल की तरफ गये। वहां पर उन्हें चार व्यक्ति लाईन से भागते

हुये दिखाई दिये। उन्होंने उन्हें ललकारा और रूकने के लिये कहा तो उनमें से एक बदमाश ने कट्टा निकालकर उन्हें व पीछा करने वाले पुलिस फोर्स व जनता के लोगों पर जान से मारने की नियत से गोली चलाई तो यह साक्षी नीचे गिर गया और उसके दाहिने हाथ की तर्जनी और अंगूठे के बीच में गोली के छर्रे की चोट लगी और खून निकल आया।

9. फरियादी बीरमसिंह ने आगे कहा कि कि बदमाश भागने लगे तो उन लोगों ने पुनः अपनी जान की परवाह न करते हुए बदमाशों का पीछा किया तो बदमाश भागते हुये पास ही बरोल व खेरचाखेड़ी के जंगल में गये तो उसने अपनी सर्विस रायफल से एक हवाई फायर कर बदमाशों को रोका तो चारों बदमाश पस्त होकर नीचे बैठ गये जिन्हें फरियादी व उसके साथी आरक्षक आनंदसिंह, उमेश व राजपाल तथा पब्लिक के महेन्द्रसिंह सोलंकी व महेश पाटीदार ने पकड़ लिया। फरियादी के कथनानुसार मनोज पाटीदार उन्हें ब्यावरा माण्डू गांव में मिला था वो भी उनके साथ में गया था। कुछ समय बाद ही थाना प्रभारी और एस.डी.ओ.पीमय बल के मौके पर आये और आरोपियों को अपने कब्जे में लेकर जप्ती व गिरफ्तारी की कार्यवाही थाना प्रभारी द्वारा मौके पर की गई। बीरमसिंह के कथनानुसार जिस बदमाश ने उसके उपर फायर किया था उसने अपना नाम–रज्जबअली उर्फ मुन्नाभाई पिता शेर मोहम्मद निवासी ग्राम तुंदुआ थाना–बलदीराय, तहसील–मुसाफिर खाना जिला–सुल्तानपुर (उ.प्र.) बताया था। फरियादी के कथनानुसार दूसरे ने अपना नाम आबिद अली पिता शफीक मोहम्मद, मुसलमान निवासी–बड़ीखेल सारंगपुर व तीसरे ने अपना नाम शाकिर पिता मुरादअली, निवासी–भदोना, थाना वलदीराय, तहसील– मुसाफिर खाना जिला–सुल्तानपुर (उ.प्र.) व चौथे ने अपना नाम सीताराम पिता फूलचंद कुम्हार निवासी कुम्हार मोहल्ला छापीहेड़ा का बताया व दो जिनके नाम इंकलाब निवासी सुल्तानपुर व धर्मेन्द्र पिता बक्तावरसिंह राजपूत, ग्राम सोनखेड़ा थाना–खिचलीपुर जिला राजगढ़ बताया जिनको मौके से फरार होना बताया। उसने प्र.पी.–9 की रिपोर्ट लिखाई जाने की पुष्टि की है। उसने अपना मेडीकल परीक्षण अस्पताल में होने और उसकी निशानदेही से नक्शा मौका प्र.पी.–12 बनाये जाने की भी पुष्टि की है। उसने प्र.पी.–13 के जप्ती पंचनामा अनुसार रायफल 303 बोर और एक चला हुआ कारतूस भी जप्त किये जाने की पुष्टि की है।

8. Learned counsel for the appellants has basically questioned the sentence awarded to the appellants in this case. It is submitted that the sentence is excessive. They have argued that offence under section 307/34 of IPC, where only single injury has been caused, punishment awarded is highly excessive.

9. We have heard the learned counsel for the parties.

10. We are of the considered view, that the facts and circumstances of the case and the sequence of the events, which shows that the basic purpose of the accused persons was to rob Shri Manoj Patidar and in that process having

killed Ramlal, his driver besides Rs.15,00,000/-, even though, the appellants will be guilty of those offences which are subject matter of the other appellants, who have already been convicted for those offences, no indulgence can be shown of the appellants in this case also. However, considering all the facts of the case, the sentence awarded to them is reduced to RI for 10 years with fine of Rs.10,000/- each. In view of the nonpayment of fine, the appellants will have to further undergo RI for three months in addition to the sentence awarded under section 307/34 of IPC. The fine under section 354/34 is maintained. The sentences awarded in this case shall run concurrently with the sentence awarded in ST No.80/2008. The sentences will not run one after the other but will run concurrently as provided under section 427 of Cr.P.C.

With these observations, the appeal is disposed of.

C.c. as per rules.

Appeal disposed of.

I.L.R. [2014] M.P., 2400
APPELLATE CRIMINAL
Before Mr. Justice Ajit Singh & Mr. Justice B.D. Rathi
Cr. A. No. 1489/2000 (Jabalpur) decided on 3 October, 2013

NARAIN SINGH (DR.) ...Appellant
Vs.
STATE OF M.P. ...Respondent

***Prevention of Corruption Act (49 of 1988), Sections 13(1)(d) r/w 13(2) & 7 - Demand* - Acceptance of illegal gratification has not been corroborated by any independent witness - Neither demand of bribe nor acceptance thereof has been proved by the prosecution beyond reasonable doubt - Appeal allowed. (Paras 16 & 19)**

भ्रष्टाचार निवारण अधिनियम (1988 का 49), धाराऐं 13(1)(डी) सहपठित 13(2) व 7 – मांग – किसी स्वतंत्र साक्षी द्वारा, अवैध परितोषण की स्वीकृति की पुष्टि नहीं की गयी – अभियोजन द्वारा न तो रिश्वत की मांग और न ही उसकी स्वीकृति को युक्तियुक्त संदेह से परे साबित किया गया है – अपील मंजूर।

Mrigendra Singh, for the appellant.
Aditya Adhikari standing counsel with *Satish Chaturvedi,* for the respondent.

JUDGMENT

The Judgment of the Court was delivered by :

B.D. Rathi, J. :- This appeal has been preferred under Section 374(2) of the Code of Criminal Procedure (for short "the Code") against the judgment dated 19.5.2000 passed by Special Judge (under the Prevention of Corruption Act, 1988(for short, "the act")) at Shahdol in Special Case No. 3/97, whereby the appellant has been convicted under Sections 13(1)(d) read with 13 (2) of the Act and sentenced to undergo R.I. for 3 years and to pay a fine of Rs.5,000/- and in default to suffer R.I. for one year.

2. It is admitted that during the relevant period i.e. 10th to 12th May, 1997, the appellant was working as Branch Manager in Adivasi Vitta Vikas Nigam, Shahdol (for brevity, 'the Nigam') and, accordingly, was a Public Servant.

3. Prosecution case, may be, summed up as under:-

(a) Complainant Rampal Singh applied for loan at Branch Shahdol of the Nigam for purchasing Mini Bus and deposited margin money of Rs.36,000/-. Later, he decided to purchase a Tractor, margin money of which was Rs.20,000/-, and accordingly, Rs.16,000/- got deposited in excess.

(b) After obtaining the order to purchase Tractor-Trolley, on 3.5.1997, he along with his brother Ajmer and a driver went to Bhopal and obtained Tractor Trolley and its accessories from the Agency. On 9.5.1997, he went to the office of appellant at Shahdol and asked for registration papers of the vehicle, upon which, appellant demanded a sum of Rs.15,000/-.

(c) Not intending to pay illegal gratification of Rs.15,000/- to the appellant, on 10.5.1997, the appellant went to Superintendent of Police, Lokayukt and moved a complaint (Ex.P-25). Thereafter, Superintendent of Police provided him with a tape recorder and a cassette for recording his conversation with the appellant and also asked him to arrange for Rs.15,000/- as per the demand.

(d) On the same day, the complainant returned to Shahdol and after meeting the appellant, recorded the conversation wherein the appellant reiterated the demand. Then along with constable Babadeen, he went to his village and arranged Rs.15,000/- from Ajmer.

(e) Next day i.e. on 11/5/1997, he along with Ajmer and Babadeen went to Superintendent of Police, Lokayukt, Rewa, who in presence of his sub-ordinate staff, played the tape and got corresponding script (Ex.P-1) prepared and on the same day, complainant gave second complaint (Ex.P-9), on which, the Superintendent directed Shri Parihar (P.W.10), Deputy Superintendent of Police to take appropriate action.

(f) Thereafter, on the same night, they proceeded for Jaisingh Nagar and took night halt there. In the morning, two Gazetted Officers viz. S.K. Tiwari S.D.O. Forest, and B.L. Mishra (PW4), Project Officer, Tribal Development, were called who with the consent of complainant, heard the tape and read the complaint and transcript (Ex.P-1). Thereafter, they noted the numbers of currency notes amounting to Rs.15,000/-, 25 of which were in the denomination of Rs.500/- whereas remaining 25 notes were in the denomination of Rs.100/- each. Then Constable Manoj(PW2) smeared the notes with phenolphthalein powder. The said notes were kept in the pocket of complainant with the direction not to touch them before giving to the appellant and to signal after handing over the same to the appellant. To explain the chemical process, solution of sodium carbonate was prepared and except Manoj all were asked to wash their hands in one part of solution which did not change its colour. The said part of the solution was kept in a sealed container and Manoj was asked to wash his hands in the remaining part of the solution, that turned pink. It was also preserved in a sealed bottle. After completion of necessary formalities the trap party proceeded to Shahdol.

(g) On 12/5/1997, at Shahdol, the appellant was not found in his Office. At 5 pm when he reached his home, complainant and Ajmer went to his house and after talks as per demand handed him Rs.15,000/- and thereafter, Ajmer, on the pretext of spitting, came outside and signaled upon which members of trap party reached the spot and caught the appellant counting notes. Thereafter, solution of sodium carbonate was prepared and firstly officers and members of trap party washed their hands but colour of the solution remained unchanged. Then, B.L. Mishra took Rs.15,000/- from the appellant and tallied the numbers of the currency notes with that recorded earlier. Subsequently, the appellant and complainant were asked to wash their hands in separate part of the solution and both the parts turned pink and officers of the trap party also washed their hands in another part of the solution that also turned pink. All these parts were preserved in separate containers and signed slips were affixed thereon. Accordingly, trap panchnama (Ex.P-5) and spot map (Ex.P-6) were prepared.

(h) Documents pertaining to loan of the complainant were seized form the office of appellant and after recording the statements of witnesses the sealed containers were sent to Forensic Science Lab for examination and after investigation, the charge-sheet was filed.

4. On 2/7/1998, appellant was charged with the offences punishable under Sections 13(1)(d) and 13(2) of the Act. He denied the same and pleaded false implication.

5. Learned counsel for the appellant submitted that demand and acceptance of the illegal gratification were not proved by leading cogent and reliable evidence and the prosecution case was not supported by independent witnesses. He further submitted that the conversation recorded in the Tape recorder, was concocted and forged. He contended that the evidence of prosecution witnesses being full of material contradictions, omissions and exaggerations, could not have been relied upon, and the impugned judgment based on the same, cannot be affirmed. According to him, on the said date the complainant had gone to the house of the appellant with application cum

specimen signature card Savings Bank Account to obtain the signature of the appellant to open joint account in Allahabad Bank, required for depositing installments of loan, envisaged under the rule prescribed for borrowing the loan from the Nigam and had requested the appellant to deposit the amount and get the Bank account opened as he had to attend his annual examinations at Rewa going to be conducted on the next date i.e. on 13.5.97. The appellant was returning the money to the complainant by explaining him the mode of opening the Bank account and in the mean time was surrounded by the trap party.

6. In response, learned Standing Counsel, while inviting attention to the incriminating pieces of evidence on record, submitted that the impugned judgment was well merited.

7. Having regard to the arguments advanced by the parties, impugned judgment and record of the trial Court were perused.

8. It is necessary for the prosecution to prove that the person demanding and accepting gratification is a public servant. In the present case, there is no dispute that during the relevant period, appellant was a public servant. The prosecution must also prove a demand for gratification and that the gratification has been given to the accused. If these three basic facts are proved, the accused may be found guilty for an offence under the provisions of law that concerns us in this case. Therefore, it would be worthwhile to examine the case under the following heads:

(i) Evidence pertaining to Demand

(ii) Evidence pertaining to Acceptance

Evidence as to Demand

9. Upendar Singh Parihar (PW10), the then Dy. Superintendent of Police, Lokayukt, deposed that on 10/5/97, application (Ex.P/25) given by the complainant to Superintendent of Police, was handed over to him for investigation, in pursuance whereof, he had provided the complainant with a Tape Recorder and a cassette and asked him to record the conversation of the appellant with him and Panchnama (Ex.P/30) of the same was prepared at 3.30 p.m. Complainant Rampal Singh (PW5), in paragraph 21 of his cross-examination, has deposed that on 10th only he had started from Rewa and between 3 to 4 p.m. had reached at the Office of the Nigam at Shahdol. In

para 7 he has deposed that the conversation was recorded between 3 to 4 p.m. Admittedly, distance between Shahdol and Rewa is about 167 kilometers and, therefore, it was not possible to reach Shahdol from Rewa within a period of 30 minutes.

10. Upendra Singh further deposed that after explaining complainant the method to operate the Tape, he had sent the complainant with Constable Babadeen. Babadeen (PW1) has deposed that at Shahdol, complainant had made him sit at a Kirana shop and after two hours, the complainant had come and informed him that the conversation had been recorded. Therefore, it is clear that there is no independent witness to the recorded conversation, as Babadeen, companion of complainant, was not present around or near the room where the conversation was going on and, hence, there is no evidence as to authenticity of the voices recorded in the cassette. Babadeen has further testified that thereafter, he along with the complainant, had gone to Village Kunda Tola and rested there in the night. Next day, after arranging for Rs.15,000/- they went to Rewa and handed over the cassette to the Officers at the Lokayukt Office. Thus, from his testimony, it is evident that after recording the conversation, they had not immediately proceeded to Rewa to submit the cassette at Lokaykt Office, but had taken rest in the Village and, next day, had given the same at Lokayukt Office and during the intervening period, the cassette had remained in possession of the complainant only. Therefore, possibility of tampering and concoction of cassette cannot be ruled out.

11. A bare perusal of transcript (Ex.P/1) of the conversation recorded in the said cassette would reveal that in the last the appellant had asked whether its Reel was finished and the complainant had replied that Yes it was finished. This part of the transcript, renders serious doubt to the whole recorded conversation. Moreover, complaints (Ex.P/25 & P/9) also do not indicate as to when the demand was made by the appellant for the very first time. There is no other evidence on record to establish the origin of demand of bribe by the appellant from the complainant.

12. From the above, it is quite vivid, that the prosecution has failed to prove the factum of demand by leading cogent and reliable evidence, in as much as, complainant Rampal acted in a strange manner by asking Babadeen to sit in a Kirana shop not allowing him to witness the conversation and also in view of the other material discrepancies as noted above.

13. Now we, advert to the second head, as indicated above. Evidence as to Acceptance.

14. As per the prosecution version, the trap party comprised of two Gazetted Officers viz. S.K.Tiwari and B.L.Mishra. S.K.Tiwari has not been examined by the prosecution and B.L.Mishra (PW4) deposed that he was asked by the Constable of Lokayukt Office to reach the Circuit House and after reaching there and upon asking, he was informed that some confidential proceedings were going on and he would not be informed about the same. In para 7, he deposed that in the Jeep, the Lokayukt party had taken signatures on some documents and he did not remember as to which documents he had signed on. According to him, no notes were given by the Lokayukt Party in the rest house to anyone before him and he was also not aware about the proceedings regarding chemicals etc. He further deposed in para 9 that after the trap, he had neither taken the notes from Inspector nor tallied the same and the notes were tallied by the Inspector. He was not declared hostile by the prosecution. Therefore, there is no reason to disbelieve him.

15. Details of the notes given by the complainant before trap were noted in Ex.P/33 and the Gazetted Officers, after completion of the trap, had made a short endorsement on the back of Ex.P/33 itself that the notes seized from the appellant tallied with those mentioned in Ex.P/33. However, complete details of notes seized from the appellant have not been mentioned therein. As indicated already, B.L.Mishra (PW4) deposed in para 9 that after the trap, he had neither taken the notes from Inspector nor tallied the same and the notes were tallied by the Inspector.

16. In view of the aforesaid, it is clear that acceptance of illegal gratification has not been corroborated by any independent witness and the same cannot be believed merely on the testimonies of complainant and his brother Ajmer Singh. Evidence of Babadeen, owing to his queer conduct of ignoring the directions of DSP and sitting outside at the instance of complainant, also does not appear to be trustworthy.

17. Moreover, there is nothing on record to render the defence version, as indicated above, doubtful, which has also been fortified by Ex.D/9 and Ex.D/10, respectively application form for opening joint account and deposit slip forms dated 12/5/1997 (the date of trap) duly signed by the complainant, particularly in view of Rule 7.2 of M.P. Adivasi Vitt Evam Vikas Nigam, Adivasi Vargon Ke Liye Swarozgar Yojnayon Ki Niyamwali, 1995 (Ex.D/14) requiring

the complainant to open a joint account with Branch Manager viz. the appellant for repayment of loan amount. Further, no explanation was given by the complainant in regard to his signatures on the said documents, which were admitted by him in para 25 of his evidence.

18. To sum up, on one hand, the incriminating evidence of the complainant suffered from serious infirmities and on the other, veracity of the trap proceedings was also questionable in the light of the surrounding circumstances. In the aforesaid premises, we are of the considered view, that the trial Court has mis-appreciated the evidence on record and committed grave illegality in convicting the appellant.

19. Accordingly, as neither demand of bribe nor acceptance thereof has been proved by the prosecution beyond reasonable doubt, therefore, in view of the judgment rendered by Apex Court in *Syed Ahmed Vs. State of Karnataka* (AIR 2012 SC 3359), impugned judgment of conviction cannot be sustained.

20. In the result, the appeal is allowed. The conviction and consequent sentences are hereby set aside. The appellant is acquitted of the offences. Appellant is on bail. His bail bonds stand discharged. Fine amount, if deposited, be refunded.

21. Copy of the judgment be sent to the trial Court for information and compliance.

Appeal allowed.

I.L.R. [2014] M.P., 2407
APPELLATE CRIMINAL
Before Mr. Justice Ajit Singh & Mr. Justice B.D. Rathi
Cr.A. No. 177/2002 (Jabalpur) decided on 3 October, 2013

SURESH & ors. ...Appellants
Vs.
STATE OF M.P. ...Respondent

***Penal Code (45 of 1860), Sections 302/34 & 323/34 - Murder - Enmity* - Material inconsistency between ocular and medical evidence - Held - Where the eye-witness account is found credible and trustworthy, medical opinion pointing to the alternative possibilities is**

not accepted as conclusive - The testimony of an injured witness is accorded a special status in law - Such a witness comes with a built-in-guarantee of his presence at the scene of crime and is unlikely to spare his actual assailment in order to falsely implicate someone - No perversity in convicting and sentencing the appellants - Appeal stands dismissed. (Paras 12 to 15)

दण्ड संहिता (1860 का 45), धाराऐं 302/34 व 323/34 – हत्या – वैमनस्यता – प्रत्यक्षदर्शी साक्ष्य और चिकित्सीय साक्ष्य के मध्य तात्विक असंगति – अभिनिर्धारित – जब चक्षुदर्शी साक्षी का कथन विश्वसनीय और भरोसेमंद पाया जाता है, तब वैकल्पिक संभावनाओं की ओर इंगित करते चिकित्सीय अभिमत को निर्णायक रुप से स्वीकार नहीं किया जायेगा – आहत साक्षी की परिसाक्ष्य को विधि में विशेष स्थान दिया जाता है – ऐसा साक्षी, अपराध के घटनास्थल पर अपनी उपस्थिति की अंतरंग गारंटी के साथ आता है और किसी और को मिथ्या आलिप्त करने के लिये वह अपने वास्तविक हमलावरों को बचायेगा, यह असंभावित है – अपीलार्थीगण को दोषसिद्ध और दण्डादिष्ट करने में कोई विपर्यस्तता नहीं – अपील खारिज।

Cases referred :

AIR 1991 SC 4, AIR 1974 SC 1936, (2003) 6 SCC 380, AIR 2010 SC 979, AIR 2009 SC 1110, AIR 1994 SC 250, AIR 1993 SC 1193, AIR 2011 SC 2552, AIR 2008 SC 505.

J.S. Singh, for the appellants.
S.S. Bisen, G.A. for the respondent.

JUDGMENT

The Judgment of the Court was delivered by : **B.D. Ratiii, J. :-** This appeal has been preferred under Section 374(2) of the Code of Criminal Procedure (for short "the Code") being aggrieved with the judgment dated 31.12.2001 passed by Special Judge (under the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short "the Act"), Sehore, in Special Case No.302/2000, whereby the appellants have been convicted under Sections 302/34 and 323/34 of the Indian Penal Code (for short, 'the IPC) and sentenced to imprisonment for life with fine stipulation and R.I. for six months with fine stipulation respectively.

2. The prosecution story, in short, is that on 2.9.999 at about 10 am complainant, Samandar Singh and his father Munshilal were cutting grass in their field. Thereafter, as they proceeded for their home, Ramesh, Suresh and

Brindavan armed with Pharsis and Dharam Singh armed with Sarfa (Ballam) came there and started assaulting Munshilal due to which he fell on the spot. As Samandar Singh tried to escape the appellants assaulted him as well, while abusing and exhorting to kill him. Upon the shouts of Samandar Singh, his grand mother and Nathuram came on the spot, while the appellants fled. In the said incident, Samandar Singh received injuries on his hands and legs, while Munshilal sustained injuries on his head, chest and both the hands and legs. Nathuram informed about the incident to Mishrilal, Munshilal S/o Sevaram, Ram Singh and his mother Ram kumar Bai who also reached the spot. Samandar Singh and Munshilal were taken by Nathuram in a bullock cart to police station, Bilkis, where at about 4 pm, First Information Report (for short "FIR", Ex.P/1) was lodged. Munshilal and Samandar Singh were taken to Primary Health Centre, Bilkisganj from where, they were referred to Hamidia Hospital Bhopal, but near Ratibad Village, Munshilal succumbed to the injuries thus caused. Accordingly, Morgue intimation was registered and after investigation charge sheet was filed.

3. During trial, appellants denied the charges and pleaded false implication.

4. Learned counsel for the appellants submitted that the impugned judgment was based upon mis-appreciation of evidence on record. According to him, existence of previous enmity with regard to boundary dispute of agricultural lands, is established from the evidence on record and there are material inconsistencies between ocular and medical evidence and, therefore, eye-witness account is not reliable. To buttress the contention, reliance was placed on the following precedents:

(i) *Budhwa Vs. State of MP* (AIR 1991 SC 4)

(ii) *Hallu Vs. State of M.P.* (AIR 1974 SC 1936)

(iii) *Thaman Kumar Vs. State of Union Territory of Chandigarh* ((2003)6 SCC 380)

(iv) *Javed Masood Vs. State of Rajsthan* (AIR 2010 SC 979)

(v) *Vithal Pundalik Zendge Vs. State of Maharashtra* (AIR 2009 SC 1110)

(vi) *State of Gujrat Vs. Patel Mohan Mulji* (AIR 1994

SC 250)

(vii) *Kathi Odhabai Bhimabhai Vs. State of Gujrat* (AIR 1993 SC 1193)

(viii) *Bhajan Singh Vs. State of Haryana* (AIR 2011 SC 2552

5. In response, learned Government Advocate while making reference to the incriminating pieces of evidence on record, submitted that the conviction was well merited and the impugned judgment does not warrant interference. He contended that if testimony of eye-witness is undoubtedly trustworthy then minor consistencies between ocular and medical evidence should be ignored in the interests of justice. For this, reliance was placed on *D.Sailu Vs. State of Andhra Pradesh* (AIR 2008 SC 505).

6. Having regard to the arguments advanced by the parties, record of the trial Court was perused.

7. To bring home the charges prosecution examined, as many as 24 witness including Dr. D.S.Badkur (PW16), who conducted the post mortem. As per autopsy report (Ex.P/30), cause of death was shock and haemorhage as a result of craniocerebral and leg injuries. Undisputedly, nature of death was homicidal and therefore there is no need to re-appreciate the evidence on that point.

8. The only eye-witness to the incident is injured Samandar Singh (PW1), son of deceased. Ram Singh (PW2), Mankunwar (PW3), Mishrilal Chowkidar (PW6), Rambabu (PW10), Ramkunwar (PW12), widow of the deceased, Smt. Geetabai (PW17) and Nathuram (PW21) were the witnesses who had reached on the spot after receiving information about the incident and had seen deceased and complainant Samandar Singh on the spot and were apprised by Samandar that they had been assaulted by the appellants.

