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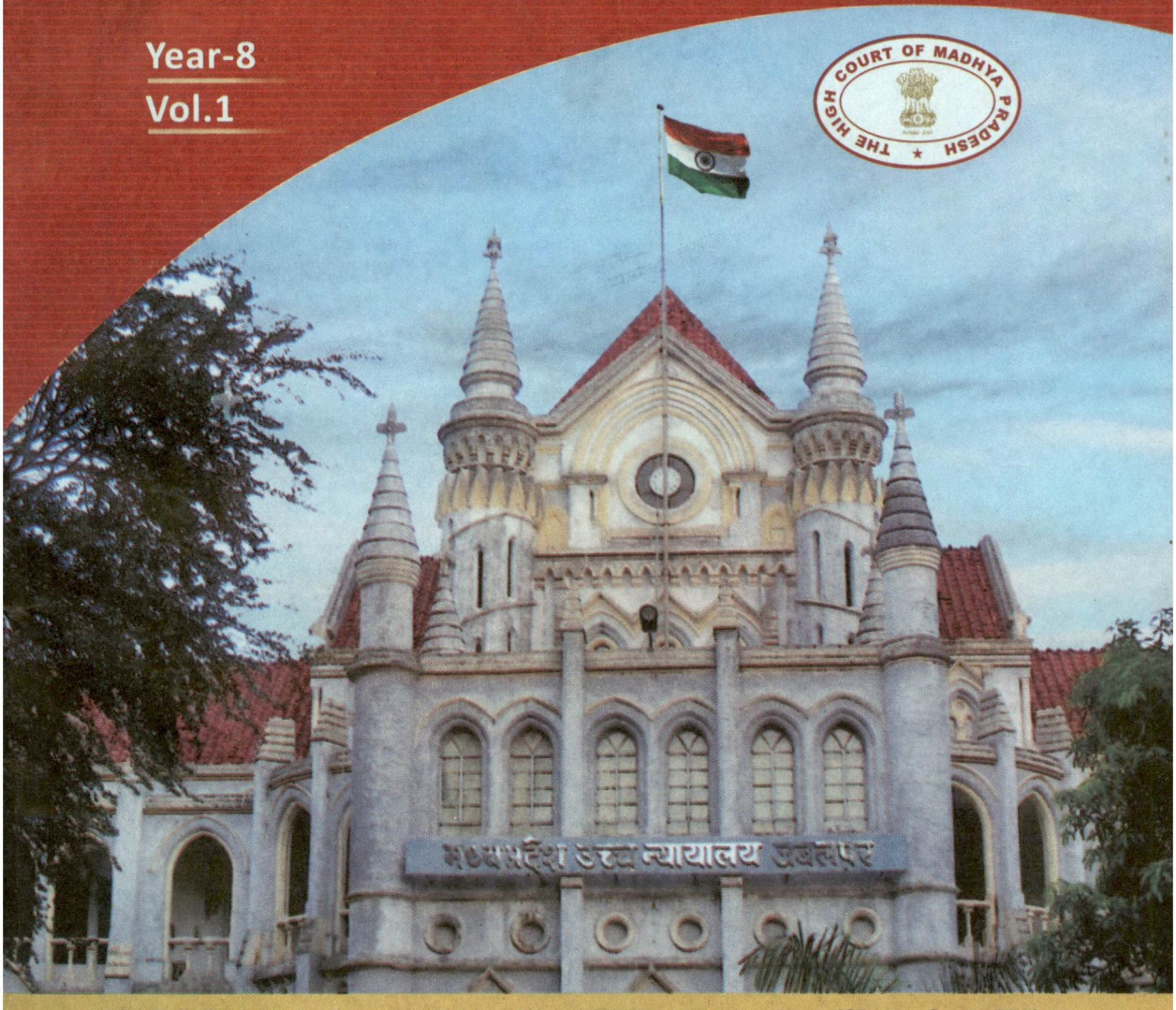

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माध्यस्थम् और सुलह अधिनियम (1996 का 26), धारा 34 – अवार्ड को अपास्त किया जाना – अवार्ड अपास्त किया जा सकता है (i) यदि वह मूलभूत नीति के विपरीत है, (ii) भारत के हितय न्याय या नैतिकता के विरूद्ध है, (iii) यदि वह प्रत्यक्ष रूप से अवैध मनमाना है। (एम.पी. स्टेट सिविल सप्लाई कारपोरेशन लि. वि. मे. के.डी. ट्रान्सपोर्ट) ...556

***Arbitration and Conciliation Act (26 of 1996), Section 34(2)(b)(ii) – Awards* – Trial Court set aside the award only on the ground that appellant had no authority to deduct amount without getting the dispute adjudicated – This finding was contrary to clause 9.4 of agreement – Additional District Judge while passing the impugned judgments exceeded its jurisdiction while dealing with the objections preferred u/s 34 of the Act – Judgments passed by the trial Court suffer from jurisdictional infirmity – Impugned judgments are set aside – Awards passed by the Arbitrator are restored – Appeals allowed. [M.P. State Civil Supplies Corporation Ltd. Vs. M/s. K.D. Transport]...556**

माध्यस्थम् और सुलह अधिनियम (1996 का 26), धारा 34(2)(बी)(ii) – अवार्ड – विचारण न्यायालय ने केवल इस आधार पर अवार्ड अपास्त किया कि अपीलार्थी को विवाद न्यायनिर्णीत कराये बिना रकम की कटौती करने का प्राधिकार नहीं था – यह निष्कर्ष, करार के खंड 9.4 के विपरीत था – अतिरिक्त जिला न्यायाधीश, आक्षेपित निर्णयों को पारित किये जाते समय अधिनियम की धारा 34 के अंतर्गत प्रस्तुत आक्षेपों का निराकरण करते समय अपनी अधिकारिता से परे गये – विचारण न्यायालय द्वारा पारित निर्णय, अधिकारिता की कमी से ग्रस्त है – आक्षेपित निर्णय अपास्त – मध्यस्थ द्वारा पारित अवार्ड पुनःस्थापित – अपील मंजूर। (एम.पी. स्टेट सिविल सप्लाई कारपोरेशन लि. वि. मे. के.डी. ट्रान्सपोर्ट) ...556

***Arbitration and Conciliation Act (26 of 1996), Section 36 – Award – Execution* – Held – Award passed by the arbitral tribunal under the provisions of the Act is enforceable under Section 36 in the same manner as if it were a decree of the Court, though Arbitral Tribunal is not a Court, so application for execution cannot be filed before arbitral tribunal. [Magma Fincorp Ltd. Vs. Rajbhan Singh] ...106**

माध्यस्थम् और सुलह अधिनियम (1996 का 26), धारा 36 – अवार्ड –

निष्पादन – अभिनिर्धारित – माध्यस्थम् अधिकरण द्वारा अधिनियम के उपबंधों के अंतर्गत पारित किया गया अवार्ड धारा 36 के अंतर्गत उसी ढंग से प्रवर्तनीय है जैसे कि वह न्यायालय की डिक्री हो, यद्यपि माध्यस्थम् अधिकरण, न्यायालय नहीं है तथापि निष्पादन हेतु आवेदन को माध्यस्थम् अधिकरण के समक्ष प्रस्तुत नहीं किया जा सकता। (मेग्मा फिनकार्प लि. वि. राजभान सिंह) ...106

Arbitration and Conciliation Act (26 of 1996), Section 36 – Execution petition **– In respect of an award the execution proceeding can not be initiated where the person or property of person is situated against whom decree is sought to be executed, without insisting on to first apply for execution to one Court, merely to obtain transfer – Petition allowed. [Magma Fincorp Ltd. Vs. Rajbhan Singh]** ...106

माध्यस्थम् और सुलह अधिनियम (1996 का 26), धारा 36 – निष्पादन याचिका – अवार्ड के संबंध में निष्पादन कार्यवाही, मात्र अंतरण अभिप्राप्त करने के लिए एक न्यायालय को निष्पादन हेतु पहले आवेदन करने पर जोर दिये बिना, उस स्थान पर आरंभ नहीं की जा सकती है जहां वह व्यक्ति जिसके विरूद्ध डिक्री का निष्पादन चाहा गया है या उस की संपत्ति स्थित है – याचिका मंजूर। (मेग्मा फिनकार्प लि. वि. राजभान सिंह) ...106

Arms Act (54 of 1959), Section 13 – Transfer of weapon licence **– Petitioner's application for grant of licence by transferring the licence of pistol from the name of father to the petitioner has been rejected by non-speaking order – Neither the merits nor the recommendation of District Magistrate and Commissioner were considered – Held – Any authority either judicial, quasi judicial or administrative, are bound to pass speaking order by assigning reasons – Impugned order being non-speaking is set aside – Matter is remanded back to respondent No. 1 & 2 to reconsider as per rules and regulation existing on the date of filing the application – In case of change of rules, petitioner may file fresh application which shall be considered in accordance with new policy. [Rohit Kumar Vs. State of M.P.]** ...727

आयुध अधिनियम (1959 का 54), धारा 13 – शस्त्र अनुज्ञप्ति का अंतरण – याची द्वारा उसके पिता के नाम से जारी पिस्तौल की अनुज्ञप्ति को उसके नाम अंतरित करते हुए शस्त्र अनुज्ञप्ति जारी किये जाने हेतु प्रस्तुत आवेदन पत्र कारण विहीन आदेश द्वारा खारिज किया गया – न तो प्रकरण के गुण दोष पर एवं न ही जिला दण्डाधिकारी एवं आयुक्त द्वारा की गई अनुशंसा पर विचार किया गया –

अभिनिर्धारित – कोई भी प्राधिकारी चाहे वह न्यायिक, अर्ध–न्यायिक अथवा प्रशासनिक हो, कारण प्रकट करते हुए सकारण आदेश पारित करने हेतु बाध्य है – आक्षेपित आदेश कारण विहीन होने से अपास्त किया जाता है – आवेदन प्रस्तुत करने की तिथि को विद्यमान नियमों एवं विनियम के अनुसार पुनः विचार किये जाने हेतु प्रत्यर्थी क्र. 1 व 2 को मामला प्रतिप्रेषित – नियमों में परिवर्तन होने की दशा में, याची नये सिरे से आवेदन पत्र प्रस्तुत कर सकेगा, जिस पर नवीन नीति के अनुसार विचार किया जायेगा। (रोहित कुमार वि. म.प्र. राज्य) ...727

Ceiling on Agricultural Holdings Act, M.P.(20 of 1960), Section 4 – Transfers or Partitions made after the publication of Bill but before commencement of Act – Locus Standi – **14 transactions were declared void transactions – Appeal was filed by purchasers who were claiming through holder – Holder allowed the finding of fact recorded by Competent Authority against him on the factum of failure of discharge the burden of proof to attain finality – Purchasers cannot be allowed to contend to the contrary – As per Section 4(4) of Act, 1960, transaction becomes rebuttable with regard to transfer or sale as void, only at the instance of transferor/holder of land – Only holder/transferor of land can rebut the transaction and not transferees. [State of M.P. Vs. Jagdish Pandey]** **(DB)...799**

कृषि जोत अधिकतम सीमा अधिनियम म.प्र. (1960 का 20), धारा 4 – विधेयक के प्रकाशन के पश्चात् परंतु अधिनियम के लागू होने के पूर्व किये गए अंतरण अथवा बंटवारे – सुने जाने का अधिकार – 14 संव्यवहारों को शून्य संव्यवहार घोषित किया गया – अपील, क्रेतागण द्वारा प्रस्तुत की गई जो कि धारक के माध्यम से दावा कर रहे थे – सबूत के भार का निर्वहन करने में असफल रहने के तथ्य पर से धारक के विरूद्ध सक्षम प्राधिकारी द्वारा निकाले गये तथ्य के निष्कर्ष को धारक ने अंतिमता प्राप्त होने दी – क्रेतागण को इसके प्रतिकूल तर्क करने हेतु अनुमति नहीं दी जा सकती है – अधिनियम, 1960 की धारा 4(4) के अनुसार, केवल भूमि के अंतरक/भूधारक के सुझाव पर ही किसी शून्य अंतरण अथवा विक्रय से संबंधित संव्यवहार खण्डनीय हो जाता है – केवल भूधारक/भूमि का अंतरक ही संव्यवहार को खण्डित कर सकता है न कि कोई अंतरिती। (म.प्र. राज्य वि. जगदीश पांडे) **(DB)...799**

Ceiling on Agricultural Holdings Act, M.P.(20 of 1960), Section 4 – Transfers or Partitions made after the publication of Bill but before commencement of Act – **14 sale deeds were executed on one day by holder of land in favour of his employees – Holder did not produce any**

document to show that he was in grave and urgent need of finance/ money for the treatment of his daughter – No documentary evidence was produced to establish that the daughter of holder of land had to undergo such treatment at London and incurred heavy expenses therefor – Passport of daughter also not produced – Finding by Board of Revenue regarding the fact that the holder was badly in need of money for treatment of his daughter at London is not based on any legal and tangible evidence – Petition allowed. [State of M.P. Vs. Jagdish Pandey] (DB)...799

कृषि जोत अधिकतम सीमा अधिनियम म.प्र. (1960 का 20), धारा 4 – विधेयक के प्रकाशन के पश्चात् परंतु अधिनियम के लागू होने के पूर्व किये गए अंतरण अथवा बंटवारे – भूमि धारक द्वारा अपने कर्मचारियों के पक्ष में एक दिन में ही 14 विक्रय विलेख निष्पादित किये गये – धारक ने ऐसा कोई भी दस्तावेज प्रस्तुत नहीं किया जिससे यह दर्शित हो कि उसे अपनी पुत्री के उपचार के लिये पैसों की तुरंत एवं घोर आवश्यकता थी – ऐसा भी कोई दस्तावेजी साक्ष्य प्रस्तुत नहीं किया गया जिससे यह स्थापित हो कि भूधारक की पुत्री का उक्त उपचार लंदन में करवाना पड़ा एवं जिसमें उसने भारी खर्च वहन किया – पुत्री का पासपोर्ट भी प्रस्तुत नहीं – राजस्व मंडल द्वारा इस तथ्य के संबंध में निकाला गया निष्कर्ष कि धारक को अपनी पुत्री का उपचार लंदन में कराने हेतु पैसों की अत्यंत आवश्यकता थी, किसी विधिक एवं मूर्त साक्ष्य पर आधारित नहीं है – याचिका मंजूर। (म.प्र. राज्य वि. जगदीश पांडे) **(DB)...799**

Ceiling on Agricultural Holdings Act, M.P.(20 of 1960), Section 5 – Permission of Collector **– No prior permission of the Collector was obtained by the holder under Section 5 of the Act – In the light of non-compliance of mandatory provision, the sale ought to be treated as void. [State of M.P. Vs. Jagdish Pandey] (DB)...799**

कृषि जोत अधिकतम सीमा अधिनियम म.प्र. (1960 का 20), धारा 5 – कलेक्टर की अनुमति – अधिनियम की धारा 5 के अंतर्गत धारक द्वारा कलेक्टर की पूर्व अनुमति प्राप्त नहीं की गई – अनिवार्य प्रावधान का पालन न किये जाने के प्रकाश में, विक्रय को शून्य समझा जाना चाहिए था। (म.प्र. राज्य वि. जगदीश पांडे) **(DB)...799**

Civil Procedure Code (5 of 1908), Section 9 and Land Revenue Code, M.P. (20 of 1959), Section 257 – Bar of civil suit **– Contract for sale – Validity thereof – Could only be examined by Civil Court and not by revenue Court. [Kishorilal Tiwari Vs. Kandhilal] ...512**

सिविल प्रक्रिया संहिता (1908 का 5), धारा 9 एवं भू राजस्व संहिता, म.प्र. (1959 का 20), धारा 257 – सिविल वाद का वर्जन – विक्रय के लिए संविदा – इसकी विधिमान्यता – केवल सिविल न्यायालय द्वारा परीक्षण किया जा सकता है और न कि राजस्व न्यायालय द्वारा। (किशोरीलाल तिवारी वि. कंधीलाल) ...512

Civil Procedure Code (5 of 1908), Section 9 – Concealment of fact **– Plaintiff filed civil suit for declaration and permanent injunction – Plaintiff concealed the fact that earlier also he had filed a suit in regard to same property and Court had refused to grant relief – Concealment of fact amounts to playing fraud with Court – Revision dismissed with cost of Rs. 10,000/-. [Kamar Mohammed Khan Vs. Begum Sabiha Sultan]** ...230

सिविल प्रक्रिया संहिता (1908 का 5), धारा 9 – तथ्य का छिपाव – वादी ने घोषणा एवं स्थाई व्यादेश हेतु सिविल वाद प्रस्तुत किया – वादी ने इस तथ्य को छिपाया कि पूर्व में भी उसने समान संपत्ति के संबंध में वाद प्रस्तुत किया था और न्यायालय ने अनुतोष प्रदान करने से इंकार किया था – तथ्य का छिपाव, न्यायालय के साथ कपट करने की कोटि में आता है – रू. 10,000/– व्यय के साथ पुनरीक्षण खारिज। (कमर मोहम्मद खान वि. बेगम सबीहा सुल्तान) ...230

Civil Procedure Code (5 of 1908), Section 35-B – Cost of causing delay **– Held – The payment of cost is a condition precedent to the further prosecution of defence by the defendant – If defendant does not ultimately pay the cost and his right of further prosecution is taken away because of non payment of cost, yet the court while passing the judgment and decree will ensure that said amount is included in decree – Further held, the effect and impact of section 35-B (1) & (2) are different and are applicable in different stages. [Kamlesh (Smt.) Vs. Smt. Urmila Devi]** ...730

सिविल प्रक्रिया संहिता (1908 का 5), धारा 35–बी – विलंब के लिये खर्चा – अभिनिर्धारित – प्रतिवादी द्वारा अपने बचाव को अग्रसर करने हेतु खर्चे का भुगतान एक पुरोभाव्य शर्त है – यदि कोई प्रतिवादी अंततः खर्चे की राशि अदा नहीं करता है एवं ऐसे अभुगतान के कारण उसका बचाव का अधिकार समाप्त कर दिया जाता है, तब भी निर्णय एवं डिक्री पारित करते समय न्यायालय यह सुनिश्चित करेगा कि ऐसे खर्चे की राशि डिक्री में सम्मिलित की जाये – आगे यह भी अभिनिर्धारित, धारा 35–बी(1) एवं (2) के प्रभाव एवं परिणाम भिन्न हैं एवं भिन्न भिन्न अवस्थाओं में प्रयोज्य हैं। (कमलेश (श्रीमती) वि. श्रीमती उर्मिला देवी) ...730

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Civil Procedure Code (5 of 1908), Section 96 – See – Specific Relief Act, 1963, Section 34 [Akshay Doogad Vs. State of M.P.] (DB)...217

सिविल प्रक्रिया संहिता (1908 का 5), धारा 96 – देखें – विनिर्दिष्ट अनुतोष अधिनियम, 1963, धारा 34 (अक्षय दूगड वि. म.प्र. राज्य) (DB)...217

***Civil Procedure Code (5 of 1908), Section 100 – Second appeal – Suit for declaration that appellant be declared as tenant* – Both the courts below held that appellant has failed to establish landlord-tenant relationships – Landlord has already filed a suit for eviction as appellant was never inducted by landlord but in fact is a sub-tenant without the permission of landlady – Where both the courts below recorded concurrent findings of facts which are in fact and in effect impregnable in the nature – Do not warrant any interference as no question of law is involved. [Sunil Enterprises Vs. Smt. Mithila Devi]** ...193

सिविल प्रक्रिया संहिता (1908 का 5), धारा 100 – द्वितीय अपील – इस घोषणा हेतु वाद कि अपीलार्थी को किरायेदार घोषित किया जाये – दोनों निचली अदालतों ने यह अभिनिर्धारित किया कि अपीलार्थी मकानमालिक–किरायेदार के संबंधों को स्थापित करने में असफल रहा है – मकानमालिक ने पहले ही बेदखली हेतु वाद प्रस्तुत कर दिया है जबकि अपीलार्थी को कभी भी मकानमालिक द्वारा प्रतिष्ठापित नहीं किया गया था किंतु वास्तव में वह मकानमालिक की अनुमति के बिना उपकिरायेदार है – जहां दोनों निचली अदालतों ने तथ्यों के समवर्ती निष्कर्ष v f H k f y f वास्तवk में एवं प्रभाव में अभेद्य स्वरूप के हैं – किसी हस्तक्षेप की आवश्यकता नहीं क्योंकि विधि का कोई प्रश्न अंतर्ग्रस्त नहीं है। (सुनील इंटरप्राइजेस वि. श्रीमती मिथिला देवी) ...193

***Civil Procedure Code (5 of 1908), Section 100 & Order 7 Rule 11 and Cooperative Societies Act, M.P. 1960 (17 of 1961), Section 64* – Held – Suit for declaration filed in contravention of Section 64(2) of Co-operative Societies Act is not maintainable – Appellant could have approached Tribunal. [Har Prasad Yadav Vs. Mahaveer Prasad Jain]** ...531

सिविल प्रक्रिया संहिता (1908 का 5), धारा 100 व आदेश 7 नियम 11 और सहकारी सोसाइटी अधिनियम, म.प्र. 1960 (1961 का 17), धारा 64 – अभिनिर्धारित – सहकारी सोसाइटी अधिनियम की धारा 64(2) के उल्लंघन में प्रस्तुत घोषणा हेतु वाद पोषणीय नहीं है – अपीलार्थी, अधिकरण के समक्ष जा सकता था। (हर प्रसाद ...531

Civil Procedure Code (5 of 1908), Section 107, Order 9 Rule 13, Order 43 Rule 1(d) & Order 47 Rule 1 – Setting aside of ex parte decree – Review – **MJC was dismissed by trial Court primarily on the ground of limitation – High Court in appeal by way of clemency (since the respondent was a pardanashin woman and dependent on her lawyer for conducting her case), and by imposing cost of Rs. 3,000/- condoned the delay and also allowed the application under Order 9 Rule 13 and set aside the ex parte decree – Held – Power of the High Court in a review are very much limited and the errors have to be apparent on the face of record – Once the Court consciously come to the conclusion that there was sufficient cause shown by the respondent – Then it was definitely clothed with the jurisdiction to consider the effect of setting aside the impugned order – Therefore, Review Petition dismissed as being without merit. [Allauddin Vs. Smt. Sayra Bi]** ...507

सिविल प्रक्रिया संहिता (1908 का 5), धारा 107, आदेश 9 नियम 13, आदेश 43 नियम 1(डी) व आदेश 47 नियम 1 – एकपक्षीय डिक्री अपास्त की जाना – पुनर्विलोकन – विचारण न्यायालय द्वारा एम.जे.सी. को प्राथमिक रूप से परिसीमा के आधार पर खारिज किया गया – अपील में उच्च न्यायालय ने दया के रूप में (चूंकि प्रत्यर्थी पर्दानशीं महिला थी और अपना प्रकरण संचालित करने के लिये अपने वकील पर निर्भर थी) रू. 3,000/– व्यय अधिरोपित करते हुये विलंब माफ किया एवं आदेश 9 नियम 13 के अंतर्गत आवेदन भी मंजूर किया तथा एकपक्षीय डिक्री अपास्त की – अभिनिर्धारित – पुनर्विलोकन में उच्च न्यायालय की शक्ति बहुत अधिक सीमित है तथा त्रुटियां अभिलेख पर प्रकट रूप से दर्शित होनी चाहिये – एक बार जब न्यायालय सचेत रूप से इस निष्कर्ष पर पहुंचता है कि प्रत्यर्थी द्वारा पर्याप्त कारण दर्शाया गया था – तब वह निश्चित रूप से आक्षेपित आदेश अपास्त किये जाने के प्रभाव को विचार में लेने के लिये अधिकारिता प्राप्त था – इसलिये पुनर्विलोकन याचिका गुणदोष विहीन होने के कारण खारिज। (अलाउद्दीन वि. श्रीमती सायरा बी) ...507

Civil Procedure Code (5 of 1908), Section 114 & proviso to Order 5 Rule 9 (5) and High Court of Madhya Pradesh Rules, 2008, Chapter 15 Rule 13 – **Review of order is sought on the ground of procedural illegality as the petitioners were not served with the notice and the office has erred in treating the petitioners to have been served – Held – Presumption as to the service of notice – If the acknowledgement is not received within 30 days from the date of issuance of summons, presumption of service of notice has rightly been drawn by the office –**

Proviso to Order 5 Rule 9(5) is applicable to this proceeding – Petition is dismissed. [M.P. Madhya Kshetra Vidyut Vitran Co. Ltd. Vs. M/s. Schaltech Automation P. Ltd.] ...825

सिविल प्रक्रिया संहिता (1908 का 5), धारा 114 एवं आदेश 5 नियम 9(5) का परंतुक एवं उच्च न्यायालय मध्यप्रदेश नियम, 2008, अध्याय 15 नियम 13 – प्रक्रियात्मक अवैधता के आधार पर आदेश का पुनर्विलोकन चाहा गया है कि याचीगण पर नोटिस की तामील नहीं हुई थी एवं कार्यालय द्वारा याचीगण को तामीलशुदा मानने में त्रुटि कारित की गई – अभिनिर्धारित – नोटिस की तामील की उपधारणा – यदि समंस जारी होने के 30 दिवस के भीतर अभिस्वीकृति प्राप्त नहीं हुई थी तो कार्यालय द्वारा नोटिस की तामील की उपधारणा उचित रूप से गठित की गई – इस मामले में आदेश 5 नियम 9(5) का परंतुक लागू होगा – याचिका खारिज। (एम.पी. मध्य क्षेत्र विद्युत वितरण कं. लि. वि. मे. शैलटेक ऑटोमेशन प्रा. लि.) ...825