9. Dr. Smt. Archana (PW20) had examined the injuries of Munshilal and Samandar Singh and prepared respective MLC reports.

10. Samandar Singh (PW1) categorically stated that on the date of incident in the morning at 10 a.m., he and his father Munshilal after cutting grass, were returning to their home. At that time, appellants Ramesh, Suresh and Brindavan, armed with Pharsis, while Dharma armed with Kharpa (Ballam) came there

and assaulted his father, who fell on the spot. As he went to intervene, he was also assaulted. Upon his shouts, the witnesses arrived and were apprised by him of the incident. His father received injuries on both his hands and legs, chest and head. He also received injuries on both his legs and hands. He lodged FIR (Ex.P/1). Thereafter, they were sent to Hamidia Hospital Bhopal where the doctor declared him dead. His evidence is fully corroborated by that of above named witnesses.

11. FIR (Ex.P/1) was promptly lodged wherein all the facts were also mentioned. The corresponding injuries were also proved by Dr.Smt. Archana (PW20). She categorically deposed that she had examined Munshilal and prepared MLC report (Ex.P/32). She had noted lacerated and incised wounds on both his legs, head and chest. She had also examined Samandar Singh and prepared MLC report (Ex.P/34) on whose legs, as well, she had found incised and lacerated wounds. Though Dr. D.S.Badkur (PW16) had found three ante mortem lacerated wounds on forehead and legs of the deceased. In para 12 he deposed that neither there was any incised wound nor stab wound. On this aspect, it was argued by learned counsel that there was inconsistency between the medical and ocular evidence of Samandar Singh (PW1) who had stated that injuries were caused by sharp edged weapon viz. Pharsi and Kharpa.

12. It is well settled that ocular testimony has greater evidentiary value vis-a-vis medical evidence. However, ocular evidence may be disbelieved when medical evidence completely rules out all possibilities of ocular evidence being true. The testimony of an injured witness is accorded a special status in law. Such a witness comes with a built-in-guarantee of his presence at the scene of crime and is unlikely to spare his actual assailment in order to falsely implicate someone.

As a general rule, a Court can and may act on the testimony of a single witness though uncorroborated. One credible witness outweighs the testimony of a number of other witnesses of indifferent character. Unless corroboration is insisted upon by statutes, Court should not insist on corroboration except in cases where the nature of the testimony of the single witness itself requires as a rule of prudence that corroboration should be insisted upon. Whether corroboration of the testimony of a single witness is or is not necessary, must depend upon facts and circumstances of each case and no general rule can be laid down.

13. In the case in hand, there is no ground to discard the testimony of injured eye-witness Samandar which is well corroborated by other witnesses of *res gestae* evidence, as well as, recitals of a promptly lodged FIR. Moreover, it is apparent that deceased and Samandar Singh had received injuries in the incident. Needless to say that doctors had not witnessed the incident. It is trite that where the eye-witness account is found credible and trustworthy, medical opinion pointing to the alternative possibilities is not accepted as conclusive. It would be erroneous to accord undue primacy to the hypothetical answers of medical witnesses to exclude the eye-witnesses' account which had to be tested independently and not treated as the "variable" keeping the medical evidence as the "constant".

14. In the aforesaid premises, we are of the considered opinion that the trial Court did not commit any illegality or perversity in convicting and sentencing the appellants and further that in the backdrop of the well settled position of law as discussed above, precedents cited by the learned counsel, are of no avail to him, in the peculiar facts and circumstances of the instant case.

15. In the result, the appeal stands dismissed. Impugned conviction and sentences are hereby affirmed.

16. Copy of this judgment along with record of the trial Court be sent to the trial Court for information and compliance.

Appeal dismissed.

I.L.R. [2014] M.P., 2412
APPELLATE CRIMINAL
Before Mr. Justice S.K. Seth & Mr. Justice P.K. Jaiswal
Cr.A. No. 815/2001 (Indore) decided on 21 August, 2014

STATE OF M.P. ...Appellant
Vs.
INDER SINGH ...Respondent

Penal Code (45 of 1860), Section 302 - Circumstantial Evidence **- When case rests on circumstantial evidence it must satisfy three tests (1) Circumstances must be cogently and firmly established (2) Circumstances should be of definite and unerringly pointing towards guilt of accused and (3) Circumstances taken cumulatively should form a complete chain. (Para 8)**

दण्ड संहिता (1860 का 45), धारा 302 – परिस्थितिजन्य साक्ष्य – जब प्रकरण परिस्थितिजन्य साक्ष्य पर आधारित होता है तब उसे तीन परीक्षणों को संतुष्ट करना चाहिए (1) परिस्थितियां, प्रबल एवं ठोस रुप से स्थापित की जानी चाहिए (2) परिस्थितियां, सुस्पष्ट/निश्चित होनी चाहिए और अचूक रुप से अभियुक्त की दोषिता की ओर इंगित करने वाली होनी चाहिए, तथा (3) परिस्थितियों को संयुक्त रुप से लेने पर, संपूर्ण श्रृंखला निर्मित होनी चाहिए।

JUDGMENT

The Judgment of the Court was delivered by : **S.K. Seth, J. :-** This appeal, with leave, is against the judgment of acquittal handed down by the Additional Sessions Judge, Khargone in S.T. No. 129 of 2000.

2. Respondent Inder Singh was prosecuted for having committed offence punishable under Section 302 of the IPC for causing murder of Dinesh.

3. Poonam Chand (PW3) and Sakubai (PW5) are the parents of the deceased Dinesh whereas Marubai (PW4) is the wife of Dinesh. Rameshwar (PW2) is the cousin of Dinesh and Rukmanbai (PW6) and Ganesh (PW7) are the sister and brother of Dinesh.

4. Prosecution case in brief is that on 13.11.1998, Dinesh along with his servant Inder Singh went to the agriculture field for the night-watch. They left home around 7.45 pm. Within 15 minutes Inder Singh came back running to the village (Bagdari) and disclosed that unknown assailants attacked Dinesh with stones as a result whereof Dinesh was lying near the field of Satyanarayan, Upon getting this information Rameshwar (PW2) along with Bharat, Sajju, Chhater went and found Dinesh lying in unconscious state near the field of Satyanarayan. They brought him back to village and then Rameshwer took Dinesh to Bhagwanpur Hospital and thereafter Rameshwer went and lodge FIR (Ex.P.2) in the P.S. Bhagwanpura. On basis of FIR (Ex.P.2) , a case was registered under Section 307 of the IPC and the investigation commenced. Dinesh was shifted to District Hospital where he was examined by Dr.K.S. Thakur (PW1) and the MLC Report is Ex.P.1.

5. On 15.11.1998, relatives of Dinesh took him to the Suyash Hospital Indore and during treatment; Dinesh succumbed to injuries on 18.11.1998. This was followed by the inquest and usual Marg inquiry. Corpse was sent to the M.Y. Hospital for the post-mortem examination. Ex.P. 10 is the autopsy

report by Dr.Dube (PW13) who conducted the postmortem examination. according to Dr. Dube, Dinesh died due to respiratory failure as a result of head injury. After the usual steps, charge sheet was filed and the respondent was arraigned to stand trial under section 302 of the Penal Code.

6. At the trial respondent abjured guilt therefore in order to bring home the charge, prosecution examined 15 witnesses. On consideration of evidence adduced by the prosecution learned trial Court found that the prosecution failed to establish beyond reasonable doubt that the respondent committed the offence of culpable homicide. Thus giving the benefit of doubt, respondent was acquitted.

7. Against the judgment of acquittal, State after obtaining the leave, has preferred this appeal as stated above.

8. We have heard rival submmissions at length and perused the record of the trial Court. The case in hand is of circumstantial evidence.It is well settled that when the case rests on circumstantial evidence, such evidence must satisfy three tests:- (1) the circumstances from which inference of guilt is sought to be drawn must be cogently and firmly established; (ii) those circumstances should be of definite and unerringly pointing towards the guilt of the accused; and (iii) the circumstances taken cumulatively should form a complete chain leading to the conclusion that the crime was committed by the accused and none else.

9. After a close scrutiny we find that the case in hand does not satisfy the three tests as mentioned. The trial Court has discussed the evidence in detailed in its well-reasoned judgment which does not call for repetition. In view of evidence on record, it could not be said that the State has entirely and effectively dislodged or demolished the grounds on which the trial Court has based its judgment, which are reasonable and plausible. We do not find that the view taken by the trial Court is perverse or unreasonable. Trial Court has properly appreciated the evidence before it recorded the finding of acquittal. As result we find no merit and substance so as to warrant interference with the order of acquittal passed by the trial Court. Thus, the appeal fails and the same is accordingly dismissed. Respondent is on bail, therefore his bail bond stands discharged.

10. Ordered accordingly.

Appeal dismissed.

I.L.R. [2014] M.P., 2415
APPELLATE CRIMINAL
Before Mr. Justice S.K. Seth & Mr. Justice P.K. Jaiswal
Cr.A. No. 196/2003 (Indore) decided on 21 August, 2014

STATE OF M.P. ...Appellant
Vs.
KAMAL & anr. ...Respondents

A. Criminal Procedure Code, 1973 (2 of 1974), Section 378 - Appeal against acquittal - **Appellate Court can interfere with order of acquittal only in an exceptional case where there are compelling circumstances to interfere and the judgment under appeal is found to be perverse. (Para 7)**

क. दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 378 – दोषमुक्ति के विरुद्ध अपील – अपीली न्यायालय, दोषमुक्ति के आदेश में केवल अपवादात्मक प्रकरण में हस्तक्षेप कर सकता है जहां हस्तक्षेप के लिए आबद्धकर परिस्थितियां हैं और निर्णय जिसके विरुद्ध अपील की गई है, वह विपर्यस्त पाया जाता है।

B. Penal Code (45 of 1860), Section 302 - Murder - **Case under Section 125 of Cr.P.C. for grant of maintenance was pending between deceased and appellant No.2 - Evidence of Sisters of deceased that appellant No.2 exhorted appellant No.1 who in his turn caused blow by means of spade to deceased not reliable in absence of corroborative independent evidence - In absence of Serologist's report, presence of blood stains on seized spade is of no value - Findings given by Trial Court cannot be said to be perverse - Appeal dismissed. (Paras 8 to 10)**

ख. दण्ड संहिता (1860 का 45), धारा 302 – हत्या – मृतिका और अपीलार्थी क्र. 2 के बीच में द.प्र.सं. की धारा 125 के अंतर्गत भरण.पोषण का प्रकरण लंबित था – मृतिका की बहनों का साक्ष्य कि अपीलार्थी क्र. 2 ने अपीलार्थी क्र. 1 को उकसाया, जिसने अपनी ओर से मृतिका पर फावड़े से वार किया, पुष्टिकारक स्वतंत्र साक्ष्य की अनुपस्थिति में विश्वसनीय नहीं – सीरम विज्ञानी के प्रतिवेदन की अनुपस्थिति में, जब्त किये गये फावड़े पर रक्त के दाग की उपस्थिति का कोई मूल्य नहीं – विचारण न्यायालय द्वारा दिये गये निष्कर्षों को विपर्यस्त नहीं कहा जा सकता – अपील खारिज।

Case referred :

(2013) 14 SCC 751.

JUDGMENT

The Judgment of the Court was delivered by : **S.K Sethi, J. :-** This appeal against acquittal is by the State.

2. Two respondents were sent up to face trial on the charges of murder of Ramubai, wife of accused No.2 Sukhram. The charge against accused No. 1 Kamal was under section 302 substantively as also under section 3(2) (v) of the Prevention of Scheduled Caste and Scheduled Tribes Atrocity Act 1988; the accused No. 2 Sukhram was charged u/s 302 read with section 114 of the IPC. The Trial Court on considering the evidence led by the prosecution acquitted both the accused of all the charges giving them benefit of doubt. Aggrieved by that decision the State has come up in appeal.

3. It is no longer in dispute that the deceased Ramubai aged about 25 years was the wife of accused No.2 Sukhram ; that Sukhram and his wife were tribal (Bhils) of Dhar District in M.P.; that Ramubai died a homicidal death on 11.12.2001 in a forest near village Moregoan of Dhar District. This came within the jurisdiction of Police Station Amzera with a Police out-post at Dasai. Autopsy report dated 12.12.2001 is Ex.P.9 by Dr. K.C. Shukla which shows that homicidal death was due to injury to the vital organ (brain) causing haemorrhage and shock; injury within 24 hours of the examination.

4. Prosucution case in brief was as under. On 11.12.2001 at about 3 pm the said Ramubai was collecting cow-dung cakes in the forest near the village Moregoan. At that time she was accompained by her two sisters Sukamabai and Rukhabai and one Nanibai ; Ramubai sat down to attend call of nature and the companions went a little ahead when both the accused came and at the instigation of accused Sukhram, accused Kamal gave blow with a spade on the head of Ramubai whereupon she fell down; and the accused persons ran away from the spot; the incident was witnessed by the said Sukmabai, Rukhabai and Nanibai. FIR Ex. P.5 was recorded at the said police out post at 3 am on 12.12.2001; this FIR was recorded at the instance of Sukmabai; investigation followed and spot map was prepared etc. On this material the prosecution sought conviction of both the accused as mentioned above.

5. The accused abjured their guilt and pleaded that they were innocent and had been falsely implicated. They have examined 3 witnesses in defence.

6. The trial Court on the material on record acquitted both the accused of all the charges. The trial court has given both the accused persons benefit of boubt.

Aggrieved by the acquittal the State has come is appeal. The main grounds urged in the memo of appeal are that though Ramubai was the wife of accused Sukhram, the accused had left her and had remarried another woman; that since then Ramubai was staying with her father and she had filed claim for maintenance against her husband. With this back-ground both accused on the date of incident came to the spot and Sukhram exhorted accused Kamal to kill Ramubai, whereupon the accused Kamal struck a blow on the head of Ramubai with a spade. Ramubai fell down and expired after some time. The trial Court had erred in disbelieving eye witnesses Sukmabai(PW5) and Rukhabai (PW8); it also erred in not accepting the supporting autopsy report; the trial court erred in holiding that there was delay in recording the FIR which had cast doubts on the testimonies of the eye witnesses and the trial court failed to consider evidence on record explaining the delay. For these reasons, State argued that the judgment of the trial court was erroneous and deserved to be set aside, and the accused persons be punished on the charges framed against them.

7. The Supreme Court in *State of Uttar Pradesh V. Gobargan and others* (2013) 14 SCC 751 has laid down sufficient guidelines for interference by the superior Court against order of acquittal. It is there held that in an exceptional cases where there are compelling circumstances to interfere and the judgment under appeal is found to be perverse, can the appellate Court interfere with order of acquittal. Further held that it should be borne in mind the presumption of innocence of the accused which is bolstered up by the acquittal. With these guidelines in mind let us now examine the evidence on record to see whether case for interference is made out or not. The evidence of Sukmabai, real sister of the deceased who claims to have been present at the time of the incident has this to say: both the accused persons come to the spot and at the instance and instigation of accused Sukhram the accused Kamal struck spade blow on the head of Ramubai; thereafter both the accused fled leaving the spade behind. There is no substantial support to this evidence of Sukmabai in the evidence of Rukhabai her sister (PW8) and an independent witness Nanibai(PW7). Nanibai disclaim any knowledge of the case in hand and she was confronted her case dairy statement seeking to impeach her credit. The fact however remains that there is no independent corroboration of evidence of Sukmabai. The evidence of Rukhabai (PW8) significantly is silent on the part played by Sukram when she states that both accused persons came to the spot and the accused Kamal struck Ramubai on the head with a spade. No word about instigation or abetment by accused Sukhram in her testimony. In this state of affairs it cannot be said that the trial

Court erred in giving benefit of doubt to both the accused.

8. As regards the medical evidence touched upon by the State, this by itself does not lead to the conclusion of guilt of particularly accused no. 1. Hence according to us this contention of the appellant State has no force.

9. As regards the delay in the FIR this point is also of little or no value since the incident took place on 11.12.2001 at about 3 pm and the FIR Ex. P.5 was recorded in the early hours at 3 am on 12.12.2001. That apart, the evidence of Sukmabai shows that the Police Officer in the Police out post instead of recording the FIR straight away asked her to go and look after the victim. We find that there was no delay in recording the FIR, and even if there was delay that stands explained. Another circumstance to be considered is the finding of blood stains on the seized spade per report Ex.P.17. But this finding in absence of Serologist Report is of no value. As it is the document Ex.P.17 was unable to clarify about origin of the blood stains and the blood group thereof.

10. From what has been discussed above it is amply clear that the trial court judgment giving benefit of doubt to both the accused cannot be said to be perverse or calling for interference by the appellate court. We are therefore very clear that this appeal is devoid of merit and has to be dismissed.

11. Ordered accordingly.

Appeal dismissed.

I.L.R. [2014] M.P., 2418
APPELLATE CRIMINAL
Before Mr. Justice S.K. Gangele & Mr. Justice S.K. Palo
Cr. A. No. 367/2006 (Gwalior) decided on 25 September, 2014

KARANVEER RANA ...Appellant
Vs.
STATE OF M.P. ...Respondent
(and Cr. A. No. 368/2006)

A. ***Prevention of Corruption Act (49 of 1988), Section 19 -*** **Sanction - Held - Mere error, omission or irregularity in sanction is not considered fatal unless it has resulted in the failure of justice. (Para 22)**

क. *भ्रष्टाचार निवारण अधिनियम (1988 का 49), धारा 19 – मंजूरी – अभिनिर्धारित* – मंजूरी में मात्र त्रुटि, लोप या अनियमितता को घातक नहीं माना

जाता जब तक कि उसके परिणामस्वरुप न्याय की हानि ना हुई हो।

B. Prevention of Corruption Act (49 of 1988), Section 20 - Presumption - **Held - The provision cannot be overlooked - Further, once it is proved that the amount was recovered from the appellants possession, the burden of proof lies on the appellants to prove that they received the same bonafidely or for some other purpose.** **(Para 25)**

ख. भ्रष्टाचार निवारण अधिनियम (1988 का 49), धारा 20 – उपधारणा – अभिनिर्धारित – उपबंध को अनदेखा नहीं किया जा सकता – इसके अतिरिक्त, एक बार जब यह साबित हो जाता है कि रकम को अपीलार्थीगण के कब्जे से बरामद किया गया था, सबूत का भार अपीलार्थी पर होगा, यह साबित करने के लिये कि उन्होंने उसे सद्भाविक रुप से प्राप्त किया था या किसी अन्य प्रयोजन के लिये थी।

Cases referred :

(2008) 9 SCC 674, (2007) 14 SCC 783, (2007) 7 SCC 625, AIR 1964 SC 575, (2001) 1 SCC 691, (2005) 12 SCC 641, (2008) 14 SCC 779.

Keshav Pathak, for the appellant.
J.D. Suryawanshi, for the respondent.

JUDGMENT

The Judgment of the Court was delivered by : **S.K. PALO, J. :-** Regard being had similitude in the controversy involved in the matter, the above-mentioned cases were heard analogously and a common order is being passed.

2. Appellant-accused Karanveer Rana (Cr. Appeal No. 367/2006) and appellant-accused Lakhan Lal Mishra (Cr. Appeal No. 368/2006) have filed their appeals under Section 374 (2) Cr.P.C to set aside the judgment dated 21st April, 2006 passed by the learned Special Judge (Prevention of Corruption Act), Guna in Special Sessions Trial No. 2/04, whereby the appellants have been convicted under Sections 7 and 13 (1) (d) read with Section 13(2) of Prevention of Corruption Act, 1988 [in short "PC Act"] and sentenced imprisonment for terms of one year each and imposed fine of Rs.2000/- and under Section 13 (2) of PC Act, imprisonment for one year each and fine of Rs. 2000/- each respectively. In lieu of fine, the appellants are directed to undergo sentence of three months each for every count.

3. The material facts which are not disputed in these appeals are that appellant Lakhan Lal Mishra was serving in as Railway Traffic Inspector (Railway Path Nirikshak) at Byaora Railway Station at the relevant time and subsequently, retired from service on 28th March, 2003. Accused- appellant Karanveer Rana was serving in the Western Central Railway Bhopal as Store Assistant at the relevant time. Dinesh Hayarn (PW-8) was serving in the Office of D.R.M as Assistant Grade-II. Shri M.R. Dugaya (PW-13) Superintendent in the Office of D.R.M (Works), Bhopal. Mr. Khalid Hussain Qureshi (PW-3) was serving as Time Keeper in the Office of Engineering Railway Traffic, Byaora at the relevant time. It is also not disputed that Ramesh Chand Jain (PW-11) is the Manager and Proprietor of Vardhman Trading Corporation Company and this Company was having license to purchase scraps from the Railway. Complainant Akalank Jain (PW-9) and Rajesh Jain (PW-10) are the sons-in-law of Ramesh Chand Jain (PW-11). Akalank Jain (PW-9) and Rajesh Jain (PW-10), at the relevant time, purchased sleepers and scraps material from the Railway in the auction and the delivery of which was to be done at Ruthai and Kumbraj Railway Stations by the accused persons. The accused persons delivered this scraps to Akalank Jain in between 26th-28th June, 2002 for which papers were prepared accordingly.

4. Facts just necessary for adjudicating the matters are stated hereasunder:

To appreciate the cases of the appellants and also to find out whether the appellants are entitled for the relief as prayed for by them.

Briefly stated, the prosecution story is that Ramesh Chand Jain, the Manger of Vardhman Trading Corporation Company and this Company is doing the business of purchasing irons and scraps. The sons-in-law of Ramesh Chand Jain are Akalank Jain and Rajesh Jain, who were also working in the said Company. On 13.5.2002, D.C.O.S Jhansi auctioned 55.980 metric tones scraps through Bhopal Division at Bhopal. This scraps were purchased by Akalank Jain and Rajesh Jain in their names. 25% of this auction amount was deposited on 13.5.2002 in Railway Department. The rest amount i.e. Rs. 2,26, 931/- was deposited by them at D.C.O.S Office Jhansi. They also received the order of delivery of goods. The said order was deposited by them in the Office of C.P.W.I, Byaora-Rajgrah. Appellant- accused Lakhan Lal Mishra, CPWI was to deliver the goods to Akalank Jain from 27.6.2002 to 29.6.2002. On 26.6.2002 when complainant Akalank Jain and Rajesh Jain went to the Office of CPWI, Byaora to take delivery of goods, the appellant

accused L.L. Mishra CPWI and appellant- accused K.B. Rana, Assistant Store Keeper, demanded Rs.3360/- and Rs.3920/- as gratification. After several requests of Akalank Jain and Rajesh Jain, the accused-appellants agreed to deliver the goods on payment of Rs. 2000/- each. On 27.6.2002, Akalank Jain and Rajesh Jain informed this to the Proprietor-Ramesh Chand Jain who was at Jhansi. Then, Ramesh Chand Jain told to Akalank Jain and Rajesh Jain not to give any gratification to the accused- appellants and he wanted to take the matter to the Lokayukta Police. Ramesh Chand Jain met the Superintendent of Police, Lokayukta on 27.6.2002 and on 28.6.2002 he approached the Superintendent of Police, Lokayukta at Gwalior and lodged the complaint about illegal demand of Rs. 2000/- each by the appellants-accused persons.

5. On the basis of this complaint, in the leadership of Inspector Rajendra Singh Bhadauria, Ashok Bhardwaj, Constable Ravindra Singh, Constable Dinesh Sharma, Vinod Kumar Thapa, Bhagsingh Tomar sent to Guna. At the same time for legal action they also obtained permission from the District Magistrate for trapping to be conducted and requested to make available two Panch witnesses. The then District Magistrate, Guna ordered Dr. Girish Narayan Sharma, Ayurved Chikitsa Adhikari, Government Ayurved Mahavidyala, Gwalior and Dr. R.L.Mishra, Veterinary Assistant Surgeon, Gwalior to accompany the trap party.

6. On 28.6.2002 Inspector Rajendra Singh Bhadauria alongwith members of trap party left Gwalior in Government vehicle No.M.P. 02/2147 at 3:30 PM and reached Guna at around 8:30 PM. They went to the Circuit House and called the complainant Akalank Jain. After being satisfied that the appellants-accused persons demanded Rs.2000/- each as gratification and the amount was to be paid to the appellants- accused persons at Room No.4 of Shreelodge,Guna.

7. Report was lodged under Section 7 of PC Act, Panch witnesses were introduced to the complainant Akalank Jain and the complaint was read over to Panch witnesses which Akalank Jain admitted before the Panch witnesses. Thereafter, eight currency notes denomination of Rs.500/- given to the Inspector Rajendra Singh Bhadoria by Akalank Jain. Numbers of notes were noted down and powder of Phenolphthalein was used to coat over the notes by Surendra Singh. These notes were kept in the pocket of shirt by complainant Akalank Jain and he was instructed not to touch the notes before giving it to

the appellants-accused persons. He was also instructed not to shake his hands with any one. He was also instructed that after handing over the notes to the appellants-accused persons to give signal to trap party by caressing his hairs. At the same time, solution of sodium carbonate was prepared in clean glass, in which both hands of Surendra Singh were washed. The solution become rosy. This solution was kept in a clean bottle and sealed it. Two packets of Phenolphthalein powder were prepared by Surendra Singh and kept in two different envelopes. Thereafter, two packets of Sodium carbonate powder was prepared by Habib Khan and kept in two different sealed envelopes. Before proceeding for trap, all the members of trap party were washed their hands in solution of Sodium carbonate prepared in the clean glass including complainant Akalank Jain and the colour did not change. This solution was also kept in different clean bottles. Panchnama was prepared at the Circuit House regarding these proceedings.

8. Inspector Rajendra Singh Bhadauria alongwith members of the trap party and Panch witnesses left the Circuit House by a jeep for Shreelodge, Guna alongwith complainant Akalank Jain. After reaching the bus stand, they instructed the complainant Akalank Jain to go to lodge along-with Inspector Ravindra Singh, Bhag Singh, Dinesh Sharma and Habib Khan. Complainant Akalank Jain went to the lodge and after handing over the currency notes to the accused persons, came out to the balcony and gave signal to the trap party. On receiving signal Inspector Ravindra Singh and Habib Khan went to the Room No.4, where accused persons were staying. They caught the hands of accused Lakhan Lal Mishra and Constables Bhag Singh and Dinesh caught the hands of appellant – accused Karanveer Rana. Thereafter, the panch witnesses and other members of trap party also entered into the room and disclosed their identity and in two different clean glasses containing solution of Sodium carbonate washed the hands of the appellants-accused persons. The solution become its colour to rosy. This solution was kept in different bottles and sealed it. The accused persons were asked about the currency notes. Appellant- accused Lakhan Lal Mishra said that he kept in the right pocket of his trouser and the appellant-accused said that he kept the currency notes in his left pocket of his trouser. The Panch witnesses Girish Narayan Sharma (PW-1) and Dr. R.L.Mishra (PW2) were allowed to wash their hands in the solution of sodium carbonate prepared in two glasses, the colour did not change. This solution was kept in two different bottles. Thereafter, Panch witness Dr. R.L.Mishra took out the currency notes from the pocket of accused-appellant

Lakhan Lal and Panch witness Girish Narayan Sharma took out the currency notes from the pocket of appellant-accused Karanveer Rana. Both the accused persons had four notes each denomination of Rs.500/-. Thus, Rs. 2000/- from each were found. The number of currency notes were tallied, which was found to be the same numbers noted down at the Circuit House, Guna and these were the same currency notes given to the complainant Akalank Jain for handing over to the appellants-accused persons. The currency notes were seized from the appellants-accused persons and prepared seizure memo and kept in different sealed envelopes. Thereafter, again prepared solution of sodium carbonate in two different glasses and the hands of Panch witnesses R.L. Mishra and Girish Narayan Sharma were washed and the colour of the solution became rosy. This solution was kept in two different bottles. Again, solution of sodium carbonate was prepared and trousers of both the accused-appellants were removed and the pockets of both the trousers were dipped into the solution and the colour of the solution became changed. This solution was also kept in two different bottles and sealed them. Trousers of the appellants-accused persons which were worn, seized and seizure memo was prepared.

9. The appellants-accused persons asked about the papers with regard to delivery of scrap goods. They informed that these papers were kept with Khalid Hussain Qureshi (PW-3), who was staying in the same room. Therefore, from the custody of Khalid Hussain Qureshi papers with regard to auction and delivery of scrap goods were seized and seizure memo was drawn. Panchnama was prepared with regard to all the proceedings, spot map was also prepared. The accused- appellants persons arrested. FIR lodged and the sample of the sodium carbonate, powder of phenolphthalein and the solution in the sealed bottles were sent to F.S.L. Sagar for chemical examination. After due sanction from the concerned Department. Charge sheet was filed.

10. The learned Trial Court framed the charges under Sections 7 & 13 (1) (d) read with Section 13 (2) of PC Act and explained to the appellants-accused. They abjured guilt. In their examination, they have stated that complainant Akalank Jain and Rajesh Jain are the sons-in-law of Ramesh Chand Jain, who were buying the scrap materials from the Railway for quite some time. They have always been using tactics of pressuring the Railway servants to do such things which were not permissible by rules, so that they can get delivery of goods violated the rules. In December 2001, a case was

prepared by Railway Engineer, Sagar against these person. A case was also lodged against complainant Akalank Jain and Rajesh Jain at Mathura regarding purchase of old wagon. On 11.12.2002 at the time of delivery of scrap goods at Byaora, Ramesh Jain wanted to take excess goods. At that time, Ramesh Jain and Akalank Jain quarrelled with the appellants-accused persons. They have implicated them by making this conspiracy.

11. The appellants-accused persons further stated that in between 26th to 28th June, 2002 the accused persons were sitting alongwith complainant Akalank Jain at Hotel Shreel, Guna and after delivery of goods they used to stay at the Hotel and used to take dinner there. On 28.2.2002 after delivery of the goods, complainant Akalank Jain and Rajesh Jain threw a party in which R.P.F Inspector Karan was also present. Complainant Akalank Jain and Rajesh Jain brought alcohol and also offered the appellants -accused persons to drink and by the conspiracy, trap was conducted. The appellants- accused persons also claim that the goods were delivered on 28.6.2002 before the trap was conducted. In this regard, they also examined Inspector Karan Singh (DW-1) and Khemchand, the Trolley Man (DW-2) as defence witnesses.

12. The learned Trial Court after appreciating the evidence adduced, convicted the appellants-accused persons under Section 7 of PC Act and Section 13 (1) (D) read with Section 13 (2) of the same Act and imposed sentence as mentioned in para-2 of this judgment.

13. Appellant, Karanveer Rana has assailed the impugned judgment on several grounds. It is contended that neither the learned Trial Court has evaluated the evidence properly nor followed the principles of natural justice and also did not analyze the evidence in its proper perspective. There has been vital contradictions which has not been considered. Therefore, the impugned judgment is liable to be set aside.

14. Appellant, Lakhan Lal Mishra also challenged the impugned judgment on several grounds and contended that the impugned judgment pronounced by the learned Trial Court is not in accordance with law. Hence, is not maintainable.

15. We have given serious thought to the argument put forth before us by the learned counsel for the respondent and throughly examined the evidence adduced.

16. In the opinion of this Court, the learned Trial Court has considered all the evidence produced before it and analysised the evidence systematically and cogently.

17. Appellant Lakhan Lal Mishra has retired on attaining the age of superannuation, before charge sheet was filed. Therefore, sanction in this regard was not essential. So far as appellant, Karanveer Rana is concerned, sanction has been obtained vide Ex.P/16. The Dy. Chief Account Officer, Railway (Western Railway), Jabalpur has granted the sanction. Shri S.P.Tiwari, (PW-6) Senior Regional Finance Manager (Western Central Railway), Bhopal has proved this document.

18. Mr. Aklank Jain (PW-9) submitted written complaint Ex.P/2 to Rajendra Bhadouria (PW-14), the Investigator, that the accused persons are coming to Room No.4 of Hotel Shree for receiving the bribe and requested for necessary action. It is contended by the appellant Karanveer Rana that the appellants and witness Akalank Jain were staying at the Hotel Shree since 26.6.2002. Therefore, such application on 28.6.2002 is given is false information. It is also contended that the Investigating Officer did not proceed in this line to investigate the matter. Therefore, the investigation is tainted.

19. It would be suffice to mention that the appellants have not taken such a plea earlier. In this regard, *State of Andhra Pradesh Vs. P. Satyanarayana Murthy* (2008) 9 SCC 674, can be relied on in which the Hon'ble Supreme Court has held that:

> Criminal Procedure Code, 1973 – S. 313 – Examination of accused – Version given by him for the first time during examination – Whether acceptable – Respondent, for the first time taking stand under S. 313 that bribe money was forced into his hands – Such stand, held, not acceptable in the face of other evidence against him.
>
> Therefore, the contention raised by the appellants is not sustainable.

20. Both the appellants seriously contended that the goods which are "iron scrap" were handed over part by part from 26.6.2002 to 28.6.2002. The trap party was organized on 28.6.2002 after the goods were actually delivered. Therefore, there was no motive to demand such illegal gratification, as the

"iron scrap" were already delivered to the complainant contractors. In this regard, it can be very well said that the goods delivered after there was a negotiation and when the complainant, Akalank Jain (PW-9) promised to give the amount once the goods were delivered. Before the delivery of goods, negotiation was done by the accused persons. In furtherance of negotiation the amount was to be given. Even presuming that there was no such deal then why the accused persons came to the Hotel Shree Lodge to "celebrate" and "party" ? Why they accepted the amount ? It indicates that the amount which was earlier decided was received on 28.6.2002. There is no presumption that gratification can not be obtained or given after commission of the acts. So this contention of the appellants does not carry much weight.

21. Room No.4 of Hotel Shree Lodge was booked by complainant Akalank Jain (PW-9) from 26.6.2002 and in this lodge the complainant Akalank Jain (PW-9), Rajesh Jain (PW-10) and the accused persons were staying in the hotel. If that is so, why the accused / appellants stayed there and received the hospitality of the complainant Akalank Jain, the appellants have not answered. Even if, the story of the appellants are taken for granted that they had gone to the hotel for partying (celebration) their action itself indicates that they have been utilizing the services of the Akalank Jain (PW-9) and Rajesh Jain (PW-10). According to them before the trap was conducted the delivery of goods was over on 28.6.2002 , why did they stay in the hotel Shree ? Once, the work was over, their presence in the hotel itself indicates that they had gone to receive the gratification as earlier negotiated by them.

22. Contention of the appellants that sanction was not proved properly also does not hold good. In this regard, it can be very well said that, the fact of sanction under Section 19 of the Prevention of Corruption Act, 1988 has considerable significance. Stress is on "failure of justice" and that too "in the opinion of the Court". Significantly, the "failure of justice" is relatable to error, commission or irregularity in the sanction,. Therefore, mere error, omission or irregularity in sanction is not considered fatal unless it has resulted in the failure of justice. The accused / appellants have not indicated anything how the non-examination of the sanctioning authority has adversely effected the prosecution case, or it resulted into failure of justice. In this regard, it would be proper to refer the case *Paul Varghese vs. State of Kerala & Another* (2007) 14 SCC 783, in which the Hon'ble Supreme Court has held:

Error, omission or irregularity in sanction – Effect of –

held, it is sot (sic:not) fatal unless it has occasioned or resulted in failure of justice - Requirement of sanction under S. 19 (1) is a matter of procedure and does not go to the root of the jurisdiction – Criminal Procedure Code, 1973, S 465.

23. In the case in hand, the Trial Court has recorded the finding that the accused / appellants have accepted the amount. It is immaterial that the amount was received before the work was done or after it was done. Therefore, it would also be immaterial whether the accused / appellants were not in position to oblige the complainant. In this regard, the law laid down *Girja Prasad (dead) by LRS. Vs. State of Madhya Pradesh* (2007) 7 SCC 625 can be referred:

Prevention of Corruption Act, 1947 – S. 4 and S. 5 (1) (d) r/w S. 5 (2)- Presumption under S. 4 regarding acceptance of illegal gratification – Invocation of – Prerequisites for – Rebuttal of said presumption – Held, once it is proved that the amount has been received by the accused, presumption under S. 4 would get attracted – In such a case, it would be wholly immaterial whether the said acceptance of amount was for him or for someone else – It would also be immaterial whether the accused was or was not in a position to oblige the complainant – However, the said presumption is not absolute- Accused can rebut the said presumption by leading evidence – In the present case, there was evidence as to acceptance of amount by the accused- Hence, presumption under S. 4 of the PC Act, 1947 got attracted – Accused failed to rebut the said presumption as he did not adduce any evidence whatsoever in that regard- Therefore, High Court was justified in reversing his acquittal and convicting him under the PC Act, 11947 (sic:1947) and S. 161 IPC – Penal Code, 1860, S.161 (since repealed) – Prevention of Corruption Act, 1988, S. 20 and S.13 (1) (d) r/w S. 13 (2).

24. Section 20 of the Prevention of Corruption Act, 1988 corresponds Section 4 of Prevention of Corruption Act, 1947. Before presumption can be raised, the burden is on the prosecution to prove that the accused has accepted or obtained or as agreed to accepted or attempted to obtain for himself any gratification other than legal remuneration etc. In the present case amount was recovered from the possession of the accused persons has been proved.

Therefore, presumption can be drawn as to the existence of the fact that before the goods (iron scrap) were delivered it was agreed upon by them to deliver the same and they will obtain Rs.2000/- each after the delivery. In *Dhanwantri Desai vs. State of Maharashtra,* AIR 1964 SC 575 held as under:

> Whereas under Section 114 of the Evidence Act, it is open to the Court to draw or not to draw a presumption as to the existence of one fact from the proof of another fact and it is not obligatory upon the Court to draw such presumption, under sub-section (1) of Section 4, however, if a certain fact is proved, that is, where any gratification (other than legal remuneration) or any valuable thing is proved to have been received by an accused person the Court is required to draw a presumption that the person received that thing as a motive or reward such as is mentioned in Sec. 161, Indian Penal Code. Therefore, the court has no choice in the matter, once it is established that the accused person has received a sum of money which was not due to him as legal remuneration.

25. As this is a case under Prevention of Corruption Act, the presumption Clause under Section 20 of the Act cannot be overlooked. Once, it is proved that the amount was recovered from the appellants' possession, the burden of prove lies on the appellants to prove that they received the same bona fidely or for some other purpose. In this regard, *Krishna Ram Vs. State of Rajasthan* (2009) 11 SCC may be referred to, in which it is held that:

> Prevention of Corruption Act, 1988 – S.7 and 13(1) (d) r/w S. 13 (2) and S. 20- Presumption under S. 20- Demand of Rs. 500 by Patwari (public servant) for giving favourable report in regard to allotment of lands on permanent leasehold rights, alleged – Currency notes treated with phenolphthalein powder recovered from pockets of appellant – accused – Numbers of the notes recovered matched – Stand of appellant that the money was handed over to him by the complainant as loan amount on behalf of DW-1 not proved – Held, once money was recovered from the possession of the appellant, the burden under S. 20 shifts upon him, which he could not discharge – Demand of Rs. 500 as bribe money, thus, conclusively proved.

26. We are also aware that, the presumption clause in Indian Evidence Act 1872 in cases of prevention of corruption, legal or mandatory, presumption can be drawn from the factual or discretionary presumption. It would be, however, unsafe to draw another discretionary presumption. In this regard, the law laid down by the Hon'ble Supreme Court in *M. Narsinga Rao vs. State of A.P.,* (2001) 1 SCC 691 can be profitable referred. The Hon'ble Supreme Court has held as under:

> Evidence Act, 1972 – S. 114 – Presumptions – A legal or mandatory presumption can be drawn from a factual or discretionary presumption – It would however be unsafe to draw another discretionary presumption – Presumptions.

27. In the present case, also the money was given to the appellants in Room No.4 of Hotel Shree Lodge. Immediately after it was handed over to the appellants the complainant Akalank Jain (PW-2) signaled the trap party. The trap party along with independent witnesses Dr. Girish Narayan Sharma (PW-1) and Dr. R.L. Mishra, (PW-2) entered into the scene. The credible evidence of member of Lokayukta Police of trap party and the independent witnesses is available in the record. The accused persons have not offered reasonable explanation of the tainted money. Under Section 20, the Court is under obligation to presume that the accused persons accepted the bribe. In *Kanshi Ram Vs. State of Punjab,* (2005) 12 SCC 641, the Hon'ble Supreme Court has made it clear by holding that:

> Prevention of Corruption Act, 1988 – S. 20 – Bribery – Presumption under S. 20- Applicability – Receipt of money proved beyond reasonable doubt – NO reasonable explanation offered by accused as to how the tainted money came to his possession -Held, it would be presumed under S. 20 that the accused accepted the bribe – On facts, the explanation offered by appellant was not sufficient to rebut the presumption – Conviction and sentence upheld.

28. Every acceptance of illegal gratification whether preceded by a demand or not, would be covered by Section 7 of the Act. But it's acceptance of illegal gratification is in pursuance of a demand by the public servant, then it would also fall under Section 13 (1) (d) of the Act. Therefore, in the present case, the appellants received the illegal gratification constitutes offence both

under Sections 7 and under Section 13 (1) (d) of the Act. The evidence of witnesses clearly established the demand and also acceptance. The phenolphthalein powder test conducted lead to considerable support to the prosecution case. In the circumstances *Baliram Vs. State of Maharashtra* (2008) 14 SCC 779 can be relied. The Honble Apex Court has held that:

> Prevention of Corruption Act, 1988 – Ss. 7 and 13(1) (d) r/w S. 13 (2) – Demand of Rs. 100 by appellant -accused, Minimum Wages Inspector, from complainant PW- 1 for dropping action for not maintaining register with regard to yearly servants – Said demand proved by fact that PW1 had immediately lodged a complaint with Anit-(sic:Anti) corruption Bureau which was recorded as Ext. 16 – Currency notes treated with anthracene powder recovered from right side pocket of appellant's pants- Acceptance of tainted money also proved vide Exts. 17 and 18 – Evidence of PWs establishing not only the demand but also its acceptance – Held, no interference with impugned upholding conviction of appellant called for.

29. We have noticed that the defense has utterly failed to prove that Akalank Jain (PW-9) and Rajesh Jain (PW-10) and their father-in-law Ramesh Chand Jain (PW- 11) have tried to falsely implicate the appellants for they wanted to take advantage with the railway employees or to pressuring the employees. They have also alleged that in earlier occasion, the complainant was allegedly involved in such a case of threatening by Railway Department, Sagar. But no satisfactory evidence has been led in this regard. Therefore, there is no material to substantiate the plea of false implication. The fact of recovery of Rs. 2000/- from each of the appellant has been fully corroborated by the complainant, the trap party and the independent witnesses.

30. In view of the evidence and documents on record, we are in agreement with the finding of the learned Trial Court. Consequently, both the these appeals fails and is hereby dismissed.

31. Appellants are on bail, their bail bonds and surety bonds are hereby canceled. They are directed to surrender themselves before the Trial Court / Special Court, I Addl. Sessions Judge, Guna within seven days, to serve their

remaining jail sentence as per the judgment. If they fail to surrender before the Trial Court, the Trial Court shall be free to proceed to issue necessary orders, including coercive steps to secure their attendance.

Appeal dismissed.

I.L.R. [2014] M.P., 2431
CRIMINAL REVISION
Before Mr. Justice G.S. Solanki
Cr. Rev. No. 373/2014 (Jabalpur) decided on 25 June, 2014

SACHIN AHIRWAR ...Applicant
Vs.
STATE OF M.P. ...Non-applicant

***Juvenile Justice (Care and Protection of Children) Act (56 of 2000), Section 53* - Repeat application - Repeat application for Supurdginama/Bail - Held - Since similarly placed co-accused persons have been released on supurdginama/bail - Applicant has accrued fresh right for being released on supurdginama on the ground of parity - Revision allowed. (Paras 5 & 6)**

किशोर न्याय (बालकों की देख–रेख और संरक्षण) अधिनियम (2000 का 56), धारा 53 – पुनरावेदन – सुपुर्दगीनामा/जमानत हेतु पुनरावेदन – अभिनिर्धारित – चूंकि समान रुप से स्थित सह–अभियुक्तगण को सुपुर्दगीनामा/जमानत पर मुक्त किया गया – समानता के आधार पर आवेदक को सुपुर्दगीनामा पर मुक्त किये जाने के लिये नये सिरे से अधिकार प्रोद्भूत होता है – पुनरीक्षण मंजूर।

A. Usmani, for the applicant.
Pratibha Mishra, P.L. for the State/non-applicant.

ORDER

G.S. Solanki, J. :- This revision has been filed by the applicant through his legal guardian/ mother Triveni Bai under Section 53 of the Juvenile Justice (Care And Protection of Children) Act, 2000 (hereinafter referred to as the Act, 2000) being aggrieved by impugned judgment dated 15.2.2014 passed by Ninth Additional Sessions Judge, Jabalpur in Criminal Appeal No. 38/2014 affirming the order dated 31.1.2014 passed by the Principal Magistrate, Juvenile Justice Board, Jabalpur in Criminal Case No. 285/2013 whereby the application for releasing the applicant on supurdginama, has been

dismissed.

2. The facts, in short, giving rise to this revision are that juvenile Sachin Ahirwar was arrested in connection with Crime No. 370/2013 registered at P.S. Ghamapur, District Jabalpur for the offences punishable under Sections 302, 147, 148, 149 of the IPC and Section 25 of the Arms Act. After due investigation, he was charge sheeted before Juvenile Justice Board. Thereafter, Triveni Bai, legal guardian/mother of juvenile Sachin preferred an application before Juvenile Justice Board for releasing him on supurdginama, which was dismissed vide order dated 6.7.2013 passed in Criminal Case No. 676/2013, being aggrieved thereby an appeal (Criminal Appeal No. 118/2013) was preferred before Ninth Additional Sessions Judge, Jabalpur, which was also dismissed vide judgment dated 25.7.2013. Being aggrieved thereby, a revision (Criminal Revision No. 109/2014) was preferred before this Court, which was dismissed as withdrawn vide order dated 28.1.2014 with liberty to move a fresh application under Section 12 of the Act, 2000 before the Juvenile Justice Board stating the ground that all other co-accused persons including one Juvenile have been granted bail on Supurdginama. In view of the liberty granted by this Court, an application was again preferred before Juvenile Justice Board, which was also dismissed vide order dated 31.1.2014. Being aggrieved thereby, an appeal was again preferred before the Sessions Court, which was also dismissed vide impugned judgment, hence this revision.

3. Learned counsel for the applicant has submitted that the Courts below have erred in appreciating the facts on record. Similarly placed co-accused juvenile Akhilesh has already been released on Supurdginama of his mother by the appellate Court vide judgment dated 28.11.2013 and the case of present juvenile is on similar footing. The other co-accused, who are facing trial before the Sessions Court, have already been released on bail by this Court vide order dated 30.9.2013 passed in M.Cr.C. No. 11434/2013, therefore, the impugned judgment be set aside and applicant be released on supurdginama of his mother.

4. Learned counsel for the State has supported the judgment/order passed by the Courts below.

5. I have heard the learned counsel for the parties at length and gone through the judgment/order passed by the Courts below. Applicant/juvenile Sachin is in remand home since 19.6.2013. Though, his previous applications

filed under Section 12 of the Act, 2000 has been dismissed and appeals and revisions have also been dismissed, however, since his similarly placed co-accused juvenile Akhilesh and other co-accused persons have been released on supurdiginama/bail, therefore, in the changed circumstances on the ground of parity, the applicant has accrued fresh right for being released on Supurdginama. Thus, in my opinion, the Courts below have committed illegality in dismissing the application/appeal filed on behalf of the applicant. The Court must keep in mind that the Act, 2000 is a beneficial and social oriented legislation, which should be given full effect by all concerned whenever a matter relating to a delinquent child comes before them.

6. Consequently, this revision is allowed. Applicant Sachin Ahirwar is directed to be released on supurdginama of his legal guardian/mother Triveni Bai in a sum of ₹10,000/- (Rupees Ten Thousand only) with one surety in the like amount to the satisfaction of Principle Magistrate, Juvenile Justice Board, Jabalpur for securing his presence before the said Court on all the dates of hearing fixed in this regard during the pendency of criminal case.

Certified copy as per rules.

Revision allowed.