Civil Procedure Code (5 of 1908), Order 1 Rule 10 – For impleading attesting witness as a party against whom no relief is claimed **– Proposed defendant is only the attesting witness of the document – Unless some allegation is made against such witness to assess the executant of document with some fraud or dishonesty such attesting witness is neither necessary party nor proper party in the suit. [Swati Nagpure Vs. Smt. Kamla Nagpure] ...41**

सिविल प्रक्रिया संहिता (1908 का 5), आदेश 1 नियम 10 – ऐसा अनुप्रमाणक साक्षी जिसके विरूद्ध कोई अनुतोष नहीं चाहा गया है, को पक्षकार के रूप में अभियोजित करने हेतु – प्रस्तावित प्रतिवादी केवल दस्तावेज का अनुप्रमाणक साक्षी है – जब तक कि दस्तावेज के निष्पादक का निर्धारण करने के लिए उक्त साक्षी के विरूद्ध किसी कपट या बेईमानी का कोई आरोप नहीं लगाया जाता, उक्त अनुप्रमाणक साक्षी न तो आवश्यक पक्षकार है न ही वाद में उचित पक्षकार है। (स्वाती नागपुरे वि. श्रीमती कमला नागपुरे) ...41

Civil Procedure Code (5 of 1908), Order 1 Rule 10(2) – Court may strike out and add parties **– Held – It cannot be laid down as an absolute proposition that a third party can never be impleaded in the suit but where the third party can show a fair semblance of title or interest he can certainly file an application for impleadment and ought to be impleaded as a party. [Ramit Kumar Pathak Vs. Pawan Kumar Pathak] ...418**

सिविल प्रक्रिया संहिता (1908 का 5), आदेश 1 नियम 10(2) – न्यायालय पक्षकारों को हटा और जोड़ सकता है – अभिनिर्धारित – इसे आत्यांतिक प्रतिपादन के रूप में अधिकथित नहीं किया जा सकता कि एक तृतीय पक्षकार को वाद में कभी भी अभियोजित नहीं किया जा सकता परंतु जहां तृतीय पक्षकार हक या हित की उचित सदृश्यता दर्शा सकता है, वह निश्चित रूप से पक्षकार बनाये जाने हेतु आवेदन प्रस्तुत कर सकता है और उसे पक्षकार के रूप में अभियोजित किया जाना चाहिए। (रमित कुमार पाठक वि. पवन कुमार पाठक) ...418

Civil Procedure Code (5 of 1908), Order 3 Rule 1 & 2 – Appearance by recognized agent or pleader – **A person holding unregistered general power of attorney can appear and act on behalf of a party to the proceeding in a Court. [Sharmila Tagore (Smt.) Vs. Azam Hasan Khan]** ...770

सिविल प्रक्रिया संहिता (1908 का 5), आदेश 3 नियम 1 व 2 – किसी मान्यताप्राप्त अभिकर्ता अथवा अभिवक्ता की उपस्थिति – अपंजीकृत मुख्तारनामा धारक कोई व्यक्ति न्यायालयीन कार्यवाही मे किसी पक्षकार की ओर से उपस्थित होकर कार्यवाही कर सकता है। (शर्मिला टैगोर (श्रीमती) वि. आजम हसन खान) ...770

Civil Procedure Code (5 of 1908), Order 6 Rule 17 – Amendment **– Application for amendment is filed by a party after commencement of trial – Held – The trial court must address upon the issue as regards existence of jurisdictional facts – Only after recording its satisfaction, trial court shall move further to decide the application on merits. [Manoj Jain Vs. Smt. Suman Goyal]** ...396

सिविल प्रक्रिया संहिता (1908 का 5), आदेश 6 नियम 17 – संशोधन – विचारण आरंभ होने के पश्चात् एक पक्षकार द्वारा संशोधन हेतु आवेदन प्रस्तुत किया गया–अभिनिर्धारित–विचारण न्यायालय को अधिकारिता के तथ्यों के अस्तित्व से संबंधित मुद्दे पर विचार करना चाहिए – केवल अपनी संतुष्टि अभिलिखित किये जाने के पश्चात् विचारण न्यायालय आवेदन को गुणदोषों पर निर्णीत करने के लिये अग्रसर होगा। (मनोज जैन वि. श्रीमती सुमन गोयल) ...396

Civil Procedure Code (5 of 1908), Order 6 Rule 17 – Amendment – Delay **– If the application has been filed after the beginning of the trial and the desired amendment was very well in the knowledge of the petitioner on the date of filing the written statement, the same could not be allowed by the trial Court – Petition dismissed. [Swati Nagpure Vs. Smt. Kamla Nagpure]** ...41

सिविल प्रक्रिया संहिता (1908 का 5), आदेश 6 नियम 17 – संशोधन – विलंब – यदि आवेदन विचारण आरंभ होने के पश्चात् प्रस्तुत किया गया है तथा चाहा गया संशोधन लिखित कथन प्रस्तुत करने की तिथि को भली भांति याची की जानकारी में था, तब उसे विचारण न्यायालय द्वारा मंजूर नहीं किया जा सकता – याचिका खारिज। '(स्वाती नागपुरे वि. श्रीमती कमला नागपुरे) ...41

Civil Procedure Code (5 of 1908), Order 7 Rule 11(d) – Preliminary issue **– When from the averment of the plaint it is clear that the suit is barred by any law, then plaint can be rejected – But when disputed question in relation to the issue of limitation is involved, the Court cannot reject the plaint. [Pramod Kumar Vs. Saiyad Rajiy Sultan]** ...850

सिविल प्रक्रिया संहिता (1908 का 5), आदेश 7 नियम 11 (डी) – प्रारंभिक विवाद्यक – जब वादपत्र के प्रकथन से यह स्पष्ट है कि वाद किसी विधि द्वारा वर्जित है, तब ऐसे वादपत्र को नामंजूर किया जा सकता है – परंतु, जब परिसीमा के विवाद्यक के संबंध में विवादित प्रश्न अंतर्ग्रस्त है, तब न्यायालय वादपत्र को निरस्त नहीं कर सकता। (प्रमोद कुमार वि. सैय्यद राजी सुल्तान) ...850

Civil Procedure Code (5 of 1908), Order 9 Rule 7 – Setting aside of exparte proceedings **– Trial Court not only refused to set aside exparte proceedings but did not allow the defendant to participate in subsequent proceedings – Held – Unless sufficient cause is shown, the trial Court is not bound to set aside exparte proceedings and not bound to start the proceedings afresh – However, defendants cannot be deprived to participate in further proceedings – Petition allowed. [Haridas Kacchi Vs. Jay Krishan Puranik]** ...39

सिविल प्रक्रिया संहिता (1908 का 5), आदेश 9 नियम 7 – एकपक्षीय कार्यवाहियों को अपास्त किया जाना – विचारण न्यायालय ने न केवल एकपक्षीय कार्यवाहियों को अपास्त करने से मना किया है बल्कि प्रतिवादी को पश्चात्वर्ती कार्यवाहियों में भाग लेने नहीं दिया – अभिनिर्धारित – जब तक पर्याप्त कारण न दर्शाया जाये, विचारण न्यायालय एकपक्षीय कार्यवाहियां अपास्त करने हेतु बाध्य नहीं है. एवं नये सिरे से कार्यवाहियां प्रारंभ करने हेतु बाध्य नहीं है – यद्यपि, प्रतिवादीगण को आगे की कार्यवाहियों में भाग लेने से वंचित नहीं किया जा सकता – याचिका मंजूर। (हरीदास कच्छी वि. जय कृष्ण पुराणिक) ...39

Civil Procedure Code (5 of 1908), Order 9 Rule 13 – See – Payment of Wages Act, 1936, Sections 15(2) & 17(1A), **[Saabir &**

Brothers Vs. Rajesh Sen] ...786

सिविल प्रक्रिया संहिता (1908 का 5), आदेश 9 नियम 13 – देखें – मजदूरी संदाय अधिनियम, 1936, धाराऐं 15(2) व 17(1ए), (साबिर एंड ब्रदर्स वि. राजेश सेन) ...786

Civil Procedure Code (5 of 1908), Order 9 Rule 13 – Setting aside ex-parte decree against the defendants **– No notice were received by the appellants – Since proper opportunity of hearing has not been given to the appellants, ex-parte judgment would be against the principles of natural justice – Sufficient cause is to be made out, to do substantial justice – Ex-parte award is set aside subject to condition that the appellant shall deposit 50% of the awarded amount in the Trial Court, and Rs. 5,000/- cost to be paid to claimant. [Dharmendra Singh Vs. Nagga Ji]** ...549

सिविल प्रक्रिया संहिता (1908 का 5), आदेश 9 नियम 13 – प्रतिवादीगण के विरूद्ध एकपक्षीय डिक्री अपास्त की जाना – अपीलार्थीगण द्वारा कोई नोटिस प्राप्त नहीं किया गया – चूंकि अपीलार्थीगण को सुनवाई का उचित अवसर नहीं दिया गया है, एकपक्षीय निर्णय, नैसर्गिक न्याय के सिद्धांतों के विरूद्ध होगा – सारवान न्याय करने के लिए पर्याप्त कारण बनना चाहिए – एकपक्षीय अवार्ड को इस शर्त के अधीन अपास्त किया गया कि अपीलार्थी, अवार्ड की गई रकम का 50% विचारण न्यायालय में जमा करेगा और दावाकर्ता को रू. 5,000/– व्यय अदा करेगा। (धर्मेन्द्र सिंह वि. नग्गा जी) ...549

Civil Procedure Code (5 of 1908), Order 14 Rule 2 – Issue of adverse possession **– Mixed question of law and fact – It cannot be decided without taking evidence. [Pramod Kumar Vs. Saiyad Rajiy Sultan]** ...850

सिविल प्रक्रिया संहिता (1908 का 5), आदेश 14 नियम 2 – प्रतिकूल कब्जे का विवाद्यक – विधि एवं तथ्य का मिश्रित प्रश्न – बिना साक्ष्य लिये इसको विनिश्चित नहीं किया जा सकता। (प्रमोद कुमार वि. सैय्यद राजी सुल्तान) ...850

Civil Procedure Code (5 of 1908), Order 14 Rule 2 – Preliminary issue **– Issue of limitation – Is a mixed question of fact and law which can be decided only after framing issues and recording evidence. [Pramod Kumar Vs. Saiyad Rajiy Sultan]** ...850

सिविल प्रक्रिया संहिता (1908 का 5), आदेश 14 नियम 2 – प्रारंभिक विवाद्यक

– परिसीमा का विवाद्यक – यह तथ्य एवं विधि का मिश्रित प्रश्न है, जिसे केवल विवाद्यकों को विरचित किये जाने तथा साक्ष्य अभिलिखित किये जाने के पश्चात् ही विनिश्चित किया जा सकता है। (प्रमोद कुमार वि. सैय्यद राजी सुल्तान) ...850

Civil Procedure Code (5 of 1908), Order 18 Rule 4 – Cross-examination of witness – **Right to cross-examination was closed as counsel was engaged in another case – Court could have deferred cross-examination unless & until reason given for non availability of counsel was tainted with some oblique motive – Petition allowed. [Jabbar Khan Vs. Rauf Beg]** ...394

सिविल प्रक्रिया संहिता (1908 का 5), आदेश 18 नियम 4 – साक्षी का प्रतिपरीक्षण – प्रतिपरीक्षण करने के अधिकार को समाप्त किया गया क्योंकि अधिवक्ता अन्य प्रकरण में व्यस्त था – न्यायालय, प्रतिपरीक्षण को आस्थगित कर सकता था जब तक कि अधिवक्ता की अनुपलब्धता के लिये दिया गया कारण किसी परोक्ष हेतु से दूषित नहीं था – याचिका मंजूर। (जब्बार खान वि. रऊफ बेग) ...394

Civil Procedure Code (5 of 1908), Order 18 Rule 4 & Order 19 Rule 1 & 2, Evidence Act (1 of 1872), Sections 1 & 3 and General Clauses Act (10 of 1897), Section 3(3) – Exhibiting affidavit as document – **Exhibition of affidavit as document is not permitted by the Court. [Kalusingh Vs. Smt. Nirmala]** ...450

सिविल प्रक्रिया संहिता (1908 का 5), आदेश 18 नियम 4 व आदेश 19 नियम 1 व 2, साक्ष्य अधिनियम (1872 का 1), धाराऐं 1 व 3 एवं साधारण खण्ड अधिनियम (1897 का 10), धारा 3(3) – शपथपत्र को दस्तावेज के रूप में प्रदर्शित किया जाना – शपथपत्र को दस्तावेज के रूप में प्रदर्शित करना, न्यायालय द्वारा अनुज्ञात नहीं। (कालू सिंह वि. श्रीमती निर्मला) ...450

Civil Procedure Code (5 of 1908), Order 39 Rule 1 & 2 – Injunction – **Whether the trial Court has power to call the deponent for cross- examination under Order 39 – Held – It cannot be accepted as a thumb rule that in no circumstances the trial Court can permit the cross-examination of the deponent in proceedings under Order 39 Rule 1 & 2 – This cannot be forgotten that the statute is to be interpreted to advance the cause of justice – Too technical a construction of provision that leaves no room for reasonable elasticity of interpretation should be avoided – Court has power to permit cross- examination. [Balmukund Sharma Vs. Balkrishna Sharma Upadhyay]** ...67

सिविल प्रक्रिया संहिता (1908 का 5), आदेश 39 नियम 1 व 2 – व्यादेश – क्या आदेश 39 के अंतर्गत विचारण न्यायालय को प्रतिपरीक्षण के लिये अभिसाक्षी को बुलाने की शक्ति है – अभिनिर्धारित – यह सामान्य नियम के रूप में स्वीकार नहीं किया जा सकता कि किसी भी परिस्थिति में विचारण न्यायालय द्वारा आदेश 39 नियम 1 व 2 के अंतर्गत कार्यवाहियों में अभिसाक्षी का प्रतिपरीक्षण करने की अनुमति नहीं दी जा सकती – यह भूला नहीं जा सकता कि कानून का निर्वचन, न्याय के ध्येय को अग्रसर करने के लिये किया जाना चाहिये – उपबंध के ऐसे अति तकनीकी अर्थान्वयन से बचना चाहिये जो निर्वचन के युक्तियुक्त लचीलेपन के लिये कोई जगह न छोड़े – न्यायालय को प्रतिपरीक्षण की अनुमति देने की शक्ति है। (बालमुकुन्द शर्मा वि. बालकृष्ण शर्मा उपाध्याय) ...67

Civil Services (Classification, Control and Appeal) Rules, M.P. 1966, Rule 3 & 4 – Documents – Departmental enquiry – **Charges levelled against petitioner were not vague or incapable of understanding the same – Rule 3 & 4 of Rules, 1966 do not contemplate supply of documents along with charge-sheet – Only requirement is to forward a list of documents, by which charges are proposed to be proved – Record shows that all the documents were supplied during the course of enquiry – Petitioner also did not raise any objection with regard to production of documents – Non supply of documents which were not considered by Enquiry Officer would not prejudice the petitioner – Writ Court has gone into each and every aspect of the matter in detail and has recorded a finding to say that the order passed by the Disciplinary Authority and findings recorded by Enquiry Officer is legal and proper – No reason to interfere with the reasonable judgment and decree passed by the writ Court. [Yogiraj Sharma (Dr.) Vs. State of M.P.]** **(DB)...689**

सिविल सेवा (वर्गीकरण, नियंत्रण और अपील) नियम, म.प्र. 1966, नियम 3 व 4 – दस्तावेज – विभागीय जांच – याची के विरूद्ध लगाये गये आरोप अस्पष्ट अथवा न समझे जाने योग्य नहीं थे – नियम 1966 के नियम 3 व 4 आरोपपत्र के साथ दस्तावेज प्रदाय किये जाना अनुध्यात नहीं करते – ऐसे दस्तावेजों की एक सूची प्रेषित किया जाना मात्र अपेक्षित है, जिनके द्वारा आरोप प्रमाणित किये जाना प्रस्तावित है – अभिलेख से प्रकट होता है कि जांच के दौरान समस्त दस्तावेज प्रदाय किये गये थे – याची ने भी दस्तावेजों के प्रस्तुतीकरण के संबंध में कोई आपत्ति नहीं उठाई – जांच अधिकारी द्वारा विचार में नहीं लिये गये दस्तावेजों को प्रदाय न किये जाने से याची को कोई प्रतिकूल प्रभाव कारित नहीं होगा – रिट न्यायालय ने मामले के प्रत्येक पहलू का विस्तार से अध्ययन किया है तथा यह निष्कर्ष अभिलिखित किया है कि अनुशासनिक प्राधिकारी द्वारा पारित आदेश एवं

जांच अधिकारी द्वारा अभिलिखित निष्कर्ष वैध एवं उचित है – रिट न्यायालय द्वारा पारित युक्तियुक्त निर्णय एवं डिक्री में हस्तक्षेप करने का कोई कारण नहीं। (योगीराज शर्मा (डॉ.) वि. म.प्र. राज्य) (DB)...689

Civil Services (Classification, Control and Appeal) Rules, M.P. 1966, Rule 10 and Civil Services (Pension) Rules, M.P. 1976, Rule 9 – Departmental enquiry – **Whether penalty on retired Govt. servant can be imposed for enquiry initiated while he was in service – Held – Yes, as per Rule 9 of the Pension Rules, 1976 the penalty can be imposed. [Saroj Kumar Shrivastava Vs. State of M.P.]** ...774

सिविल सेवा (वर्गीकरण, नियंत्रण और अपील) नियम, म.प्र. 1966, नियम 10 एवं सिविल सेवा (पेंशन) नियम, म.प्र. 1976, नियम 9 – विभागीय जांच – क्या किसी सेवानिवृत्त शासकीय सेवक पर उसके सेवाकाल के दौरान प्रारंभ की गई जांच के आधार पर शास्ति अधिरोपित की जा सकती है – अभिनिर्धारित – हां, पेंशन नियम, 1976 के नियम 9 के अनुसार शास्ति अधिरोपित की जा सकती है। (सरोज कुमार श्रीवास्तव वि. म.प्र. राज्य) ...774

Civil Services (Classification, Control and Appeal) Rules, M.P. 1966, Rule 14 – Departmental Enquiry – Misconduct – **Petitioner, Class IV employee – Posted as Process Server – Called upon to do work of Water server – Refusal to do so – Departmental enquiry – Removal from service – Held – It is not a case of petitioner that Process Server cannot be called upon to do work of Water Server, removal justified as it is a case of insubordination and disregarding the instructions given by the superiors – Petition dismissed. [Raj Kumar Vishwakarma Vs. State of M.P.]** (DB)...115

सिविल सेवा (वर्गीकरण, नियंत्रण और अपील) नियम, म.प्र. 1966, नियम 14 – विभागीय जांच – अवचार – याची, चतुर्थ श्रेणी कर्मचारी – आदेशिका वाहक के रूप मे पदस्थ – पानी पिलाने का कार्य करने के लिये कहा गया – ऐसा करने से इंकार किया – विभागीय जांच – सेवा से हटाया गया – अभिनिर्धारित – यह याची का प्रकरण नहीं है कि आदेशिका वाहक को पानी पिलाने का कार्य करने के लिये बुलाया नहीं जा सकता, पद से हटाया जाना न्यायोचित क्योंकि यह अवज्ञा एवं अपने वरिष्ठ अधिकारियों द्वारा दिये गये अनुदेशों की अवहेलना का प्रकरण है – याचिका खारिज। (राज कुमार विश्वकर्मा वि. म.प्र. राज्य) (DB)...115

Civil Services (Classification, Control and Appeal) Rules, M.P. 1966, Rule 14 – Punishment from removal of services – **Whether**

excessive or not – Held – It is a case of insubordination and disregarding the instructions of seniors, so it is a major misconduct – In one sense it is a lighter punishment – Petition dismissed. [Raj Kumar Vishwakarma Vs. State of M.P.] (DB)...115

सिविल सेवा (वर्गीकरण, नियंत्रण और अपील) नियम, म.प्र. 1966, नियम 14 – सेवा से पदच्युति का दंड – क्या अत्याधिक है या नहीं – अभिनिर्धारित – यह अवज्ञा एवं अपने वरिष्ठ अधिकारी द्वारा दिये गये अनुदेशों की अवहेलना का प्रकरण है, अतः यह मुख्य कदाचरण है – एक मायने में यह हल्का दंड है – याचिका खारिज। (राज कुमार विश्वकर्मा वि. म.प्र. राज्य) **(DB)...115**

Civil Services (Classification, Control and Appeal) Rules, M.P. 1966, Rule 14 (5) (b), Rule 14 (ii) and Civil Services (Pension) Rules, M.P. 1976, Rule 9 – Departmental enquiry **– Penalty of withholding 50% pension of the Petitioner for a period of 5 years – Lapses on part of the Respondents – First show cause notice issued on 25/02/1984 and upto 26/7/1995 notices were sent – Enquiry report submitted on 05/03/1999 – Enquiry kept pending for 14 years – No witnesses examined – Petitioner retired on 31/12/2001 – Imposition of penalty on 20/01/2006 – Held – As the lapses on part of the Govt. was so grave that penalty of withholding of 50% pension for a period of five years set aside – Withheld amount of pension be paid – Petition allowed. [Saroj Kumar Shrivastava Vs. State of M.P.] ...774**

सिविल सेवा (वर्गीकरण, नियंत्रण और अपील) नियम, म.प्र. 1966, नियम 14(5)(बी), नियम 14 (ii) एवं सिविल सेवा (पेंशन) नियम, म.प्र. 1976, नियम 9 – विभागीय जांच – पांच वर्ष की अवधि हेतु याची की 50% पेंशन रोके जाने की शास्ति – प्रत्यर्थीगण की ओर से चूक – प्रथम कारण बताओ नोटिस 25/02/1984 को जारी एवं 26/07/1995 तक नोटिस भेजे जाते रहे – जांच प्रतिवेदन 05/03/1999 को प्रस्तुत – जांच 14 वर्षों तक लंबित रखी गई – किसी साक्षी का परीक्षण नहीं – याची 31/12/2001 को सेवानिवृत्त – शास्ति दिनांक 20/01/2006 को अधिरोपित – अभिनिर्धारित – चूंकि शासन की ओर से की गई चूक इतनी गंभीर थी कि पांच वर्ष की अवधि हेतु 50% पेंशन रोके जाने की शास्ति अपास्त की गई – रोकी गई पेंशन की राशि का भुगतान किया जाये – याचिका मंजूर। (सरोज कुमार श्रीवास्तव वि. म.प्र. राज्य) ...774

Civil Services (Classification, Control and Appeal) Rules, M.P. 1966, Rule 14(11) – Adjournment – Appointing Defence Assistant –

Non-compliance of Rule 14(11) – Held – Adjournment sought for was not for taking inspection or for submitting list of witnesses, so not in conformity with time period specified in Rule 14(11) – Contention not tenable. [Raj Kumar Vishwakarma Vs. State of M.P.] (DB)...115

सिविल सेवा (वर्गीकरण, नियंत्रण और अपील) नियम, म.प्र. 1966, नियम 14(11) – स्थगन – बचाव सहायक की नियुक्ति – नियम 14(11) का अननुपालन – अभिनिर्धारित – चाहा गया स्थगन निरीक्षण करने अथवा साक्षियों की सूची प्रस्तुत करने के लिये नहीं था, अतः नियम 14(11) में निर्धारित की गयी समयसीमा के अनुरूप नहीं था – तर्क रक्षणीय नहीं। (राज कुमार विश्वकर्मा वि. म.प्र. राज्य) (DB)...115

Civil Services (Classification, Control and Appeal) Rules, M.P. 1966, Rule 14, 16 & 27 – Assessment of shortage in the stock and recovery – Since there was no proper assessment of loss caused to the State and the petitioner was also not afforded an opportunity to cross examine the authority who has conducted physical verification, the same was not to be made foundation of penalty on the petitioner – Recovery of the amount of the loss from the petitioner cannot be sustained – Petition allowed. [Rajkumar Rachandani Vs. State of M.P.] ...435

सिविल सेवा (वर्गीकरण, नियंत्रण और अपील) नियम, म.प्र. 1966, नियम 14, 16 व 27 – स्टाक में कमी का निर्धारण एवं वसूली – चूंकि राज्य को कारित हानि का उचित निर्धारण नहीं किया गया था और प्राधिकारी जिसने उक्त का प्रत्यक्ष सत्यापन किया है, के प्रतिपरीक्षण का अवसर भी याची को प्रदान नहीं किया गया था, इसे याची पर शास्ति अधिरोपित करने का आधार नहीं बनाया जाना चाहिए था – याची से हानि की रकम की वसूली को कायम नहीं रखा जा सकता – याचिका मंजूर। (राजकुमार रचनदानी वि. म.प्र. राज्य) ...435

Civil Services (Classification, Control and Appeal) Rules, M.P. 1966, Rule 14, 16 & 27 – Order imposing penalty of withholding of increment with cumulative effect and recovery of Rs. 1,02,349/- assailed on the ground that if a major penalty is required to be imposed, a detailed enquiry as provided under Rule 14 should have been conducted whereas no enquiry was conducted and the assessment of loss was not also done in accordance with circular issued in that regard – Held – Rule 14 & 16 – Procedure for imposing penalty – Authority's intention was to impose major penalty which is evident from show cause notice – A charge sheet should have been issued and detailed enquiry was to be conducted in accordance with Rule 14 – Procedure adopted to

impose major penalty cannot be sustained. [Rajkumar Rachandani Vs. State of M.P.] ...435

सिविल सेवा (वर्गीकरण, नियंत्रण और अपील) नियम, म.प्र. 1966, नियम 14, 16 व 27 – संचयी प्रभाव से वेतन वृद्धि रोकने और रू. 1,02,349/– की वसूली की शास्ति अधिरोपित करने के आदेश को इस आधार पर चुनौती दी गई कि यदि कोई मुख्य शास्ति अधिरोपित की जाना अपेक्षित है, विस्तृत जांच संचालित की जानी चाहिए जैसा कि नियम 14 के अंतर्गत उपबंधित है, जबकि कोई जांच संचालित नहीं की गई थी और इस संबंध में जारी परिपत्र के अनुसार हानि का निर्धारण भी नहीं किया गया – अभिनिर्धारित – नियम 14 व 16 – शास्ति अधिरोपित करने की प्रक्रिया – प्राधिकारी का आशय मुख्य शास्ति अधिरोपित करने का था जो कि कारण बताओ नोटिस से प्रकट होता है – आरोप पत्र जारी किया जाना चाहिए था और नियम 14 के अनुसार विस्तृत जांच संचालित की जानी चाहिए थी – मुख्य शास्ति अधिरोपित करने के लिये अपनाई गई प्रक्रिया को कायम नहीं रखा जा सकता। (राजकुमार रचनदानी वि. म.प्र. राज्य) ...435

Civil Services (Leave) Rules, M.P. 1977, Rule 24 – Absence after expiry of leave – Adverse Entry **– Petitioner working on the post of Sub-Inspector of Police – Adverse entry was made in his confidential report on being remained unauthorizedly absent from duty – Rule 24 of Rules, 1977 provides for taking action for absence after expiry of leave – No action under Rule 24 was taken – Adverse entry made in confidential report without making any enquiry is unwarranted – Adverse entry quashed – However, respondents given liberty to take action against the petitioner as per Rule 24 of Rules, 1977. [Himmat Singh Parihar Vs. State of M.P.] ...476**

सिविल सेवा (अवकाश) नियम, म.प्र. 1977, नियम 24 – अवकाश समाप्ति पश्चात् अनुपस्थिति – प्रतिकूल प्रविष्टि – याची, पुलिस उप–निरीक्षक के पद पर कार्यरत – कर्तव्य से अनाधिकृत रूप से अनुपस्थित रहने पर उसके गोपनीय प्रतिवेदन में प्रतिकूल प्रविष्टि की गई – नियम 1977 का नियम 24, अवकाश समाप्ति पश्चात् अनुपस्थिति हेतु कार्यवाही करने के लिए उपबंधित करता है – नियम 24 के अंतर्गत कोई कार्यवाही नहीं की गई – कोई जांच किये बिना गोपनीय प्रतिवेदन में की गई प्रतिकूल प्रविष्टि अनुचित – प्रतिकूल प्रविष्टि अभिखंडित की गई – किंतु, प्रत्यर्थी को याची के विरूद्ध नियम 1977 के नियम 24 के अनुसार कार्यवाही करने की स्वतंत्रता दी गई। (हिम्मत सिंह परिहार वि. म.प्र. राज्य) ...476

Civil Services (Pension) Rules, M.P. 1976, Rule 9 – See – Civil

Services (Classification, Control and Appeal) Rules, M.P. 1966, Rule 14 (5) (b), Rule 14 (ii) [Saroj Kumar Shrivastava Vs. State of M.P.] ...774

सिविल सेवा (पेंशन) नियम, म.प्र. 1976, नियम 9 – देखें – सिविल सेवा (वर्गीकरण, नियंत्रण और अपील) नियम, म.प्र. 1966, नियम 14(5)(बी), नियम 14 (ii) (सरोज कुमार श्रीवास्तव वि. म.प्र. राज्य) ...774

Civil Services (Pension) Rules, M.P. 1976, Rule 42 – Deemed Permission – Voluntary retirement can be presumed – If no action taken within six months – Even in circumstance (ii). [Harendra Jaseja (Dr.) Vs. State of M.P.] ...384

सिविल सेवा (पेंशन) नियम, म.प्र. 1976, नियम 42 – मानी हुई अनुमति – स्वैच्छिक सेवानिवृत्ति की उपधारणा की जा सकती है – यदि छह माह की अवधि के भीतर कोई कार्यवाही नहीं की जाती – यहाँ तक कि परिस्थिति क्रं. (ii) में भी। (हरेन्द्र जसेजा (डॉ.) वि. म.प्र. राज्य) ...384

Civil Services (Pension) Rules, M.P. 1976, Rule 42 – Voluntary retirement – Date of retirement – Notice indicating the particular period of time – Held – In absence of any rejection within such period same will become operative from the date on completion of notice period. [Harendra Jaseja (Dr.) Vs. State of M.P.] ...384

सिविल सेवा (पेंशन) नियम, म.प्र. 1976, नियम 42 – स्वैच्छिक सेवानिवृत्ति – सेवानिवृत्ति की तिथि – नोटिस में दर्शित निश्चित समयावधि – अभिनिर्धारित – ऐसी समयावधि के भीतर किसी खारिजी के अभाव में नोटिस की अवधि पूर्ण होने की तिथि से स्वैच्छिक सेवानिवृत्ति प्रभावशील होगी। (हरेन्द्र जसेजा (डॉ.) वि. म.प्र. राज्य) ...384

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सिविल सेवा (पेंशन) नियम, म.प्र. 1976, नियम 42 – स्वैच्छिक सेवानिवृत्ति – पूर्व अनुमति – आवश्यकता – नियम 42 – अभिव्यक्त अनुमति हेतु कहीं विहित नही करता – केवल परिस्थिति क्रं. (i) एवं (ii) को छोड़कर। (हरेन्द्र जसेजा (डॉ.) वि. म.प्र. राज्य) ...384

Civil Services (Pension) Rules, M.P. 1976, Rule 42 – Voluntary

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सिविल सेवा (पेंशन) नियम, म.प्र. 1976, नियम 42 – स्वैच्छिक सेवानिवृत्ति – पूर्व अनुमति की आवश्यकता – परिस्थितियॉं – (i) जहॉं कि शासकीय सेवक निलंबन के अधीन है (ii) जहॉं कि शासकीय सेवक के विरूद्ध अनुशासनात्मक कार्यवाही संस्थित किये जाने हेतु कोई मामला नियोक्ता प्राधिकारी के समक्ष विचाराधीन है। (हरेन्द्र जसेजा (डॉ.) वि. म.प्र. राज्य) ...384

Coal Mines (Special Provisions) Act (11 of 2015), Sections 3(a)(n) & 4(4) – "Promoters" or "any of its company" of such prior allottee – Petitioner established a Power Plant for generating electricity – Petitioner was sourcing coal extracted from Coal Mine operated by sister concern of Petitioner – Allocation of Coal Mines to sister concern of Petitioner was annulled pursuant to the decision of Supreme Court in W.P. (Cri) 120/2012 – Bids were invited for subject coal mines as per the provisions of Act, 2015 – Whether Petitioner is eligible to participate in bid or it fits into the expression "its promoter" or "any of its company" – Held – Associate Company must be held to be covered by the expansive expression used in Section 4(4) –Petitioner itself has described itself to be a sister concern of defaulter prior allottee company but it also has significant influence and control of common promoter and his financial stakes and including the fact that petitioner was dependent on the supply of coal from prior allottee only – Petitioner has also admitted that prior allottee has not paid/deposited the additional levy as directed by Supreme Court – Share holding pattern of both companies is an alter-ego of defaulter prior allottee. [B L A Power Pvt. Ltd. Vs. Union of India] (DB)...129

कोयला खान (विशेष उपबंध) अधिनियम (2015 का 11), धाराऐं 3(ए)(एन) व 4(4) – ऐसे पूर्व आबंटिती के "प्रवर्तक" अथवा "उसकी कोई कंपनी" – याची ने विद्युत उत्पादन हेतु पावर–प्लांट (विद्युत संयंत्र) स्थापित किया – याची अपनी सहयोगी संस्था द्वारा संचालित कोयला खान से उत्खनित कोयला प्राप्त कर रहा था – रिट याचिका (दाण्डिक) 120/2012 में उच्चतम न्यायालय के निर्णय के अनुसार याची की सहयोगी संस्था को कोयला खान का आबंटन रद्द किया गया –

अधिनियम, 2015 के उपबंधों के अनुसार विषयाधीन कोयला खानों हेतु बोलियां आमंत्रित की गयी – क्या याची बोली में भाग लेने के लिये पात्र है अथवा "उसके प्रवर्तक" अथवा "उसकी कोई कंपनी" की अभिव्यक्ति के अंतर्गत आता है – अभिनिर्धारित – सहयोगी कंपनी को धारा 4(4) में प्रयोग की गयी विस्तृत अभिव्यक्ति के अंतर्गत माना जाना चाहिए – याची ने स्वयं ही स्वयं को व्यतिक्रमी पूर्व आबंटिती कंपनी की सहयोगी संस्था के रूप में वर्णित किया है परंतु उसका सामान्य प्रवर्तक एवं उसके वित्तीय हिस्सेदारी पर भी उल्लेखनीय प्रभाव एवं नियंत्रण है तथा यह तथ्य भी शामिल है कि याची केवल पूर्व आबंटिती से ही कोयले की आपूर्ति के लिए निर्भर था – याची ने यह भी स्वीकार किया है कि पूर्व आबंटिती ने उच्चतम न्यायालय द्वारा यथानिदेशित अतिरिक्त उद्ग्रहण का भुगतान/निक्षेप नहीं किया है – शेयर धारण करने का दोनों कंपनियों का स्वरूप व्यतिक्रमी पूर्व आबंटिती का सूक्ष्म शरीर है। (बी एल ए पॉवर प्रा. लि. वि. यूनियन ऑफ इंडिया)(DB)...129

Coal Mines (Special Provisions) Act (11 of 2015), Sections 3(a)(n) & 4(4) – "Promoters" or "any of its company" of such "prior allottee" – **Reasonable or direct nexus – The provision certainly has reasonable or direct nexus with the object sought to be achieved, to keep away the defaulter prior allottees from participating in the auction process directly or indirectly, through the cobweb of Companies created or in existence to defeat the direction of Supreme Court regarding payment or recovery of additional levy from them. [B L A Power Pvt. Ltd. Vs. Union of India] (DB)...129**

कोयला खान (विशेष उपबंध) अधिनियम (2015 का 11), धाराऐं 3(ए)(एन) व 4(4) – ऐसे "पूर्व आबंटिती" के "प्रवर्तक" अथवा "उसकी कोई कंपनी" – युक्तियुक्त अथवा सीधा संबंध – भुगतान या अतिरिक्त उद्ग्रहण की वसूली के संबंध में उच्चतम न्यायालय के निदेश को विफल बनाने के लिये सृजित या विद्यमान कम्पनियों के मायाजाल के जरिये व्यतिक्रमी पूर्व आबंटितियों को प्रत्यक्ष या अप्रत्यक्ष रूप से नीलामी की प्रक्रिया में हिस्सा लेने से दूर रखने में सफल बनाने के चाहे गये उद्देश्य के साथ निश्चित रूप से उपबंध का युक्तियुक्त एवं सीधा संबंध है। (बी एल ए पॉवर प्रा. लि. वि. यूनियन ऑफ इंडिया) (DB)...129

Commercial Tax Act, M.P. 1994 (5 of 1995), Sections 45-A (10) & (12) – Imposition of Penalty – **Penalty has to be exercised judiciously – Deliberate defiance of Law, guilty conduct and dishonest intentions are necessary ingredients for imposing penalty – Technical or Venial breach of a statutory provision by itself not reason for imposing penalty – Finding should be recorded as to whether there was intention**

tax – Mere non production of a document, i.e. form no. 75 does not establish intention on the part of company to evade law – Technical lapse unaccompanied by mala fide or dishonest intention can be classified as bona fide mistake – Imposition of penalty set aside – Petition allowed. [Mena Transport (Ms.) Vs. Assistant Commissioner of Commercial Tax] **(DB)...371**

वाणिज्यिक कर अधिनियम, म.प्र. 1994 (1995 का 5), धाराऐं 45–ए (10) व (12) – शास्ति का अधिरोपण – शास्ति का प्रयोग न्याय सम्मत रूप से किया जाना चाहिए – जानबूझकर विधि की अवज्ञा, दोषपूर्ण आचरण एवं बेईमान आशय शास्ति अधिरोपित करने हेतु आवश्यक तत्व है – किसी कानूनी उपबंध का तकनीकी अथवा क्षम्य भंग अपने आप में शास्ति अधिरोपित करने हेतु कोई कारण नहीं है – ऐसे निष्कर्ष अभिलिखित किया जाना चाहिए कि क्या कर से बचने का आशय था – मात्र किसी दस्तावेज अर्थात् फॉर्म नं. 75 के प्रस्तुत न किये जाने से यह स्थापित नही होता कि कंपनी का आशय विधि से बचने का था – कदाशय अथवा बेईमान आशय रहित तकनीकी गलती को सद्भाविक भूल में वर्गीकृत किया जा सकता है – शास्ति का अधिरोपण अपास्त – याचिका मंजूर। (मीना ट्रांन्सपोर्ट (मे.) वि. असिस्टेन्ट कमिश्नर ऑफ कमर्शियल टैक्स) **(DB)...371**

Companies Act (1 of 1956), Section 446 – Stay on winding up proceedings **– Section 446 is not attracted in respect of issuance of notification under Madhya Pradesh Sahayata Upkram (Vishesh Upabandh) Adhiniyam, 1978. [Citibank N.A. London Branch Vs. M/s. Plethico Pharmaceuticals Ltd.]** **...829**

कम्पनी अधिनियम (1956 का 1), धारा 446 – परिसमापन कार्यवाहियों का स्थगन – म.प्र. सहायता उपक्रम (विशेष उपबंध) अधिनियम, 1978 के अंतर्गत जारी की जाने वाली अधिसूचना के संबंध में धारा 446 आकर्षित नहीं होगी। (सिटीबैंक एन.ए. लंदन ब्रांच वि. मे. प्लेथिको फार्मास्यूटिकल्स लि.) **...829**

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Constitution – Article 226 – Consideration of representation – Delay and Laches **– Practice to direct for consideration of representation even in cases of long delay and laches and thereby reopening the cases which are dead due to lapse of time is not proper and should not be done. [Raghuveer Singh Vs. State of M.P.] ...481**

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Constitution – Article 226 – Departmental Enquiry – Validity

of charge sheet – **Gravity of charges of misconduct are required to be tested only in departmental enquiry by Enquiry Officers while recording evidence – Whether there were any lapses on the part of petitioner in discharging the duty as Registrar of University or not has to be tested by the Enquiry Officer while conducting the enquiry – High Court is not required to look into those aspects nor is supposed to conduct the enquiry on its own to test the validity of charge sheet – Petition dismissed. [Brajesh Singh (Dr.) Vs. State of M.P.] ...110**

संविधान – अनुच्छेद 226 – विभागीय जांच – आरोप पत्र की वैधता – अवचार के आरोपों की गंभीरता की जांच केवल विभागीय जांच में साक्ष्य अभिलिखित किये जाते समय जांच अधिकारी द्वारा की जाना अपेक्षित है – क्या विश्वविद्यालय के रजिस्ट्रार के रूप में कर्त्तव्य का निर्वहन करते समय याची की ओर से कुछ गलती हुई थी अथवा नहीं इसकी जांच, जांच अधिकारी द्वारा जांच संचालित करते समय की जानी चाहिये – उच्च न्यायालय को न तो उन पहलुओं पर ध्यान देना अपेक्षित है न ही आरोप पत्र की वैधता की जांच करने के लिये स्वयं जांच संचालित करना अपेक्षित है – याचिका खारिज। (ब्रजेश सिंह (डॉ.) वि. म.प्र. राज्य) ...110

Constitution – Article 226 – Duty of Court – **Held – Must examine the case to ensure genuine public interest – Strict vigilance to ensure no abuse of process – Court should make an earnest endeavour to take up those cases, where the subjective purpose to the lis justifies the need of it. [Mukesh Dandeer Vs. State of M.P.] (DB)...761**

संविधान – अनुच्छेद 226 – न्यायालय का कर्तव्य – अभिनिर्धारित – वास्तविक लोक हित सुनिश्चित करने के लिए न्यायालय को प्रकरण का परीक्षण अवश्य करना चाहिए – कड़ी सतर्कता बरतनी चाहिए कि प्रक्रिया का दुरूपयोग न हो – न्यायालय को ऐसे प्रकरणों को विचार में लेने का गंभीर प्रयास करना चाहिए जहां वाद का व्यक्तिपरक प्रयोजन उसकी आवश्यकता को न्यायोचित ठहराता हो। (मुकेश दंडीर वि. म.प्र. राज्य) (DB)...761

Constitution – Article 226 – Entrance Examination by APDMC – **Scanning of OMR sheets after examination – Complete procedure – Explained. [Paras Saklecha Vs. State of M.P.] (DB)...453**

संविधान – अनुच्छेद 226 – ए.पी.डी.एम.सी. द्वारा प्रवेश परीक्षा – परीक्षा उपरांत ओ.एम.आर. शीट की स्कैनिंग – पूर्ण प्रक्रिया – स्पष्ट की गयी। (पारस सकलेचा वि. म.प्र. राज्य) (DB)...453

Constitution – Article 226 – Investigation by CBI – **Charge-sheet already filed – Merely charge-sheet has been filed it will not take away the power of the Court to direct for fresh investigation by CBI. [Kalyani Pandey (Ku.) (Dr.) Vs. Union of India]** (DB)...17

संविधान – अनुच्छेद 226 – सी.बी.आई. द्वारा अन्वेषण – आरोप पत्र पहले ही प्रस्तुत किया जा चुका है – केवल आरोप पत्र प्रस्तुत किये जाने से न्यायालय की सी.बी.आई. को नये सिरे से अन्वेषण किये जाने के निदेश देने की शक्ति को वापस नहीं लिया जा सकता। (कल्याणी पांडे (कुमारी) (डॉ.) वि. यूनियन ऑफ इंडिया) (DB)...17

Constitution – Article 226 – Investigation by CBI – **Police did not register FIR inspite of information regarding commission of cognizable offence – Inspite of handing over of investigation to a senior officer on the instruction of the General Administration Department, accused persons were not arrested – Interrogation of eye witnesses and other witnesses and their statements u/s 161 of Cr.P.C. also not recorded – FIR was also registered belatedly and that too on the intervention of the Court – In view of material discrepancy in investigation and bias attitude of State Investigating agency in holding investigation is apparent – Impugned investigation and filing of charge-sheet cannot be said to be impartial – Direction issued for fresh and impartial investigation by CBI and till filing of fresh charge-sheet, proceedings in trial pending in Sessions Court shall remain stayed. [Kalyani Pandey (Ku.) (Dr.) Vs. Union of India]** (DB)...17

संविधान – अनुच्छेद 226 – सी.बी.आई. द्वारा अन्वेषण – संज्ञेय अपराध घटित होने की सूचना के बावजूद पुलिस ने प्रथम सूचना प्रतिवेदन दर्ज नहीं किया – सामान्य प्रशासन विभाग के निदेश पर वरिष्ठ अधिकारी को अन्वेषण सौंपे जाने के बावजूद, अभियुक्तों को गिरफ्तार नहीं किया गया – प्रत्यक्षदर्शी साक्षियों एवं अन्य साक्षियों से पूछताछ तथा दंड प्रक्रिया संहिता की धारा 161 के अंतर्गत उनके कथन भी अभिलिखित नहीं किये गये – प्रथम सूचना प्रतिवेदन भी विलंब से दर्ज किया गया एवं वह भी न्यायालय के मध्यक्षेप से – अन्वेषण के दौरान राज्य अन्वेषण एजेंसी द्वारा अन्वेषण में तात्विक त्रुटियां एवं पक्षपातपूर्ण बर्ताव प्रकट होता है – आक्षेपित अन्वेषण एवं प्रस्तुत आरोपपत्र निष्पक्ष नहीं कहा जा सकता – सी.बी.आई. को नये सिरे से निष्पक्ष अन्वेषण हेतु निदेश जारी किया गया एवं नया आरोप पत्र प्रस्तुत करने तक सत्र न्यायालय में लंबित विचारण की कार्यवाहियां स्थगित रहेंगी। (कल्याणी पांडे (कुमारी) (डॉ.) वि. यूनियन ऑफ इंडिया) (DB)...17

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Constitution – Article 226 – Medical Entrance Examination by APDMC – **Admission beyond 30th September – Regulation on Graduate Medical Education 1997 postulates that no admission of student in respect of any academic session beyond 30th September should be permitted – Prohibition is against the Authorities – It is open to Writ Court to issue directions to Authorities which must bind the Authorities to permit admission and registration of student even beyond 30th September, in case the Court records its satisfaction and just reasons therefor. [Paras Saklecha Vs. State of M.P.]** **(DB)...499**

संविधान – अनुच्छेद 226 – ए.पी.डी.एम.सी. द्वारा चिकित्सा प्रवेश परीक्षा – 30 सितम्बर के बाद प्रवेश – स्नातक चिकित्सा शिक्षा 1997 पर विनियमन मान्य करता है कि किसी शैक्षणिक सत्र के संबंध में विद्यार्थी को 30 सितम्बर के बाद प्रवेश की अनुमति नहीं दी जानी चाहिए – प्राधिकारियों के विरूद्ध प्रतिशेध है – रिट न्यायालय के लिए प्राधिकारियों को निदेश जारी करने का मार्ग खुला है, जो प्राधिकारीगण को 30 सितम्बर के बाद भी विद्यार्थी को प्रवेश और पंजीयन की अनुमति देने के लिए बाध्य करेगा, यदि ऐसा करने हेतु न्यायालय अपनी संतुष्टि एवं न्यायोचित कारण अभिलिखित करता है। (पारस सकलेचा वि. म.प्र. राज्य) **(DB)...499**

Constitution – Article 226 – Medical Entrance Examination – **Suggestions on certain security measures invited from Principal and Monitoring agencies i.e. APDMC and AFRC. [Paras Saklecha Vs. State of M.P.]** **(DB)...457**

संविधान – अनुच्छेद 226 – चिकित्सा प्रवेश परीक्षा – प्रधानाचार्य एवं अनुश्रवण एजेंसी अर्थात् ए.पी.डी.एम.सी एवं ए.एफ.आर.सी. से कतिपय सुरक्षा उपायों के सुझाव आमंत्रित किये गये। (पारस सकलेचा वि. म.प्र. राज्य) **(DB)...457**

Constitution – Article 226 – Mining lease – Auction process – **Petitioner was the highest bidder – As per clause 6 of auction notice he was required to obtain environmental clearance certificate – State Authority directed to approach Central Authority for seeking environmental permission – Whether amounts to rejection of permission – Held – No, clause 6 will get activated only when rejection of permission for grant of environmental clearance certificate is made by authority competent to issue such certificate and not by any other authority – Petitioner can approach the Central Authority – Accordingly, petition disposed of. [Shakti Traders (M/s.) Vs. State of M.P.]** **(DB)...473**

संविधान – अनुच्छेद 226 – खनन पट्टा – नीलामी प्रक्रिया – याची, सर्वोच्च बोली लगाने वाला – नीलामी नोटिस के खंड 6 के अनुसार उसे पर्यावरण अनापत्ति प्रमाणपत्र अभिप्राप्त करना अपेक्षित था – राज्य प्राधिकरण ने पर्यावरण अनुमति चाहने हेतु केन्द्रीय प्राधिकारी के समक्ष जाने के लिये निदेशित किया – क्या अनुमति अस्वीकृत करने की कोटि में आता है – अभिनिर्धारित – नहीं, खंड 6 केवल तब प्रभावी होगा जब पर्यावरण अनापत्ति प्रमाणपत्र प्रदान किये जाने हेतु अनुमति की अस्वीकृति, उक्त प्रमाणपत्र जारी करने के लिए सक्षम प्राधिकारी द्वारा दी गई हो और न कि किसी अन्य प्राधिकारी द्वारा – याची, केन्द्रीय प्राधिकारी के समक्ष जा सकता है – तद्नुसार, याचिका का निपटारा किया गया। (शक्ति ट्रेडर्स (मे.) वि. म.प्र. राज्य) **(DB)...473**

Constitution – Article 226 – Moulding of relief – Powers and duties **– To do substantive justice, if same flows from the fact of the case – Petition can not be non-suited on hyper technical grounds – Permitted moulding. [Harendra Jaseja (Dr.) Vs. State of M.P.] ...384**

संविधान – अनुच्छेद 226 – अनुतोष का सुधार – शक्तियाँ एवं कर्तव्य – मौलिक न्याय किये जाने हेतु, यदि प्रकरण के तथ्यों से ऐसा प्रकट होता है – परातकनीकी आधारों पर याचिका अस्वीकार नहीं की जा सकती है – सुधार की अनुमति स्वीकृत। (हरेन्द्र जसेजा (डॉ.) वि. म.प्र. राज्य) **...384**

Constitution – Article 226 – Permission to grant admission beyond 30th September **– On apprehension expressed in PIL, Court directed to immediately scan and digitize the answer papers – Written Examination could not be conducted and it stood postponed – Subsequently, online examination was announced on 20-9-2015 however, due to several technical faults which occurred during examination period, the examination was to be abandoned – Subsequently, the examination was conducted on 8th October, 2015 – Situation was not created by Institutions intentionally nor the students who would be taking admission are responsible for the same – Date of admission extended till 14-10-2015 – Union of India, MCI and Dental Medical Council and Universities directed to recognize the admission process for academic year 2015-16 completed by 14-10-2015 and to register the students so admitted and allow them to pursue their medical course in respective colleges treating them having been admitted within prescribed period. [Paras Saklecha Vs. State of M.P.] (DB)...499**

संविधान – अनुच्छेद 226 – 30 सितम्बर के बाद प्रवेश प्रदान करने की अनुमति – लोकहित वाद में अभिव्यक्त आशंका पर, न्यायालय ने तुरंत रूप से उत्तर