I.L.R. [2014] M.P., 2433
CRIMINAL REFERENCE
Before Mr. Justice Shantanu Kemkar & Mr. Justice Mool Chand Garg
Cr. Ref. No. 1/2012 (Indore) decided on 23 July, 2013

IN REFERENCE ...Applicant
Vs.
SUNIL ...Non-applicants

(and Cr. A. 1435/2012)

A. Penal Code (45 of 1860), Sections 302, 363, 367, 376(2)(F) - Rape - Murder - **Circumstantial evidence - Appellant lifted the victim which was objected by grand-mother Shyamlibai - He was also seen on the way taking the girl with him by P.W. 2 and P.W.3 - Dead body was recovered at the instance of the appellant - Postmortem report, evidence of doctor and F.S.L. report supports the prosecution case - Held - Entire oral evidence as well as the medical evidence completely connects the appellant with the commission of the crime of rape and**

murder - In the absence of any satisfactory explanation by the appellant in whose custody, the minor child was, the appellant is guilty of commission of rape and murder of a girl aged 4 years. (Paras 14 &15)

क. दण्ड संहिता (1860 का 45), धाराऐं 302, 363, 367, 376(2)(एफ) – बलात्कार – हत्या – परिस्थितिजन्य साक्ष्य – अपीलार्थी ने पीड़िता को उठाया, जिसका विरोध दादी श्यामलीबाई द्वारा किया गया – उसे बालिका को अपने साथ ले जाते हुए अ.सा. 2 व अ.सा. 3 द्वारा भी देखा गया – अपीलार्थी की निशानदेही पर शव बरामद किया गया – शव प्रतिवेदन, चिकित्सक का साक्ष्य और न्यायालयिक विज्ञान प्रयोगशाला का प्रतिवेदन अभियोजन के प्रकरण का समर्थन करते हैं – अभिनिर्धारित – संपूर्ण मौखिक साक्ष्य तथा चिकित्सीय साक्ष्य पूर्ण रुप से अपीलार्थी को बलात्कार और हत्या के अपराध से जोड़ते हैं – अपीलार्थी, जिसकी अभिरक्षा में अवयस्क बालिका थी, द्वारा किसी संतोषजनक स्पष्टीकरण की अनुपस्थिति में, अपीलार्थी 4 वर्षीय बालिका का बलात्कार और हत्या कारित करने का दोषी।

***B. Penal Code (45 of 1860), Section 302 - Murder - Death Sentence - Rarest of rare case* - The crime was committed in cruel, diabolic and brutal manner - Innocent girl aged 4 years was subjected to such a barbaric treatment by the appellant, who was her uncle - Having regard to the vulnerability of the victim and the gruesome nature of the crime, case falls in the category of "Rarest of rare case" - Death sentence is confirmed. (Para 19)**

ख. दण्ड संहिता (1860 का 45), धारा 302 – हत्या – मृत्युदण्ड – विरलतम से विरल प्रकरण – अपराध क्रूरतापूर्ण, पैशाचिक और पाश्विक ढंग से कारित किया गया – 4 वर्षीय अबोध बालिका के साथ अपीलार्थी जो कि उसका चाचा था, द्वारा उक्त बर्बर व्यवहार किया गया – प्रहार सुलभ पीड़िता और अपराध के घिनौने स्वरुप को ध्यान में रखते हुए प्रकरण "विरलतम से विरल प्रकरण" की श्रेणी में आता है – मृत्युदण्ड की पुष्टि की गई।

Cases referred :

AIR 1996 SC 2800, (2005) 3 SCC 114, JT 2013(6) 225, 2013 CR.L.J. 1460, 1980(2) SCC 684 = 1980 SCC (Cri) 580, JT 2012(2) SC 560, JT 2002(3) SC 264, 1983(3) SCC 470.

R.S. Parmar, P.L. for the applicant/State.
Praveen Newalkar, for the non-applicant.

JUDGMENT

The Judgment of the Court was delivered by : SHANTANU KEMKAR, J. :- The Additional Sessions Judge, Manawar, District Dhar vide impugned judgment dated 05.12.2012 passed in Sessions Trial No.414/2012 has awarded the death sentence to Sunil s/o Bhuria and has made a reference of the proceedings for confirmation of death sentence by this Court. Feeling aggrieved by his conviction and sentence awarded by the impugned judgment, the accused has preferred Criminal Appeal No.1435/2012. This order will govern the disposal of the reference as also of the criminal appeal.

2. The relevant facts of the case are that on 31.10.2012, the victim, a girl aged four years, whose parents had gone for earning their livelihood, was playing with two other girls of the family, aged six years and three years, in the courtyard of her house. Shyamlibai (PW-4), grandmother of the victim, was keeping watch on them. At 02.00 PM, appellant Sunil, who is cousin of victim's father, residing next to the house of the victim came there. He lifted the victim to take her with him and started walking away. On being objected by Shyamlibai and Kamal, who is real uncle of the victim who also at that time arrived at home to take his lunch, the appellant replied that he is taking her to her parents. He then fled away with the victim. The appellant was seen on the way taking the girl with him by Santosh (PW-2), Mukesh (PW-3). At 05.00 PM, parents of the victim came back to home. On being inquired about the girl, they told that the appellant did not bring her to them. The appellant, who was also present at that time, did not say anything regarding whereabouts of the girl. Thereafter, parents of the girl along with Kamal, Paro, Santosh, Mukesh and Sanjay started search of the victim. Initially, the appellant was also searching the victim with them, but then he disappeared.

3. When the girl was not found till 11.00 PM, a report was lodged at 11.10 PM at Police Station, Manawar against the appellant, which was registered as Crime No.578/2012 for offence under Section 363 of the Indian Penal Code. The Police started search of the missing girl from 12.00 in the night. Next day i.e. on 01.11.2012 at about 08.15 AM, the appellant was found hiding himself in the sugarcane field of Babulal. He was arrested vide arrest memo Ex.P/6. On his memorandum Ex.P/7, the dead body of victim was recovered from the field of Mohan Patidar. Panchayatnama Ex.P/8 was prepared. Clothes and the blood stained soil were seized vide seizure panchnama Ex.P/9 and Ex.P/10. Spot map Ex.P/2 was prepared.

4. Further investigation was carried out by the Police and after its completion, charge-sheet was filed against the appellant under Section 302, 201, 367 and 376 (2) (f) of the Indian Penal Code. The dead body of the victim was sent for postmortem examination. As per the opinion of the team of the doctors, who conducted the postmortem, the cause of death of the victim was asphyxia because of throttling and the nature of the death was opined to be homicidal in nature. The postmortem report is Ex.P/14. In Ex.P/14, the vaginal findings were to the effect that Vulva and vaginal were found swelled; labia majora and minora were swelled and blood stained; hymen was ruptured at 6 O'clock position with perineal tear about 1.5 x 0.3 cm at 6 O'clock position; vaginal orifice was open and blood stained; and blood clot was seen in vagina. On being asked by the Police, a query report was also given by Dr. Saurabh Borasi, who conducted the postmortem, in which it has been stated that (a) the injuries found around face, neck and around nipple are may be due to nails and tooth; (b) according to vaginal findings suggest that sexual intercourse must be done; and (c) sexual intercourse must be done within 24 hrs.

5. The appellant on being arrested by the Police was medically examined. As per the medical report Ex.P/16, he was held to be capable of committing sexual intercourse. Two semen slides, pubic hairs and underwear were preserved, which along with other articles relating to the victim seized by the Police vide Ex.P/9 were sent for chemical analysis to Forensic Laboratory vide letter Ex.P/28. FSL report Ex.P/30 confirmed presence of semen on top (Article A), pant (Article B), slide (Article G), swab (Article H) of victim and underwear (Article E) and slide (Article J-1) of appellant.

6. On completion of the investigation, the Police filed charge-sheet against the appellant. The trial Court, after appreciation of the material brought on record, held the appellant guilty of rape and murder of the victim. Keeping in view the heinous nature of crime committed by the appellant, who was the uncle of the girl, the trial Court convicted and sentenced him with death penalty for offence under Section 302 of the Indian Penal Code and also convicted him for two years RI under Section 363; seven years RI under Section 367 and ten years RI for offence under Section 376 (2) (f) of the Indian Penal Code with default clauses.

7. Shri Praveen Newalkar, learned counsel for the appellant argued that in the absence of any cogent and reliable evidence against the appellant, the trial Court could not have convicted him for the alleged offence; in the

alternative, he submitted that the appellant being a young person, aged 25 years, the death sentence awarded against the appellant under Section 302 IPC be not confirmed and it be converted into life imprisonment.

8. On the other hand, Shri R.S. Parmar, learned Panel Lawyer for the respondent, has supported the impugned judgment of conviction and the sentence awarded to the appellant. He argued that the trial Court has properly appreciated the evidence and has rightly recorded the findings about conviction. He also argued that looking to the gruesome crime committed by the appellant, the death sentence awarded by the trial Court deserves to be confirmed.

9. Undisputedly, the appellant is cousin (Mausera Bhai) of the victim's father. Thus, he was uncle of the victim. Kamal (PW-1), who had lodged the first information report, had stated that he along with the other family members had gone for work of agricultural labour in the field of Pannalal. At about 02.00 PM, when he had come to house for taking meals for himself and to carry it for other family members, the appellant had taken the victim with him on the pretext of taking her to her parents. When at 05.00 PM the parents of the girl returned, the girl was neither with them. A report was lodged in the night. Next day in the morning, on being searched, Sunil was found in the field of Babulal. On being asked about the victim, he told that after committing rape on her, she has been murdered by him and her dead body has been thrown in the field of Mohan. Thereafter, at the instance of the appellant, the dead body of the victim was seized. He has explained in his cross-examination that he had seen the appellant taking the victim with him at 02.00 PM, when he reached home.

10. Santosh (PW-2) is the witness, who had seen the victim with the appellant at about 02.00 PM on the way after she was being taken by him from her house. He stated that at 05.00 PM when members of family came back from the work, they were enquiring about the whereabouts of the victim. On that, the appellant had stated that he after taking the victim with him, slept under the tree and it is not known to him that where the victim had gone from that place. Mukesh (PW-3) has also supported the version of Santosh (PW-2) about the victim's last seen together on the way with the appellant at about 02.00 PM.

11. Shyamlibai (PW-4), grandmother of the victim, from whose custody the appellant had taken the victim with him, has supported the prosecution story. She had stated that when she was sitting in the courtyard, appellant came and lifted the victim for being taken with him. On being asked, he replied that he is taking the victim to her parents in the field. At that time, her son

Kamal had come. He also asked the appellant as where he is taking the victim. At about 05.00 PM, when the victim's parents and other family members came back to home, it was informed by her parents that she is not being brought to them by appellant Sunil. On being asked to Sunil, who was there at that time, he informed that after taking the girl with him, he had slept under a tree, at that time, the victim went away and that he is not aware as to where she has gone. Sanjay (PW- 5) has also supported the prosecution version about the incident.

12. Dr. Saurabh Borasi (PW-8) proved the cause of death to be asphyxia because of throttling and in relation to neurogenic shock, the nature of death to be homicidal. As per his evidence, there was sexual assault with the victim. He proved the injuries and the vaginal findings of the victim.

13. Having regard to the aforesaid, it is clear that the prosecution case is based upon the circumstantial evidence. It has now been well settled that a conviction can be based solely on the basis of circumstantial evidence. Where a case rests squarely on circumstantial evidence, inference of guilt can be justified only when all the incriminating facts and circumstances are found to be incompatible with innocence of the accused or the guilt of other person. The circumstances from which the conclusion of guilt is drawn should be fully proved and such circumstances must be conclusive in nature and all the circumstances should be complete and there should be no gap in the chain of evidence.

14. To prove its case, the prosecution has examined Kamal (PW-1), Santosh (PW-2), Mukesh (PW-3), Shyamlibai (PW-4) and Sanjay (PW-5) apart from other witnesses. The evidence of all these witnesses which are about the incident is consistent. It has been duly proved that the victim was taken by the appellant and was last seen with the appellant. He took her from the courtyard and was seen on the way taking her with him by the witnesses Santosh (PW-2) and Mukesh (PW-3). The witnesses had deposed that when all the family members including the parents of the victim came back from the field, the appellant was also there, but the victim was not there. On being inquired from the appellant, he could not give a satisfactory explanation about the whereabouts of the victim. All of them started her search, for some time the appellant was with them, but then he disappeared. In the circumstances, a report was lodged against the appellant at the Police Station. During the search in the morning, he was found hiding in the field of Babulal. Arrest memo was prepared by D.V.S. Nagar (PW-11) in the presence of witnesses Sanjay (PW-

5) and Kailash. The postmortem report, evidence of doctor and the FSL report supports the prosecution case.

15. The entire oral evidence as well as the medical evidence completely connects the appellant with the commission of the crime of rape and murder. In the absence of any satisfactory explanation by the appellant, in whose custody, the minor child was, we have no hesitation to hold that the appellant is guilty of commission of rape and murder of the victim, a girl aged four years. Looking to the opinion of the doctor in the postmortem report about the sexual assault and the FSL report, in our considered view, the trial Court has committed no error in convicting the appellant, as aforesaid. The circumstances enumerated by the trial Court for holding the appellant guilty of the offence, are rightly found to be proved by it.

16. Now, the question which requires consideration is whether the present case would fall in the category of "rarest of rare case", so as to justify awarding of capital punishment to appellant Sunil.

17. In the case of *Kamta Tiwari v. State of MP* AIR 1996 SC 2800 in somewhat similar circumstances, 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 four years, the Supreme Court while maintaining the award of death sentence by treating the case as "rarest of rare case" has held that when an innocent hapless girl of 7 years was subjected to such barbaric treatment by a person who was in a position of her trust his culpability assumes the proportion of extreme depravity and arouses a sense of revulsion in the mind of the common man. In fine, 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 where the sentence of death is eminently desirable not only to deter others from committing such atrocious crimes but also to give emphatic expression to society's abhorrence of such crimes.

18. In the case of *State of UP v. Satish* (2005) 3 SCC 114, the Supreme Court upheld the death sentence in a case where the victim aged less than 6 years, was raped and thereafter murdered, treating it to be "rarest of rare case". In the case of *Shankar Kisanrao Khade v. State of Maharashtra* JT 2013 (6) 225, considered various judgments of the Supreme Court on the issue, including *Gurvail Singh v. State of Punjab* 2013 Cr.L.J. 1460, *Bachan Singh v. State of Punjab* [1980 (2) SCC 684 = 1980 SCC (Cri) 580],

Rajendra Pralhadrao Wasnik v. State of Maharashtra [JT 2012 (2) SC 560], *Devender Pal Singh v. Government of NCT of Delhi* [JT 2002 (3) SC 264], *Kamta Tiwari v. State of MP* [AIR 1996 SC 2800] and *Machhi Singh and other v. State of Punjab* [1983 (3) SCC 470], it has been held by the Supreme Court that aggravating circumstances (crime test) and mitigating circumstances (criminal test) were to be taken into account while deciding the issue of imposition of death penalty. It held that to award death sentence, even if both the tests are satisfied as against the accused, the Court has to finally apply "rarest of rare case test", which depends on perception of the society and not judge centric i.e. whether the society will approve the awarding of death sentence to certain types of crimes or not. While applying this test, the Court has to look into variety of factors like society's abhorrence, extreme indignation and antipathy to certain types of cases like rape and murder of minor girls intellectually challenged, suffering from physical disability old and infirm women with those disabilities etc. The Courts award death sentence because situation demands due to constitutional compulsion, reflection by the will of the people and not judge centric. It was further held the aggravating circumstances, to name few are that the offence was committed on the victim, who is innocent helpless or a person relies upon the trust of relationship like a child helpless woman and is inflicted with the crime by such a person. The crime is committed so brutally that it pricks or shocks not only the judicial conscience but even the conscience of the society. Some of the mitigating circumstances enumerated in the case of *Shankar Kisanrao Khade v. State of Maharashtra* (supra) are the manner and circumstances in and under which the offence was committed, for example, extreme mental or emotional disturbance or extreme provocation in contradistinction to all these situations in normal course as well as the chances of the accused of not indulging in commission of the offence against and the probability of the accused being reformed and rehabilitated and the condition of the accused shows that he was mentally disturbed. The Supreme Court clarified that the aggravating and mitigating circumstances shown are not exhaustive but are only illustrative.

19. Having regard to aforesaid legal position, we have to examine as to whether the present case is a fit case calling for award of capital punishment. The contention of the appellant that the appellant is a young person aged 25 years, and as such, lenient view deserves to be adopted, cannot be accepted as the age of the accused cannot be a determinative factor by itself. The victim was niece of the appellant, thus he was fatherly figure for the victim. The

crime was committed in cruel, diabolic and brutal manner. The innocent girl aged four years was subjected to such a barbaric treatment by the appellant, who was her uncle. Having regard to the vulnerability of the victim and the gruesome nature of the crime, we have no hesitation in holding that this case falls in the category of **"rarest of rare case"** where the sentence for death of appellant has rightly been awarded by the trial Court and such a sentence eminently was desirable, which in our considered view, not only deters others from committing such atrocious crime, but also manifest society's abhorrence of such crime. This case not only shocks the judicial conscience but even the conscience of the society and in our view, the nature of crime and the situation demands award of death sentence to the appellant.

20. As a result, the reference made by the trial Court in regard to the death sentence awarded by it to appellant is answered in affirmative and we hereby confirm the same. The appellant's conviction under Sections 302, 363, 367 and 376 (2) (f) of the IPC is maintained. The appeal filed by the accused / appellant is hereby dismissed.

Order accordingly.

I.L.R. [2014] M.P., 2441
CRIMINAL REFERENCE
Before Mr. Justice Ajit Singh & Mr. Justice N.K. Gupta
Cr. Ref. No. 8/2013 (Jabalpur) decided on 15 July, 2014

IN REFERENCE ...Applicant
Vs.
ARVIND ALIAS CHHOTU THAKUR ...Non-applicant

(and Cr. A. No. 2728/2013)

A. ***Penal Code (45 of 1860), Sections 302, 376-A, 363, 201, Protection of Children from Sexual Offences Act, (32 of 2012), Section 6 - Death Sentence - Rarest of rare case - Circumstantial evidence -*** **Male profile from the clothes of the prosecutrix and her vaginal swab were found of the appellant - Chain of circumstantial evidence is complete and it is established that it was the appellant who, committed rape upon the prosecutrix. (Para 14)**

क. दण्ड संहिता (1860 का 45), धाराऐं 302, 376.ए, 363, 201, लैंगिक अपराधों से बालकों का संरक्षण अधिनियम, (2012 का 32), धारा 6 – मृत्युदण्ड –

विरलतम से विरल प्रकरण – परिस्थितिजन्य साक्ष्य – अभियोक्त्री के कपड़े एवं वेजाइनल स्वैब से प्राप्त पौरुष पार्श्विका, अपीलार्थी की होना पाया गया – परिस्थितिजन्य साक्ष्य की श्रृंखला पूर्ण और यह स्थापित हो जाता है कि वह अपीलार्थी था, जिसने अभियोक्त्री से बलात्कार कारित किया।

***B. Penal Code (45 of 1860), Sections 302, 376-A, 363, 201 & 304 Part-II - Death Sentence* - Appellant did not kill the deceased intentionally but, while he stopped the prosecutrix from crying or shouting, suffocation was caused and the deceased prosecutrix died - However, rape with a girl of tender age is brutal on its own but, no death sentence is provided for offence u/s 376(1) or (2) of I.P.C. - Therefore, due to that brutality, no death sentence can be directed under such circumstances, it cannot be said that it is a rare of rarest case - Conviction and sentence u/s 201 & 302 of I.P.C. set aside - Conviction u/s 363 & 376-A of I.P.C. is confirmed - Appellant acquitted of the charge of offence u/s 302 & 201 of I.P.C. but, appellant is convicted for offence u/s 304 Part-II of I.P.C. under the head of charge u/s 302, I.P.C. - Appeal partly allowed. (Paras 22 & 23)**

ख. दण्ड संहिता (1860 का 45), धाराऐं 302, 376.ए, 363, 201 व 304 भाग -II – मृत्युदण्ड – अपीलार्थी ने मृतिका की हत्या आशयपूर्वक नहीं की बल्कि जब उसने अभियोक्त्री को रोने या चीखने से रोका, उसका दम घुटा और मृतिका अभियोक्त्री की मृत्यु हो गयी – अपितु, बाल्यावस्था की बालिका से बलात्कार अपने आप में निर्दयता है, परंतु भा.द.सं. की धारा 376(1) या (2) के अंतर्गत अपराध के लिये मृत्युदण्ड उपबंधित नहीं – अतः, उस निर्दयता के कारण, उक्त परिस्थितियों में मृत्युदण्ड निदेशित नहीं किया जा सकता, यह नहीं कहा जा सकता कि यह विरलतम से विरल प्रकरण है – भा.द.सं. की धारा 201 व 302 के अंतर्गत दोषसिद्धि एवं दण्डादेश अपास्त – भा.द.सं. की धारा 363 व 376.ए के अंतर्गत दोषसिद्धि की पुष्टि की गई – अपीलार्थी को भा.द.सं. की धारा 302 व 201 के अंतर्गत अपराध के आरोप से दोषमुक्त किया गया, परन्तु अपीलार्थी को भा.द.सं. की धारा 302 के अंतर्गत आरोप के शीर्षान्तर्गत, भा.द.सं. की धारा 304 भाग-II के अंतर्गत अपराध के लिये दोषसिद्ध किया गया – अपील अंशतः मंजूर।

Cases referred :

(2011) 9 SCC 462, (2011) 6 SCC 312, (2014) 5 SCC 697, (2014) 5 SCC 353, (2014) 5 SCC 509, (2014) 4 SCC 747, (2012) 4 SCC 37.

Vijay Pandey, Dy. A.G. for the applicant.

Siddharth Gulatee, for the Non-applicant.

JUDGMENT

The Judgment of the Court was delivered by : **N.K. GUPTA, J. :-** Since Criminal Reference No.8/2013 referred by the learned Sessions Judge, Narsinghpur and the Criminal Appeal No.2728/2013 filed by appellant Arvind alias Chhotu Thakur have arisen from the same judgment dated 30.9.2013 passed by the learned Sessions Judge, Narsinghpur in ST No.86 of 2013, both the matters are hereby disposed off by a common judgment.

2. Vide judgment dated 30.9.2013 the learned Sessions Judge, Narsinghpur in S.T.No.86 of 2013 convicted the the appellant Arvind @ Chhotu Thakur for offences punishable under Sections 376-A, 302, 363, 201 of I.P.C and Section 6 of Protection of Children From Sexual Offences Act, 2012 (hereinafter referred to as 'POCSO Act') death sentence was awarded for offence under Section 376- A and 302 of I.P.C whereas, five years rigorous imprisonment with fine of Rs.1000/- was inflicted for each count for remaining I.P.C offences and no separate sentence has been given for offence under Section 6 of 'POSCO Act'.

3. The prosecution's case in short is that the complainant Preeti @ Mona Thakur (PW1) was residing at Hanuman Ward, Kareli, District Narsinghpur. Since her husband had expired 1 ½ years prior to the incident, she was working at Milan Hotel as a servant. She had three children out of them one was a boy Shivam aged 11 years, second child was the deceased prosecutrix aged 10 years and the third child was a girl aged 6 years. The appellant is husband of one Mamta Bai, sister of the complainant and therefore, there were intimate relations between both the families. In July 2013, the complainant Preeti Thakur had sent her daughters to her father Nanuram (PW7) at Village Paloha for their studies. On 26.2.2013, Nanuram (PW7) brought the girls to the house of the complainant at Kareli. At about 4.00 p.m the complainant Preeti Thakur went to the house of accused along with her girls and remained there up to 6.00 p.m. Thereafter, she went to work on her job. The girls and father resided in the house of the complainant. At about 10.00 p.m in the night when the complainant came to her house, she found the deceased prosecutrix was missing. She inquired with her father and other children but, she could not get any trace of the deceased prosecutrix. She inquired from various persons on

that day and next day also. On 27.2.2013 the complainant Preeti had lodged a missing report Ex.P/1 at Police Station Kareli.

4. On 27.2.2013 Kishori Lal (PW2) went to the Police Station Kareli and lodged a merg intimation Ex.P/5 that the dead body of the deceased prosecutrix was lying in the field of Rajkumar Chouksey. Police recovered the dead body and sent for its post mortem. Initially the post mortem was performed at Primary Health Center, Amgaon by Dr. Vinay Thakur (PW18) and Dr. Rashi Patel. They found that blood was oozing from the vagina of the deceased prosecutrix and froth was coming from her nostrils. However, they could not give any information about the cause of death and therefore, they referred the dead body of the deceased prosecutrix to Medical College, Jabalpur. Dr. Ashok Najan (PW22) along with a team of doctors performed the post mortem on the body of the deceased and he found that blood was oozing from her nostrils, there was blood in the vaginal opening. Nails were found cynosed, hymen was torn, laceration relating to hymen was 3 cm. inside the vaginal opening and upto 1 c.m deep. Blood was oozing from that wound. Slides of vaginal swab were prepared, clothing and sample of her hair etc. were collected and were handed over to the concerned Constable after sealing. Doctor found that the deceased died due to asphyxia.