पुस्तिकाओं को स्कैन और डिज़ीटाइज करने के लिए निदेशित किया – लिखित परीक्षा आयोजित नहीं की जा सकी और उसे स्थगित किया गया – तत्पश्चात्, 20.09.2015 को ऑनलाईन परीक्षा घोषित की गई किन्तु, कई तकनीकी त्रुटियां/कमियां जो परीक्षा की अवधि के दौरान कारित हुई थी, के कारण परीक्षा का परित्याग करना पड़ा – तत्पश्चात्, 8 अक्टूबर 2015 को परीक्षा आयोजित की गई – संस्थाओं द्वारा यह स्थिति जानबूझकर निर्मित नहीं की गई थी और न ही विद्यार्थीगण जो प्रवेश लेंगे, वे इसके लिए जिम्मेदार हैं – प्रवेश की तिथि 14.10.2015 तक बढ़ाई गई – मारत के संघ, भारतीय चिकित्सा परिषद् एवं दंत चिकित्सा परिषद् तथा विश्वविद्यालयों को 14.10.2015 तक पूर्ण की गई शैक्षणिक वर्ष 2015–16 के लिये प्रवेश प्रक्रिया को मान्यता देने के लिए और इस तरह प्रवेश दिये गये विद्यार्थियों का पंजीयन करने के लिये तथा उन्हें विहित अवधि के भीतर प्रवेश दिया जाना मानते हुए, उन्हें संबंधित महाविद्यालयों में अपना चिकित्सा पाठ्यक्रम जारी रखने की अनुमति देने के लिए निदेशित किया गया। (पारस सकलेचा वि. म.प्र. राज्य) (DB)...499

Constitution – Article 226 **– Petitioner – Appointed & posted as Process Server – Plea that he is not expected to discharge work of Water Server – Tenability – Held – Such a plea is not tenable for want of specific pleading in writ petition or during enquiry or before Appellate Authority. [Raj Kumar Vishwakarma Vs. State of M.P.] (DB)...115**

संविधान – अनुच्छेद 226 – याची – आदेशिका वाहक के रूप में नियुक्त व पदस्थ – यह अभिवाक् कि उससे पानी पिलाने का कार्य करने की अपेक्षा नहीं की जा सकती – रक्षणीयता – अभिनिर्धारित – रिट याचिका में अथवा जांच के दौरान अथवा अपीलीय प्राधिकारी के समक्ष विनिर्दिष्ट अभिवचन के अभाव में ऐसा अभिवाक् रक्षणीय नहीं। (राज कुमार विश्वकर्मा वि. म.प्र. राज्य) (DB)...115

Constitution – Article 226 **– Petitioner's bid was accepted on the understanding that the agreement will be executed in his favour if he obtains all environmental clearances – Same could not be effectuated as the petitioner could not obtain such clearances within the time specified in the tender notice – Petitioner's claim for quashing of re–auction process and interest at the rate of 18% on the security amount – Held – Claim of interest – Maintainability of writ – Relief of interest in exercise of writ jurisdiction, as claimed, can not be countenanced – Petitioner is free to take recourse to appropriate remedy for interest in common law, if permissible – As the contractual or statutory obligation, is not established by the petitioner he is not entitled for the relief of interest. [Manish Kumar Gupta Vs. State of M.P.] (DB)...789**

संविधान – अनुच्छेद 226 – याची की बोली इस सहमति पर स्वीकार की गई थी कि उसके पक्ष में करार तभी निष्पादित किया जायेगा यदि वह समस्त पर्यावरणीय मंजूरियां प्राप्त कर लेगा – उसे कार्यान्वित नहीं किया जा सका क्योंकि याची निविदा नोटिस में निर्दिष्ट अवधि के भीतर उक्त मंजूरियां प्राप्त नहीं कर सका – याची का पुनः नीलामी प्रक्रिया को अभिखंडित किये जाने एवं सुरक्षा निधि पर 18% की दर से ब्याज का दावा – अभिनिर्धारित – ब्याज का दावा – रिट की पोषणीयता – रिट अधिकारिता का प्रयोग करते हुये ब्याज की सहायता के दावे का समर्थन नहीं किया जा सकता – याची ब्याज हेतु सामान्य विधि के अंतर्गत, उपयुक्त उपचार का सहारा ले सकता है, यदि अनुज्ञेय हो – चूंकि याची कोई भी संविदीय अथवा कानूनी दायित्व स्थापित नहीं कर सका है, वह ब्याज की सहायता पाने हेतु हकदार नहीं है। (मनीष कुमार गुप्ता वि. म.प्र. राज्य) (DB)...789

***Constitution – Article 226 – PIL – Entrance examination by APDMC* – Future examination – Obtaining of finger prints at the time of enrollment – Verification of finger prints & photos to be done at the time of entry in the Examination Hall, during counseling and at the time of admission. [Paras Saklecha Vs. State of M.P.] (DB)...464**

संविधान – अनुच्छेद 226 – लोक हित वाद – ए.पी.डी.एम.सी. द्वारा प्रवेश परीक्षा – भावी परीक्षा – नामांकन के समय अंगुलियों की छाप अभिप्राप्त की जाना – अंगुलियों की छाप एवं फोटो का सत्यापन परीक्षा कक्ष में प्रवेश के समय, परामर्श के दौरान और प्रवेश के समय, किया जाये। (पारस सकलेचा वि. म.प्र. राज्य) (DB)...464

***Constitution – Article 226 – Public Interest Litigation – Bonafide of the petitioner* – Stranger cannot be permitted to meddle in any proceedings unless he is aggrieved person – Writ petition maintainable for judicial enforceable legal right – Existing of such right is condition precedent for invoking writ jurisdiction – To exercise such extraordinary jurisdiction, relief prayed must be to enforce such legal right which is foundation of said jurisdiction – Person aggrieved does not include who suffers psychological or imaginary injury – Person aggrieved must be whose right or interest adversely affected. [Mukesh Dandeer Vs. State of M.P.] (DB)...761**

संविधान – अनुच्छेद 226 – लोक हित वाद – याची की सद्भाविकता – पर–व्यक्ति को किन्हीं भी कार्यवाहियों में हस्तक्षेप करने की अनुमति नहीं दी जा सकती, यदि वह पीड़ित व्यक्ति नहीं है – न्यायिक रूप से प्रवर्तनीय विधिक अधिकारों हेतु प्रस्तुत रिट याचिका पोषणीय है – रिट अधिकारिता का अवलंब लेने के लिए ऐसे विधिक अधिकार की विद्यमानता पुरोभाव्य शर्त है – ऐसे असाधारण

अधिकारिता का प्रयोग करने के लिये चाहा गया अनुतोष ऐसे विधिक अधिकार के प्रवर्तन हेतु होना चाहिए जो कि ऐसे अधिकारिता का आधार है – पीड़ित व्यक्ति की श्रेणी में ऐसे व्यक्ति सम्मिलित नहीं हैं जो किसी मनोवैज्ञानिक अथवा काल्पनिक क्षति से पीड़ित हों – पीड़ित व्यक्ति वह है जिसका कोई अधिकार अथवा हित प्रतिकूल रूप से प्रभावित हुआ हो। (मुकेश दंडीर वि. म.प्र. राज्य) (DB)...761

Constitution – Article 226 – Recovery of excess payment – **Petitioner retired as Ranger – Respondents directed for recovery of Rs. 24,116/- including interest – Held – State Government unable to establish any role of petitioner in fixation of pay and unless established that damage is caused, petitioner not subjected to pay interest – Liability to refund the excess amount upheld – Charging of compound interest quashed – Petition partially allowed. [Beer Bhan Singh Vs. State of M.P.]** ...402

संविधान – अनुच्छेद 226 – अतिरिक्त भुगतान की वसूली – याची रेंजर के रूप में सेवानिवृत्त हुआ –, प्रत्यर्थीगण को ब्याज शामिल करते हुये रू. 24,116/– की वसूली हेतु निदेशित किया गया – अभिनिर्धारित – राज्य सरकार वेतन निर्धारण में याची की किसी भूमिका को स्थापित करने में असमर्थ और जब तक कि यह स्थापित नहीं किया जाता कि क्षति कारित हुई है, याची ब्याज का भुगतान करने के लिये अध्याधीन नहीं – अतिरिक्त राशि के प्रतिदाय के दायित्व की पुष्टि की गई – चक्रवृद्धि ब्याज का अधिरोपण अभिखंडित – याचिका अंशतः मंजूर। (बीर भान सिंह वि. म.प्र. राज्य) ...402

Constitution – Article 226 – **Whether fresh investigation through independent agency like C.B.I. can be ordered without consent of the State – Held –Yes, in an exceptional situation it can be ordered. [Mithlesh Rai Vs. State of M.P.]** (DB)...667

संविधान – अनुच्छेद 226 – क्या राज्य की सहमति के बिना सी.बी.आई. जैसे स्वतंत्र अभिकरण के माध्यम से नये सिरे से अन्वेषण कराये जाने हेतु आदेशित किया जा सकता है – अभिनिर्धारित – हां, आपवादिक परिस्थिति में ऐसा आदेशित किया जा सकता है। (मिथलेश राय वि. म.प्र. राज्य) (DB)...667

Constitution – Article 226 – **Whether investigation of a criminal case by State Agency is open to judicial review in the writ jurisdiction – Held – Yes, if rights as enshrined under the Constitution are violated by the authorities. [Mithlesh Rai Vs. State of M.P.]** (DB)...667

संविधान – अनुच्छेद 226 – क्या रिट अधिकारिता के अंतर्गत, किसी

दाण्डिक प्रकरण में राज्य अभिकरण द्वारा किये जा रहे अन्वेषण के न्यायिक पुर्नविलोकन की स्वतंत्रता है – अभिनिर्धारित – हां, यदि प्राधिकारियों द्वारा संविधान में प्रतिष्ठापित अधिकारों का उल्लंघन किया जाता है। (मिथलेश राय वि. म.प्र. राज्य) (DB)...667

Constitution – Article 226 – Writ of certiorari – In Public interest litigation, it cannot be allowed to affect contractual agreement itself which reduces a legal document in worthless piece of paper – If permitted, it is bound to lead to a chaotic situation affecting the fabric of law – No reason to interfere in the impugned order – Petition dismissed. [Mukesh Dandeer Vs. State of M.P.] (DB)...761

संविधान – अनुच्छेद 226 – उत्प्रेषण रिट – लोकहित वाद में किसी संविदात्मक करार को प्रभावित नहीं होने दिया जा सकता, क्योंकि ऐसा होने पर एक वैध दस्तावेज एक मूल्यहीन कागज का टुकड़ा मात्र रह जाता है – यदि इसकी अनुमति दी गई, तब ऐसी अव्यवस्था की स्थिति बनना निश्चित है जो कानून के ताने–बाने को प्रभावित करेगी – आक्षेपित आदेश में हस्तक्षेप हेतु कारण नहीं – याचिका खारिज। (मुकेश दंडीर वि. म.प्र. राज्य) (DB)...761

Constitution – Article 226 – Writ Petition – Suppression of facts – Suppression of facts would amount to abuse of process of law and a party guilty of such suppression of material facts is not entitled to grant of any relief in such writ petition, which is based on suppression of material facts – Petition dismissed. [Pratibha Kushram (Smt.) Vs. State of M.P.] ...427

संविधान – अनुच्छेद 226 – रिट याचिका – तथ्यों का छिपाव – तथ्यों का छिपाव किया जाना विधि की प्रक्रिया के दुरूपयोग की कोटि में आयेगा और तात्विक तथ्यों के उक्त छिपाव का दोषी पक्षकार ऐसी रिट याचिका जो तात्विक तथ्यों के छिपाव पर आधारित है, में कोई अनुतोष प्रदान किये जाने के लिए हकदार नहीं – याचिका खारिज। (प्रतिभा कुशराम (श्रीमती) वि. म.प्र. राज्य) ...427

Constitution – Article 226 – Writ – Petitioner declared disqualified to take part in coming election of 2014 for the post of Chairman, Nagar Panchayat, due to failure to furnish accounts of election expenses of earlier election held in 2009 – Show cause notice was not served to the petitioner, instead it was served to the father of petitioner – Held – Such an order of disqualification cannot be sustained under the law. [Vimlesh Vanshkar (Ku.) Vs. State of M.P.] ...757

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संविधान – अनुच्छेद 226 – रिट – नगर पंचायत, अध्यक्ष पद हेतु वर्ष 2009 में आयोजित पूर्व चुनाव के दौरान किए गए खर्चों का ब्यौरा प्रस्तुत करने में असफल रहने के कारण याची को वर्ष 2014 में होने वाले चुनाव में भाग लेने हेतु अयोग्य घोषित किया गया – कारण बताओ सूचना पत्र याची पर तामील न कराया जाकर उसके पिता पर तामील कराया गया – अभिनिर्धारित – अयोग्यता का उक्त आदेश विधि अंतर्गत कायम नहीं रखा जा सकता। (विमलेश वंशकार (कुमारी) वि. म.प्र. राज्य) ...757

Constitution – Article 311 & 309 – Compulsory retirement – **Not a punishment – It implies no stigma nor suggestion of misbehaviour. [Shiv Kumari Gulhani (Smt.) Vs. District and Sessions Judge, Mandla] (DB)...73**

संविधान – अनुच्छेद 311 व 309 – अनिवार्य सेवानिवृत्ति – दंड नहीं है – इससे न तो कोई कलंक न ही दुर्व्यवहार का सुझाव विवक्षित है। (शिव कुमारी गुल्हानी (श्रीमती) वि. डिस्ट्रिक्ट एण्ड सेशंस जज, मण्डला) **(DB)...73**

Constitution – Article 311 & 309 – Compulsory retirement – Subjective satisfaction **– Petitioner was advised to improve his work – He was also graded "E" (poor) – He was negligent in working, he was not punctual and there was no improvement inspite of repeated warnings – Ample material on record for the District and Sessions Judge to form a subjective satisfaction that it is in public interest to compulsorily retire the petitioner at the premature age of 57. [Shiv Kumari Gulhani (Smt.) Vs. District and Sessions Judge, Mandla] (DB)...73**

संविधान – अनुच्छेद 311 व 309 – अनिवार्य सेवानिवृत्ति – व्यक्तिपरक संतुष्टि – याची को अपना कार्य सुधारने की सलाह दी गई थी – उसे "E" (poor) श्रेणी में भी रखा गया – वह कार्य में उपेक्षावान था, वह समयनिष्ठ नहीं था एवं बारंबार चेतावनी के बावजूद उसमें कोई सुधार नहीं हुआ – जिला एवं सत्र न्यायाधीश के पास व्यक्तिपरक संतुष्टि निर्मित करने के लिये अभिलेख पर पर्याप्त सामग्री थी कि याची को समयपूर्व 57 वर्ष की आयु में अनिवार्य रूप से सेवानिवृत्त किया जाना जनहित में है। (शिव कुमारी गुल्हानी (श्रीमती) वि. डिस्ट्रिक्ट एण्ड सेशंस जज, मण्डला) **(DB)...73**

Contempt of Courts Act (70 of 1971), Sections 10, 15 & 16 **– Shri Jitendra Singh Chouhan, Advocate practicing at Manavar – He appeared before the Court of Tehsildar – Petition has been filed praying that respondent Tehsildar has committed criminal contempt of Court by insulting and misbehaving with the Advocate by obstructing the**

administration of justice, therefore, prayed that he be suitably punished. – Held – A legal practitioner has important duty and obligation to co-operate with the Court for just and proper administration of justice – Chouhan without submitting his vakalatnama was seeking adjournment and shouting in the Court, while Tehsildar was hearing other case – When Tehsildar asked Shri Chouhan to maintain the decorum of the Court, he continued shouting there – Tehsildar asked Shri Chouhan, Advocate to leave the Court does not amount to contempt of Court – No case is made out against Tehsildar for committing contempt of Court – Petition dismissed. [Bar Association, Manavar Vs. Shri Satyendra Singh] (DB)...860

न्यायालय अवमान अधिनियम (1971 का 70), धाराऐं 10, 15 व 16 – श्री जितेन्द्र सिंह चौहान, अधिवक्ता मनावर में वकालत का पेशा करते हैं – वह तहसीलदार के न्यायालय के समक्ष उपस्थित हुआ – याचिका यह प्रार्थना करते हुए प्रस्तुत की गई है कि प्रत्यर्थी तहसीलदार ने अधिवक्ता से दुर्व्यवहार एवं उसका अपमान करके न्याय प्रशासन में बाधा डालते हुये न्यायालय की दाण्डिक अवमानना कारित की है, इसलिये, प्रार्थना की गई कि उसे उचित रूप से दण्डित किया जाये – अभिनिर्धारित – न्यायसंगत एवं उचित न्याय प्रशासन हेतु एक विधि व्यवसायी का यह महत्वपूर्ण कर्तव्य एवं बाध्यता होती है कि वह न्यायालय का सहयोग करे – चौहान बिना अपना वकालतनामा प्रस्तुत किए स्थगन चाह रहा था एवं न्यायालय में चिल्ला रहा था, जबकि तहसीलदार अन्य प्रकरण की सुनवाई कर रहा था – जब तहसीलदार द्वारा श्री चौहान को न्यायालय की गरिमा बनाये रखने हेतु कहे जाने के बाद भी उन्होंने चिल्लाना जारी रखा – तहसीलदार द्वारा श्री चौहान, अधिवक्ता को न्यायालय से जाने के लिये कहना न्यायालय की अवमानना की कोटि में नहीं आता है – तहसीलदार के विरूद्ध न्यायालय की अवमानना कारित करने का कोई मामला नहीं बनता है – याचिका खारिज। (बार एसोसिएशन, मनावर वि. श्री सत्येन्द्र सिंह) **(DB)...860**

***Contract** – Tender - Eligibility to participate in tender process* – **Petitioner Company is engaged in generation of power which is supplied to consumers/grid – Petitioner company is operating in a regulated sector, regulated under the provisions of Electricity Act – Tender Process for allotment of Coal Mines is in respect of coal mines earmarked for non-regulated sector – Held – Central Govt. has power to classify the coal mines for specified end uses – Petitioner who intends to use the coal for generation of power per se is not qualified to participate in auction process of the subject coal mines which is earmarked for end use of non regulated sector, for optimum utilization of national resources. [B L A Power Pvt.**

Ltd. Vs. Union of India] (DB)...129

संविदा – निविदा – निविदा प्रक्रिया में भाग लेने के लिए योग्यता – याची कंपनी विद्युत उत्पादन में संलग्न है जो कि उपभोक्ताओं / ग्रिड को आपूर्ति की जाती है – याची कंपनी विनियमित क्षेत्र में संचालित है जो कि विद्युत अधिनियम के प्रावधानों के अंतर्गत विनियमित है – कोयला खानों के आबंटन के लिए निविदा प्रक्रिया गैर–विनियमित क्षेत्रों के लिए चिन्हित कोयला खानों के संबंध में है – अभिनिर्धारित – विशिष्ट अंतिम उपयोग के लिए कोयला खानों को वर्गीकृत करने की शक्ति केंद्र शासन के पास है – याची जो वास्तव में विद्युत उत्पादन के लिए कोयले के उपयोग का आशय रखता है उस विषयाधीन कोयला खान की नीलामी प्रक्रिया में भाग लेने के लिए अर्ह नहीं है जो कि राष्ट्रीय संसाधनों के अधिकतम उपयोग के लिए, गैर विनियमित क्षेत्र के उपयोग हेतु चिन्हित है। (बी एल ए पॉवर प्रा. लि. वि. यूनियन ऑफ इंडिया) (DB)...129

Cooperative Societies Act, M.P. 1960 (17 of 1961), Section 64 – **Issues raised in this matter are covered by the provisions of Section 64 of the M.P. Cooperative Societies Act – Co-operative Society Tribunal would have jurisdiction to go into the issues – Dispute can be raised before the Tribunal even by a person who is not a member of the society and the Tribunal would decide it – Appeal is dismissed. [Har Prasad Yadav Vs. Mahaveer Prasad Jain]** ...531

सहकारी सोसाइटी अधिनियम, म.प्र. 1960 (1961 का 17), धारा 64 – इस मामले में उठाये गये विवाद्यक मध्यप्रदेश सहकारी सोसाइटी अधिनियम की धारा 64 के उपबंधों द्वारा आच्छादित हैं – सहकारी सोसाइटी अधिकरण को विवाद्यकों का विचारण करने की अधिकारिता होगी – विवाद को अधिकरण के समक्ष किसी ऐसे व्यक्ति द्वारा भी उठाया जा सकता है जो सोसाइटी का सदस्य नहीं तथा अधिकरण इसे निर्णीत करेगा – अपील खारिज। (हर प्रसाद यादव वि. महावीर प्रसाद जैन) ...531

Cooperative Societies Act, M.P. 1960 (17 of 1961), Section 64 – See – Civil Procedure Code, 1908, Section 100 & Order 7 Rule 11 **[Har Prasad Yadav Vs. Mahaveer Prasad Jain]** ...531

सहकारी सोसाइटी अधिनियम, म.प्र. 1960 (1961 का 17), धारा 64 – देखें – सिविल प्रक्रिया संहिता, 1908, धारा 100 व आदेश 7 नियम 11 (हर प्रसाद यादव वि. महावीर प्रसाद जैन) ...531

Court Fees Act (7 of 1870), Schedule I Article 1– A [As substituted by Court Fee (M.P. Amendment) Act (6 of 2008), w.e.f.

2-4-2008] – **Amendment is a beneficial legislation – Benefit of upper limit of Court Fees prescribed by the Amendment Act, must be applied uniformly to all litigants instituting their claim after 02-04-2008 – Be it in the form of plaint before the subordinate court or memorandum of appeal before the High Court, as the case may be – Being beneficial court fee regime – Reference answered accordingly. [Technofab Engineering Ltd. (M/s.) Vs. Bharat Heavy Electricals Ltd.] (FB)...651**

न्यायालय फीस अधिनियम (1870 का 7), अनुसूची I अनुच्छेद 1–ए [न्यायालय फीस (म.प्र. संशोधन) अधिनियम, (2008 का 6) द्वारा प्रतिस्थापित, 02.04.2008 से प्रभावी] – संशोधन एक लाभकारी कानून है – संशोधन अधिनियम में विहित न्याय शुल्क की ऊपरी सीमा का लाभ 02.04.2008 के पश्चात् दावा संस्थित करने वाले सभी पक्षकारों पर समान रूप से लागू किया जाना चाहिए – चाहे वह अधीनस्थ न्यायालय के समक्ष वाद के रूप में हो अथवा उच्च न्यायालय के समक्ष अपील मेमोरेण्डम के रूप में, जैसा भी मामला हो – लाभकारी न्याय शुल्क व्यवस्था होने के नाते – तद्नुसार निर्देश का उत्तर दिया गया। (टेक्नोफेब इंजीनियरिंग लि. (मे.) वि. भारत हैवी इलेक्ट्रिकल्स् लि.) **(FB)...651**

Criminal Procedure Code, 1973 (2 of 1974), Section 125 – Ad interim maintenance **– Husband retired as a lineman from M.P.E.B. – Pension of Rs. 8,000/- per month – Held – Wife entitled for Rs. 2,500/- per month keeping in view the market price index of food stuffs and other essential things. [Shyama (Smt.) Vs. Laxmi Narayan] ...562**

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 125 – अंतरिम भरण पोषण – पति म.प्र. विद्युत मंडल से लाईनमैन के पद से सेवानिवृत्त – रू. 8,000/– प्रति माह की पेंशन – अभिनिर्धारित – खाद्य पदार्थ एवं अन्य आवश्यक वस्तुओं का बाज़ार मूल्य सूचकांक दृष्टिगत रखते हुये पत्नी रू. 2,500/– प्रतिमाह की हकदार। (श्यामा (श्रीमती) वि. लक्ष्मी नारायण) **...562**

Criminal Procedure Code, 1973 (2 of 1974), Section 125 – Ad interim maintenance **– Relationship of husband and wife in question – Prima facie evidence – Comparison of ration card, education certificate vis-a-vis Voter I.D. card – Held – Ration card, education certificate will prevail over voter I.D. card – Application for ad-interim maintenance allowed. [Shyama (Smt.) Vs. Laxmi Narayan] ...562**

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 125 – अंतरिम भरण पोषण – पति और पत्नी का संबंध प्रश्नाधीन – प्रथम दृष्ट्या साक्ष्य – राशन कार्ड, शिक्षा

प्रमाणपत्र के मुकाबले में मतदाता पहचान पत्र की तुलना – अभिनिर्धारित – राशन कार्ड, शिक्षा प्रमाणपत्र, मतदाता पहचान पत्र पर अभिभावी होगा – अंतरिम भरण पोषण हेतु आवेदन मंजूर। (श्यामा (श्रीमती) वि. लक्ष्मी नारायण) ...562

Criminal Procedure Code, 1973 (2 of 1974), Section 125 – Interim maintenance **– Adult son – Whether entitled for interim maintenance – Held – Not entitled either himself or through his mother. [Shyama (Smt.) Vs. Laxmi Narayan]** ...562

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 125 – अंतरिम भरण पोषण – वयस्क पुत्र – क्या अंतरिम भरण पोषण के लिये हकदार है – अभिनिर्धारित – या तो स्वयं या अपनी माता के जरिये हकदार नहीं। (श्यामा (श्रीमती) वि. लक्ष्मी नारायण) ...562

Criminal Procedure Code, 1973 (2 of 1974), Section 125 – Maintenance **– Second wife – If the respondent/husband has done a cheating with the applicant/wife by not informing about the first marriage then still he is liable to pay maintenance to the applicant/ wife – Application allowed. [Sukhvati Bai (Smt.) Vs. Manphool Narvariya]** ...287

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 125 – भरण–पोषण – दूसरी पत्नी – प्रत्यर्थी/पति ने यदि प्रथम विवाह के बारे में जानकारी न देकर आवेदिका/पत्नी के साथ छल किया है, तब भी वह आवेदिका/पत्नी को भरण–पोषण का भुगतान करने के लिये उत्तरदायी है – आवेदन मंजूर। (सुखवती बाई (श्रीमती) वि. मनफूल नरवरिया) ...287

Criminal Procedure Code, 1973 (2 of 1974), Section 125 – Maintenance – Whether future salary could be ordered to be attached to meet out the maintenance amount **– Held – Future salary is not tangible corporeal property available for seizure – Hence cannot be attached for realization of arrear as well as current maintenance. [Anil Jain Vs. Shilpa Jain]** ...243

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 125 – भरण–पोषण – क्या भरण–पोषण की राशि की पूर्ति करने के लिए भविष्य के वेतन को कुर्क करने का आदेश दिया जा सकता है – अभिनिर्धारित – भविष्य में मिलने वाला वेतन जब्ती के लिए उपलब्ध वास्तविक मूर्त संपत्ति नहीं है – अतः बकाया की वसूली के साथ–साथ वर्तमान भरण–पोषण के लिए कुर्क नहीं किया जा सकता। (अनिल जैन वि. शिल्पा जैन) ...243

Criminal Procedure Code, 1973 (2 of 1974), Section 157 – Sending of report to Magistrate – Forthwith – F.I.R. registered on 27/06/1997 at 10 p.m. – Report forwarded to Magistrate on 30/06/1997 at 1.20 p.m. – Delay – Whether delay in forwarding the report to Magistrate speaks about falsity of the case – Held – Though there was delay in forwarding the report to the Magistrate but such a delay has not caused any serious prejudice to the appellants and even otherwise there was over whelming and incriminating evidence, both oral as well as documentary to support the case of the prosecution. [Narender Singh Vs. State of M.P.] (SC)...641

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 157 – दण्डाधिकारी को प्रतिवेदन भेजा जाना – तत्काल – प्रथम सूचना प्रतिवेदन दिनांक 27/06/1997 को रात्रि 10 बजे दर्ज किया गया – दण्डाधिकारी को प्रतिवेदन दिनांक 30/06/1997 को दिन के 1.20 बजे प्रेषित किया गया – विलंब – क्या दण्डाधिकारी को प्रतिवेदन विलंब से भेजे जाने से प्रकरण का झूठा होना प्रकट होता है – अभिनिर्धारित – यद्यपि, दण्डाधिकारी को प्रतिवेदन भेजे जाने में विलंब कारित हुआ था, परंतु उससे अपीलार्थीगण को कोई भी गंभीर हानि कारित नहीं हुई है एवं अन्यथा भी अभियोजन के प्रकरण के समर्थन हेतु मौखिक एवं दस्तावेजी दोनों ही प्रकार के प्रबल और अपराधसूचक साक्ष्य उपलब्ध थे। (नरेन्दर सिंह वि. म.प्र. राज्य) (SC)...641

Criminal Procedure Code, 1973 (2 of 1974), Sections 197, 397 r/w 401 & 482 – See – Prevention of Corruption Act, 1988, Sections 13(1)(d) & 13(2) [Kalpana Parulekar (Dr.) (Ku.) Vs. Inspector General of Police Special Police Establishment Lokayukt] (DB)...599

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Criminal Procedure Code, 1973 (2 of 1974), Section 200 and Protection of Women from Domestic Violence Act (43 of 2005), Section 28(2) – Preliminary examination – Domestic violence case – There is no requirement to record preliminary examination of the aggrieved person on filing the complaint and prior to taking the cognizance. [Ravi Kumar Bajpai Vs. Smt. Renu Awasthi Bajpai] ...302

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महिलाओं का संरक्षण अधिनियम (2005 का 43), धारा 28(2) – प्रारंभिक परीक्षण – घरेलू हिंसा प्रकरण – परिवाद प्रस्तुत करने पर तथा संज्ञान लेने से पूर्व व्यथित व्यक्ति के प्रारंभिक परीक्षण को अभिलिखित किया जाना अपेक्षित नहीं। (रवि कुमार बाजपेयी वि. श्रीमती रेणु अवस्थी बाजपेयी) ...302

Criminal Procedure Code, 1973 (2 of 1974), Section 200 – See – Electricity Act, 2003, Section 135 **[M.P. Madhya Kshetra Vidyut Vitran Co. Ltd. Vs. Kalyan Singh Chauhan]** ...907

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 200 – देखें – विद्युत अधिनियम, 2003, धारा 135 (एम.पी. मध्य क्षेत्र विद्युत वितरण कं. लि. वि. कल्याण सिंह चौहान) ...907

Criminal Procedure Code, 1973 (2 of 1974), Section 228 – See – Penal Code, 1860, Section 376 **[Pukhraj Singh Vs. State of M.P.]** ...248

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 228 – देखें – दण्ड संहिता, 1860, धारा 376 (पुखराज सिंह वि. म.प्र. राज्य) ...248

Criminal Procedure Code, 1973 (2 of 1974), Sections 228 & 397 – Framing of charges **– Held, the material and quality of evidence cannot be gone into – Revisional Court has limitations which don't empower to intervene at an interlocutory stage – All that has to be looked into at the time of framing of charge, is existence of prima facie case. [Devendra Singh Vs. State of M.P.]** ...259

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धाराएं 228 व 397 – आरोप विरचित किये जाना – अभिनिर्धारित, साक्ष्य की सामग्री एवं गुणवत्ता पर विचार नहीं किया जा सकता – पुनरीक्षण न्यायालय की सीमाएं हैं जो कि अंतवर्ती प्रक्रम में हस्तक्षेप करने के लिए सशक्त नहीं करती – आरोप विरचित करते समय जो कुछ भी देखा जाना चाहिए वह यह है कि प्रथम दृष्ट्या प्रकरण विद्यमान है। (देवेन्द्र सिंह वि. म.प्र. राज्य) ...259

Criminal Procedure Code, 1973 (2 of 1974), Section 233 – Application for summoning Head Muharir of AJAK Thana and to summon Rojnamcha Sanha with original complaint filed by applicants **– Rejection of – Held – Aforesaid documents can be produced only if there is an order by Court – On perusal of photocopy of complaint it is clear that the same was received at AJAK Thana, so it is not baseless or vexatious and the applicants cannot be deprived to prove their defence – Revision petition allowed. [Awadh Narayan**

Vs. State of M.P.] ...580

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 233 – अजाक थाने के प्रधान मुहर्रिर को समन किये जाने हेतु और आवेदकगण द्वारा प्रस्तुत मूल परिवाद के साथ रोजनामचा सान्हा समन करने के लिये आवेदन – की अस्वीकृति – अभिनिर्धारित – उपरोक्त दस्तावेजों को केवल तब प्रस्तुत किया जा सकता है यदि न्यायालय द्वारा कोई आदेश दिया गया हो – परिवाद की फोटोप्रति के परिशीलन से यह स्पष्ट है कि उसे अजाक थाना में प्राप्त किया गया था, अतः वह आधारहीन या तंग करने वाला नहीं है और आवेदकगण को अपना बचाव सिद्ध करने से वंचित नहीं किया जा सकता – पुनरीक्षण याचिका मंजूर। (अवध नारायण वि. म.प्र. राज्य) ...580

Criminal Procedure Code, 1973 (2 of 1974), Section 256 – Complaint dismissed in default of appearance – **Magistrate should mention the reason that why he has no option but to dismiss the complaint. [Rajendra Kumar Jain Vs. Shriram Agrawal]** ...296

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 256 – उपस्थिति के व्यतिक्रम में परिवाद खारिज – मजिस्ट्रेट को कारण उल्लिखित करना चाहिए कि क्यों उसके पास परिवाद खारिज करने के सिवाय कोई विकल्प नहीं। (राजेन्द्र कुमार जैन वि. श्रीराम अग्रवाल) ...296

Criminal Procedure Code, 1973 (2 of 1974), Section 256 – Non-appearance of complainant – Circumstances for exercise of power – **Appearance of complainant or his counsel on previous dates of hearing – Interested in early disposal of the case – Case should not be dismissed for singular default of appearance. [Rajendra Kumar Jain Vs. Shriram Agrawal]** ...296

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 256 – परिवादी का उपस्थित न होना – शक्ति के प्रयोग हेतु परिस्थितियां – सुनवाई की पूर्वतर तिथियों पर परिवादी या उसके अधिवक्ता की उपस्थिति – प्रकरण के शीघ्र निपटारे के इच्छुक – उपस्थिति के एकमात्र व्यतिक्रम पर प्रकरण को खारिज नहीं किया जाना चाहिए। (राजेन्द्र कुमार जैन वि. श्रीराम अग्रवाल) ...296

Criminal Procedure Code, 1973 (2 of 1974), Section 256 – Non-appearance of complainant – **Powers are discretionary to be exercised judiciously, fairly and for advancement of criminal justice and not for its impairment. [Rajendra Kumar Jain Vs. Shriram Agrawal]** ...296

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 256 – परिवादी का

उपस्थित न होना – शक्तियां वैवेकिक हैं जिसका प्रयोग न्यायोचित रूप से, निष्पक्ष रूप से तथा आपराधिक न्याय की उन्नति के लिये किया जाना चाहिये और न कि उसकी हानि के लिए। (राजेन्द्र कुमार जैन वि. श्रीराम अग्रवाल) ...296

Criminal Procedure Code, 1973 (2 of 1974), Section 300 – Double jeopardy **– Respondent had lodged FIR against applicant and his parents u/s 498-A of IPC and they were acquitted – Second FIR lodged again on similar allegations – No man shall be put in jeopardy twice for one and same offence – Applicant cannot be prosecuted for same offence – Charge sheet quashed. [Ashish Vs. State of M.P.]** ...273

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 300 – दोहरा संकट – प्रत्यर्थी ने भारतीय दंड संहिता की धारा 498–ए के अंतर्गत आवेदक एवं उसके माता–पिता के विरूद्ध प्रथम सूचना प्रतिवेदन दर्ज किया था और उन्हें दोषमुक्त किया गया था – समान अभिकथनों पर पुनः दूसरा प्रथम सूचना प्रतिवेदन दर्ज किया – किसी व्यक्ति को एक एवं समान अपराध के लिये दो बार दंडित नहीं किया जा सकता – समान अपराध के लिये आवेदक को अभियोजित नहीं किया जा सकता – आरोप पत्र अभिखंडित। (आशीष वि. म.प्र. राज्य) ...273

Criminal Procedure Code, 1973 (2 of 1974), Sections 300 & 482 – See – Penal Code, 1860, Sections 337, 279 & 304-A, **[Nadimuddin Vs. State of M.P.]** ...316

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धाराऐं 300 व 482 – देखें – दण्ड संहिता, 1860, धाराऐं 337, 279 व 304–ए (नदीमुद्दीन वि. म.प्र. राज्य) ...316

Criminal Procedure Code, 1973 (2 of 1974), Section 311 – Recalling of witness **– Held – No application which will tantamount to the filling up the lacunae of the case could be permitted. [Soneram Rathore Vs. State of M.P.]** ...873

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 311 – साक्षी को वापस बुलाया जाना – अभिनिर्धारित – ऐसा कोई भी आवेदन पत्र जो कि प्रकरण की कमियों की पूर्ति करने हेतु आशयित है, स्वीकार नहीं किया जा सकता। (सोनेराम राठौर वि. म.प्र. राज्य) ...873

Criminal Procedure Code, 1973 (2 of 1974), Section 319 – Power to proceed against other persons **– During investigation it was found that applicant was not present on spot – Material contradictions in the evidence of witnesses – Addition of additional accused warranted only**

when there is reasonable prospect of case against such accused ending in their conviction – Order under this Section cannot be passed only because first informant or one of witnesses seeks to implicate other persons. [Omprakash Vs. State of M.P.] ...254

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 319 – अन्य व्यक्तियों के विरूद्ध कार्यवाही करने की शक्ति – अन्वेषण के दौरान यह पाया गया कि आवेदक घटनास्थल पर उपस्थित नहीं था – साक्षियों के साक्ष्य में तात्विक विरोधाभास है – अतिरिक्त अभियुक्त को जोड़ना केवल तभी आवश्यक है जब ऐसे अभियुक्त के विरूद्ध प्रकरण की युक्तियुक्त संभावना है जो उनकी दोषसिद्धि में समाप्त हो – इस धारा के अंतर्गत आदेश केवल इसलिए पारित नहीं किया जा सकता कि प्रथम सूचनाकर्त्ता अथवा साक्षियों में से कोई एक अन्य व्यक्तियों को आलिप्त करना चाहता है। (ओमप्रकाश वि. म.प्र. राज्य) ...254

Criminal Procedure Code, 1973 (2 of 1974), Section 320 and Penal Code (45 of 1860), Sections 498-A & 324 – Compounding of offence – **Compromise deed filed jointly – Trial Court has no jurisdiction to compound – Offences are non compoundable. [Balendra Shekhar Mishra Vs. State of M.P.] ...583**

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 320 एवं दण्ड संहिता (1860 का 45), धाराऐं 498–ए व 324 – अपराध का शमन करना – संयुक्त रूप से समझौता विलेख प्रस्तुत किया गया – विचारण न्यायालय को शमन करने की कोई अधिकारिता नहीं – अपराध अशमनीय है। (बलेन्द्र शेखर मिश्रा वि. म.प्र. राज्य) ...583

Criminal Procedure Code, 1973 (2 of 1974), Section 397 – Revision – **Notice to accused – Applicant was arrayed as accused in complaint – Complaint u/s 138 N.I Act was dismissed without issuing notice to applicant – Revisional court without issuing notice to applicant set aside the order of Trial Magistrate and directed to take cognizance – Held – Valuable right to defend was denied to applicant by revisional court – Order set aside – Matter remanded back. [Jayant Thirani Vs. Gyanchand Dubey] ...900**

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 397 – पुनरीक्षण – अभियुक्त को नोटिस – आवेदक को परिवाद में अभियुक्त बनाया गया – परक्राम्य लिखत अधिनियम की धारा 138 के अंतर्गत प्रस्तुत परिवाद को आवेदक को नोटिस जारी किये बिना ही खारिज कर दिया गया – पुनरीक्षण न्यायालय ने आवेदक को नोटिस जारी किये बिना विचारण दण्डाधिकारी के आदेश को अपास्त किया एवं

संज्ञान लेने हेतु निदेशित किया – अभिनिर्धारित – पुनरीक्षण न्यायालय द्वारा आवेदक को बचाव के बहुमूल्य अधिकार से वंचित किया गया – आदेश अपास्त – मामला प्रतिप्रेषित किया गया। (जयंत थिरानी वि. ज्ञानचंद दुबे) ...900

Criminal Procedure Code, 1973 (2 of 1974), Section 397 & 401 and Penal Code (45 of 1860), Section 498A r/w 34 – **Marriage solemnized on 17/05/2002 – No cruelty in relation to demand of dowry committed in short duration of two months – Held – No cruelty of serious nature alleged and there is no manifest error of law – Revision against acquittal dismissed. [Abhilasha Vs. Ashok Dongre]** ...266

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 397 व 401 एवं दण्ड संहिता (1860 का 45), धारा 498ए सहपठित 34 – विवाह 17/05/2002 को संपन्न हुआ – दो महीने की संक्षिप्त अवधि में दहेज की मांग के संबंध में कोई क्रूरता कारित नहीं की गई – अभिनिर्धारित – गंभीर प्रकृति की कोई क्रूरता अभिकथित नहीं तथा विधि की कोई प्रकट त्रुटि नहीं – दोषमुक्ति के विरूद्ध पुनरीक्षण खारिज। (अभिलाषा वि. अशोक डोंगरे) ...266

Criminal Procedure Code, 1973 (2 of 1974), Section 397 & 401 – Revision – **When High Court may exercise and may not exercise power of revision – Circumstances explained. [Abhilasha Vs. Ashok Dongre]** ...266

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 397 व 401 – पुनरीक्षण – उच्च न्यायालय कब पुनरीक्षण की शक्ति का प्रयोग कर सकता है और कब नहीं कर सकता – परिस्थितियां स्पष्ट की गई। (अभिलाषा वि. अशोक डोंगरे) ...266

Criminal Procedure Code, 1973 (2 of 1974), Section 397/401 – **Accused fraudulently deceived complainant by making a false representation with regard to his age and has intentionally induced the complainant to accord her consent to the marriage – Held – Necessary ingredients – It cannot be said that the complaint as filed, does not disclose the ingredients of cheating as defined u/s 415 of the IPC – However, allegations cannot be taken at its face value, being inherently improbable, which can be arrived at without referring to the defence. [Nilofer Khan (Smt.) Vs. Mohd. Yusuf Khan]** ...882

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 397/401 – अभियुक्त ने अपनी आयु के संबंध में मिथ्या व्यपदेशन करते हुए परिवादी के साथ कपटपूर्वक

प्रवंचना की एवं जानबूझकर परिवादी को विवाह हेतु सहमति देने के लिए उत्प्रेरित किया – अभिनिर्धारित – आवश्यक घटक – यह नहीं कहा जा सकता कि शिकायत, यथाप्रस्तुत, भा.दं.सं. की धारा 415 में परिभाषित 'छल' के घटकों को प्रकट नहीं करती है – यद्यपि, अभिकथनों को अंतर्निहित रूप से असंभव होने के नाते प्रत्यक्षतः नहीं लिया जा सकता जिन्हें बचाव को निर्दिष्ट किये बिना निष्कर्षित किया जा सकता है। (नीलोफर खान (श्रीमती) वि. मोहम्मद यूसुफ खान) ...882

Criminal Procedure Code, 1973 (2 of 1974), Section 397/401 – Grant of maintenance – **Order rejecting application by Judicial Magistrate First Class on the ground that the respondent was living separately without any just and proper cause was set- aside by Revisional Court – Held – Maintenance cannot be denied on the ground that the husband has been acquitted from the charges u/s 498-A of the IPC or on account of dissolution of marriage between the parties – It is obligatory on the part of the husband to maintain his wife – No interference is called for – Revision dismissed. [Narayan Datt Tiwari Vs. Smt. Laxmi Bai Tiwari]** ...890

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 397/401 – भरण–पोषण प्रदान किया जाना – न्यायिक दण्डाधिकारी प्रथम श्रेणी द्वारा प्रत्यर्थी के बिना किसी वैध एवं उचित कारण के पृथक निवास करने के आधार पर आवेदन को निरस्त किये जाने के आदेश को पुनरीक्षण न्यायालय द्वारा अपास्त किया गया – अभिनिर्धारित – पक्षकारों के मध्य विवाह का विघटन हो जाने अथवा भा.दं.सं. की धारा 498–ए के आरोपों से पति के दोषमुक्त हो जाने के आधार मात्र पर भरण पोषण से इंकार नहीं किया जा सकता – पति के लिये अपनी पत्नी का भरण पोषण करना बंधनकारी है – हस्तक्षेप की कोई आवश्यकता नहीं – पुनरीक्षण खारिज। (नारायण दत्त तिवारी वि. श्रीमती लक्ष्मीबाई तिवारी) ...890

Criminal Procedure Code, 1973 (2 of 1974), Section 397/401 – Quashing of charge – **Police seized 32 bottles of Cosome and 38 bottles of Codex syrup from the possession of co-accused – It is alleged that the same were supplied by the applicant to co-accused for Sale – Question for consideration is that whether above drugs fall within the ambit of "Manufactured drug" or "Psychotropic substance" punishable u/s 8(b) r/w section 21(b) of the NDPS Act – Held – Since both syrups contained Codeine Phosphate in proportion of 10 milligrams per 5 millilitres means 10 milligrams per dose unit, which is permissible in view of Entry No. 35 of the Notification – Same does not fall within the ambit of manufactured**

drug – Therefore, even if the entire allegation and documents filed with charge sheet are taken at their face value and true, no offence as alleged is made out – Applicant is discharged – Revision petition allowed. [Shiv Kumar Gupta Vs. State of M.P.] ...876

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 397/401 – आरोप अभिखंडित किया जाना – पुलिस ने सह–अभियुक्त के आधिपत्य से कोसोम की 32 शीशियां एवं कोडेक्स सिरप की 38 शीशियां जब्त की – यह अभिकथित है कि आवेदक द्वारा उक्त शीशियां सह–अभियुक्त को विक्रय हेतु प्रदाय की गई थीं – विचारण हेतु प्रश्न यह है कि क्या उपरोक्त वर्णित औषधियां एन.डी.पी.एस. अधिनियम की धारा 8(बी) सहपठित धारा 21(बी) के अंतर्गत दण्डनीय "निर्मित औषधि" अथवा "मनःप्रभावी पदार्थ" की परिधि में आती हैं – अभिनिर्धारित – चूंकि उपरोक्त दोनो ही सिरप में प्रति 5 मिलीलीटर में कोडीन फॉस्फेट की मात्रा 10 मिलीग्राम के अनुपात में अर्थात् 10 मिलीग्राम प्रति खुराक इकाई थी, जो कि अधिसूचना की प्रविष्टि क्र. 35 के आलोक में अनुज्ञेय है – यह निर्मित औषधि की परिधि में नहीं आती है – अतएव, यदि संपूर्ण आक्षेप एवं अभियोग पत्र के साथ प्रस्तुत दस्तावेजों को यथा दर्शित एवं सत्य मान भी लिया जाये, तब भी अभिकथित अपराध गठित नहीं होता है – आवेदक को आरोपमुक्त किया गया – पुनरीक्षण याचिका मंजूर। (शिव कुमार गुप्ता वि. म.प्र. राज्य) ...876

Criminal Procedure Code, 1973 (2 of 1974), Section 397/401 – Transportation of Explosive substance **– Explosive substance was being transported to Bhilwara – Trucks entered into the State of Madhya Pradesh – Offence was registered merely on the ground that specific route passing from State of M.P. was not mentioned in statutory forms – Held – Licensee is only required to inform the Superintendent of Police and Collector of respective district, which was done – No provision in statutory form to specify the route – Company is a licensed manufacturer – Truck was having National Permit and authorised to transport explosive – No sufficient ground was present for proceeding against the applicants u/s 9 (B)(1-B) of Explosive Act 1884 and Section 5 of Explosive Substances Act and other relevant rules – Applicants no. 2 & 3 are discharged – Revision allowed. [Kasturnath Vs. State of M.P.] ...572**

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 397/401 – विस्फोटक पदार्थ का परिवहन – विस्फोटक पदार्थ का मीलवाड़ा परिवहन किया जा रहा था – ट्रकों ने मध्यप्रदेश राज्य में प्रवेश किया – मात्र इस आधार पर अपराध पंजीबद्ध

किया गया कि कानूनी प्रपत्रों में मध्यप्रदेश राज्य से गुजरने का विनिर्दिष्ट मार्ग उल्लिखित नहीं था – अभिनिर्धारित –, अनुज्ञप्तिधारी द्वारा केवल संबंधित जिले के पुलिस अधीक्षक एवं कलेक्टर को सूचना दिया जाना अपेक्षित था, जो सूचना दी गई थी – मार्ग विनिर्दिष्ट करने के लिए कानूनी प्रपत्रों में कोई उपबंध नहीं – कंपनी एक अनुज्ञप्तिधारी निर्माता है – ट्रक को राष्ट्रीय परमिट प्राप्त था और विस्फोटकों का परिवहन करने के लिए प्राधिकृत था – आवेदकगण के विरूद्ध विस्फोटक अधिनियम 1884 की धारा 9(बी)(1–बी) एवं विस्फोटक पदार्थ अधिनियम की धारा 5 तथा अन्य सुसंगत नियमों के अंतर्गत कार्यवाही करने के लिए कोई पर्याप्त आधार उपस्थित नहीं था – आवेदकगण क्र. 2 व 3 को आरोपमुक्त किया गया – पुनरीक्षण मंजूर। (कस्तूरनाथ वि. म.प्र. राज्य) ...572

Criminal Procedure Code, 1973 (2 of 1974), Section 408 and Penal Code (45 of 1860), Section 406 – **Trial Court held that Court at Ujjain has no jurisdiction to entertain complaint for offence u/s 406 of IPC and directed to transfer the case to the Court of JMFC, Khachrod – Order attained finality – Application under Section 408 of Cr.P.C. dismissed by Sessions Judge on the ground that parallel Court has already passed the transfer order, and it has no power to take different view – No irregularity by revisional Court – Revision dismissed. [Sadhna Kothari (Smt.) Vs. Shri Abhay Kumar Dalal]** ...262

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 408 एवं दण्ड संहिता (1860 का 45), धारा 406 – विचारण न्यायालय ने अभिनिर्धारित किया कि उज्जैन के न्यायालय को भा.दं.सं. की धारा 406 के अंतर्गत अपराध की शिकायत ग्रहण करने की कोई अधिकारिता नहीं और न्यायिक दंडाधिकारी प्रथम श्रेणी, खाचरौद के न्यायालय को प्रकरण अंतरित करने के लिये निदेशित किया – आदेश ने अंतिमता प्राप्त की – दं.प्र.सं. की धारा 408 के अंतर्गत आवेदन को सत्र न्यायाधीश द्वारा इस आधार पर खारिज किया गया कि समानांतर न्यायालय ने पहले ही अंतरण आदेश पारित किया है और भिन्न दृष्टिकोण लेने की शक्ति नहीं – पुनरीक्षण न्यायालय द्वारा कोई अनियमितता नहीं – पुनरीक्षण खारिज। (साधना कोठारी (श्रीमती) वि. श्री अभय कुमार दलाल) ...262

Criminal Procedure Code, 1973 (2 of 1974), Section 439 – Bail – Ground of de-novo trial – **Record reconstructed after destroyed in fire – Delay not occasioned by accused – Entitled for bail. [Mohd. Sheru Vs. State of M.P.]** ...937

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 439 – जमानत – नये सिरे

से विचारण का आधार – आग में नष्ट होने के पश्चात् अभिलेख पुनर्निर्मित किया गया – अभियुक्त द्वारा विलंब उत्पन्न नहीं किया गया – जमानत हेतु हकदार। (मोहम्मद शेरू वि. म.प्र.राज्य) ...937

Criminal Procedure Code, 1973 (2 of 1974), Section 439 – Bail – Object – To secure the appearance of the accused at the time of trial – It is neither punitive nor preventive. [Mohd. Sheru Vs. State of M.P.] ...937