5. In due investigation, it was found that the witness Dr. Rajesh Kori (PW5) saw the appellant with the deceased child who, was going towards the field of Vishnu Kuchbandiya. Witnesses Devendra Choudhary (PW3) and Birju Thakur (PW4) have stated that on 23.3.2013 at about 8.00 p.m in the night they saw one person coming from the field of Rajkumar Chouksey in a doubtful manner. He was trying to hide himself and a stone was thrown by the witnesses then that person stood up and came out from behind the tree, he was appellant Arvind @ Chhotu Thakur. Chen Singh Lodhi (PW6) has also stated that the appellant confessed his guilt before him. The appellant was arrested and he was also sent for medico legal examination. His underwear was taken and sample for DNA test was also prepared. According to the DNA report Ex.P/37 on clothes of the deceased prosecutrix and vaginal swab, male DNA profile of the accused was found. After due investigation, the charge-sheet was filed before the concerned committal Court, who committed the case to the Sessions Judge, Narsinghpur.

6. The appellant abjured his guilt. He did not take any specific plea but he has stated that he was falsely implicated. However, no defence evidence

was adduced.

7. The learned Sessions Judge after considering the prosecution's evidence, convicted and sentenced the appellant as mentioned above.

8. We have heard the learned counsel for the parties at length.

9. After considering the submissions made by the learned counsel for the parties and looking to the evidence adduced by the prosecution, it appears that there is no ocular evidence in the case and the entire case rests upon the circumstantial evidence. Therefore, all the circumstances, shall be considered one by one. The most important circumstance in the present case is the report given by the Forensic Science Laboratory, that in clothes of the deceased prosecutrix and her vaginal swab male Y chromosome STR DNA profile was found and on comparison with the DNA profile obtained from the blood sample of the appellant it was found to be same. The clothes of the deceased were collected by the Police from the concerned doctor and delivered the same to the Constable Raman Singh (PW10) after sealing them. Similarly the blood sample taken from the appellant was duly given by the concerned doctor after sealing to Constable Satish (PW19) and such samples were sealed and duly sent to the Forensic Science Laboratory. The learned counsel for the appellant could not establish any reason so that any doubt could be created in collecting the sample and their transmission to the Forensic Science Laboratory. Under such circumstances, it was found that the male profile which was found in the vaginal swab of the deceased prosecutrix and her clothes were of the appellant Arvind @ Chhotu Thakur.

10. The complainant Preeti @ Mona thakur (PW1) and Nanuram (PW7) have stated that since June 2012 the deceased prosecutrix and her sister were residing with Nanuram at Village Paloha. On 26.2.2013, Nanuram took the deceased prosecutrix and her sister to the house of the complainant at Kareli and thereafter, the complainant Preeti took her children to the house of her sister Mamta Bai and remained there for two hours. At about 4.00 p.m they came back to the house of the complainant. Preeti and Nanuram have stated that about about 10.00 p.m when Preeti Bai came to her house from her job, it was found that the deceased prosecutrix was missing. The complainant searched for the deceased prosecutrix and thereafter, a missing report Ex.P/1 was lodged on 27.2.2013. In that report it was mentioned that for the last time she was viewed in front of the house of the complainant and

thereafter, she was missing. The complainant Preeti @ Mona Thakur and her father Nanuram could not imagine as to where the deceased prosecutrix might have gone. The witness Rajesh Kori (PW5) has stated that on the date of the incident he went out side of his house to play with his child, then he saw the appellant who, was accompanied with the deceased prosecutrix, going towards the field of Rajkumar Chouksey. In the cross examination of this witness nothing could be brought so that it can be said that the witness was inimical towards the appellant or his testimony was not believable. Under such circumstances, the prosecution has proved the fact of last seen of the deceased prosecutrix with appellant Arvind.

11. The witnesses Devendra Choudhary (PW3) and Birju Thakur (PW4) have stated that on the date of the incident both were present in the house of Birju Thakur. They were cleaning utensils. Suddenly they saw that a person was coming from one side of the field of Rajkumar Chouksey who, had hidden behind the tree of Bamora. Devendra threw 2-3 stones and thereafter, he shouted that if that person would not come out, he would hit him by the stone. Thereafter, the person who stood behind the tree arose and told that he was Chhotu @ Arvind. The appellant was known to these witnesses and these witnesses have stated that it was the appellant who, was found coming at about 8-8.30 p.m from the side of Rajkumar Chouksey's field. In the cross examination of these two witnesses, nothing could be brought which may create a doubt in their testimony. No enmity with these witnesses could be established by the appellant and therefore, their testimony is acceptable. By the statements of Devendra Choudhary (PW3) and Birju Thakur (PW4), it is established that soon after the incident the appellant was found coming back from the spot.

12. Kishorilal (PW2) has stated that he went in the field of Rajkumar Chouksey to remove a calf who entered the field and damaged the crop of masoor, then he saw that inside the wire fencing, the dead body of a girl was lying. Since he knew that the girl child of the complainant was missing, he went to inform the complainant and thereafter, he went to the Police Station and lodged a merg report Ex.P/ 5. Testimony of this witness is duly corroborated by the document Ex.P/5 recorded by the Police at Police Station, Kareli. In this document, it is clearly mentioned that the complainant Preeti Bai identified the dead body of her girl child and thereafter, Kishorilal (PW2) lodged a merg intimation. Kishorilal (PW2), Preeti @ Mona Thakur (PW1) and Town Inspector Kaushal Singh (PW24) have stated that when they reached

to the spot, they found the dead body of the deceased prosecutrix wearing a pink shirt and yellow pink trouser. The dead body of the deceased prosecutrix was identified by Preeti Bai that she was her daughter aged 10 years. Also the witnesses Rajesh Kori (PW5) and Shisir Patel (PW8) have stated that when the police reached to the spot Inspector Kaushal Singh (PW24) has directed that nobody would touch the dead body as he had called a dog for search. When that information was told by the Inspector the accused/appellant immediately left the spot and he disappeared. When the dog smelled the dead body of the deceased prosecutrix, he rushed towards the house of the appellant and went inside the house. The proceedings of search done by the dog was not clearly placed on record by the prosecution. However, the conduct of the appellant is established by these two witnesses to show his guilty conscious that when he received an information that a dog was being called by the Police for smelling purpose, he immediately left the spot whereas, he was maternal uncle (mausa) of the deceased and it was expected from him to participate and co-operate in the investigation.

13. The witness Chen Singh Lodhi (PW6) has stated that he was coming on a motor cycle along with Mukesh Chouhan then he saw the accused in a disturbed condition and on asking, the appellant told the witness Chen Singh Lodhi that he committed a mistake and he killed the daughter of his co-brother in a field on the previous tuesday. In the cross examination, the witnesses could not give an explanation as to why he did not inform about such confession to the Police or Kotwar but, he has stated that he did not want to indulge in any problem. However, this witness was examined under Section 164 of Cr.P.C and he denied before the Magistrate that the appellant gave any confessional statement before him. Looking to the conduct of the witness Chen Singh Lodhi, his testimony appears to be doubtful and therefore, the prosecution could not prove the extra judicial confession of the appellant.

14. After considering the aforesaid circumstances, it would be apparent that the appellant had an opportunity to be conversant with the deceased prosecutrix and it is established that soon before the incident he was found with the prosecutrix going towards the field. Soon after the incident, he was found coming from the side of a field of Rajkumar. During investigation when it was informed that Police would bring a dog for smelling purposes, he ran away from the spot. Ultimately, male profile from the clothes of the prosecutrix and her vaginal swab were found of the appellant and therefore, chain of circumstantial

evidence is complete and it is established that it was the appellant who, committed rape upon the prosecutrix. After commission of rape, it would be apparent that the prosecutrix could not go anywhere and her dead body was found lying in that field itself. According to the post mortem report given by Dr. Ashok Najan (PW22) and suggestions given to him in the cross examination, it would be apparent that the death of the deceased was homicidal and therefore, by aforesaid circumstances, the only conclusion can be drawn is that the appellant killed the deceased prosecutrix. Hence with the prosecution's evidence the learned Sessions Judge has rightly found that the appellant committed rape upon a 10 year old deceased prosecutrix and killed her.

15. The learned counsel for the appellant has stated that cause of death could not be ascertained by the various doctors and therefore, it cannot be said the appellant killed the deceased. If both the post mortem reports Ex.P/25 and P/28 proved by Dr.Vinay Thakur (PW18) and Dr. Ashok Najan (PW22) are considered, then it would be apparent that death of the deceased was caused by asphyxia. No doctor has opined that she died due to exposure caused to her in the night. No symptoms of exposure were found on her body in any of the post mortem reports. It is not opined by the doctors that the death was natural or due to cardiac arrest. Dr. Najan in his cross examination had categorically informed that it was a homicidal death. Dr. Najan has given a finding that the deceased died due to asphyxia, blood was oozing from her nostrils and therefore, asphyxia would have been caused by smothering. When there is no other reason visible in the post mortem reports relating to the death of the deceased prosecutrix, then evidence of Dr. Najan is acceptable that the deceased died due to asphyxia due to smothering done by the appellant.

16. The learned counsel for the appellant has further submitted that the appellant had not intended to kill the deceased otherwise, external injuries relating to smothering would have been visible on the body of the deceased and it is possible that during the commission of intercourse, while the appellant was trying to stop the crying of the prosecutrix, suffocation would have been caused and the deceased died due to asphyxia. Hence the appellant had not intended to kill the deceased. The learned counsel for the appellant has placed his reliance upon the judgment passed by Hon'ble the Apex Court in the case of *'Ajit Singh Vs. State of Punjab'* [(2011) SCC 9 462] in which it was mentioned that the incident took place in a spur of moment and it was not a premeditated assault. The deceased did not sustain such an injury which was sufficient to cause death in ordinary course of nature and therefore, no offence under Section 302 of I.P.C is made out. At the

most offence under Section 304 (Part I) of I.P.C shall be made out. Similarly, the learned counsel for the appellant has placed his reliance upon the judgment of Hon'ble the Apex Court in the case of *'Yomeshbhai Pranshankar Bhatt Vs. State of Gujarat'* [(2011) 6 SCC 312] in which is (sic:it) is laid that the appellant had no premeditation to kill the deceased or to cause any bodily injury so that the deceased would have died, then it would not be a case of intention. It is further held that in cases relating to circumstantial evidence the Court should examine the circumstances very carefully before arriving at a finding of guilt and if there is any doubt which is inconsistent with innocence of the accused, benefit thereof should go to the accused.

17. The learned counsel for the appellant has also placed his reliance upon the judgment passed by Hon'ble the Apex Court in the case of *'Manjeet Singh Vs. State of Himachal Pradesh'* [(2014) 5 SCC 697] in which it is held that if the evidence on record does not establish that the injuries caused on the body of the deceased must in all probability cause his death or likely to cause his death and the incident took place at the spur of the moment, during the heat of exchange of words, the accused caused injuries on the body of the deceased which caused his death then the ingredients of murder as defined under Section 300 of I.P.C shall not be attracted. In such a case, offence of culpable homicide not amounting to murder under section 304 of I.P.C shall constitute. In the light of aforesaid judgments passed by Hon'ble the Apex Court, if the facts of the present case are considered then it would be apparent that no external injury was caused by the appellant to the deceased prosecutrix other than injury caused in her private part. Injury caused in the private part was a part of crime under Section 376 of I.P.C and it cannot be taken separately as injury caused by the appellant to the prosecutrix for offence under Section 302 of I.P.C because no doctor has stated that injury caused on private part of the deceased was fatal in nature. Possibility cannot be ruled out that the appellant kept his hand on the mouth of the prosecutrix, so that she would not cry but, in doing so he suffocated the prosecutrix and she died of asphyxia. Under such circumstances, it cannot be said that the appellant intended to kill the deceased. Hence in the light of aforesaid judgments passed by the Apex Court the crime committed by the appellant in the absence of any intention or causing fatal injury, falls within the purview of Section 304 (Part II) of I.P.C. Hence the learned Sessions Judge has committed an error in convicting the appellant for offence under Section 302 of I.P.C.

18. The appellant is convicted for offence under Section 376-A of I.P.C.

This provision has been recently introduced to punish severely offences of rape where injury is caused resulting into death of victim. It may be read as under :

> **"376-A. Punishment for causing death or resulting in persistent vegetative state of victim** - Whoever, commits an offence punishable under sub-section (1) or sub¬section (2) of section 376 and in the course of such commission inflicts an injury which causes the death of the woman or causes the woman to be in a persistent vegetative state, shall be punished with rigorous imprisonment for a term which shall not be less than twenty years, but which may extend to imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life, or with death."

The learned counsel for the appellant has submitted that no visible injury was found to the prosecutrix, except the injury caused in her private part and therefore, it cannot be said that the appellant inflicted an injury which caused death of the woman. However, the contention advanced by the learned counsel for the appellant cannot be accepted, because in this provision it is no where mentioned that the accused would have caused death of the prosecutrix with intention. Word "injury" is mentioned in that provision is defined in Section 44 of the I.P.C. Provision of Section 44 of I.P.C is reproduced as under :

> **'44. "Injury"** - the word "injury" denotes any harm whatever illegally caused to any person, in body, mind, reputation or property.'

According to that provision if someone harms illegally to any person in body, mind etc. then injury would be caused and therefore, when the appellant kept his hand on mouth of the prosecutrix, so that she should not shout and in that process if she died due to suffocation, then certainly the appellant caused an injury to the prosecutrix which caused the death of the prosecutrix and therefore, the offence of the appellant squarely falls within the purview of Section 376-A of I.P.C and therefore, the learned Sessions Judge has rightly convicted the appellant under Section 376-A of I.P.C.

19. According to the witnesses the appellant was found going towards the field of one Rajkumar along with the prosecutrix. It is duly proved that the age of the prosecutrix was 10 years. It was not in the knowledge of the parents of the prosecutrix that she was taken by the appellant and therefore, a missing

report Ex.P/1 was lodged by the mother of the deceased prosecutrix. Under such circumstances, it is duly established that the appellant kidnapped the deceased prosecutrix from her mother's guardianship without taking any permission from her guardians. Hence he committed an offence under Section 363 of I.P.C. The learned Sessions Judge has rightly convicted the appellant for offence under Section 363 of I.P.C.

20. As discussed above, the appellant is found guilty of offence under Section 376-A of I.P.C and since the deceased prosecutrix was aged 10 years then his offence is also covered with Section 6 of 'POSCO Act' and therefore, the learned Sessions Judge has rightly convicted the appellant for that offence also.

21. So far as the offence under Section 201 of I.P.C is concerned the charges were framed that the appellant threw the dead body of the deceased at a different place and tried to disappear the evidence against him. However, it is established by the evidence that he took the prosecutrix to the field of Rajkumar Chouksey and he was found coming back from that field by some witnesses. Hence, it is possible that the rape was committed upon the prosecutrix at the same place where her dead body was found. Her underwear was also found near her body. Hence the prosecution could not establish the fact that the appellant killed the prosecutrix at a different place and threw her body at the spot where her body was found. By the prosecution's evidence it can be gathered that he committed rape upon the prosecutrix and caused her death but, there is no specific evidence produced by the prosecution to show that the appellant did something to disappear the evidence. It is true that when he heard that the SHO was calling a dog for smelling, then he ran away from the spot but, it may be the circumstance to show his conduct but, does not fall within the purview of disappearing of the evidence. Under such circumstances, the prosecution failed to prove that the appellant committed an offence under Section 201 of I.P.C.

22. So far as the sentence is concerned the learned counsel for the appellant has placed his reliance upon the judgments passed by Hon'ble the Apex Court in the cases of *'Rajkumar Vs. State of M.P'* [(2014) 5 SCC 353], *'Dharam Deo Yadav Vs. State of U.P'* [(2014) 5 SCC 509] and *'Ashok Debbarma @ Achak Debbarma Vs. State of Tripura'* [(2014) 4 SCC 747] to show that in similar cases the Apex Court converted the death sentence into sentence of life imprisonment. However, basically it is laid in all such cases that death sentence be given in rare of rarest case. On the other hand the learned Deputy Advocate General has submitted with a bunch of so many cases decided by the Hon'ble

Apex Court since the year 1980 to 2013. However, in all of such cases it is held by the Apex Court that death sentence be given in rare of rarest case. The learned Deputy Advocate General has placed his reliance especially on the judgment passed by the Apex Court in the case of *'Rajendra Pralhadrao Wasnik Vs. State of Maharashtra'* [(2012) 4 SCC 37] in which the death sentence directed to a culprit who, was guilty of rape upon a small child and killed her thereafter, was confirmed. In the present case, it would be apparent that it was not the intention of the appellant to kill the deceased prosecutrix. He is not found guilty of offence under Section 302 of I.P.C. Similarly if the appellant would have been found guilty of offence under Sections 376(1) or (2) of I.P.C. then, he would have been awarded a sentence of life imprisonment but, the offence is committed after introduction of provision of Section 376-A of I.P.C which provides a sentence of life imprisonment up to the natural life or with death. In the present case, when the crime committed by the appellant falls within the purview of Section 376-A of I.P.C, then it is necessary that a severe sentence as directed in the provision of Section 376-A of I.P.C which is severe than the sentence of offence under Section 376(1) or (2) of I.P.C should be awarded. However, according to the factual position, the appellant did not kill the deceased intentionally but, while he stopped the prosecutrix from crying or shouting, suffocation was caused and the deceased prosecutrix died. However, rape with a girl of tender age is brutal on its own but, no death sentence is provided for offence under Section 376(1) or (2) of I.P.C therefore, due to that brutality, no death sentence can be directed. Under such circumstances, it cannot be said that it is a rare of rarest case and therefore, it would be proper not to award the death sentence to the appellant for offence under Section 376-A of I.P.C. It would be proper that he be sentenced for rigorous imprisonment for life which shall mean imprisonment for the remainder of that person's natural life. Similarly, he can be sentenced with 10 years rigorous imprisonment for offence under Section 304(Part II) of I.P.C Since the offence committed by the appellant under Section 6 of the 'POSCO Act' is parallel to the offence committed under Section 376-A of I.P.C therefore, in the light of the provision under Section 42 of the 'POSCO Act' it would not be necessary to pass a separate sentence for offence under Section 6 of the 'POSCO Act' The trial Court has rightly inflicted a sentence of five years rigorous imprisonment with fine of Rs.1000/- for offence under Section 363 of I.P.C and therefore, there is no need to interfere in the sentence passed by the trial Court for that offence.

23. On the basis of aforesaid discussion, the appeal filed by the appellant is hereby partly allowed. His conviction and sentence under Section 201 and 302 of

I.P.C are hereby set aside whereas, conviction under Section 363 and 376-A of I.P.C is confirmed. He is acquitted of the charge of offence under Section 302 and 201 of I.P.C but, he is convicted for offence under Section 304 (Part II) of I.P.C under the head of charge under Section 302 of I.P.C. The appellant shall undergo 10 years rigorous imprisonment for offence under Section 304 (Part II) of I.P.C. Though the conviction for offence under Sections 376-A and 363 of I.P.C is maintained and also the sentence for offence under Section 363 of I.P.C is maintained but, death sentence awarded by the trial Court for offence under Section 376-A of I.P.C is hereby set aside and the appellant is sentenced for life imprisonment which shall mean imprisonment for the remainder of that person's natural life for that offence. Since death sentence is not confirmed against the appellant for any offence therefore, reference sent by the learned Sessions Judge, Narsinghpur is not accepted and death sentence directed against the appellant is not confirmed. The reference is hereby disposed off with the aforesaid direction and the appeal filed by the appellant is also hereby disposed of with the aforesaid modification in conviction and sentence.

24. The appellant is in jail and office is directed to arrange for issuance of supersession warrant as intimated above.

25. Copy of the judgment be sent to the trial Court along with its record for information and compliance.

Reference disposed of.

I.L.R. [2014] M.P., 2453

CRIMINAL REFERENCE

Before Mr. Justice Ajit Singh & Mr. Justice N.K. Gupta

Cr. Ref. No. 7/2013 (Jabalpur) decided on 15 July, 2014

IN REFERENCE ...Applicant

Vs.

GANESH LODHI & anr. ...Non-applicants

(and Cr. A. No. 2311/2013)

A. ***Penal Code (45 of 1860), Sections 302, 376(2)(g) - Death Sentence - Murder - Rape - Circumstantial evidence - Prosecution has failed to prove a complete chain of circumstantial evidence - It is not proved beyond doubt that the appellants were the persons, who committed rape upon the deceased prosecutrix and killed her - Benefit***

of doubt is to be given to the appellants - Impugned judgment is held to perverse and deserves to be set aside - Appeal allowed. (Para 27)

क. दण्ड संहिता (1860 का 45), धाराऐं 302, 376(2)(जी) – मृत्युदण्ड – हत्या – बलात्कार – परिस्थितिजन्य साक्ष्य – अभियोजन परिस्थितिजन्य साक्ष्य की पूर्ण श्रृंखला साबित करने में असफल रहा – यह संदेह से परे साबित नहीं कि मृतिका अभियोक्त्री का बलात्कार एवं उसकी हत्या कारित करने वाले जों व्यक्ति थे, वे अपीलार्थीगण थे – अपीलार्थीगण को संदेह का लाभ दिया जाना चाहिए – आक्षेपित आदेश विपर्यस्त और अपास्त किये जाने योग्य ठहराया गया – अपील मंजूर।

***B. Evidence Act (1 of 1872), Section 27* - No evidence that the appellant No.1 did any intercourse with the prosecutrix, at least the semen sample of the appellant No.2 could be compared from the semen obtained from the vaginal swab of the deceased prosecutrix. (Para 25)**

ख. साक्ष्य अधिनियम (1872 का 1), धारा 27 – कोई साक्ष्य नहीं कि अपीलार्थी क्र. 1 ने अभियोक्त्री से समागम किया, कम से कम अपीलार्थी क्र. 2 के वीर्य के नमूने का मिलान, मृतिका अभियोक्त्री के वेजाईनल स्वेब से प्राप्त वीर्य के साथ किया जा सकता है।

***C. Evidence Act (1 of 1872), Section 3 - Child witness - Tutored* - Eye witness (child) appears to be tutored by first informant due to property dispute with accused - Evidence of child witness not reliable. (Paras 11 to 13)**

ग. साक्ष्य अधिनियम (1872 का 1), धारा 3 – बालक साक्षी – सिखाया हुआ – चक्षूदर्शी साक्षी (बालक) को प्रथम मुखबिर द्वारा, अभियुक्त से सम्पत्ति के विवाद के कारण, सिखाया जाना प्रतीत होता है – बालक साक्षी का साक्ष्य विश्वसनीय नहीं।

Cases referred :

(2001) 9 SCC 129, (1997) 5 SCC 341, AIR 1976 SC 2423, (2013) 7 SCC 192.

Vijay Pandey, Dy. A.G. for the State.
Anoop Saxena, for the accused.

JUDGMENT

The Judgment of the Court was delivered by : **N.K. GUPTA, J. :-** A criminal reference No.7/2013 has been referred by the learned Additional Sessions Judge, Bijawar, District Chhatarpur against the

same judgment dated 23.8.2013 in S.T.No.71/2011 against which the appellants/accused Ganesh and Ramji have preferred the criminal appeal No.2311/2013, therefore, both the matters are being decided by this common judgment.

2. The learned Additional Sessions Judge, Bijawar, District Chhatarpur vide judgment dated 23.8.2013 in S.T.No.71/2011 convicted the accused Ganesh and Ramji for offences punishable under Sections 302 and 376 (2) (g) of IPC and sentenced with death sentence and life imprisonment with fine of Rs.1,000/-, in default of payment of fine, 3 months rigorous imprisonment. Since death sentence was passed by the learned Additional Sessions Judge therefore, the death reference is referred to this Court.

3. Being aggrieved with the aforesaid judgment, conviction and sentence, the appellants Ganesh and Ramji have preferred criminal appeal No.2311/2013.