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 439 – जमानत – उद्देश्य – विचारण के समय अभियुक्त की उपस्थिति सुनिश्चित करना – यह न तो दण्डात्मक है न ही निवारक। (मोहम्मद शेरू वि. म.प्र.राज्य) ...937

Criminal Procedure Code, 1973 (2 of 1974), Section 439 – Grant of bail – Delay in trial – Inordinate and unexplained – Not attributable to the accused – Entitled for bail. [Mohd. Sheru Vs. State of M.P.] ...937

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 439 – जमानत प्रदान की जाना – विचारण में विलंब – अपरिमित एवं अस्पष्ट – अभियुक्त पर आरोपणीय नहीं – जमानत हेतु हकदार। (मोहम्मद शेरू वि. म.प्र.राज्य) ...937

Criminal Procedure Code, 1973 (2 of 1974), Section 482 and Forest Act, Indian (M.P. Amendment) 2009 (7 of 2010), Section 52-A – Power to hear appeal by appellate authority against the order of release of the vehicle passed by authorised officer, in respect of offence committed on 20.10.2009 – Section 52-A of Indian Forest Act (M.P. Amendment) was published in Gazette on 27.03.2010 – Held – Appellate authority was not competent to exercise his appellate powers according to the provisions of Section 52-A of the Indian Forest Act (M.P. Amendment) of that time when the crime was committed – As the same provides an appeal against the order of confiscation and not against the order of release of vehicle – Amendment made in Section 52-A on 27.03.2010 shall not have retrospective effect – Application is dismissed. [State of M.P. Vs. Saurabh Namdeo] ...634

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 482 एवं वन अधिनियम, भारतीय (म.प्र.संशोधन) 2009 (2010 का 7), धारा 52–ए – 20.10.2009 को कारित किये गये अपराध के संबंध में वाहन मुक्त किये जाने के प्राधिकृत अधिकारी द्वारा पारित किये गये आदेश के विरूद्ध अपीली प्राधिकारी द्वारा अपील सुनने की शक्ति – भारतीय वन (म.प्र.संशोधन) अधिनियम की धारा 52–ए 27.03.2010 को राजपत्र में प्रकाशित किया गया था – अभिनिर्धारित – जब अपराध कारित किया गया था,

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Criminal Procedure Code, 1973 (2 of 1974), Section 482 and Penal Code (45 of 1860), Section 379 – Theft – Quashment of proceedings – **Accused/ petitioner prayed that the borrower non-applicant failed to make the payment of instalments of loan – The financier is entitled to take possession of financed vehicle as per the terms of the contract and filing of the complaint against accused was bad in law – Held – At this stage it would be difficult to come to conclusion, whether the recovery by the financial institution was proper and was in accordance with law – Without scrutiny of evidence to stifle the proceedings at this stage would be improper – The trial Court would be able to adjudicate the matter only after adducing proper evidence and hence petition for quashing criminal proceeding is dismissed. [Arpit Jain Vs. Vijay Sisodiya]** ...919

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 482 एवं दण्ड संहिता (1860 का 45), धारा 379 – चोरी – कार्यवाहियाँ अभिखंडित की जाना – अभियुक्त/याची ने प्रार्थना की कि उधार लेने वाले/अनावेदक ने ऋण की किस्तों के भुगतान में चूक की – संविदा की शर्तों के अनुसार वित्तदाता वित्तपोषित वाहन का आधिपत्य प्राप्त करने का हकदार है एवं अभियुक्त के विरूद्ध परिवाद प्रस्तुत किया जाना विधि को दृष्टि में अनुचित था – अभिनिर्धारित – इस प्रक्रम पर, इस निष्कर्ष पर पहुंचना कठिन होगा कि क्या वित्तीय संस्थान द्वारा की गई वसूली समुचित एवं विधि अनुसार थी – बिना साक्ष्य की संवीक्षा के, इस प्रक्रम पर कार्यवाहियों को समाप्त करना अनुचित होगा – केवल उचित साक्ष्य प्रस्तुत होने के पश्चात् ही विचारण न्यायालय प्रकरण का न्यायनिर्णयन करने में समर्थ होगा, अतएव, दाण्डिक कार्यवाहियों को अभिखंडित किये जाने हेतु प्रस्तुत याचिका खारिज की गई। (अर्पित जैन वि. विजय सिसोदिया) ...919

Criminal Procedure Code, 1973 (2 of 1974), Section 482, Essential Commodities Act (10 of 1955), Section 3/7 and Kerosene (Restriction on use and Fixation of Ceiling Price) Order, 1993, Sub-clause 3(2) – Quashing of FIR – **No evidence available on record which**

may show that the petitioner was in any way connected with the tanker found stationed in his premises though truck was stationed without his sanction and authority and at the instance of owner of the tanker containing kerosene for whose benefit, the kerosene was transported – It cannot be said that the petitioner is guilty of any crime – FIR liable to be quashed and the petitioner is discharged – Application allowed. [Rasmeet Singh Malhotra Vs. State of M.P.] ...329

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 482, आवश्यक वस्तु अधिनियम (1955 का 10), धारा 3/7 एवं केरोसिन (उपयोग पर निर्बंधन और अधिकतम कीमत का निर्धारण) आदेश, 1993, उपखंड 3(2) – प्रथम सूचना प्रतिवेदन अभिखंडित किया जाना – अभिलेख पर कोई साक्ष्य उपलब्ध नहीं जो यह दर्शा सके कि याची उसके परिसर में खड़े पाये गये टैंकर से किसी प्रकार संबद्ध है यद्यपि ट्रक उसकी मंजूरी या प्राधिकार के बिना और केरोसिन युक्त टैंकर के स्वामी जिसके लाभ हेतु केरोसिन का परिवहन किया गया, के कहने पर खड़ा किया गया था – यह नहीं कहा जा सकता कि याची किसी अपराध का दोषी है –. प्रथम सूचना प्रतिवेदन अभिखंडित किये जाने योग्य और याची को आरोपमुक्त किया गया – आवेदन मंजूर। (रसमीत सिंह मल्होत्रा वि. म.प्र. राज्य) ...329

***Criminal Procedure Code, 1973 (2 of 1974), Section 482 – Inherent power* – Held – To prevent the abuse of process of the Court and to prevent the harassment to citizen of India by illegal prosecution under Section 376 of IPC, it would be imperative obligation to interfere in the impugned order. [Pukhraj Singh Vs. State of M.P.] ...248**

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 482 – अंतर्निहित शक्ति – अभिनिर्धारित – न्यायालय की प्रक्रिया के दुरूपयोग को रोकने एवं भा.दं.सं. की धारा 376 के अंतर्गत अवैध अभियोजन के द्वारा भारत के नागरिक के उत्पीड़न को रोकने के लिये आक्षेपित आदेश में हस्तक्षेप करना अनिवार्य दायित्व होगा। (पुखराज सिंह वि. म.प्र. राज्य) ...248

***Criminal Procedure Code, 1973 (2 of 1974), Section 482 – Inherent power* – Quashment of complaint – Complaint filed by divorced wife against husband for misappropriation of "Stridhan" – Whether any property gifted during marriage is still in possession of husband and he is not returning the same while having no right, is a matter of evidence – Application has no force – Dismissed. [Sadhna Kothari (Smt.) Vs. Shri Abhay Kumar Dalal] ...262**

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 482 – अंतर्निहित शक्ति – शिकायत अभिखंडित की जाना – विच्छिन्न विवाह पत्नी द्वारा पति के विरूद्ध "स्त्रीधन" के दुर्विनियोजन की शिकायत प्रस्तुत की गई – क्या विवाह के दौरान दान की गई कोई संपत्ति अभी भी पति के कब्जे में है और कोई अधिकार न होते हुये उसे नहीं लौटा रहा है, साक्ष्य का मामला है – आवेदन में कोई बल नहीं – खारिज। (साधना कोठारी (श्रीमती) वि. श्री अभय कुमार दलाल) ...262

Criminal Procedure Code, 1973 (2 of 1974), Section 482 – Inherent powers **– Availability of alternative remedy – Held – Only on the ground of non-availing of remedy provided for filing criminal revision would not create obstruction in the way of filing petition under section 482. [Kuldeep Shrivastava Vs. Ramesh Chandra] ...587**

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 482 – अंतर्निहित शक्तियां – वैकल्पिक उपचार की उपलब्धता – अभिनिर्धारित – केवल इस आधार पर कि दांडिक पुनरीक्षण प्रस्तुत करने हेतु उपबंधित उपचार का अवलंब नहीं लिया गया, धारा 482 के अंतर्गत याचिका प्रस्तुत करने के मार्ग में अवरोध उत्पन्न नहीं होगा। (कुलदीप श्रीवास्तव वि. रमेश चन्द्र) ...587

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दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धाराऐं 482 व 320 एवं दण्ड संहिता (1860 का 45), धाराऐं 498–ए व 324 – उच्च न्यायालय की अंतर्निहित शक्तियां – का प्रयोग – भा.दं.सं. की धारा 498–ए व 324 के अंतर्गत अपराध अशमनीय बनाये गये – उच्च न्यायालय को धारा 482 के अंतर्गत प्रथम सूचना रिपोर्ट एवं दाण्डिक प्रकरण अभिखंडित करने की अधिकारिता है। (बलेन्द्र शेखर मिश्रा वि. म.प्र. राज्य) ...583

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Electricity Act (36 of 2003), Section 151 – Cognizance of offences – **Held – That even when a Magistrate is to take cognizance on the police report, that would not mean that no other option is available and the private complaint cannot be lodged. [M.P. Madhya Kshetra Vidyut Vitran Co. Ltd. Vs. Ramswaroop Kushwah]** **...913**

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साक्ष्य अधिनियम (1872 का 1), धारा 63 – द्वितीयक साक्ष्य – अभिनिर्धारित – किसी को यह स्थापित करना होगा कि प्रतिलिपि एक ऐसे दस्तावेज की है जो वास्तविक रूप से अस्तित्व में था – द्वितीयक साक्ष्य को ग्राहय बनाने के लिये, मूल दस्तावेज की खोज का पर्याप्त सबूत होना चाहिए। (नरसिंह वि. श्रीपत सिंह) ...414

Evidence Act (1 of 1872), Section 103 – Burden of proof – Where it is a admitted fact that the applicant resided with the respondent for 15 years as a wife, it shall be presumed that pleadings and statements of the applicant are acceptable and the marriage of the applicant took place with the respondent by following the various rituals and procedure as prescribed in the Hindu Marriage Act. [Sukhvati Bai (Smt.) Vs. Manphool Narvariya] ...287

साक्ष्य अधिनियम (1872 का 1), धारा 103 – सबूत का भार – जहां यह स्वीकृत तथ्य है कि आवेदिका 15 वर्षों तक प्रत्यर्थी के साथ पत्नी के रूप में निवासरत रही, यह उपधारणा की जायेगी कि आवेदिका के अभिवचन एवं कथन स्वीकार करने योग्य है तथा प्रत्यर्थी के साथ आवेदिका का विवाह विभिन्न रीति रिवाजों एवं प्रक्रिया जैसा कि हिंदू विवाह अधिनियम में विहित है का पालन करते हुए हुआ है। (सुखवती बाई (श्रीमती) वि. मनफूल नरवरिया) ...287

Evidence Act (1 of 1872), Section 113-B – Presumption –

Requires – Existence of proximate and live link between the effect of cruelty based on dowry demand and concerned death, and, reasonable time gap between cruelty inflicted and death in question. [State of M.P. Vs. Ramkishan] (DB)...541

साक्ष्य अधिनियम (1872 का 1), धारा 113–बी – उपधारणा – अपेक्षा – दहेज की मांग पर आधारित क्रूरता का प्रभाव और संबंधित मृत्यु के बीच सीधा संबंध एवं निकटता की विद्यमानता, तथा, की गई क्रूरता और प्रश्नगत मृत्यु के बीच युक्तियुक्त समय का अंतर। (म.प्र. राज्य वि. रामकिशन) (DB)...541

Evidence Act (1 of 1872), Section 113-B – See – Penal Code, 1860, Sections 304-B & 498-A [State of M.P. Vs. Ramkishan] (DB)...541

साक्ष्य अधिनियम (1872 का 1), धारा 113–बी – देखें – दण्ड संहिता, 1860, धाराऐं 304–बी व 498–ए (म.प्र. राज्य वि. रामकिशन) (DB)...541

Evidence Act (1 of 1872), Section 114 – Presumption – **Applicant resided with the respondent for 15 years as a wife – It shall be presumed that the applicant was the wife of the respondent. [Sukhvati Bai (Smt.) Vs. Manphool Narvariya] ...287**

साक्ष्य अधिनियम (1872 का 1), धारा 114 – उपधारणा – आवेदिका 15 वर्षों तक प्रत्यर्थी के साथ पत्नी के रूप में निवासरत रही – यह उपधारणा की जायेगी कि आवेदिका, प्रत्यर्थी की पत्नी थी। (सुखवती बाई (श्रीमती) वि. मनफूल नरवरिया) ...287

Examination – Cancelling the examination – **No opportunity of hearing was given to the candidates who had appeared in the examination – Held – Paper was sold for a premium of Rs. 6 to 20 lakhs by the examiner/moderators – STF registered a crime in respect of same examination – Later on, based upon the material available, Public Service Commission cancelled the entire examination in order to maintain the sanctity of the examination and also in order to give further chance to the candidates who have participated in the earlier examination – Question of grant of opportunity of hearing does not arise – No illegality in the decision making process followed by Public Service Commission – Decision of the Public Service Commission does not warrant any interference – Public Service Commission is free to proceed with the process of selection by holding a fresh examination. [Ashish Gupta (Dr.) Vs. State of M.P.] ...443**

परीक्षा – परीक्षा निरस्त की जाना – अभ्यर्थीगण जो परीक्षा में उपस्थित हुये थे, को सुनवाई का कोई अवसर नहीं दिया गया – अभिनिर्धारित – परीक्षक/माडरेटर द्वारा रू. 6 से 20 लाख के अधिमूल्य पर पर्चा बेचा गया था – एस.टी.एफ. ने उसी परीक्षा के संबंध में अपराध पंजीबद्ध किया – बाद में, उपलब्ध सामग्री के आधार पर, लोक सेवा आयोग ने परीक्षा की गरिमा बनाये रखने के उद्देश्य से तथा पूर्वतर परीक्षा में जो अभ्यर्थीगण सहभागी हुये थे उन्हें अतिरिक्त अवसर देने के लिये भी संपूर्ण परीक्षा निरस्त की – सुनवाई का अवसर प्रदान करने का प्रश्न उत्पन्न नहीं होता – लोक सेवा आयोग द्वारा अपनाई गई निर्णय लेने की प्रक्रिया में कोई अवैधता नहीं – लोक सेवा आयोग द्वारा लिये गये निर्णय में हस्तक्षेप की आवश्यकता नहीं – लोक सेवा आयोग नये सिरे से परीक्षा आयोजित करके प्रक्रिया को आगे बढ़ाने के लिये स्वतंत्र है। (आशीष गुप्ता (डॉ.) वि. म.प्र. राज्य) ...443

Excise Act, M.P. (2 of 1915), Sections 34(1)(a) & 34(2) **– Commissioner (Excise) issued instructions to affix hologram on all duty paid bottles – Required hologram were not affixed on the cartons containing bottles of liquor – No provision of law or rules where liability is placed on licensee – Instruction issued by Commissioner (Excise) is merely executive instruction – Criminal proceedings can be initiated only if it is found that liquor is not duty paid – Mere omission to affix hologram is not punishable – Proceeding against applicant quashed. [P.V. Muralidharan Vs. State of M.P.]** ...596

आबकारी अधिनियम, म.प्र. (1915 का 2), धाराएं 34(1)(ए) व 34(2) – आयुक्त (आबकारी) ने शुल्क का भुगतान की गई सभी बोतलों पर होलोग्राम लगाने के लिये अनुदेश जारी किये – मदिरायुक्त बोतलों के कार्टन पर अपेक्षित होलोग्राम नहीं लगाये गये थे – विधि का कोई उपबंध या कोई नियम नहीं जिसमें अनुज्ञप्तिधारी पर दायित्व डाला गया हो – आयुक्त (आबकारी) द्वारा जारी अनुदेश मात्र कार्यपालिक अनुदेश है – दाण्डिक कार्यवाहियां केवल तब आरंभ की जा सकती हैं यदि यह पाया जाता है कि मदिरा की शुल्क अदायगी नहीं की गई है – मात्र होलोग्राम लगाने से चूक दण्डनीय नहीं – आवेदक के विरूद्ध कार्यवाही अभिखंडित की गई। (पी.व्ही. मुरलीधरन वि. म.प्र. राज्य) ...596

Forest Act, Indian (M.P. Amendment) 2009 (7 of 2010), Section 52-A – See – Criminal Procedure Code, 1973, Section 482 **[State of M.P. Vs. Saurabh Namdeo]** ...634

वन अधिनियम, भारतीय (म.प्र.संशोधन) 2009 (2010 का 7), धारा 52–ए – देखें – दण्ड प्रक्रिया संहिता, 1973, धारा 482 (म.प्र. राज्य वि. सौरभ नामदेव) ...634

General Clauses Act (10 of 1897), Section 3(3) – Question of exhibit affidavit as document – **Exhibition of affidavit as document is not permitted by the Court. [Kalusingh Vs. Smt. Nirmala] ...450**

साधारण खण्ड अधिनियम (1897 का 10), धारा 3(3) – शपथपत्र को दस्तावेज के रूप में प्रदर्शित करने का प्रश्न – शपथपत्र को दस्तावेज के रूप में प्रदर्शित करना, न्यायालय द्वारा अनुज्ञात नहीं। (कालू सिंह वि. श्रीमती निर्मला) ...450

General Clauses Act (10 of 1897), Section 3(3) – See – Civil Procedure Code, 1908, Order 18 Rule 4 & Order 19 Rule 1 & 2 **[Kalusingh Vs. Smt. Nirmala] ...450**

साधारण खण्ड अधिनियम (1897 का 10), धारा 3(3) – देखें – सिविल प्रक्रिया संहिता, 1908, आदेश 18 नियम 4 व आदेश 19 नियम 1 व 2 (कालू सिंह वि. श्रीमती निर्मला) ...450

Govansh Vadh Pratishedh Adhiniyam (6 of 2004), Sections 4, 5, 6, 6-A, 9, 11(5) & 11(B) and Prevention of Cruelty to Animals Act (59 of 1960), Sections 11(b), 11(d) & 11(5) – Prohibition on transport of cow or beef – **Penalty – Confiscation of vehicle – Revision – Treating animals cruelly – Collector can confiscate the vehicle when by a competent court it is found that any violation of section 4, 5, 6, 6-A and 6-B of the Adhiniyam has been committed – The Collector should have refrained from passing any order of confiscation of vehicle during pendency of the criminal case – In absence of any finding with regard to violation of said Section of the Adhiniyam, by the Criminal Court – The order passed by the Collector confiscating the vehicle u/s 11(5) of the Adhiniyam is bad in law. [Sheikh Kalim Vs. State of M.P.] ...924**

गौवंश वध प्रतिषेध अधिनियम (2004 का 6), धाराऐं 4, 5, 6, 6–ए, 9, 11(5) व 11(बी) एवं पशुओं के प्रति क्रूरता का निवारण अधिनियम (1960 का 59), धाराऐं 11(बी), 11(डी) व 11(5) – गौ अथवा गौमांस के परिवहन का प्रतिषेध – शास्ति – वाहन की जब्ती – पुनरीक्षण – पशुओं के प्रति क्रूरतापूर्ण व्यवहार – कलेक्टर किसी वाहन को जब्त कर सकता है, जब किसी सक्षम न्यायालय द्वारा यह पाया गया हो कि अधिनियम की धारा 4, 5, 6, 6–ए एवं 6–बी का उल्लंघन कारित हुआ है – दाण्डिक प्रकरण के लंबित रहने के दौरान कलेक्टर को वाहन जब्त करने संबंधी कोई आदेश पारित करने से विरत रहना चाहिए था – अधिनियम की उक्त धाराओं के उल्लंघन के संबंध में दाण्डिक न्यायालय के किसी निष्कर्ष के अभाव में कलेक्टर द्वारा अधिनियम की धारा 11(5) के अंतर्गत पारित वाहन जब्ती का आदेश,

विधि की दृष्टि में अनुचित है। (शेख कलीम वि. म.प्र. राज्य) ...924

High Court of Madhya Pradesh Rules, 2008, Chapter 15 Rule 13 – See – Civil Procedure Code, 1908, Section 114 & proviso to Order 5 Rule 9 (5) **[M.P. Madhya Kshetra Vidyut Vitran Co. Ltd. Vs. M/s. Schaltech Automation P. Ltd.] ...825**

उच्च न्यायालय मध्यप्रदेश नियम, 2008, अध्याय 15 नियम 13 – देखें – सिविल प्रक्रिया संहिता, 1908, धारा 114 एवं आदेश 5 नियम 9(5) का परंतुक (एम. पी. मध्य क्षेत्र विद्युत वितरण कं. लि. वि. मे. शैलटेक ऑटोमेशन प्रा. लि.) ...825

Hindu Marriage Act (25 of 1955), Section 13(1) (i)(i-a) – Cruelty – Meaning **– Willful refusal to fulfill matrimonial obligations in certain circumstances amounts cruelty. [Basudev Jatav Vs. Smt. Rekha Jatav] (DB)...525**

हिन्दू विवाह अधिनियम (1955 का 25), धारा 13(1)((i)(i-ए)–क्रूरता–अर्थ – कतिपय परिस्थितियों में वैवाहिक दायित्वों का निर्वहन करने से जानबूझकर इंकार करना क्रूरता की कोटि में आता है।(बासुदेव जाटव वि. श्रीमती रेखा जाटव)(DB)...525

Hindu Marriage Act (25 of 1955), Section 13(1)(i)(i-a) – Cruelty **– Obligation of social status of the persons involved and the economic conditions and other matters varies from time to time, place to place and individual to individual – It is antithesis to natural love and affection between husband and wife – Destructive of soft feeling of concern for each other and sense of togetherness which is bed rock of matrimonial relations. [Basudev Jatav Vs. Smt. Rekha Jatav] (DB)...525**

हिन्दू विवाह अधिनियम (1955 का 25), धारा 13(1)(i)(i-ए) – क्रूरता – संबंधित व्यक्तियों के सामाजिक दायित्व, आर्थिक स्थितियां एवं अन्य मुद्दे समय, स्थान एवं व्यक्ति विशेष के आधार पर परिवर्तनशील होते हैं – यह पति–पत्नी के मध्य नैसर्गिक प्रेम एवं स्नेह के प्रतिकूल है – एक दूसरे के प्रति कोमल भावना एवं साहचर्य की संवेदना जो कि वैवाहिक संबंधों का मूल आधार है, का विनाशक है। (बासुदेव जाटव वि. श्रीमती रेखा जाटव) (DB)...525

Hindu Marriage Act (25 of 1955), Section 13(1)(i)(i-b) – Animus deserandi **– Proved – Wife deserted the husband to live at her parents house prior to joining job – Wife took away her jewellary and articles – Refused to come back – Living separately for four years. [Basudev Jatav Vs. Smt. Rekha Jatav] (DB)...525**

हिन्दू विवाह अधिनियम (1955 का 25), धारा 13(1)(i)(i-b) – अभित्यजन का आशय – सिद्ध – पत्नी ने नौकरी का सेवाभार ग्रहण करने के पूर्व ही अपने माता–पिता के साथ रहने हेतु अपने पति का अभित्यजन किया – पत्नी अपने आभूषण एवं अन्य वस्तुएं अपने साथ ले गई – वापस आने से इंकार – चार वर्षों से पृथक रह रही है। (बासुदेव जाटव वि. श्रीमती रेखा जाटव) (DB)...525

***Hindu Marriage Act (25 of 1955), Section 13(1) (i)(i-b) – Desertion – Means* – Negation of living together which is essence of matrimony – Unjustifiable withdrawal from company of the other – Findings of factum of desertion and animus of desertion are essential. [Basudev Jatav Vs. Smt. Rekha Jatav]** (DB)...525

हिन्दू विवाह अधिनियम (1955 का 25), धारा 13(1) (i)(i-बी) – अभित्यजन – अर्थात् – साथ–साथ रहना जो कि वैवाहिकी का सार है, से इंकार करना – अन्य के साहचर्य से अनुचित रूप से हट जाना–अभित्यजन की कथ्यता एवं अभित्यजन के आशय के संबंध में निष्कर्ष आवश्यक है। (बासुदेव जाटव वि. श्रीमती रेखा जाटव) (DB)...525

***Hindu Marriage Act (25 of 1955), Section 13(1) (i)(i-b) – Desertion* – Wife's employment at a place other than husband – *Per-se* – Not constitute desertion. [Basudev Jatav Vs. Smt. Rekha Jatav]** (DB)...525

हिन्दू विवाह अधिनियम (1955 का 25), धारा 13(1) (i)(i-बी) – अभित्यजन – पति के नियोजन के स्थान से भिन्न स्थान पर पत्नी का नियोजन – स्वमेव – अभित्यजन गठित नहीं करता। (बासुदेव जाटव वि. श्रीमती रेखा जाटव) (DB)...525

***Hindu Marriage Act (25 of 1955), Sections 13(1)(1-A) & (1-B) – Cruelty and desertion* – Respondent left her matrimonial home and does not join her husband for more than two years, without any reasonable excuse – She is guilty of desertion – It is total repudiation of the obligation of marriage – Further respondent lodged FIR against appellant and his family members u/s 498A of IPC after 17 years of marriage – Respondent guilty of desertion and cruelty – Decree of divorce passed. [Satish Kumar Jain Vs. Smt. Usha Jain]** (DB)...199