4. The facts of the case, in short, are that, on 28.11.2010, at about 7 a.m. in the morning, the complainant Nathu (P.W.1) went to village Bakaswaha for shopping and therefore, he went to meet his daughter, the deceased prosecutrix. When he reached the house of his daughter, he found that Roop Singh (P.W.3) and Jai Singh, children of the deceased were crying and they informed that the accused Ramji and Ganesh came in the previous evening and stayed in their house for the entire night. In the night, Ramji held the hands of the deceased and Ganesh assaulted her by an axe on her neck and therefore, she had died. When Nathu went inside the house, he saw the dead body of his daughter and thereafter, he came out and he found that neighbours Dhaniram (P.W.2) and Kayyum (P.W.4) and Jinnu Jain (P.W.5) were present. The complainant Nathu went to the Police Station Bakshwaha and lodged the FIR, Ex.P/2. A merg intimation, Ex.P/1 was also recorded. The police went to the spot and Panchayatnama lash, Ex.P/4 was prepared and dead body of the deceased was sent for post-mortem. Dr.L.L.Ahirwar (P.W.8) did the post-mortem on the body of the deceased and gave his report, Ex.P/22. He found 4 incised wounds on the neck of the deceased. Out of them, 2 wounds were fatal in nature and due to those injuries, the deceased had expired. He found that left jaw of the deceased was also broken. Vaginal swab of the deceased was taken on the slide and handed over to the concerned constable, after its sealing. Shri R.P.Verma (P.W.12) SHO, Police Station Bakaswaha had investigated the matter. He observed the formalities of the investigation

of the spot. The appellants were arrested and clothings of the accused Ramji were seized and sealed. On intimation given by Ganesh, one axe was also seized. Seized property was sent for forensic science analysis. In report, Ex.P/27, given by the FSL expert, it was found that sperm and semen particles were found in the vaginal swab of the prosecutrix and on her underwear but, such spots were not found sufficient for serum test. Similarly, on the article 'K', the axe is alleged to be seized from the appellant Ganesh, blood was found on it but, it was not proved that there was any human blood on that axe, whereas blood group of the deceased was 'AB'.

5. After due investigation, the charge-sheet was filed before the concerned JMFC, who committed the case to the Sessions Judge, Chhatarpur and ultimately, it was transferred to the learned Additional Sessions Judge, Bijawar.

6. The appellants abjured their guilt. They took a plea that they were falsely implicated in the matter. However, no defence evidence was adduced.

7. The learned Additional Sessions Judge after considering the prosecution's evidence, convicted and sentenced the appellants as mentioned above. Death sentence was recorded against the appellants for offence under Section 302 of IPC.

8. We have heard the learned counsel for the parties at length.

9. First of all it is to be considered as to whether death of the deceased was homicidal in nature. In this respect, evidence of Dr.L.L.Ahirwar (P.W.8) who proved the post-mortem report, Ex.P/22, in which he found that 4 incised wounds were caused on the neck of the deceased prosecutrix. Out of them, first two were fatal in nature. Description of the wounds is as under:-

(1) Incised wound 10 X 4 X 3 cms on left side of neck.

(2) Incised wound 6 X 2 X 1 cms on left side of neck.

(3) Incised wound 2 X 1 X 1 cms on left side of neck.

(4) Incised wound 2 X 1 X 1 cms on left side of neck.

Entire left jaw of the deceased was found fractured and in opinion of Dr.Ahirwar those injuries were sufficient to cause death of the deceased. Looking to the opinion of Dr.Ahirwar, it was established by the prosecution that death of the deceased was homicidal in nature.

10. The prosecution has examined Roop Singh (P.W.3) as an eye witness, who is a child witness, aged 6 years. The deceased was the mother of child Roop Singh. According to Roop Singh, the appellants came in the previous evening of the incident to his house and resided in the night. He got up because he received a push from the left leg of the appellant Ganesh and he found that the appellant Ramji held legs of the deceased and the appellant Ganesh assaulted the deceased by an axe. He has stated that in the morning, his maternal grandfather (P.W.1) came to his house and he told the entire story to him and Nathu has stated that after collecting facts from children, he lodged the FIR, Ex.P/2. A merg intimation, Ex.P/1 was also recorded at Police Station Bakaswaha. However, some discrepancies arose in the story told by Roop Singh and his maternal grandfather Nathu.

11. Initially Nathu did not state about the rape committed upon the deceased prosecutrix and story told in the FIR, Ex.P/2 and merg intimation, Ex.P/1 was that the appellants killed the deceased. However, Nathu as well as Roop Singh improved the story that Roop Singh saw the appellants committing rape on the prosecutrix. However, Roop Singh has accepted that he does not know about the word 'Rape'. Roop Singh is a small child of 6 years who can be tutored by her maternal grandfather. If he would have seen the fact of rape committed by the appellants then, certainly he could say that he saw any of the appellants lying upon the prosecutrix or he found that the clothings of the prosecutrix were removed. Roop Singh could not say anything about that fact. Looking to his statement about the alleged rape, it appears that he was tutored by his maternal grandfather to that fact. Hence, the possibility cannot be ruled out that he was tutored about the entire incident. Roop Singh has stated that in his presence, the appellant Ramji had held the legs of the prosecutrix and the appellant Ganesh gave a blow of an axe on the neck of the prosecutrix, whereas Dr.Ahirwar found 4 different injuries on the neck of the prosecutrix and therefore, if Roop Singh was the eye witness, he would have seen 4 assaults caused by the appellant Ganesh. It is a material contradiction between the statement of the eye witness and the medical evidence.

12. Thirdly, it is stated by the witness Roop Singh that the accused Ramji threatened him to either sleep or else, he would also be killed. Witness Roop Singh therefore, went to sleep and he got up only in the morning. Such conduct as depicted by the eye witness Roop Singh appears to be unnatural. If mother

of the child was injured by the accused persons then, his natural conduct could be that he would pretended himself to be sleeping but, as and when the accused persons disappeared from the house, he would have tried to make hue and cry or to get some help to his mother if she was alive. It was not possible for a child that after getting a threat, he would go to sleep till the next morning. All such discrepancies indicate that possibility of tutoring of the child witness cannot be ruled out.

13. Nathu and Roop Singh were asked about the death of Veer Singh, husband of the deceased. Both of them accepted that Veer Singh was not given any share from the family property by his father and therefore, he committed suicide. Child witness Roop Singh has stated that the appellant Ganesh was his real uncle and the accused Ramji was cousin of the accused Ganesh. Under such circumstances, after death of the deceased prosecutrix, it was for her father to implicate the brothers of the husband of the deceased, so that pressure may be created upon father-in-law of the deceased to extract some share for the children of the deceased and therefore, there was a possibility that the complainant would have implicated the appellants.

14. The learned Deputy Advocate General has invited the attention of this Court to the judgment passed by Hon'ble the Apex Court in case of *"Suryanarayan Vs. State of Karnataka"*, [(2001) 9 SCC 129], in which it is held that if the child witness withstands the cross-examination and if the testimony inspires confidence, so as to rule out the possibility of tutoring, it could be relied upon as the sole basis for convicting the accused. Similarly, reliance is placed upon the judgment passed by Hon'ble the Apex Court in case of *"Dattu Ramrao Sakhare and Others Vs. State of Maharashtra"*, [(1997) 5 SCC 341], in which it is laid that the testimony of a child witness can be relied on even in absence of oath, if he understands the nature of question and gave rational answers thereof. It is further directed that Court must see that the child is reliable and there is no likelihood of being tutored. Corroboration is not necessary. In the light of the aforesaid judgments, the evidence of witness Roop Singh is to be examined as to whether he was tutored witness or his testimony can be relied upon.

15. In the present case, Dhaniram (P.W.2) is an important witness. Dhaniram and Nathu have accepted that initially Dhaniram was residing at village Jaitpura and he was considering the deceased as his niece due to relation of the village. The police took him as a witness for the statement of the accused

persons under Section 27 of the Evidence Act and seizure etc. He is the witness of entire investigation. He did not turn hostile for seizure etc. However, for few points he was declared hostile. Under such circumstances, the evidence given by Dhaniram (P.W.2) appears to be important. Dhaniram has stated that at about 6 a.m. in the morning, Roop Singh came out of the house and told that someone killed his mother. He did not mention the name of anyone. It is apparent from the statement of Roop Singh that after the incident, the main door was closed from outside by latches and on his knocking, some Khatik had opened the door. It was expected from the child to inform about the death of his mother to the person, who opened the door but, the child Roop Singh could not exactly say as to who opened the latches. Parsadi Khatik (P.W.13) was examined to establish that he had opened the latches but, he turned hostile and he did not say anything about the incident. According to the witness Nathu, when he reached to the house of the deceased, both the children were weeping and there was nobody except them, whereas Dhaniram (P.W.1) has accepted that after hearing the cries of Roop Singh etc. he, Kayyum (P.W.4) and Jinnu Jain (P.W.5) went to the spot at about 6 a.m. in the morning. Dhaniram has categorically stated that one Ramlal informed the police by phone and when the police came to the spot, the parents of the deceased were called from village Jaitpura. According to the witnesses Dhaniram, Kayyum and Jinnu Jain, they reached at the spot at about 6 a.m. in the morning, whereas, Nathu claims that he reached at the spot at 7 a.m. in the morning. Looking to such discrepancies, where child witness Roop Singh did not inform any of the witnesses namely Dhaniram, Kayyum and Jinnu that the appellants had stayed in his house in the previous night and they killed his mother, his testimony is not trustworthy.

16. Dhaniram, Kayyum and Jinnu Jain have stated that they did not find the appellants in the house of the deceased in the night. They did not hear the voice of appellants or the deceased relating to quarrel. They did not hear that TV was on in the late night. According to the prosecution, the quarrel had started at 8 p.m. in the night and the evidence under Section 161 of the Cr.P.C. was recorded of these neighbouring witnesses Dhaniram, Kayyum and Jinnu Jain that they heard the sound of quarrel at about 8 p.m. The version which is not supported by these witnesses now appears to be incorrect because according to Roop Singh himself, his mother was in habit to keep her shop open upto 11 p.m. and if quarrel would have started at 8 p.m. then, she would have been killed before closure of her shop and therefore, at the time of the

incident, her shop would have been opened and dead body could not be obtained on the mattress used by her for sleeping. Under such circumstances, though these witnesses have partly turned hostile, their version which is against their case diary statements appears to be correct. They did not hear any noise of quarrel at 8 p.m. because such quarrel could not take place at 8 p.m.

17. The learned Deputy Advocate General has submitted that the testimony of the witness Roop Singh is duly corroborated by timely lodged FIR, Ex.P/2 and therefore, his statement is trustworthy. In this connection, if the FIR, Ex.P/2 is examined then, it would be apparent that according to Nathu, he came to the spot at 7 a.m. in the morning and after getting knowledge of the incident, he rushed to the police station and FIR was lodged at 7.15 a.m. and prima facie, it appears that FIR was lodged promptly but, if version of Dhaniram is considered then, it would be apparent that Nathu came to the spot when he was called by the police. Nathu tried to explain that he came to Bakaswaha for marketing and therefore, he also went to the house of his daughter to meet her. His explanation appears to be unnatural because shops of the market would have opened after 10 a.m. and therefore, it was not necessary for Nathu to leave his village at 6 a.m. in the morning. Secondly, if he came all alone for the purpose of marketing then, there was no possibility of his family members to remain present at the time when the document of Panchayatnama lash, Ex.P/4 (memo relating to description of dead body) was prepared. In that memo, dead body was identified by Ramsakhi, unmarried sister of the deceased and Preetam Singh, brother of the deceased alongwith Nathu, father of the deceased. Presence of Ramsakhi and her brother indicates that statement of Dhaniram is correct. Witness Nathu did not come to the house of his daughter at 7 a.m. on his own and he reached to the spot when he was called by the police. Under such circumstances, it would be apparent that Nathu Singh did not reach to the spot at 7 a.m. and therefore, he could not lodge the FIR, Ex.P/2 at 7.15 a.m. The FIR registered by the police appears to be ante timed.

18. When FIR itself is under question for being delayed or ante timed then, it is necessary to examine as to whether the provisions of Section 157 of the Cr.P.C. were complied with or not. In this connection, the witness R.P.Verma (P.W.12) has exhibited the counter of FIR, Ex.P/2-A to show that it was sent to the concerned Magistrate within time. According to the circulars issued by the High Courts, it is necessary for every Magistrate to mention the

date and time on each counter of FIR when it was received. On the document, Ex.P/2-A, no such endorsement is found and therefore, it was for the prosecution to prove that at what time the counter FIR was dispatched to the concerned Magistrate and when it was received by the concerned Magistrate. If the FIR was recorded at 7.15 a.m. then, certainly the counter of FIR should have been reached to the concerned Magistrate in the beginning of his working hours i.e. at about 11 a.m. but, neither any dispatch book, nor any receipt book is shown by SHO Shri R.P.Verma to establish that the counter FIR was received by the concerned Magistrate on the same very day. In this connection, the judgment passed by Hon'ble the Apex Court in case of *"Ishwar Singh Vs. State of U.P."*; [AIR 1976 SC 2423] may be referred, in which it is mentioned that it is for the prosecution to prove that the counter FIR was sent to the concerned Magistrate forthwith and if it is not sent within the reasonable period then, it may be presumed that the prosecution had sufficient time to introduce new facts and to improve the entire story of the prosecution. In such a situation, the entire prosecution story comes in the clouds of doubt.

19. In such circumstances, it would be apparent that FIR cannot be believed as a corroborative piece of evidence. It appears that it is an ante timed document, in which the story was introduced by the investigation officer as well as by Nathu (P.W.1) and the child witness Roop Singh, who was in custody of witness Nathu and came to the Court in his custody then, possibility of his tutoring cannot be discarded. If the discrepancies in the evidence of child witness Roop Singh is considered then, it would be apparent that he could not say anything about the rape. When he came out of the house he did not tell to Dhaniram, Kayyum and Jinnu Jain that the appellants killed his mother. He says only a single blow was given by the appellant Ganesh, whereas Dr.Ahirwar found 4 incised wounds on the left neck of the deceased. If Roop Singh was an eye witness, he would have seen all the 4 assaults caused by the appellant Ganesh. The conduct of Nathu appears to be unnatural that he claims to reach the house of the deceased at 7 a.m., whereas looking to his purpose, it was not necessary for him to leave his village at 6 a.m. in the morning in the cold season. It was natural that if latches of the front door were closed from outside then, someone must have opened the latches and the child would have informed that person and neighbours about the incident, whereas Nathu claims that he was the first person who reached to the spot and he found that Roop Singh and his brother were crying, whereas Dhaniram claims that initially he and other neighbours had reached to the spot.

20. One Ramlal informed the police on phone and thereafter, police called the witness Nathu from his village. The witness Roop Singh made an allegation against the appellants that they committed rape upon the prosecutrix and thereafter, killed her. If the story told by the witness is accepted as it is then, it would be apparent from the evidence given by other witnesses that the deceased was a widow, who was not given any share in the family property by her father-in-law. The accused Ganesh, real brother-in-law of the deceased was initially residing in the same locality but, thereafter, he went to stay with his father. If he had strained relations with the deceased then, certainly he would not have been permitted to take dinner in the house of the deceased and to stay in the night. Ganesh had his own house in the same village then, there was no necessity for him to stay in the house of the deceased for the entire night and if the prosecutrix permitted him to stay in the house then, it would be apparent from her conduct that she permitted the appellants to stay in the house for the entire night, so that she could have cohabitation with them otherwise, there was no reason for such stay. If the prosecutrix was ready to have cohabitation with the appellants then, there was no possibility of any resistance from her side and there was no need to the appellants to kill her. Under such circumstances, the allegation as prepared in the FIR, Ex.P/2 and told by the child witness Roop Singh appears to be unnatural and therefore, if he claims to be an eye witness for such an unnatural instance then, his testimony cannot be believed.

21. If law laid down by Hon'ble the Apex Court in cases of *Dattu Ramrao Sakhare* (Supra) and *Suryanarayan* (supra) is applied in the present case then, it would be apparent that there is a lot of material contradictions between the statements given by the child witness and circumstances shown by the witnesses Dhaniram, Kayyum and Jinnu Jain. It is also doubtful that the FIR was lodged on the same time, which is shown in the FIR, Ex.P/2. On the contrary, it appears that it is an ante timed document. Under such circumstances, in the light of aforesaid judgments of Hon'ble the Apex Court, the evidence of witness Roop Singh cannot be accepted eye witness.

22. Upon ocular evidence being discarded then, it becomes the duty of the Court to consider other circumstantial evidence with a view to assess that it is sufficient in the ordinary course to prove the guilt of the accused. In the present case, first circumstance shown by the prosecution is that the appellants came to the house of the deceased in the previous evening and they

resided in her house. Dhaniram (P.W.2) has accepted that he saw the appellants in the evening in front of the shop of the prosecutrix but, Dhaniram, Kayyum and Jinnu Jain did not accept that they heard any noise of any quarrel between the appellants and the deceased in the night or they heard the sound of TV viewed by the appellants in the night in the house of the deceased. They had no knowledge as to whether the appellants resided in the house of the deceased on that night. In this context, witness Roop Singh (P.W.3) has stated that the appellants resided in the house of the deceased in the night. However, as discussed above, when the appellant Ganesh had his own house in the same village then, there was no need to the appellants to stay in the house of the deceased prosecutrix and there was no need to the deceased to invite them for dinner and therefore, it appears that the child witness Roop Singh is fully tutored and therefore, by considering the entire evidence, it is not proved beyond doubt that the appellants stayed in the house of the deceased prosecutrix for the entire night. It is proved by Dhaniram that they were seen in front of the shop but, such a fact cannot be considered as a fact of last seen because if they were found in front of the shop in the evening then, at about 11 p.m., the deceased prosecutrix must have closed the doors of her shop and after taking her dinner, she must have slept on her mattress and therefore, by mere presence of the appellants in the evening in front of the shop of the deceased, no circumstantial evidence is created against them relating to the factum of last seen.

23. Second circumstance shown by the prosecution is that the appellant Ganesh admitted his guilt under Section 27 of the Evidence Act and a memo, Ex.P/9 was recorded. Thereafter, one axe was recovered from the appellant Ganesh and a memo, Ex.P/11 was recorded. Similarly, clothings of the appellant Ganesh were seized with a memo, Ex.P/12. However, no human blood was found either on the clothings or on axe and therefore, seizure of axe as well as clothings is not a material evidence against the appellants. The confession given by the appellants under Section 27 of the Evidence Act is to be considered for a limited purpose, relating to a new fact arising during investigation and therefore, a very little portion of that confession is admissible under Section 27 of the Evidence Act, whereas remaining portion is inadmissible under Section 24 of the Evidence Act. Under such circumstances, only that portion can be accepted that the appellant Ganesh threw an axe in a gutter. However, according to the FSL report, Ex.P/27, no human blood was found on the clothings of the appellant Ganesh as well as on the axe recovered from

him and therefore, confession under Section 27 of the Evidence Act given by the appellant Ganesh has no evidentiary value and it cannot be considered as a circumstance against the appellant.

24. The learned Deputy Advocate General has also submitted that in the vaginal swab of the prosecutrix and on her underwear, Forensic Science Laboratory found semen particles and sperms on them and it is a circumstance against the appellants. The Forensic Science Laboratory did not mention that the semen and sperm particles found on the underwear and vaginal swab slides of the deceased were of the appellants and therefore, by presence of such semen spots and sperms, it cannot be said that those were of the appellants. Forensic Science Laboratory in its report, Ex.P/27 found that the spots found on articles H-1, H-2 and J-1 were not sufficient for serum examination but, it is no where made clear that as to why serum was not prepared from the spots found on Articles - I i.e. slide of vaginal swab of the deceased. Similarly, the serum slides of the appellants 'F' and 'G' were also available with the Forensic Science Laboratory and these 3 articles were sufficient for preparation of serum relating to semen and sperms. It is no where clear as to why the serum of article - 'I' and articles 'F' and 'G' was not prepared and compared. Under such circumstances, the prosecution failed to prove that in the vaginal swab of the prosecutrix, semen or sperms of the appellants were found.

25. Also, if the memo under Section 27 of the Evidence Act recorded by the appellants is considered as a whole then, it would be apparent that there was an admission that Ramji committed rape with the prosecutrix while she was sleeping and when the appellant Ganesh demanded for cohabitation then, due to her refusal, she was killed and therefore, there was no evidence that the appellant Ganesh did any intercourse with the prosecutrix therefore, atleast the semen sample of the appellant Ramji could be compared from the semen obtained from the vaginal swab of the deceased prosecutrix.

26. The learned Deputy Advocate General has tried to submit that strong motive was there against the appellants that they committed rape and killed the deceased. However, the prosecution utterly failed to prove the motive of the crime. It is established from the evidence of Dhaniram and Roop Singh that Ganesh was real brother-in-law of the deceased who was also ousted by his father and therefore, initially, he was residing in the same locality alongwith his wife, in which the prosecutrix was residing. Thereafter, he shifted his

residence to his father's house, situated in the same village in another locality and therefore, the appellants had cordial relations with the deceased prosecutrix. There was no dispute relating to any property between the deceased prosecutrix and the appellants otherwise, they would not have been permitted to reside in the house of the deceased. Again if a motive is gathered from the overt-act of the appellants that when the prosecutrix refused to have relations with the appellant Ganesh, she was killed but, as discussed above, if she was not ready to have cohabitation with the appellants then, there was no reason for her to permit the appellants to stay in the house for the entire night when the appellant Ganesh has his own house in the same village. Under such circumstances, no motive has been proved by the prosecution against the appellants to kill the deceased.

27. On the basis of the aforesaid discussion, if the entire circumstantial evidence adduced by the prosecution is considered then, chain of circumstantial evidence is broken. It is not complete and therefore, no conclusion of the crime can be obtained by the circumstantial evidence. In this connection, the judgment passed by Hon'ble the Apex Court in case of *"Majenderan Langeswaran Vs. State (NCT of Delhi) and another"* [(2013) 7 SCC 192] may be perused, in which it is laid that while dealing with the conviction based on circumstantial evidence, circumstances from which conclusion of guilt is to be drawn should in the first instance be fully established, and all the facts so established should also be consistent with only one hypothesis i.e. guilt of accused. Onus lies on prosecution to prove that chain of event is complete and not to leave any doubt in the mind of the Court. In the light of aforesaid judgment, if evidence of the present case is considered then, the prosecution has failed to prove a complete chain of circumstantial evidence. It is not proved beyond doubt that the appellants were the persons, who committed rape upon the deceased prosecutrix and killed her. Under such circumstances, the benefit of doubt is to be given to the appellants and they could not be convicted either for offence punishable under Section 376 or 302 of IPC. Under such circumstances, the appellants cannot be sentenced. The reference sent by the learned Additional Sessions Judge cannot be accepted. The conviction as well as the sentence directed by the trial Court for offence punishable under Sections 302/34, 376 (2) (g) of IPC cannot be sustained. Consequently, the appeal filed by the appellants is hereby allowed. Their conviction as well as sentence for offence punishable under Section 302/34, 376 (2) (g) of IPC are hereby set aside. The appellants are acquitted from all

the charges appended against them.

28. The appellants are in jail and therefore, office is directed to issue release warrants, so that they shall be set free without any delay.

29. Copy of the judgment be sent to the trial Court alongwith its record for information and compliance.

Order accordingly.

I.L.R. [2014] M.P., 2466
MISCELLANEOUS CRIMINAL CASE
Before Mr. Justice J.K. Maheshwari
M.Cr.C. No. 8446/2011 (Indore) decided on 19 July, 2013

QURESHIA BI ...Applicant
Vs.
ABDUL HAMEED ...Non-applicant

A. Criminal Procedure Code, 1973 (2 of 1974), Sections 125 to 128, Muslim Women (Protection of Rights on Divorce) Act (25 of 1986), Section 3 **- On an application filed u/s 125, Cr.P.C. maintenance Rs. 125/- was awarded to the applicant wife on 15.10.1985 - Applicant filed an application u/s 127 of Cr.P.C. on 12.01.2007 for alteration of the allowance, which was held as not maintainable by courts below - Held - Since wife is residing separately with a justifiable cause from her husband, looking to the status of the husband who is now living with the second wife and earning more than Rs. 10,000/- per month - Rs. 2,000/- as amount of maintenance would be payable from the date of the order passed by the trial court - Petition stands allowed. (Paras 18 & 19)**

क. दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धाराऐं 125 से 128, मुस्लिम स्त्री (विवाह विच्छेद पर अधिकार संरक्षण) अधिनियम (1986 का 25), धारा 3 – द.प्र.सं. की धारा 125 के अंतर्गत प्रस्तुत किये गये आवेदन पर दि. 15.10.1985 को आवेदक पत्नी को भरण.पोषण रु. 125/– अवार्ड किया गया – 12.01.2007 को आवेदक ने भत्ता परिवर्तन हेतु द.प्र.सं. की धारा 127 के अंतर्गत आवेदन प्रस्तुत किया, जिसे निचले न्यायालय द्वारा पोषणीय नहीं माना गया – अभिनिर्धारित – चूंकि पत्नी न्यायोचित कारण से अपने पति से अलग रह रही है, उसके पति की स्थिति को देखते हुए, जो अब दूसरी पत्नी के साथ रह रहा है और रु. 10,000/– प्रति माह से अधिक अर्जित कर रहा है – भरण.पोषण की रकम के रुप में रु. 2,000/– विचारण न्यायालय द्वारा पारित किये गये आदेश की तिथि से देय होगा – याचिका

मंजूर।

B. Criminal Procedure Code, 1973 (2 of 1974), Sections 125 to 128, Muslim Women (Protection of Rights on Divorce) Act (25 of 1986), Section 3 - Applicability of Provision - **Law discussed. (Paras 15 & 16)**

ख. दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धाराऐं 125 से 128, मुस्लिम स्त्री (विवाह विच्छेद पर अधिकार संरक्षण) अधिनियम (1986 का 25), धारा 3 – उपबंध की प्रयोज्यता – विधि की विवेचना की गयी।

Cases referred :

2002(2) MPLJ 340, (2001) 7 SCC 740, (2007) 6 SCC 785, (2010) 1 SCC 666, 1999 (2) MPLJ 64, 1994 MPLJ 583, AIR 1979 SC 362, 1980 SC 1730, AIR 1985 SC 945, 1994 MPLJ 583, 1999(2) MPLJ 64, 2002(2) MPLJ 340.

Abhishek Malviya, for the applicant.
Yashpal Rathore, for the non-applicant.

ORDER

J.K. MAHESHWARI, J. :- Invoking the jurisdiction under Section 482 of Cr.P.C. and challenging the orders passed by the revisional court dated 9.2.2011 upholding the order of the trial Court dated 6/10/2009, rejecting the application filed by the applicant under Section 127 of Cr.P.C. as not maintainable on commencement of Muslim Women (Protection of Rights on Divorce) Act, 1986, the applicant has preferred this petition.

2. The facts leading to file the present petition are that the applicant and the non-applicant belong to Muslim caste and married according to the Muslim religion. The applicant divorced by the non-applicant-husband on 15.10.1986, thereafter competent court passed the judgment dated 11.5.1997 decreeing the suit of divorce. On filing an application under Section 125 of Cr.P.C. by the applicant, an amount of maintenance Rs.125/- monthly was awarded as per order dated 15.10.1985 passed in Criminal Miscellaneous Case No.10/83 by Judicial Magistrate First Class, Indore. After lapse of more than two decades, the applicant filed an application under Section 127 of Cr.P.C. on 12.1.2007 seeking alteration in the monthly allowance on the ground that husband has re-married, however, maintenance awarded about 27 years back is inappropriate to meet out the present expenses due to rise in prices. Thus,

looking to his present earning more than Rs.10,000/- per month, enhanced maintenance of Rs.3000/- may be directed to pay to the applicant.

3. The non-applicant has raised an objection regarding maintainability of the said application in reply, inter-alia contended that the applicant is the divorced woman as admitted by her, in Miscellaneous Criminal Case No.55/04 which was rejected on account of non-production of the evidence. Thus, after commencement of the said Act application filed by applicant under Section 127 of Cr.P.C. is not maintainable.

4. The Trial Court relying upon the judgment of this Court in the case of *Munni @ Mubarik vs. Shahbaz Khan* reported in 2002 (2) MPLJ 340 recorded a finding that the application filed by the petitioner under Section 127 of Cr.P.C. is not maintainable, the said order has been upheld by the revisional court in toto, however the present petition has been filed.

5. Learned counsel appearing on behalf of the applicant submits that the orders passed by the two courts below is unsustainable in law. It is his contention that even after commencement of the Muslim Women, (Protection of Rights on Divorce) Act, 1986 (hereinafter it be referred as 'the Act of 1986'), the applicability of the provisions of Section 125 to 128 of Cr.P.C. is not ousted. To bolster his submission, reliance has been placed on the judgment of Apex Court in the case of *Danial Latifi and Another vs. Union of India,* (2001) 7 SCC 740; *Iqbal Bano vs State of U.P. and another,* (2007) 6 SCC 785; and *Shabana Bano vs Imran Khan,* (2010) 1 SCC 666. In view of the said pronouncements, it is submitted that the order passed by the Trial Court and the revisional court may be set aside and looking to the earning of the respondent and his status, adequate amount of maintenance may be awarded by this Court allowing this petition.

6. Per contra, learned counsel representing non-applicant submits that this Court in the case of *Munni @ Mubarik* (supra) has considered the judgment of *Danial Latifi* (supra) and held that the divorced Muslim wife can take recourse only under Section 3(1)(2) of the Act of 1986. However the judgment of the co-ordinate bench of this Court is binding on this Court, therefore interference is not warranted, hence, this petition may be dismissed upholding the orders of the Courts below.

7. After hearing learned counsel for the parties and looking to language of Section 3 of the Act of 1986, it starts with the non-obstante clause, in

addition to the provisions of grant of maintenance in any other law the divorced Muslim woman is held entitled a "reasonable and fair provision" and "maintenance" to her for the Iddat period or till her re-marriage. The divorced Muslim woman is having right to move an application in this regard under Section 3(2) of the Act of 1986 and the Magistrate if satisfies may pass an order for grant of maintenance against her husband having sufficient means and has failed or neglected to make or pay within the Iddat period reasonable and fair provision and maintenance for her and the children. As per section (4), it is clear that till her re-marriage the amount of maintenance may be determined as per the standard of life enjoyed by her during her marriage and the means of such husband and relatives and also in proportion in which they would inherit the property. As per Section 5 if on the date of first hearing of the application filed under sub-section (2) of Section 3 of the Act of 1986 by divorce muslim woman and upon issuance of the notice of the said application, on the date of first hearing a divorced muslim woman and her former husband may declare, by affidavit or any other declaration in writing in such form as may be prescribed, either jointly or separately, that they would be governed by the provisions of Section 125 to 128 of the Code of Criminal Procedure, 1973 or under the Act of 1986, and on filing such affidavit or declaration in the court hearing the application, the Magistrate is required to decide the application accordingly. As per Section 7 of the Act, it is clear that if an application has been filed by a divorced muslim woman under Section 125 or 127 of Cr.P.C., is pending on commencement of the Act of 1986, then notwithstanding anything contained under the provisions of the Code of Criminal Procedure subject to provisions of Section 5 of the said Act, it may be disposed of by the such Magistrate as per the provisions of the Act of 1986.

8. Learned Court below has relied upon the judgment of this Court in the case of *Munni alias Murabak Begum* (supra) wherein another judgment of this Court in the case of *Julekha Bi Vs. Mohamad Fazal,* 1999 (2) MPLJ 64 was relied upon. In the said case of *Julekha Bi* (supra), the judgment of this Court in the case of *Abdul Rashid (Dr.) Vs. Mst. Farida,* 1994 MPLJ 583 was relied upon. In the said three judgments, this Court has held that application under Section 125 of Cr.P.C., is not maintainable by a divorced muslim woman. It has further been held that after commencement of the said Act the divorced muslim wife excluded from the inclusive definition of wife given in Explanation-b of Section 125(1) of Cr.P.C. It has also been held that

if an application under Section 125 of Cr.P.C. is pending on the date of commencement of the Act, then such application may be dealt with as per the provisions of the Act, otherwise application under Section 125 of Cr.P.C. cannot be maintained by a divorced muslim wife. It has further been held that the divorced muslim wife is entitled to claim maintenance under the provisions of said Act, up to Iddat period only and not thereafter. Thus, to find out the binding effect of the said judgments of this Court in the context of the provisions contained under the Act of 1986, and the Cr.P.C. interpreted by various judgments of Hon'ble the Apex Court on the issue of maintainability of such application and to grant maintenance to a divorced Muslim wife even after Iddat period may be seen in the context of Article 141 of Constitution of India. It is further required to be seen that after the judgments of Hon'ble the Apex Court in *Danial Latifi, Iqbal Bano and Shabana Bano* (supra), the said three judgments of this Court is binding on this Court, and subordinate courts.

9. The question as to whether Section 125 of Cr.PC, applies to divorced muslim wife, was concluded by two decisions of the Hon'ble Apex Court, those are *Bai Tahira V. Ali Hussain Fidaalli Chorthia*, AIR 1979 SC 362 and *Fuzlunbi V. K. Khadar Vali*, AIR 1980 SC 1730. In the said decisions the Apex Court held that a divorced muslim wife is entitled to maintain application under Section 125 of Cr.P.C. and further held that the amount of Mahr is different than the maintenance. But, later on two Judges Bench of Hon'ble the Apex Court were not inclined to accept the said view and were of the opinion that those cases are not correctly decided, therefore, a reference was made to the larger Bench in the case of *Mohd. Ahmed Khan Vs. Shah Bano Begum and others*, AIR 1985 SC. 945 which was decided by the Constitutional Bench consists with five Judges upholding the ratio of the said two judgments. In the said case the Supreme Court held that a divorced muslim wife so long as she had not remarried, is a wife for the purpose of Section 125 of Cr.P.C. and a statutory right to claim maintenance is available to her. The said provisions remain unaffected by the Personal Law applicable, because it is a secular provision. The Apex Court further held that Section 125 deals with the cases in which a person who possessed of sufficient means neglects or refuges to maintain his wife who is unable to maintain herself. Muslim Personal Law do not limit the liability of the husband to provide for maintenance of the divorced wife even after the period of Iddat. It has been held that Muslim husband, according to Personal Law, is under an obligation to provide

maintenance beyond the period of Iddat to his divorced wife who is unable to maintain herself. The Court referring Holy Quran, a Sacred book of Islam and referring Ayat and Suras No.241, 242 and further referring commentaries of various writers of Mohammedan Law on the said issue concluded that Ayat of the Quran leaves no doubt for a muslim husband to make a provision for or to provide maintenance to the divorced wife till she remarry. The Court has further held that "dawar" "Mahr" is payable at the time of dissolution of marriage cannot justify that it is payable "on divorced" to wife. Referring the provisions of Section 127(3)(b) of the Code, held that if Mahr is an amount which the wife is entitled to receive from the husband, in consideration of the marriage that is very opposite amount being payable in consideration of divorce. Divorce dissolves the marriage, therefore, no amount which is payable in consideration of the marriage can possibly be described as an amount payable in consideration of divorce. The alternative premise that Mahr is an obligation imposed upon the husband as a mark of respect for the wife, is wholly detrimental to the stance that it is an amount payable to the wife on divorce. A man may marry a woman for love, looks, learning or nothing at all and he may settle a sum upon her as a mark of respect for her. But, he does not divorce her as a mark of respect. Therefore, a sum payable to the wife out of respect cannot be a sum payable 'on divorce'. Thus upholding the validity of the judgment of *Bai Tahira and Fuzlunbi* (supra), held that that a divorce muslim wife is entitled to apply for maintenance under Section 125 and that Mahr is not a sum which under the Muslim Personal Law is payable on divorce. In the said judgment the Court recommended the form of uniform Civil Code throughout the territory of India and finally concluded that divorce muslim wife is entitled for maintenance other than Mahr till she remarriage, if residing separately with a justifiable reason.

10. Thereafter Parliament has enacted the law known as Muslim Women (Protection of Rights on Divorce) Act, 1986 to protect the rights of muslim women who have been divorced and obtained divorced from their husband to provide for matters connected therewith or incidental thereto. The said Act came into existence on 19th May, 1986 wherein various provisions have been made to the divorced muslim wife notwithstanding the provisions made in any other law which are in force. Viries (sic:Vires) of the said Act in the context of the judgment of Apex Court in the case of *Shah Bano Begum* (supra) and further referring inconsistency with the provisions under Section 125 of the Code of Criminal Procedure and also challenging the constitutional validity, in

the context of Articles 14 and 21 of the Constitution of India, was challenged before the Hon,ble Apex Court in the case of *Danial Latifi and another* (supra). The Supreme Court in the said judgment laid down the law as under:

> In interpreting the provisions where matrimonial relationship is involved the social conditions prevalent in society have to be considered. In Indian society whether they belong to the majority or the minority group, what is apparent is that there exists a great disparity in the matter of economic resourcefulness between a man and a woman. Indian society is male dominated, both economically and socially and women are assigned, invariably, a dependent role, irrespective of the class of society to which she belongs. A woman on her marriage very often, though highly educated, gives up all her other avocations and entirely devolves herself to the welfare of the family, in particular she shares with her husband, her emotions, sentiments, mind and body, and her investment in the marriage is her entire life- a sacramental sacrifice of her individual self and is far too enormous to be measured in terms of money. When a relationship of this nature breaks up, there can be no answer to the question as to how a woman can be compensated so far as emotional fracture or loss of investment is concerned. It is a small solace to say that such a woman should be compensated in terms of money towards her livelihood and such a relief which partakes basic human rights to secure gender and social justice is universally recognised by persons belonging to all religions and it is difficult to perceive that Muslim Law intends to provide a different kind of responsibility by passing on the same to those unconnected with the matrimonial life such as the heirs who were likely to inherit the property from her or the Wakf Boards. Such an approach appears to be a kind of distortion of the social facts. Solutions to such societal problems of universal magnitude pertaining to horizons of basic human rights, culture, dignity and decency of life and dictates of necessity in the pursuit of social justice should be invariably left to be decided on considerations other than religion or religious faith or beliefs or national, sectarian, racial or communal constraints.

The purpose of the Muslim Women (Protection of Rights on Divorce) Act, 1986 appears to be to allow the Muslim husband to retain his freedom of avoiding payment of maintenance to his erstwhile wife after divorce and the period of Iddat. However, a careful reading of the provisions of the Act would indicate that a divorced woman is entitled to a reasonable and fair provision for maintenance. Parliament seems to intend that the divorced woman gets sufficient means of livelihood after the divorce and, therefore, the word "provision" indicates that something is provided in advance for meeting some needs. In other words, at the time of divorce the Muslim husband is required to contemplate the future needs and make preparatory arrangements in advance for meeting those needs. Reasonable and fair provision may include provision for her residence, her food, her clothes, and other articles. The contention that the expression "within" in Section 3(1)(a) should be read as "during" or "for' cannot be accepted because words cannot be construed contrary to their meaning as the word "within" would mean "on or before", "not beyond" and, therefore, it was held that the Act would mean that on or before the expiration of the iddat period, the husband is bound to make and pay maintenance to the wife and if he fails to do so then the wife is entitled to recover it by filing an application before the Magistrate as provided in Section 13(3) but nowhere has Parliament provided that reasonable and fair provision and maintenance is limited only for the iddat period and not beyond it. It would extend to the whole life of the divorced wife unless she gets married for a second time.

The important section in the Act is Section 3 which provides that a divorced woman is entitled to obtain from her former husband "maintenance", "provision" and "mahr" and to recover from his possession her wedding presents and dowry and authorizes the Magistrate to order payment or restoration of these sums or properties. The crux of the matter is that the divorced woman shall be entitled to a reasonable and fair provision and maintenance to be made and paid to her within the iddat period by her former husband. The wording of Section

3 of the Act appear to indicate that the husband has two separate and distinct obligations; (1) to make a "reasonable and fair provision" for his divorced wife, and (2) to provide "maintenance" for her. The emphasis of this section is not on the nature or duration of any such "provision" or "maintenance", but on the time by which an arrangement for payment of provision and maintenance should be concluded, namely, "within the iddat period". If the provisions are so read, the Act would exclude from liability for post-iddat period maintenance to a man who has already discharged his obligation of both "reasonable and fair provision" and "maintenance" by paying these amounts in a lump sum to his wife., in addition to having paid his wife's mahr and restored her dowry as per Section 3(1)(c) and 3(1)(d) of the Act.

The precise point that arose for consideration in *Shah Bano* Case was that the husband had not made a "reasonable and fair provision" for his divorced wife even if he had paid the amount agreed as mahr half a century earlier and provided iddat maintenance and he was, therefore, ordered to pay a specified sum monthly to her under Section 125, Cr.P.C. This position was available to Parliament on the date it enacted the law but even so, the provisions enacted under the Act are "a reasonable and fair provision and maintenance to be made and paid" as provided under Section 3(1)(a) of the Act and these expressions cover different things, firstly, by the use of two different verbs - "to be made and paid to her within the iddat period, it is clear that a fair and reasonable provision is to be made while maintenance is to be paid, secondly, Section 4 of the Act, which empowers the Magistrate to issue an order for payment of maintenance to the divorced woman against various to her relatives, contains no reference to "provision". Obviously, the right to have, "a fair and reasonable provision" in her favour is a right enforceable only against the woman's former husband, and in addition to what he is obliged to pay as "maintenance".

A comparison of Sections 3(1)(a) and 3(3) with Section 125,

Cr.P.C. will make it clear that requirements provided in Section 125 and the purpose, object and scope thereof being to prevent vagrancy by compelling those who can do so to support those who are unable to support themselves and who have a normal and legitimate claim to support are satisfied. If that is so, the argument of the petitioners that a different scheme being provided under the Act which is equally or more beneficial on the interpretation placed by the Supreme Court herein than the one provided under the Code of Criminal Procedure deprives them of their right, loses its significance.

Even under the Act, the provisions of Section 125, Cr.P.C. would still be attracted and even otherwise, the Magistrate has been conferred with the power to make appropriate provision for maintenance and, therefore, what could be earlier granted by a Magistrate under Section 125 Cr.P.C. would now be granted under the very Act itself. This being the position, the Act cannot be held to be unconstitutional.

As on the date the Act came into force the law applicable to Muslim divorced women was as declared by this Court in *Shah Bano* case, so to find out the personal law of Muslims with regard to divorced women's rights, the starting point should be *Shah Bano* case and not the original text or any other material -all the more so when varying versions as to the authenticity of the source are shown to exist. That declaration was made after considering The Holy Quran, and other commentaries or other texts. When a Constitutional Bench of this Court analysed Suras 241-42 of Chapter II of The Holy Quran and other relevant textual material, it is not open to the Court to now to re-examine that position and delve into a research another conclusion.

11. In view of forgoing, the "Court has held that the provisions of the Act of 1986 is not inconsistent with the provisions of Section 125 of Cr.P.C. and held that even after commencement of the Act of 1986 the provisions of Section 125 of Cr.P.C. would still be attracted. The Magistrate has conferred the power to make appropriate provisions of maintenance which could be earlier granted by the Magistrate under Section 125 of Cr.P.C. continues, even under

the Act of 1986 to a divorced muslime wife. It has also been held that the law laid down in the case of *Shah Bano Begum* (supra) relying upon the Ayat and Suras of Holy Quran, makes it clear that even under Muslim Personal Law the payment of maintenance to a wife is not limited up to the lddat period, it may be paid even alter the period of Iddat till her remarriage. While interpreting the word "within" the period of "Iddat" as specified under Section 3(1)(a) of the Act, held it would be "during" or "for" cannot be accepted, meaning thereby of the word is "within" or "on or before" and not "beyond". Thus, even after expiry of the period of Iddat, the husband is bound to pay the maintenance to wife if he fails to do so then the wife is entitled to gets an order it as per Section 3(3) of the Act of 1986. Thus, it is clear that the payment of maintenance to a wife is not limited up to the Iddat period but payable thereafter also till the divorced muslim wife remarry. The said judgments of the Hon'ble Apex Court have been considered in the case of *Iqbal Bano* (supra) and laid down the law as under:

> "3. The Learned Magistrate held that there was no material to substantiate the plea of divorce and accordingly maintenance was granted. Order was challenged by filing a revision before the learned Additional Sessions Judge. Stand of the respondent was that after enactment of the Muslim Women (Protection of Rights on Divorce) Act, 1986 (in short "the Act"), petition under Section 125 Cr.P.C. was not maintainable. It was also stated that not only in the reply to the notice, was there mention about the utterance of the words "talaq" "talaq" "talaq", there was mention in the written statement also, amounting to divorce. Learned Additional District and Sessions Judge accepted the plea. He held that after the enactment of the Act, petition by any married muslim woman under Section 125 Cr.PC is not maintainable. Such woman can claim maintenance under the Act and not under Cr.PC. It was further held that mention was made in the written statement about the divorce purportedly 30 years back and the mentioning about this fact in law amounted to divorce. Accordingly, order of the learned Magistrate was set aside. The High Court dismissed the writ petition summarily and observed as follows;

"Heard learned counsel for the revisionist.

The learned Additional District and Sessions Judge has committed no illegality in modifying the order passed by the Magistrate in declining the maintenance after the date of divorce".

The view expressed by the First Revisional Court that no Muslim woman can maintain a petition under Section 125 Cr.PC is clearly unsustainable. The Muslim Woman (Protection of Rights on Divorced) Act, 1986 only applies to divorced woman and not a woman who is not divorced. Further more, proceedings under Section 125 Cr.PC are civil in nature. Even if the Court noticed that there was a divorced muslim woman who had been an application under Section 125 Cr.P.C., it was open to the Court to treat the same as a petition under the 1986 Act considering the beneficial nature of the legislation, especially since proceedings under Section 125 Cr.P.C. and claims made under the Muslim Women Act are tried by the same Court.

6. The dismissal of the revision petition by the High Court in the manner done is clearly unsustainable. The absence of these reasons has rendered the High Courts order unsustainable.

12. In the aforesaid, the Apex Court has expressed the view that Muslim Women can maintain a petition under Section 125 of Cr.P.C. The Act of 1986 applies to the divorced women and not to a woman who is not divorced. The proceedings under Section 125 of Cr.P.C. are civil in nature. In case the Court noticed that an application has been made by divorced muslim woman under Section 125 of Cr.P.C., it is open to the Court to treat the same with the petition under the provisions of the Act and decide it protecting the rights of such muslim woman.

13. Thereafter the Apex Court in the case of *Shabana Bano* (supra) has further considered the judgment of *Danial Latifi* (supra) and *Iqbal Bano* (supra) and held that the learned Single Judge was wholly confused with regard to different provisions of Muslim Act and the Family Courts Act and Cr.P.C. and was wholly unjustified to reject the application filed by the petitioner.

14. In view of the discussions made herein above, it is clear that after commencement of the Muslim Women (Protection of Rights on Divorce) Act, 1986 the applicability of Section 125 to 128 of Cr.P.C, is not excluded. It is the option to the parties to take recourse under Section 125 to 128 of Cr.P.C. even on filing an application under Section 3(2) of the Act of 1986. Bare reading of Section 5 of the Act of 1986, if the Muslim divorced woman or husband, as the case may be, on notice on the first date of hearing opted to take recourse or want to proceed under Sections 125 to 128 of Cr.P.C. then the Court cannot restrict them from the said recourse, and can not direct them to take recourse only under the provisions of the Muslim Women (Protection of Rights on Divorce) Act, 1986. In addition to the aforesaid while upholding the validity of the said Act by the constitutional Bench judgment of this Court. in the case of *Danial Latifi* (supra) the provisions of Section 125 of Cr.P.C. has been compared with towards the reasonableness of the provisions of the said Act and concluded as under:

i) A muslim husband is liable to make reasonable and fair provision for the future of the divorced wife, which obviously includes her maintenance as well. Such a reasonable and fair provision extending beyond the iddat period must be made by the husband within the iddat period in terms of Section 3(1)(a) of the Act.

ii) Liability of a Muslim husband to his divorced wife arising under Section 3(1)(a) of the Act to pay maintenance is not confined to the iddat period.

iii) A divorced muslim woman who has not remarried and who is not able to maintain herself after the iddat period can proceed as provided under Section 4 of the Act against her relatives who are liable to maintain her in proportion to the properties which they inherit on her death according to Muslim Law from such divorced woman including her children and parents. If any of the relatives, being unable to pay maintenance, the Magistrate may direct the State Wakf Board established under the Act to pay such maintenance.

iv) The provisions of the Act do not offend Articles 14, 15 and 21 of the Constitution of India.