हिन्दू विवाह अधिनियम (1955 का 25), धाराऐं 13(1)(1–ए) व (1–बी) – क्रूरता एवं अभित्यजन – प्रत्यर्थी ने ससुराल छोड़ा और दो वर्ष से अधिक समय तक बिना किसी युक्तियुक्त कारण के अपने पति के पास नहीं आयी – वह अभित्यजन की दोषी है – यह वैवाहिक दायित्वों का पूर्ण प्रत्याख्यान है – इसके अतिरिक्त प्रत्यर्थी ने विवाह के 17 वर्ष पश्चात् भारतीय दंड संहिता की धारा 498ए के अंतर्गत अपीलार्थी एवं उसके परिवार के सदस्यों के विरूद्ध प्रथम सूचना प्रतिवेदन दर्ज किया

– प्रत्यर्थी अभित्यजन एवं क्रूरता की दोषी – विवाह–विच्छेद की डिक्री पारित। (सतीश कुमार जैन वि. श्रीमती ऊषा जैन) (DB)...199

Income Tax Act (43 of 1961), Section 32 and Income Tax Rules, 1962, Appendix I, Item III sub-item 3(ii) – Whether special rate of 30% depreciation is allowable in the case of motor vehicles used by assessee in the business of civil construction – Held – No – Such depreciation is allowable only in case of tour operator or travel agent using his vehicles in providing transportation service to tourist or vehicles used in assessee's business of transportation of goods on hire and not on vehicles used in some other non-hiring business – The test is the use of vehicles in the business of transportation of the assessee – In the present case the assessee being in civil construction business using his vehicles for transporting earth to facilitate laying of roads cannot be said to be in business of hiring out his trucks for removal and transportation of earth as they are only sub-process of his main business of laying of roads – Appeal dismissed. [Anamay Construction Co. (M/s.) Vs. Union of India] (DB)...895

आयकर अधिनियम (1961 का 43), धारा 32 एवं आयकर नियम, 1962, परिशिष्ट I, आइटम III सब–आइटम 3(ii) – क्या सिविल कंस्ट्रक्शन के व्यापार में करदाता द्वारा मोटर वाहनों का उपयोग किये जाने के मामले में 30% अवमूल्यन की विशेष दर स्वीकार योग्य है – अभिनिर्धारित – नहीं – ऐसा अवमूल्यन केवल ऐसे मामलों में स्वीकार योग्य है जहां टूर संचालक अथवा यात्रा अभिकर्ता अपने वाहनों के उपयोग द्वारा पर्यटकों को परिवहन सुविधा उपलब्ध कराते हैं अथवा ऐसे मामलों में जहां करदाता द्वारा भाड़े की वस्तुओं के परिवहन व्यापार में वाहनों का उपयोग किया जाता है न कि गैर–भाड़ेदार वस्तुओं के परिवहन व्यापार में – करदाता के परिवहन व्यापार में उसके द्वारा प्रयुक्त वाहनों के आधार पर इसकी जांच की जा सकती है – वर्तमान प्रकरण में करदाता सिविल कंस्ट्रक्शन के व्यापार में संलग्न होकर सड़क निर्माण के कार्य हेतु मिट्टी ढोने में अपने वाहनों का उपयोग कर रहा है, जिससे यह नहीं कहा जा सकता है कि वह मिट्टी खोदने एवं उसे ढोने के कार्य हेतु अपने ट्रकों को भाड़े पर चलाने के व्यापार में संलग्न है, क्योंकि उक्त कार्य तो उसके मुख्य व्यापार अर्थात् सड़क निर्माण की प्रक्रिया का एक हिस्सा मात्र है – अपील खारिज। (अन्मय कंस्ट्रक्शन कं. (मे.) वि. यूनियन ऑफ इंडिया) (DB)...895

Income Tax Rules, 1962, Appendix I, Item III sub-item 3(ii) – See – Income Tax Act, 1961, Section 32 [Anamay Construction Co. (M/s.) Vs. Union of India] (DB)...895

आयकर नियम, 1962, परिशिष्ट I, आइटम III सब–आइटम 3(ii) – देखें – आयकर अधिनियम, 1961, धारा 32 (अन्नय कंस्ट्रक्शन कं. (मे.) वि. यूनियन ऑफ इंडिया) (DB)...895

Industrial Disputes Act (14 of 1947), Section 17-B – **Appellants were reinstated during the pendency of writ petition filed against the award of labour Court but only last pay drawn as per Section 17-B is being paid and not regular salary – Held – Section 17-B will apply only when during pendency of matter the employee is not reinstated and therefore by way of subsistence allowance he is paid full wages last drawn – However in case employee is reinstated, the concept of last wages drawn will not apply – The employer has to pay wages as prescribed under the law for the work which employee is discharging. [Durjan Ahirwar Vs. State of M.P.]** (DB)...8

औद्योगिक विवाद अधिनियम (1947 का 14), धारा 17–बी – श्रम न्यायालय के अवार्ड के विरूद्ध प्रस्तुत की गयी रिट याचिका के लंबन के दौरान अपीलार्थियों को बहाल किया गया परंतु धारा 17–बी के अनुसार केवल अंतिम आहरित वेतन का ही भुगतान किया जा रहा है और न कि नियमित वेतन – अभिनिर्धारित – धारा 17–बी केवल तभी लागू होगी जब मामले के लंबन के दौरान कर्मचारी को बहाल नहीं किया जाता और इसलिए गुजारा भत्ते के माध्यम से उसे अंतिम आहरित पूर्ण मजदूरी का भुगतान किया जाता है – तथापि यदि कर्मचारी बहाल किया जाता है तो आहरित अंतिम मजदूरी की संकल्पना लागू नहीं होगी – नियोक्ता को कर्मचारी द्वारा निर्वहन किये जा रहे कार्य के लिये विधि के अंतर्गत विहित की गयी मजदूरी का भुगतान करना होगा। (दुर्जन अहिरवार वि. म.प्र. राज्य) (DB)...8

Industrial Disputes Act (14 of 1947), Section 25-B(2)(a) and Minimum Wages Act (11 of 1948), Section 13(1)(b) – **Computation of duty period – National holidays & weekly rests are to be treated as duty period. [Deputy Director, Nagariya Prashasan Vs. Satya Narain]** ...407

औद्योगिक विवाद अधिनियम (1947 का 14), धारा 25–बी(2)(ए) एवं न्यूनतम मजदूरी अधिनियम (1948 का 11), धारा 13(1)(बी) – कर्तव्य कालावधि की संगणना – राष्ट्रीय अवकाश एवं साप्ताहिक विश्राम को कर्तव्य कालावधि माना जाना चाहिए। (डिप्टी डायरेक्टर, नगरीय प्रशासन वि. सत्यनारायण) ...407

Industrial Disputes Act (14 of 1947), Section 25-F – Back wages **– Refused while reinstating – Employee failed to prove that he was unemployed, during period of retrenchment – Employee, not entitled**

for back wages. [Deputy Director, Nagariya Prashasan Vs. Satya Narain] ...407

औद्योगिक विवाद अधिनियम (1947 का 14), धारा 25–एफ – पिछला वेतन – बहाल किये जाते समय अस्वीकार किया गया – कर्मचारी सिद्ध करने में असफल रहा कि छँटनी की कालावधि के दौरान वह बेरोजगार था – कर्मचारी, पिछले वेतन का हकदार नहीं। (डिप्टी डायरेक्टर, नगरीय प्रशासन वि. सत्यनारायण) ...407

***Interpretation of statutes – Acquittal – Revision* – By private party – No State appeal – *In revision by private parties, order of acquittal can be set aside* – Order of acquittal cannot be converted into order of conviction – High Court at the most can direct for retrial – However, this jurisdiction to be exercised by the High Court in exceptional cases. [Abhilasha Vs. Ashok Dongre] ...266**

कानूनों का निर्वचन – दोषमुक्ति – पुनरीक्षण – प्राइवेट पक्षकार द्वारा – राज्य की कोई अपील नहीं – प्राइवेट पक्षकारों द्वारा पुनरीक्षण में, दोषमुक्ति का आदेश अपास्त किया जा सकता है – दोषमुक्ति के आदेश को दोषसिद्धि के आदेश में परिवर्तित नहीं किया जा सकता – उच्च न्यायालय अधिक से अधिक पुनः विचारण के लिये निदेश दे सकता है – किंतु, उच्च न्यायालय द्वारा इस अधिकारिता का प्रयोग आपवादिक प्रकरणों में किया जाना चाहिये। (अभिलाषा वि. अशोक डोंगर) ...266

***Interpretation of statutes – Jurisdiction of civil Courts* – Provisions excluding jurisdiction of civil courts and provisions conferring jurisdiction on authorities and Tribunals other than civil courts are to be strictly construed as the civil Courts are the Courts of general jurisdiction. [Vimla Sondhia (Smt.) Vs. Door Sanchar Zila Prabandhak] ...210**

कानूनों का निर्वचन – सिविल न्यायालयों की अधिकारिता – सिविल न्यायालयों की अधिकारिता अपवर्जित करने वाले उपबंधों तथा सिविल न्यायालय को छोड़कर प्राधिकारियों को एवं अधिकरण को अधिकारिता प्रदत्त करने वाले उपबंधों का अर्थान्वयन कड़ाई से करना चाहिए क्योंकि सिविल न्यायालय, सामान्य अधिकारिता के न्यायालय होते हैं। (विमला सोंधिया (श्रीमती) वि. दूर संचार जिला प्रबंधक) ...210

***Interpretation of statutes – Juvenile Justice (Care and Protection of Children) Act, (56 of 2000), Clause 4 of Section 1* – Provisions of the Act regarding detention, prosecution, penalty or sentence shall have overriding effect over any other law and**

consequently Rules of 2007 will also be applicable in toto. [Harsewak Vs. State of M.P.] ...928

कानूनों का निर्वचन – किशोर न्याय (बालकों की देख–रेख और संरक्षण) अधिनियम, (2000 का 56), धारा 1 का खण्ड 4 – निष्पेक्ष, अभियोजन, शास्ति एवं दण्डादेश से संबंधित अधिनियम के उपबंधों का अन्य किसी भी विधि पर अध्यारोही प्रभाव होगा एवं परिणामतः 2007 के नियम भी पूर्णतः लागू होंगे। (हरसेवक वि. म. प्र. राज्य) ...928

Interpretation of Statutes – **Penalties under Rule 10 of the CCA Rule 1966 are to be imposed with prospective effect and not with retrospective effect. [Saroj Kumar Shrivastava Vs. State of M.P.]...774**

कानूनों का निर्वचन – सी.सी.ए. नियम 1966 के नियम 10 के अंतर्गत शास्तियां भविष्यलक्षी प्रभाव से अधिरोपित की जाना होती है न कि भूतलक्षी प्रभाव से। (सरोज कुमार श्रीवास्तव वि. म.प्र. राज्य) ...774

Interpretation of statutes – **2008 Cr.L.J. 264 (Ajay Kant Sharma & ors. vs. Smt. Alka Sharma) – Case law incorporating meaning "any order" means 'final order' is held per incuriam and case law of 2010 (1) MPHT 133 (Tehmina Qureshi vs. Shazia Qureshi) is also held per incuriam. [Ravi Kumar Bajpai Vs. Smt. Renu Awasthi Bajpai] ...302**

कानूनों का निर्वचन – 2008 क्रि.लॉ.जरनल 264 (अजय कांत शर्मा और अन्य वि. श्रीमती अलका शर्मा) – निर्णय विधि जिसमें "कोई आदेश" का अर्थ "अंतिम आदेश" के अर्थ में समाविष्ट किया गया है, उसे अनवधानता के कारण होना अभिनिर्धारित किया गया है तथा निर्णय विधि 2010 (1) एम.पी.एच.टी. 133 (तहमीना कुरैशी वि. शाजिया कुरैशी) को भी अनवधानता के कारण होना अभिनिर्धारित किया गया। (रवि कुमार बाजपेयी वि. श्रीमती रेणु अवस्थी बाजपेयी) ...302

***Juvenile Justice (Care and Protection of Children) Act (56 of 2000), Section 7A – See – Penal Code, 1860, Sections 457, 306 & 376,* [Harsewak Vs. State of M.P.] ...928**

किशोर न्याय (बालकों की देख–रेख और संरक्षण) अधिनियम (2000 का 56), धारा 7ए – देखें – दण्ड संहिता, 1860, धाराएँ 457, 306 व 376, (हरसेवक वि. म.प्र. राज्य) ...928

Juvenile Justice (Care and Protection of Children) Act (56 of 2000), Section 41 and Juvenile Justice (Care and Protection of

Children) Rules 2007, Rule 33(5) – **Court – Implies – Civil Court – Which has jurisdiction in the matter of adoption and guardianship, includes, District Court, Family Court, City Civil Court. [Tarun Kadam Vs. State of M.P.] (DB)...846**

किशोर न्याय (बालकों की देख–रेख और संरक्षण) अधिनियम (2000 का 56), धारा 41 एवं किशोर न्याय (बालकों की देख–रेख और संरक्षण) नियम 2007, नियम 33(5) – न्यायालय – तात्पर्य – सिविल न्यायालय – जिसे दत्तक ग्रहण एवं संरक्षकता के मामलों को सुनने की अधिकारिता हो, जिसमें जिला न्यायालय, कुटुम्ब न्यायालय एवं सिटी सिविल न्यायालय सम्मिलित हैं। (तरूण कदम वि. म.प्र. राज्य) (DB)...846

***Juvenile Justice (Care and Protection of Children) Act (56 of 2000), Section 41 (6)* – Jurisdiction – To entertain application for adoption – Family Court can. [Tarun Kadam Vs. State of M.P.] (DB)...846**

किशोर न्याय (बालकों की देख–रेख और संरक्षण) अधिनियम (2000 का 56), धारा 41(6) – अधिकारिता – दत्तक ग्रहण हेतु प्रस्तुत आवेदन ग्रहण करना – कुटुम्ब न्यायालय कर सकता है। (तरूण कदम वि. म.प्र. राज्य) (DB)...846

***Juvenile Justice (Care and Protection of Children) Act, (56 of 2000), Clause 4 of Section 1 – See – Interpretation of statutes* [Harsewak Vs. State of M.P.] ...928**

किशोर न्याय (बालकों की देख–रेख और संरक्षण) अधिनियम, (2000 का 56), धारा 1 का खण्ड 4 – देखें – कानूनों का निर्वचन (हरसेवक वि. म.प्र. राज्य) ...928

***Juvenile Justice (Care and Protection of Children) Rules, 2007, Rule 12(3) – See – Penal Code, 1860, Sections 457, 306 & 376,* [Harsewak Vs. State of M.P.] ...928**

किशोर न्याय (बालकों की देख–रेख और संरक्षण) नियम, 2007, नियम 12 (3) – देखें दण्ड संहिता, 1860, धाराएं 457, 306 व 376, (हरसेवक वि. म.प्र. राज्य) ...928

***Juvenile Justice (Care and Protection of Children) Rules 2007, Rule 33(5) – See – Juvenile Justice (Care and Protection of Children) Act, 2000, Section 41* [Tarun Kadam Vs. State of M.P.] (DB)...846**

किशोर न्याय (बालकों की देख–रेख और संरक्षण) नियम 2007, नियम 33(5) – देखें – किशोर न्याय (बालकों की देख–रेख और संरक्षण) अधिनियम,

2000, धारा 41 (तरूण कदम वि. म.प्र. राज्य) (DB)...846

Kerosene (Restriction on use and Fixation of Ceiling Price) Order, 1993, Sub-clause 3(2) – See – Criminal Procedure Code, 1973, Section 482, **[Rasmeet Singh Malhotra Vs. State of M.P.] ...329**

केरोसिन (उपयोग पर निर्बंधन और अधिकतम कीमत का निर्धारण) आदेश, 1993, उपखंड 3(2) – देखें – दण्ड प्रक्रिया संहिता, 1973, धारा 482, (रसमीत सिंह मल्होत्रा वि. म.प्र. राज्य) ...329

Land Acquisition Act (1 of 1894), Sections 4, 6 & 17 – Land Acquisition – Delay & laches – **Petitioners were aware of the fact that the land in question had already been acquired even prior to filing of the present petition, however they chose not to challenge the acquisition proceedings at the time of filing the proceedings – Even after filing of the present petition when all the facts and details were brought on record by the respondent in the year 1992 & 1993, the petitioners chose not to assail the award or the acquisition proceedings and did so for the first time by filing an application for amendment of the petition on 02.02.1996, i.e. 6 years after passing of the award and 4 years after filing of the petition – Application for setting aside of the award thus suffers from inordinary delay and laches – Further, Transport Nagar for the establishment of which the land was acquired has become fully operational in the year 2013 providing additional ground to reject this Miscellaneous Petition – It was accordingly dismissed. [R.G. Agricultural Corporation (M/s.) Vs. Municipal Council, Chhatarpur] ...810**

भूमि अर्जन अधिनियम (1894 का 1), धाराऐं 4, 6 व 17 – भूमि अर्जन – विलंब और गफलत – याचीगण इस तथ्य से अवगत थे कि वर्तमान याचिका प्रस्तुत किये जाने के पूर्व ही प्रश्नाधीन भूमि अर्जित की जा चुकी थी, किन्तु कार्यवाहियां संस्थित किये जाने के समय उन्होंने अर्जन कार्यवाही को चुनौती नहीं देने का चुनाव किया – यहां तक कि वर्तमान याचिका प्रस्तुत किये जाने के पश्चात् जब प्रत्यर्थी द्वारा वर्ष 1992 व 1993 में समस्त तथ्य एवं विवरण अभिलेख पर लाये गये थे, तब भी याचीगण ने अधिनिर्णय अथवा अर्जन कार्यवाहियों को चुनौती नहीं देने का चुनाव किया, एवं प्रथम बार अर्थात् अधिनिर्णय पारित होने के 6 वर्ष पश्चात् और याचिका प्रस्तुत किये जाने के 4 वर्ष पश्चात् उनके द्वारा 02/02/1996 को याचिका में संशोधन किये जाने हेतु प्रस्तुत आवेदन पत्र के माध्यम से इस संबंध में चुनौती दी गई – अतएव्, अधिनिर्णय को अपास्त किये जाने हेतु प्रस्तुत आवेदन पत्र

असाधारण विलंब और गफलत से ग्रसित है – इसके अतिरिक्त, जिस ट्रांसपोर्ट नगर की स्थापना हेतु भूमि अर्जित की गई थी, उसका वर्ष 2013 में ही पूर्णतः क्रियाशील हो जाना इस विविध याचिका को खारिज किये जाने हेतु एक अतिरिक्त आधार प्रदान करता है – तद्नुसार याचिका खारिज की गई। (आर.जी. एग्रीकल्चरल कारपोरेशन (मे.) वि. म्यूनिसिपल काउंसिल, छतरपुर) ...810

Land Acquisition Act (1 of 1894), Section 31 – See – Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, Section 24 [Purushottam Lal Vs. State of M.P.] (DB)...713

भूमि अर्जन अधिनियम (1894 का 1), धारा 31 – देखें – भूमि अर्जन, पुनर्वासन और पुनर्व्यवस्थापन में उचित प्रतिकर और पारदर्शिता का अधिकार अधिनियम, 2013, धारा 24 (पुरूषोत्तम लाल वि. म.प्र. राज्य) (DB)...713

Land Revenue Code, M.P. (20 of 1959), Section 50 – Revision – Suo motu powers – Limitation – Suo motu proceedings started after five years – Expression "at any time" – Held – Suo motu proceedings are not within time as the expression "at any time" denotes within 'reasonable time'. [State of M.P. Vs. Kamal Singh] ...536

भू राजस्व संहिता, म.प्र. (1959 का 20), धारा 50 – पुनरीक्षण – स्वप्रेरणा से शक्तियां – परिसीमा – पांच वर्ष पश्चात् स्वप्रेरणा से कार्यवाहियां आरंभ की गई – अभिव्यक्ति "किसी भी समय पर" – अभिनिर्धारित – स्वप्रेरणा से कार्यवाहियां समय के भीतर नहीं हैं क्योंकि अभिव्यक्ति "किसी भी समय पर", "युक्तियुक्त समय" के भीतर सूचित करती है। (म.प्र. राज्य वि. कमल सिंह) ...536

Land Revenue Code, M.P. (20 of 1959), Sections 109 & 110 – Mutation of record – Agreement to sale – No mutation could be carried out by authority. [Kishorilal Tiwari Vs. Kandhilal] ...512

भू राजस्व संहिता, म.प्र. (1959 का 20), धाराऐं 109 व 110 – अभिलेख का नामांतरण – विक्रय का करार – प्राधिकारी द्वारा नामांतरण नहीं किया जा सकता। (किशोरीलाल तिवारी वि. कंधीलाल) ...512

Land Revenue Code, M.P. (20 of 1959), Sections 109 & 110 – Mutation of record is permissible only on the basis of sale deed or other admissible documents under the law. [Kishorilal Tiwari Vs. Kandhilal] ...512

भू राजस्व संहिता, म.प्र. (1959 का 20), धाराऐं 109 व 110 – अभिलेख का नामांतरण, केवल विक्रय विलेख या विधि अंतर्गत ग्राह्य अन्य दस्तावेजों के आधार पर अनुज्ञेय है। (किशोरीलाल तिवारी वि. कंधीलाल) ...512

Land Revenue Code, M.P. (20 of 1959), Section 237(3) – Grass land reserved – None of the authorities have power to divert the same. [Ravi Shankar Sarathe Vs. State of M.P.] ...404

भू राजस्व संहिता, म.प्र. (1959 का 20), धारा 237(3) – घासभूमि आरक्षित – प्राधिकारियों में से किसी को भी उसे अपयोजित करने की शक्ति नहीं। (रविशंकर सराठे वि. म.प्र. राज्य) ...404

Land Revenue Code, M.P. (20 of 1959), Section 247(7) – Penalty – Permission was granted to the Petitioner to level the land by removing Murom and soil and to use it for filling the pits in the same land and in case of surplus, to transport it for specified use with prior permission – At the end of term of permission, Panchnama was drawn and it was found that unauthorized extraction was done contrary to restricted permission granted for levelling of land and panchnama clearly indicates that extraction was done to the extent of 120 metres wide and 15 metres deep which means that petitioner had extracted minor mineral to the extent of 7200 cubic metres for some other purpose – Findings recorded by Addl. Collector does not call for interference – Fine amount double the value of the mineral was rightly imposed by Appropriate Authority. [Netaji Grih Nirman Sahkari Samiti Maryadit Vs. State of M.P.] (DB)...489

भू राजस्व संहिता, म.प्र. (1959 का 20), धारा 247(7) – *शास्ति* – याची को मुरम और मिट्टी हटाकर भूमि को समतल करने के लिये और उसी भूमि में गड्ढों को भरने के लिये उसका उपयोग करने तथा अतिशेष की स्थिति में पूर्व अनुमति से किसी विनिर्दिष्ट उपयोग के लिये परिवहन की अनुमति प्रदान की गई थी – अनुमति की अवधि की समाप्ति पर पंचनामा बनाया गया और यह पाया गया कि भूमि को समतल करने के लिये प्रदान की गई सीमित अनुमति के विपरीत अप्राधिकृत निकासी की गई थी और पंचनामा स्पष्ट रूप से दर्शाता है कि 120 मीटर चौड़ाई एवं 15 मीटर गहराई की सीमा तक निकासी की गई थी जिसका अर्थ है कि याची द्वारा गौण खनिज को 7200 घनमीटर की सीमा तक किसी अन्य प्रयोजन हेतु निकासी की गई थी – अतिरिक्त कलेक्टर द्वारा अभिलिखित किये गये निष्कर्षों में हस्तक्षेपों की आवश्यकता नहीं – समुचित प्राधिकारी द्वारा खनिज के मूल्य की

दोगुना अर्थदण्ड की राशि उचित रूप से अधिरोपित की गई। (नेताजी गृह निर्माण सहकारी समिति मर्यादित वि. म.प्र. राज्य) (DB)...489

Land Revenue Code, M.P. (20 of 1959), Section 250 – Restoration of possession – Maintainability – Application u/s 250(2) of the M.P. Land Revenue Code is not maintainable when the civil suit has already been filed – Petition allowed. [Shree Vaishnav Sahayak Trust Vs. State of M.P.] ...80

भू राजस्व संहिता, म.प्र. (1959 का 20), धारा 250 – कब्जे का प्रत्यावर्तन – पोषणीयता – म.प्र. भू राजस्व संहिता की धारा 250(2) के अंतर्गत आवेदन पोषणीय नहीं है, जब सिविल वाद पहले ही प्रस्तुत कर दिया गया हो – याचिका मंजूर। (श्री वैष्णव सहायक ट्रस्ट वि. म.प्र. राज्य) ...80

Land Revenue Code, M.P. (20 of 1959), Section 257 – See – Civil Procedure Code, 1908, Section 9 [Kishorilal Tiwari Vs. Kandhilal] ...512

भू राजस्व संहिता, म.प्र. (1959 का 20), धारा 257 – देखें – सिविल प्रक्रिया संहिता, 1908, धारा 9 (किशोरीलाल तिवारी वि. कंधीलाल) ...512

Land Revenue Code, M.P. (20 of 1959), Section 257 – See – Mines and Minerals Rules, 1996, Rule 53 [Netaji Grih Nirman Sahkari Samiti Maryadit Vs. State of M.P.] (DB)...489

भू राजस्व संहिता, म.प्र. (1959 का 20), धारा 257 – देखें – खान और खनिज नियम, 1996, नियम 53 (नेताजी गृह निर्माण सहकारी समिति मर्यादित वि. म.प्र. राज्य) (DB)...489

Limitation Act (36 of 1963), Section 5 – Condonation of delay – Delay has not been properly explained even considering the fact that the first appeal was dismissed by the lower Court on the ground of limitation – Colossal delay has occasioned again at the time of filing the second appeal – Such high handedness and bureaucratic attitude cannot be permitted at any costs – Appeal dismissed for want of limitation. [State of M.P. Vs. Shrimant Tukojirao Panwar] ...856