15. It is to be noted that the law laid down in the judgment of *Shah Bano Begum* (supra) by the Constitutional Bench of the Apex Court has been approved while declaring the Act of 1986 as intra viries (sic:Vires). In the case of *Danial Latifi and another* (supra) the Hon'ble Apex Court concluded that under the Act of 1986 in Section 3(1)(a) words "reasonable and fair provision" and "maintenance" are having two distinct areas and further referring Section 4 thereof held that to make a "reasonable and fair provision" is different than "maintenance" awardable to divorced muslim wife by a husband. Section 4 further offers a reasonable provision for maintaining a divorced muslim wife by the family members or by the Wakf Board as the case may be, in the circumstances prevalent so. The ratio of the said two decisions have been reiterated in the case of *Iqbal Bano & Shabana Bano* (supra) by the Supreme Court as mentioned herein above. Thus, to conclude as per the said precedent and in the light of the codified provisions of the Act of 1986, it is to be held that the application filed by a divorced muslim woman under Section 3(2) of the Act would not debar her to take recourse of Section 125 to 128 of Cr.P.C. which is a secular provisions irrespective to religion or cast (sic:caste). In case the application has been filed by a divorced muslim woman under Section 3(2) of the Act and on issuance of the notice to the husband, on such application on the first date of hearing, as per declaration or affidavit in writing it be decided accordingly, by the Magistrate. This confers that on submitting an application, the Magistrate shall proceed according to the option of either party. The transitional provision made in Section 7 do not affect the provision of Section 5 of the Act because the transitional provision is only deal the contingency regarding pendency of the application under Section 125 of Cr.P.C. on the date of commencement of the Act subject to Section 5 of the Act of 1986.

16. In view of forgoing discussion and looking to the facts of the present case, it is apparent that the applicant has filed an application under Section 127 of Cr.P.C. seeking alteration of the allowance awarded to her by the trial Court about two decades before on an application under Section 125 of Cr.P.C. It is not brought on record that after service of notice, husband has submitted any option or declaration to opt the provisions of the Act of 1986. In such circumstances, the wife herself opted to proceed as per Section 125 to 128 of Cr.P.C, however, the Court cannot direct that such application is not maintainable in view of commencement of the provisions of the Muslim Women (Protection of Rights on Divorce) Act, 1986.

17. In view of analytical detail discussions made herein above referring various provisions of the Act of 1986, which are considered in various judgments of the Hon'ble Apex Court, including the two Constitutional Bench judgments, referred herein above, this Court is bound by the ratio laid down in the said judgments of the Apex Court. As per Article 141 of the Constitution of India law declared by the Supreme Court is binding on all courts. It includes the High Courts and subordinate courts. However, the judgments of this Court in the cases of *Abdul Rashid (Dr.) Vs. Mst. Farida,* 1994 MPLJ 583, *Julekha Bi Vs. Mohammad Fazal,* 1999 (2) MPLJ 64, *Munni alias Mubarik Vs. Shahbaz Khan,* reported in 2002(2) MPLJ 340 are hereby ignored. However, the findings and the orders passed by the trial court and revisional court relying upon the judgments of this Court holding that the application under section 127 filed by the applicant is not maintainable, are hereby set aside.

18. Looking to the facts of the present case wherein an amount of Rs.125/- towards maintenance has been awarded to the applicant/wife by the Judicial Magistrate First Class as per order dated 15/10/1985 on an application under Section 125 of Cr.P.C. the application under Section 127 of Cr.P.C. has been filed by the wife on 12/1/2007 which is held as not maintenable by the trial Court. Thus, after two and half decades if the application for alteration of the allowance is relegated for decision of the trial Court, it would again take some time for decision, which would not be justifiable for a divorced wife who is waiting for alteration of amount from about half of her life span. Thus, in my considered opinion the amount of maintenance can be quantified by this Court in the facts and circumstances of the case.

19. It is seen from the record that the applicant/wife is residing separately after the decree of divorce granted by the Court. The husband has remarried and enjoying his life with the second wife. As per the averments of the application filed in the year 2007, he was earning more than Rs.10,000/- per month, therefore, the demand of Rs.3,000/- has been prayed for, however, in the considered opinion of this Court, the wife is residing separately with a justifiable cause from her former husband and in the facts and circumstances of the case looking to the status of the husband who is now living with the second wife an amount of Rs.2,000/- for maintenance deserves to be awarded to the applicant/wife. In the facts and circumstances of the present case, it is directed that the said amount of maintenance would be payable from the date of the order passed by the trial Court.

20. Resultantly, this petition filed by the applicant wife stands allowed. The order dated 6.10.2009 passed by the trial Court as well as the revisional court dated 9.2.2011 are hereby set aside. The applicant is held entitled to receive an amount of Rs.2000/- per month towards maintenance from the date of the order passed by the Trial Court. The applicant would also be entitled for the cost which is quantified as Rs.3000/-.

Petition allowed.

I.L.R. [2014] M.P., 2481
MISCELLANEOUS CRIMINAL CASE
Before Mr. Justice J.K. Maheshwari
M.Cr.C. No. 3627/2013 (Indore) decided on 1 August, 2013

BABULAL & ors. ...Applicants
Vs.
STATE OF M.P. ...Non-applicant

Criminal Procedure Code, 1973 (2 of 1974), Section 167(2), Proviso (a)(ii) **- Petitioner was arrested on 18.02.2013 - Challan was filed on 22.04.2013 - Prior to filing challan accused filed application u/s 167(2) seeking benefit of the statutory bail - Trial court extended the benefit - Order was set aside by Revisional Court - Held - After exercising the right by moving the application seeking statutory bail, if the challan is filed later, it would not affect the indefeasible right accrues to the applicants to release them on bail - Even if the charge sheet is filed prior to passing the order on such application - Impugned order is set aside. (Para 11)**

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 167(2), परंतुक (ए) (ii) – याची को 18.02.2013 को गिरफ्तार किया गया – 22.04.2013 को चालान पेश किया गया – चालान प्रस्तुतीकरण से पूर्व, अभियुक्त ने कानूनी जमानत का लाभ चाहते हुए धारा 167(2) के अंतर्गत आवेदन पेश किया – विचारण न्यायालय ने लाभ प्रदान किया – पुनरीक्षण न्यायालय द्वारा आदेश अपास्त – अभिनिर्धारित – कानूनी जमानत चाहते हुए आवेदन देकर अधिकार का प्रयोग करने के पश्चात यदि चालान बाद में प्रस्तुत किया जाता है, तब आवेदकगण को जमानत पर छोड़े जाने का प्रोद्भूत होने वाला अजेय अधिकार प्रभावित नहीं होता – यदि उक्त आवेदन पर आदेश पारित होने से पूर्व आरोप पत्र प्रस्तुत किया जाता है, तब भी – आक्षेपित आदेश अपास्त।

Cases referred :

2013 CRLJ 200, 2013 CR.L.R. (MP) 382, (2012) 1 SCC (Cri) 311, 2001 AIR SCW 1500, (1994) 5 SCC 410, 1993 (2) MPJR 479.

Sanjay Sharma, for the applicants.
Deepak Rawal, G.A. & *A.S. Sisodiya,* P.L. for the respondent/State.

ORDER

J.K. MAHESHWARI, J. :- Being aggrieved by the order dated 30.04.2013 passed by the III rd Additional Sessions Judge, Mhow in Criminal Revision No. 367/2013 cancelling the bail granted to accused applicants No. 1 to 6, this petition has been preferred under Section 482 of Cr.P.C.

2. On perusal of the record, it is apparent that the FIR was lodged on 18.02.2013 , and the applicants were taken into custody on the same date, but the challan has been filed on 22.04.2013 on 62nd day for the offences under Section 399, 402 of the IPC and 25 of the Arms Act. It is also not in dispute that the bail application was filed prior to filing of the challan on 22.04.2013, however, the trial Court extended benefit of Section 167(2) proviso thereto. On filing the revision by State Government before the Sessions Court, it was allowed and the order granting bail passed by the trial Court has been set aside, cancelling the bail of the applicants. However, this petition has been preferred.

3. Learned counsel for the applicants referring the provisions of Section 167(2) Cr.P.C. (Proviso (a)(ii)) contended that in the present case the said offence relates to the sentence which may be extend to 10 years as prescribed. In such case the challan ought to be filed within 60 days from the date of arrest, otherwise the accused persons are entitled to seek liberty of statutory bail as per law. The aforesaid issue has been considered by Hon'ble the Apex Court by Three judges Bench in the case of *Sayed Mohd. Ahmed Kazmi Vs. State , GNCTD and ors.* reported in 2013 CRI.L.J.200. Reliance has also been placed on the judgment of this Court in the case of *Bazeer Khan @ Lalla Khan Vs. State of M.P.* reported in 2013 Cr.L.R. (MP) 382. In view of the aforesaid it is urged that the order passed by the Sessions Judge is contrary to the law laid down by Hon'ble the Apex Court, and also by this Court.

4. Shri Deepak Rawal, Govt. Advocate and Shri Sisodiya, Panel Lawyer

appearing on behalf of the respondent/ State contends that the challan has been filed prior to passing the order of bail on the application filed by the accused persons, however, in such circumstances, the grant of bail under section 167(2) of Cr.P.C. is not permissible. Reliance has been placed on the judgment of *Sadhvi Pragyna Singh Thakur Vs. State of Maharashtra* reported in (2012) 1 SCC (Cri) 311. In view of the foregoing, it is submitted that the Sessions Court has not committed any error to cancel the bail granted by the trial Court by setting aside the same.

5. After hearing learned counsel for both the parties and on careful reading of section 167(2) of the Cr.P.C., it is clear that a person who is in custody produced to the Magistrate whether he has or has not jurisdiction to try the case authorised to detain such accused as he thinks fit, by passing the orders time to time, but the period of said order shall not exceed by 15 days. The proviso (a) (ii) of Section 167 (2) as amended, makes it clear that in case investigation do not relate to the offence punishable with death imprisonment for life or imprisonment for a term up to 10 years, in other cases, if the investigation has not completed within 60 days, then accused persons shall be released on bail if he applies and prepared to furnish bail bond similar to the provisions specified in Chapter-XXXIII of Cr.P.C.

6. In the said context and looking to the facts of the present case it is to be decided that after filing the application to release the accused on bail and prior to passing the order on such application if charge-sheet is filed then right to get release the accused on bail under Section 167(2) (a) (ii) of the Cr.P.C. is defeated or not:

7. The said issue has been considered by the Hon'ble the Apex court, by a three Judges Bench in the case of *Uday Mohanlal Acharya Vs. State of Maharashtra* [2001 AIR SCW 1500] and ruled out as thus:-

> "Where after expiry of period of 60 days for filing challan the accused filed an application for being released on bail and was prepared to offer and furnish bail, however, the Magistrate rejects application on erroneous interpretation about non-application of Section 167(2) of Cr.P.C., to case pertaining to MPID Act of 1999 and accused approaches higher forum and in meanwhile charge-sheet is filed, the indefeasible right of accused being released does not get extinguished by subsequent filing of charge-sheet. The accused can be said to

have availed of his right to be released on bail on date he filed application for being released on bail and offers to furnish bail. Such an accused, who thus is entitled to be released on bail in enforcement of his indefeasible right will,however, have to be produced before the Magistrate on a charge-sheet being filed in accordance with Section 209 of Cr. P.C., and the Magistrate must deal with him in the matter of remand to custody subject to the provisions of the Code relating to bail and subject to the provisions of cancellation of bail."

9. A three Judges Bench of the Apex Court in *Syed Mohd. Ahmed Kazmi* (supra) has ruled that filing of the charge-sheet during pendency of application for statutory bail does not affect the right of the accused to bail under section 167(2) of Cr.P.C."

8. Recently,a three Judges Bench of Hon'ble the Apex Court has further considered the said issue in the case of *Sayed Mohd. Ahmed Kazmi* (supra) relying upon the constitutional bench judgment of the Supreme Court in the case of *Sanjay Dutt v. State through CBI* [(1994) 5 SCC 410] and reiterated the same proposition of law. The relevant paragraphs are reproduced as thus:-

"19. In support of his submissions, Mr. Pracha referred to and relied upon a Three-Judge Bench decision of this Court in *Uday Mohanlal Acharya v. State of Maharashtra* [(2001) 5 SCC 453: (AIR 2001 SC 1910: 2001 AIR SCW 1500)], wherein while referring to the earlier decision of this Court in the case of *Sanjay Dutt v. State through CBI* [(1994) 5 SCC 410 : (1994 AIR SCW 3857)], this Court interpreted the expression "if not already availed of" to mean that the Magistrate has to dispose of an application under Section 167 (2) forthwith and on being satisfied that the accused had been in custody for the specified period, that no charge-sheet had been filed and that the accused was prepared to furnish bail, the Magistrate is obliged to grant bail, even if after the filing of the application by the accused a charge-sheet had been filed. Mr. Pracha submitted that so long as an application was pending before a charge-sheet had been filed after the expiry of the stipulated period for filing of charge-sheet, the accused had an indefeasible right to be released on statutory bail, as contemplated under

the proviso to Section 167(2) Cr.P.C. Mr. Pracha submitted that the aforesaid decision was ad idem with the facts of the instant case, wherein the Appellant's application for grant of statutory bail was pending on the day when the Appellant's custody was declared to be illegal by the Additional Sessions Judge.

24. Having carefully considered the submissions made on behalf of the respective parties, the relevant provisions of law and the decision cited, we are unable to accept the submissions advanced on behalf of the State by the learned Additional Solicitor General, Mr. Raval. There is no denying the fact that on 17th July, 2012, when CR No.86 of 2012 was allowed by the Additional Sessions Judge and the custody of the Appellant was held to be illegal and an application under Section167(2) Cr.P.C. was made on behalf of the Appellant for grant of statutory bail which was listed for hearing. Instead of hearing the application, the Chief Metropolitan Magistrate adjourned the same till the next day when the Public Prosecutor filed an application for extension of the period of custody and investigation and on 20th July, 2012 extended the time of investigation and the custody of the Appellant for a further period of 90 days with retrospective effect from 2nd June 2012 . Not only is the retrospectivity of the order of the Chief Metropolitan Magistrate untenable. It could not also defeat the statutory right which had accrued to the Appellant on the expiry of 90 days from the date when the Appellant was taken into custody. Such right , as has been commented upon by this Court in the case of *Sanjay Dutt* (supra) and the other cases cited by the learned additional Solicitor General, could only be distinguished once the charge-sheet had been filed in the case and no application has been made prior thereto for grant of statutory bail. It is well-established that if an accused does not exercise his right to grant of statutory bail before the charge-sheet is filed , he loses his right to such benefit once such charge-sheet is filed and can , thereafter, only apply for regular bail."

9. In view of the forgoing law laid down by the judgments of Hon'ble the Apex Court it is clear that after laps of the period of 60 days in the offences

where the punishment may extend to 10 years similar to this case, and if the charge-sheet is not filed within 60 days, the right to get release the accused on bail is available if he applies for the same. On submitting the application for enforcement of the statutory bail to the accused, even if the charge-sheet is filed later, but prior to passing the order by the Court, it would not defeat his right of bail merely by filing charge-sheet after submitting bail application. This Court in the case of *Bazeer Khan* (supra) has also reiterated the same proposition of law relying upon the judgment of the Supreme Court in the case of *Sayed Mohd. Ahmad Kazmi* (supra).

10. In case of *Sadhvi Pragyna Singh Thakur* (supra) the facts remains that the charge-sheet was filed on 90th day itself. The other observation made in the said judgment by the two Judges Bench of Hon'ble the Apex Court would not be binding in the context of aformentioned two judgments of three Judges Bench. As per the Full Bench of this Court in the case of *Jabalpur Bus Operators Association, Jabalpur & ors. Vs. State of Madhya Pradesh & Anr.* reported in [1993 (2) MPJR 479] it is clear that the prior or subsequent judgment of the larger Bench of the Apex Court would prevail over to the judgment of two Judge's bench and binding. It is to be further observed here that while deciding the case of *Sayed Mohd. Ahmed Kazmi* (supra) reffering the earlier judgment of constitutional Bench in the case of *Sanjay Dutt* (supra), Court observed that it is well established, if an accused does not exercise his right to get statutory bail before filing the charge-sheet, he looses his right to get such benefit on filing the charge-sheet. Thus, as contemplated under Section 167(2) proviso (a)(ii) it is clear that if the accused exercises his right for grant of statutory bail prior to filing the chrge-sheet the benefit to release him on bail is available even if the charge-sheet is filed prior to passing the order on such application by the Court, but in case prior to filing the charge-sheet if the application has not been filed to release the accused on bail then such right shall not be available and the accused may apply for regular bail which may be considered as per merits of the case.

11. In view of the foregoing legal discussions and on going through the facts of this case, it is clear that the applicants were taken into custody on 18.02.2013 itself for the offences under Sections 399 & 402 of IPC read with Section 25 of the Arms Act . For the said offences the punishment , as prescribed may be extended up to 10 years. Thus the challan ought to be filed up to 19 th of April 2013 within the period of 60 days. Admittedly the challan in the present case has been filed on 22nd of April, 2013 but prior to filing the challan, the accused filed the application under Section 167(2) of the Cr.P.C. seeking benefit of the statutory bail. The trial Court extended the benefit of

bail to the applicants allowing their application, the said order was set aside by the revisional Court. In view of the analytical discussions of the language of Section 167(2) Cr.P.C. proviso (a)(ii) and as per the two judgments of the three Judges Bench in the case of *Uday Mohanlal Acharya* (supra) and *Sayed Mohd. Ahmed Kazmi* (supra) it is to be held that after exercising the right by moving an application seeking statutory bail by the accused, if the challan is filed later, it would not affect the indefeasible right accrues to the applicants to release them on bail. Thus the trial Court has rightly granted the benefit of bail to the applicants, and revisional Court without considering the aforesaid proposition of law passed the order impugned which is hereby set aside.

12. Accordingly, the petition filed by the applicants is hereby allowed. In view of the foregoing discussions it is a fit case to invoke the jurisdiction under Section 482 of the Cr.P.C. and in consequence the order impugned passed by the revisional Court stands set aside upholding the order of the trial Court. In result thereto the applicants were rightly derived the benefit of statutory bail as specified under Section 167(2) proviso(a)(ii) of Cr.P.C. Thus the bail bond furnished by them as per the order passed by the trial Court shall continue during the trial.

CC as per rules.

Petition allowed.

I.L.R. [2014] M.P., 2487

MISCELLANEOUS CRIMINAL CASE

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

M.Cr.C. No. 5270/2011 (Gwalior) decided on 16 July, 2014

R.K. KARTIKEYA ...Applicant

Vs.

RAHUL JAIN ...Non-applicant

Crimina l Procedure Code, 1973 (2 of 1974), Section 197 - Previous sanction for prosecution of public servant and cognizance - **Held - That no court shall take cognizance of offence alleged to have been committed by public servant while acting or purporting to act in discharge of his official duty except with the previous sanction as provided u/s 197 - Further held, the bar on the exercise of power of court to take cognizance of any offence is absolute and complete. (Paras 6 & 7)**

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 197 – लोक सेवक के अभियोजन हेतु पूर्व मंजूरी और संज्ञान – अभिनिर्धारित – कोई न्यायालय लोक सेवक द्वारा अपने शासकीय कर्तव्य के निष्पादन में कार्य करते समय या तात्पर्यित कार्य करते समय, अभिकथित रुप से कारित किये गये अपराध का संज्ञान सिवाय पूर्व मंजूरी के नहीं लेगा, जैसा कि धारा 197 के अंतर्गत उपबंधित है – आगे अभिनिर्धारित किया गया कि किसी अपराध का संज्ञान लेने के लिये न्यायालय की शक्ति के प्रयोग का वर्जन, आत्यंतिक एवं पूर्ण है।

Cases referred :

(2013) 10 SCC 705, (2009) 6 SCC 372,

Amit Lahoti, for the applicant.
Shailendra Dwivedi, for the non-applicant.

ORDER

The Order of the Court was delivered by :
B.D. Ratiii, J. :- By invoking the extraordinary jurisdiction of this Court, petitioner has preferred this petition under Section 482 of Code of Criminal Procedure, 1973 (in short 'the Code') calling in question the order of cognizance dated 11-05-2011 passed in private complaint case by Special Judge (Prevention of Corruption Act), Guna against the petitioner and issuance of bailable warrant in the sum of Rs.1,000/- against the petitioner for his presence before the Court on 20-06-2011.

2. The brief facts of the case are that respondent -Rahul Jain was ex-councillor of Municipality, Guna. On 12-09-2006 in daily news paper "Raj Express" one notice was published inviting tender for repairing cover body for vehicle cargo 709. Cut off date for submitting the tender was fixed as 26th September, 2006. Prior to that no administrative and financial sanction has been taken by the petitioner who was the then CMO of Municipality, Guna. Thereafter, tenders were submitted by three different firms. Tender of M/s Laxmi Agro Industry was accepted being lowest one and work order was issued. The security amount has not been obtained and when tenders were opened time and date were not mentioned. Thereafter, on completion of contracted work, physical verification of supplied material was conducted and it was found that the material supplied was of sub-standard quality thereby petitioner and one another co-accused Mohanlal Verma, Sanitary Inspector both have committed offence punishable under Section 13 of Prevention of Corruption Act 1988 (in short 'the Act') read with Sections 420 and 120-B of IPC.

3. Statement of complainant/respondent -Rahul Jain (PW-1) was recorded under Section 200 of the Code and thereafter on 11-05-2011 impugned order was passed against the petitioner and the complaint to the extent of co- accused Mohanlal Verma was dismissed on the ground that no offence was made out against him.

4. The two folds arguments advanced by learned counsel for the petitioner seeking quashment of impugned order are (1) sanction under Section 197 of the Code as well as under Section 19(1) of the Act have not been obtained before filing the private complaint and without taking into consideration this aspect of the matter, the order impugned has been illegally passed by learned trial Court (2) if the entire facts of the complaint are taken into consideration in its totality even then no offence is made out against the petitioner as prior to issuing the work order, administrative and financial sanction was obtained from the concerned authority, security amount was also got deposited from the tenderer and as per the physical verification report dated 18-01-2008 prepared by Assistant Engineer and Sub Engineer of Municipality, Guna, articles were found as per specification.

5. Combating the submissions made by learned counsel for the petitioner, respondent's learned counsel Shri Dwivedi submitted that at that time of passing of impugned order, it was not necessary to see whether the sanction under Section 197 of the Code or Section 19(1) of the Act were there or not. The factual matrix cannot be decided without taking evidence of parties on merit, therefore, the petition filed by the petitioner being sans substance, deserves dismissal.

6. Undoubtedly, for the offence punishable under the provisions of the Act, no Court shall take cognizance of an offence punishable under Sections 7, 10, 11, 13 and 15 alleged to have been committed by a public servant except with the previous sanction as provided under Section 19(1) of the Act. Similarly, no Court shall take cognizance of offence (here punishable under I.P. Code) alleged to have been committed by a public servant while acting or purporting to act in discharge of his official duty except with the previous sanction as provided under Section 197 of the Code.

7. In the case in hand, it is an admitted fact that both the sanctions have not been taken prior to filing the complaint, therefore, in view of the principle laid down by the Apex Court in the case of (2013) 10 SCC 705 *Anil Kumar*

and Others Vs. M.K. Aiyappa and another, cognizance cannot be taken by the Court. In the case of *State of U.P. Vs. Paras Nath Singh* (2009) 6 SCC 372, the Apex Court has laid down the law that bar on the exercise of power of the Court to take cognizance of any offence is absolute and complete. The very cognizance is barred that is the complaint cannot be taken notice of. Cognizance means 'jurisdiction' or 'the exercise of jurisdiction' or 'power to try and determine the cause'. In common parlance it means taking notice of. A Court, therefore, is precluded from entertaining a complaint or taking notice of it or exercising jurisdiction if it is in respect of a public servant who is accused of an offence alleged to have been committed during discharge of his official duty.

8. The case in hand is one step ahead where by passing the impugned order bailable warrant has already been issued against the petitioner. It means cognizance has been taken for the offences punishable under the Act and under Indian Penal Code also which could not be without obtaining prior sanction under Section 197 of the Code or under Section 19(1) of the Act, therefore, only on this sole ground impugned order of taking cognizance against the petitioner is liable to be set aside.

9. From the factual matrix of the case, it is evident that prior to issuing the work order, administrative and financial sanction was granted by the concerned authority for execution of work in question on 17-10-2006 by resolution No.202. It is not in dispute that lowest tender was accepted. On perusal of receipts No.28,29,30 issued from book No.30 dated 26-09-2006, it is evident that the security amount of Rs.5,000/- was got deposited by petitioner from every tenderer. Similarly, by physical verification report dated 18-01-2008 it is evident that the material supplied by the contractor was found as per specification. After taking into consideration the aforesaid factual matrix, it is clear that no offence is made out either under the provisions of Act or under IPC.

10. Therefore, on both the grounds, this petition is allowed. Impugned order dated 11-05-2011 is hereby set aside. Entire proceeding pending in the trial Court on the basis of private complaint filed by respondent/complainant - Rahul Jain is also hereby quashed. No order as to costs.

Petition allowed.