परिसीमा अधिनियम (1963 का 36), धारा 5 – विलंब के लिये माफी – इस तथ्य के विचारोपरांत कि निचले न्यायालय द्वारा प्रथम अपील परिसीमा के आधार पर खारिज की गई थी, विलंब का कोई समुचित स्पष्टीकरण प्रस्तुत नहीं किया गया – पुनः द्वितीय अपील प्रस्तुत किये जाने में भी अति विलंब कारित हुआ है – इस प्रकार

की स्वेच्छाचारी एवं नौकरशाह मनोवृत्ति किसी भी कीमत पर अनुज्ञेय नहीं – परिसीमा के अभाव में अपील खारिज की गई। (म.प्र. राज्य वि. श्रीमंत तुकोजीराव पंवार) ...856

Limitation Act (36 of 1963), Section 5 – See – Uchcha Nyayalaya (Khand Nyaypeeth Ko Appeal) Adhiniyam, M.P. 2005, Section 2 [State of M.P. Vs. Moolchand Upadhyay] (DB)...5

परिसीमा अधिनियम (1963 का 36), धारा 5 – देखें – उच्च न्यायालय (खण्ड न्यायपीठ को अपील) अधिनियम, म.प्र., 2005, धारा 2 (म.प्र. राज्य वि. मूलचन्द उपाध्याय) (DB)...5

Limitation Act (36 of 1963), Article 65 – Limitation – Provides 12 years of limitation and limitation starts when the possession of the defendant becomes adverse to the plaintiff. [Pramod Kumar Vs. Saiyad Rajiy Sultan] ...850

परिसीमा अधिनियम (1963 का 36), अनुच्छेद 65 – परिसीमा – 12 वर्ष की परिसीमा उपबंधित एवं परिसीमा तब आरंभ होती है जब प्रतिवादी का कब्जा वादी के प्रतिकूल हो जाता है। (प्रमोद कुमार वि. सैयद राजी सुल्तान) ...850

Limitation Act (36 of 1963), Article 65 – Suit was filed for possession of immovable property – Admittedly the suit is governed by this Article. [Pramod Kumar Vs. Saiyad Rajiy Sultan] ...850

परिसीमा अधिनियम (1963 का 36), अनुच्छेद 65 – अचल संपत्ति के कब्जे के लिये वाद प्रस्तुत किया गया – स्वीकृत रूप से वाद इस अनुच्छेद से शासित होगा। (प्रमोद कुमार वि. सैय्यद राजी सुल्तान) ...850

Madhyastham Adhikaran Adhiniyam, M.P. (29 of 1983), Section 7 and Arbitration and Conciliation Act (26 of 1996), Section 34 – Works contract – State Govt. one of the party – Jurisdiction over the subject matter – Held – In case of work contract the tribunal constituted under the Act of 1983 will have exclusive jurisdiction excluding the jurisdiction of forum under the Act of 1996 Act. [State of M.P. Vs. M/s. Lion Engineering Consultants] ...735

माध्यस्थम् अधिकरण अधिनियम, म.प्र. (1983 का 29), धारा 7 एवं माध्यस्थम् और सुलह अधिनियम (1996 का 26), धारा 34 – कार्य संविदा – पक्षकारों में से एक राज्य शासन है – विषयवस्तु पर अधिकारिता – अभिनिर्धारित – कार्य संविदा के प्रकरण में अधिनियम, 1996 के अंतर्गत फोरम की अधिकारिता को अपवर्जित

करते हुये, अधिनियम, 1983 के अंतर्गत गठित अधिकरण की अनन्य अधिकारिता होगी। (म.प्र. राज्य वि. मे. लॉयन इंजीनियरिंग कंसल्टेन्टस्) ...735

Mines and Minerals Rules, 1996, Rule 53 and Land Revenue Code, M.P. (20 of 1959), Section 257 – **Appropriate Authority is fully competent to pass order under Section 247(7) of the Code as also under Rule 53 of Rules, 1996. [Netaji Grih Nirman Sahkari Samiti Maryadit Vs. State of M.P.]** (DB)...489

खान और खनिज नियम, 1996, नियम 53 एवं भू राजस्व संहिता, म.प्र. (1959 का 20), धारा 257 – संमुचित प्राधिकारी संहिता की धारा 247(7) के अंतर्गत और साथ ही नियम 1996 के नियम 53 के अंतर्गत भी आदेश पारित करने के लिये पूर्णतः सक्षम है। (नेताजी गृह निर्माण सहकारी समिति मर्यादित वि. म.प्र. राज्य) (DB)...489

Minimum Wages Act (11 of 1948), Section 13(1)(b) – See – Industrial Disputes Act, 1947, Section 25-B(2)(a) **[Deputy Director, Nagariya Prashasan Vs. Satya Narain]** ...407

न्यूनतम मजदूरी अधिनियम (1948 का 11), धारा 13(1)(बी) – देखें – औद्योगिक विवाद अधिनियम, 1947, धारा 25–बी(2)(ए) (डिप्टी डायरेक्टर, नगरीय प्रशासन वि. सत्यनारायण) ...407

Motor Vehicles Act (59 of 1988), Section 166 – Compensation – **Rash and negligent – Accident – Claim for damages jointly and severally from owner, driver and insurance company – Plea of insurance company that the driver of the vehicle did not have a valid driving license and loading rickshaw has been driven without the fitness certificate – Conditions of insurance policy were found proved – Insurance company exonerated. [Karan Singh Vs. Omprakash]** ...538

मोटर यान अधिनियम (1988 का 59), धारा 166 – प्रतिकर – उतावलापन एवं उपेक्षा – दुर्घटना – स्वामी, वाहन चालक तथा बीमा कंपनी से संयुक्त रूप से एवं पृथक रूप से क्षतिपूर्ति हेतु दावा – बीमा कंपनी का अभिवाक् है कि वाहन के चालक के पास वैध वाहन अनुज्ञप्ति नहीं थी और लोडिंग रिक्शा को उपयुक्तता प्रमाणपत्र के बिना चलाया जा रहा था – बीमा पॉलिसी की शर्तों को सिद्ध पाया गया – बीमा कंपनी को उत्तरदायित्व से मुक्त किया गया। (करण सिंह वि. ओम प्रकाश) ...538

Motor Vehicles Rules, M.P. 1994, Rule 72 – Carriage permit – **One application is confined only to one permit for a single route as single permit for two different routes is not permissible. [Vijay Bajaj**

Vs. State of M.P.] (DB)...45

मोटर यान नियम, म.प्र. 1994, नियम 72 – वाहन अनुज्ञापत्र – एक आवेदन केवल एकल मार्ग हेतु एक अनुज्ञापत्र के लिये सीमित है क्योंकि दो भिन्न मार्गों के लिए एक अनुज्ञापत्र अनुज्ञेय नहीं। (विजय बजाज वि. म.प्र. राज्य) (DB)...45

Motor Vehicle Rules, M.P., 1994, Rule 72 (3) – See – Motor Vehicle Taxation Act, M.P., 1991, Section 3 [Ramsewak Sharma Vs. State of M.P.] (DB)...722

मोटरयान नियम, म.प्र., 1994, नियम 72 (3) – देखें – मोटरयान कराधान अधिनियम, म.प्र., 1991, धारा 3 (रामसेवक शर्मा वि. म.प्र. राज्य) (DB)...722

Motor Vehicle Taxation Act, M.P., (25 of 1991), Section 3 and Motor Vehicle Rules, M.P., 1994, Rule 72 (3) – Grant of permanent permit – Order granting permanent permit passed by RTO was set aside in revision on the ground that sons of petitioner, who are engaged in same business are in arrears of tax – Arrears of taxes – Lacs of rupees were due on the members of the joint family of the petitioner – No dues certificate not filed – Hence, impugned order does not require any interference. [Ramsewak Sharma Vs. State of M.P.] (DB)...722

मोटरयान कराधान अधिनियम, म.प्र., (1991 का 25), धारा 3 एवं मोटरयान नियम, म.प्र., 1994, नियम 72 (3) – स्थायी अनुज्ञापत्र प्रदान किया जाना – आर.टी.ओ. द्वारा स्थायी अनुज्ञा स्वीकृत करने संबंधी आदेश पुनरीक्षण में इस आधार पर अपास्त किया गया कि याची के पुत्रगण जो कि उसी व्यापार में संलग्न हैं, पर कर की राशि बकाया है – बकाया कर – याची के संयुक्त परिवार के सदस्यों पर लाखों रूपये बकाया थे – अदेयता प्रमाणपत्र प्रस्तुत नहीं – अतः, आक्षेपित आदेश में किसी हस्तक्षेप की आवश्यकता नहीं। (रामसेवक शर्मा वि. म.प्र. राज्य) (DB)...722

Municipalities Act, M.P. (37 of 1961), Section 47 – Recall of President – Satisfaction – 12 out of 15 elected councillors presented themselves before Collector with a signed proposal to recall – Collector after verifying that half of the period of tenure has expired forwarded the proposal to State Govt. – Non-mention of word "satisfying" will not belie the existence of facts leading to forwarding of proposal to State Govt. – Petition dismissed. [Kamal Kant Bharadwaj Vs. State of M.P.] ...48

नगरपालिका अधिनियम, म.प्र. (1961 का 37), धारा 47 – अध्यक्ष को वापस

बुलाया जाना – संतुष्टि – 15 चयनित पार्षदों में से 12 पार्षद, वापस बुलाने हेतु हस्ताक्षरित प्रस्ताव के साथ कलेक्टर के समक्ष उपस्थित हुए – कलेक्टर ने यह सत्यापित करने के पश्चात् कि कार्यकाल की आधी अवधि का अवसान हो चुका है, प्रस्ताव राज्य शासन को अग्रेषित कर दिया – "संतोषजनक" शब्द का उल्लेख न करना, राज्य शासन को प्रस्ताव अग्रेषित करने की ओर ले जाने वाले तथ्यों की उपस्थिति को नहीं झुठलायेगा – याचिका खारिज। (कमल कांत भारद्वाज वि. म.प्र. राज्य) ...48

National Security Act (65 of 1980), Sections 5 & 14 – Preventive Detention **– Right to make representation – Detenu was not informed about his right to make representation to Central Govt. – Opportunity was denied to detenu – Continued detention is illegal and untenable – Petition allowed. [Sattar Vs. State of M.P.]** **(DB)...126**

राष्ट्रीय सुरक्षा अधिनियम (1980 का 65), धाराऐं 5 व 14 – निवारक निरोध – अभ्यावेदन देने का अधिकार – बंदी को केन्द्र सरकार को अभ्यावेदन देने के उसके अधिकार के संबंध में सूचित नहीं किया गया था – बंदी को अवसर देने से इंकार – सतत् निरोध अवैध एवं असमर्थनीय है – याचिका मंजूर। (सत्तार वि. म.प्र. राज्य) **(DB)...126**

Negotiable Instruments Act (26 of 1881), Section 20 – Inchoate stamped instruments **– This section declares that inchoate instruments are also valid and legally enforceable – Respondent admitted having signed blank cheque – In case of a signed blank cheque, the drawer gives authority to the drawee to fill up the agreed liability – Further held, an individual is authorized to complete the inchoate instruments deliver to him by filling up the blanks. [Sunita Dubey (Smt.) Vs. Hukum Singh Ahirwar]** **...566**

परक्राम्य लिखत अधिनियम (1881 का 26), धारा 20 – अपूर्ण स्टॉम्पित लिखत – यह धारा घोषित करती है कि अपूर्ण लिखत भी विधिमान्य एवं वैध रूप से प्रवर्तनीय है – प्रत्यर्थी ने निरंक/कोरे चैक पर हस्ताक्षर करना स्वीकार किया है – हस्ताक्षरित निरंक/कोरे चैक के मामले में, लेखीवाल तय दायित्व को भरने का प्राधिकार उपरवाल को देता है – आगे अभिनिर्धारित किया गया कि एक व्यक्ति उसे परिदत्त किये गये अपूर्ण लिखत को निरंक/कोरे स्थान भरकर पूरा करने के लिये प्राधिकृत है। (सुनीता दुबे (श्रीमती) वि. हुकुम सिंह अहिरवार) ...566

Negotiable Instruments Act (26 of 1881), Section 138 and Evidence Act (1 of 1872), Section 45 – Defence **– The grounds which**

are not subject matter of the case, could not be permitted to raise. [Sadhna Pandey (Smt.) Vs. P.C. Jain] ...865

परक्राम्य लिखत अधिनियम (1881 का 26), धारा 138 एवं साक्ष्य अधिनियम (1872 का 1), धारा 45 – बचाव – ऐसे आधार जो प्रकरण की विषयवस्तु से संबंधित नहीं है, उठाये जाने की अनुमति नहीं दी जा सकती। (साधना पांडे (श्रीमती) वि. पी. सी. जैन) **...865**

***Negotiable Instruments Act (26 of 1881), Section 138 and Evidence Act (1 of 1872), Section 45 – Dishonor of cheque – Defence* – Difference of signature – Not taken in reply of demand notice – Nor cross- examined complainant's witnesses on such specific defence – Not available. [Sadhna Pandey (Smt.) Vs. P.C. Jain] ...865**

परक्राम्य लिखत अधिनियम (1881 का 26), धारा 138 एवं साक्ष्य अधिनियम (1872 का 1), धारा 45 – चैक का अनादरण – बचाव – हस्ताक्षर में भिन्नता – मांग नोटिस के जवाब में नहीं लिया गया – न ही उक्त विनिर्दिष्ट बचाव के संबंध में परिवादी के साक्षीगण का प्रतिपरीक्षण किया गया – उपलब्ध नहीं। (साधना पांडे (श्रीमती) वि. पी.सी. जैन) **...865**

***Negotiable Instruments Act (26 of 1881), Section 138 and Evidence Act (1 of 1872), Section 45 – Examination of signature by hand writing expert* – Dishonor of cheque on the ground of insufficient fund and not on ground of difference of signature – Not permissible. [Sadhna Pandey (Smt.) Vs. P.C. Jain] ...865**

परक्राम्य लिखत अधिनियम (1881 का 26), धारा 138 एवं साक्ष्य अधिनियम (1872 का 1), धारा 45 – हस्तलिपि विशेषज्ञ द्वारा हस्ताक्षर का परीक्षण – अपर्याप्त रकम के आधार पर चैक का अनादरण, न कि हस्ताक्षर में भिन्नता के आधार पर – अनुज्ञेय नहीं। (साधना पांडे (श्रीमती) वि. पी.सी. जैन) **...865**

***Negotiable Instruments Act (26 of 1881), Section 138 and Evidence Act (1 of 1872), Section 45 – Hand writing expert* – Age of writing of the cheque as well as signature of the accused are in dispute – Trial Court will call the handwriting expert for examination of the disputed cheque – Order of trial Court liable to be set aside. [Sohanlal Singhal Vs. Sunil Jain] ...277**

परक्राम्य लिखत अधिनियम (1881 का 26), धारा 138 एवं साक्ष्य अधिनियम (1872 का 1), धारा 45 – हस्तलिपि विशेषज्ञ – चैक लिखे जाने का समय और साथ

ही अभियुक्त के हस्ताक्षर विवादित हैं – विवादित चैक के परीक्षण हेतु विचारण न्यायालय हस्तलिपि विशेषज्ञ को बुलायेगा – विचारण न्यायालय का आदेश अपास्त किये जाने योग्य। (सोहनलाल सिंघल वि. सुनील जैन) ...277

Negotiable Instruments Act (26 of 1881), Section 138 – **Cheques were signed by 'A' for and on behalf of Aman Jeweler as proprietor of the concern – In the legal notice also, he was described as proprietor of the concern – In complaint filed u/s 200 of Cr.P.C., present applicant also added – No prima-facie evidence available to infer that Aman Jeweler is a partnership firm and present applicant is a partner – Applicant has no liability for dishonor of cheques – Therefore, applicant discharged from charge. [Manish Vs. K.G. Sharma]** ...284

परक्राम्य लिखत अधिनियम (1881 का 26), धारा 138 – प्रतिष्ठान के स्वत्वधारी के रूप में 'ए' ने अमन ज्वेलर के लिये एवं उसकी ओर से चैक हस्ताक्षरित किये – कानूनी नोटिस में भी, वह प्रतिष्ठान के स्वत्वधारी के रूप में वर्णित था – दंड प्रक्रिया संहिता की धारा 200 के अंतर्गत, प्रस्तुत शिकायत में वर्तमान आवेदक को भी जोड़ा गया – यह निष्कर्ष निकालने के लिये प्रथम दृष्ट्या साक्ष्य उपलब्ध नहीं है कि अमन ज्वेलर एक भागीदारी फर्म है एवं वर्तमान आवेदक एक भागीदार है – चैक के अनादरण के लिये आवेदक का कोई दायित्व नहीं – अतः, आवेदक को आरोपमुक्त किया गया। (मनीष वि. के.जी. शर्मा) ...284

Negotiable Instruments Act (26 of 1881), Section 138 – Drawer of cheque – **Account holder did not issue cheque – His brother issued cheque on an account maintained by his brother – Account holder is not responsible for return of cheque – Person who had issued cheque is also not responsible as he had not issued cheque on an account maintained by him – Complaint dismissed. [Kuldeep Shrivastava Vs. Ramesh Chandra]** ...587

परक्राम्य लिखत अधिनियम (1881 का 26), धारा 138 – चैक का लेखीवाल – खाताधारक ने चैक जारी नहीं किया – उसके भाई ने अपने भाई द्वारा चलाये जा रहे खाते पर चैक जारी किया –चैक की वापसी हेतु खाता धारक उत्तरदायी नहीं – वह व्यक्ति भी उत्तरदायी नहीं जिसने चैक जारी किया क्योंकि उसने चैक उसके द्वारा चलाये जा रहे खाते पर जारी नहीं किया था – परिवाद खारिज। (कुलदीप श्रीवास्तव वि. रमेश चन्द्र) ...587

Payment of Wages Act (4 of 1936), Sections 15(2) & 17(1A), Workmen's Compensation Act (8 of 1923), Section 30(1) and Civil

Procedure Code (5 of 1908), Order 9 Rule 13 – Arrears of wages – Deposit of amount – Mandatory condition – Appeals – **No appeal under Clause (a) of sub-section 1 of Section 17 shall lie unless the memorandum of appeal is accompanied by a certificate by the authority to the effect that the appellant has deposited the amount payable under the direction appealed against – Pre-condition of deposit the amount and filing the certificate of authority along with the memorandum of appeal disclosing that the amount has been deposited is a mandatory condition, without there being any power to relax or waive the requirement of pre-deposit – Amount not deposited – Appeal rightly dismissed. [Saabir & Brothers Vs. Rajesh Sen]** ...786

मजदूरी संदाय अधिनियम (1936 का 4), धाराऐं 15(2) व 17(1ए), कर्मकार प्रतिकर अधिनियम, (1923 का 8), धारा 30(1) एवं सिविल प्रक्रिया संहिता (1908 का 5), आदेश 9 नियम 13 – बकाया मजदूरी – राशि जमा की जाना – एक आज्ञापक शर्त है – अपीलें – धारा 17 की उपधारा 1 के खण्ड (ए) के अधीन कोई भी अपील तब तक नहीं होगी जब तक कि अपील ज्ञापन के साथ प्राधिकारी द्वारा इस आशय का जारी प्रमाण पत्र संलग्न न हो कि अपीलार्थी ने इस निर्देश के अधीन देय राशि जमा कर दी है, जिसके विरूद्ध अपील प्रस्तुत की गई है – राशि जमा करने तथा राशि जमा किया जाना प्रकट करते हुए प्राधिकारी के प्रमाण पत्र के साथ अपील ज्ञापन प्रस्तुत करने की पूर्व शर्त एक आज्ञापक शर्त है एवं पूर्व जमा की अपेक्षित शर्त को शिथिल अथवा अधित्यक्त करने की किसी शक्ति से रहित है – राशि जमा नहीं – अपील उचित रूप से खारिज। (साबिर एंड ब्रदर्स वि. राजेश सेन)...786

Penal Code (45 of 1860), Sections 109, 417, 420 r/w 120-B – See – Prevention of Corruption Act, 1988, Sections 13(1)(d) & 13(2) **[Kalpana Parulekar (Dr.) (Ku.) Vs. Inspector General of Police Special Police Establishment Lokayukt]** (DB)...599

दण्ड संहिता (1860 का 45), धाराऐं 109, 417, 420 सहपठित 120–बी – देखें – भ्रष्टाचार निवारण अधिनियम, 1988, धाराऐं 13(1)(डी) व 13(2) कल्पना पारुलेकर (डॉ.)(कुमारी) वि. इंसपेक्टर जनरल ऑफ पुलिस स्पेशल पुलिस इस्टैब्लिशमेंट लोकायुक्त) (DB)...599

Penal Code (45 of 1860), Sections 120 & 120-B – Criminal conspiracy – **The prosecution must prove an agreement between two or more persons to do or cause to be done some illegal act or some act, which is not illegal by illegal means – No case of criminal conspiracy and cheating made out – Charges framed against all accused persons**

set aside. [Kalpana Parulekar (Dr.) (Ku.) Vs. Inspector General of Police Special Police Establishment Lokayukt] (DB)...599

दण्ड संहिता (1860 का 45), धाराऐं 120 व 120–बी – आपराधिक षड्यंत्र – अभियोजन को किसी अवैध कृत्य या किसी ऐसे कृत्य को, जो अवैध नहीं अवैध साधन द्वारा कारित करने या करवाने के लिये दो या अधिक व्यक्तियों के बीच सहमति साबित करनी चाहिए – आपराधिक षड्यंत्र एवं छल का कोई प्रकरण नहीं बनता – सभी अभियुक्तगण के विरूद्ध विरचित आरोप अपास्त। (कल्पना पारुलेकर (डॉ.)(कुमारी) वि. इंसपेक्टर जनरल ऑफ पुलिस स्पेशल पुलिस इस्टैब्लिशमेंट लोकायुक्त) **(DB)...599**

***Penal Code (45 of 1860), Sections 147, 148, 149 & 302* – Incident took place on 27/06/1997 at about 10 p.m. – Deceased was attacked with sword, 'Farsa', axe and 'lathis' – Accused seven in number – Grounds – Report u/s 157 of Cr.P.C. sent with delay to Magistrate on 30/06/1997 – None of injured eye- witness mentioned in column no. 6 of Crime Details Form, names of accused persons not there in P.M. report etc. – Held – These are minor discrepancies which do not affect the conviction of the appellants and it is sufficiently established that occurrence took place as spoken by the prosecution witnesses – Conviction upheld – Appeal dismissed. [Narender Singh Vs. State of M.P.] (SC)...641**

दण्ड संहिता (1860 का 45), धाराऐं 147, 148, 149 व 302 – घटना दिनांक 27/06/1997 को रात्रि लगभग 10 बजे घटित हुई – मृतक पर तलवार, 'फरसा', कुल्हाड़ी एवं लाठी से हमला किया गया – अभियुक्तगण की संख्या सात – आधार – दं.प्र.सं. की धारा 157 के अंतर्गत प्रतिवेदन दण्डाधिकारी को दिनांक 30/06/1997 को विलंब से भेजा गया – अपराध विवरण पत्रक के कॉलम क्र. 6 में किसी भी चक्षुदर्शी साक्षी का नाम अंकित नहीं किया गया, शव परीक्षण प्रतिवेदन इत्यादि में भी अभियुक्तगण के नाम अंकित नहीं किये गये – अभिनिर्धारित – यह गौण असंगतियां है जो कि अभियुक्तगण की दोषसिद्धि को प्रभावित नहीं करती हैं एवं यह पर्याप्त रूप से स्थापित किया गया है कि अभियोजन साक्षीगण के कथनानुसार घटना घटित हुई थी – दोषसिद्धि कायम रखी गई – अपील खारिज। (नरेन्दर सिंह वि. म.प्र. राज्य) **(SC)...641**

***Penal Code (45 of 1860), Sections 302 & 376 – Rape and murder* – Circumstantial evidence – Law discussed. [Ram Sunder Sen Vs. Narender @ Bode Singh Patel] (SC)...341**

दण्ड संहिता (1860 का 45), धाराऐं 302 व 376 – बलात्कार और हत्या – परिस्थितिजन्य साक्ष्य – विधि विवेचित। (राम सुन्दर सेन वि. नरेन्दर उर्फ बोदे सिंह पटेल) (SC)...341

Penal Code (45 of 1860), Sections 302, 376(2)(f) & 201 – Rape and murder – **No document brought on record that accused on earlier occassion had made attempt to commit rape – Doctor who had examined accused failed to identify him in Court – Further, abrasions could be caused during the day while working in and around – Recovery of undergarments of deceased also doubtful – No blood was found on the underwear of deceased – Allegation of presence of accused on the spot was missing in statement made to police u/s 161 Cr.P.C. – High Court rightly acquitted the respondent. [Ram Sunder Sen Vs. Narender @ Bode Singh Patel]** (SC)...341

दण्ड संहिता (1860 का 45), धाराऐं 302, 376(2)(एफ) व 201 – बलात्कार और हत्या – अभिलेख पर कोई दस्तावेज नहीं लाया गया कि अभियुक्त ने पूर्वतर अवसर पर बलात्कार कारित करने का प्रयत्न किया था – चिकित्सक, जिसने अभियुक्त का परीक्षण किया था, उसे न्यायालय में पहचानने में असफल रहा – इसके अतिरिक्त, खरोंचें, प्रतिदिन के कार्य के दौरान कारित हो सकती हैं – मृतिका के अंतर्वस्त्रों की बरामदगी भी संदेहास्पद – मृतिका की जांघिया पर कोई रक्त नहीं पाया गया – पुलिस को द.प्र.सं. धारा 161 के अंतर्गत दिये गये कथन में अभियुक्त की घटनास्थल पर उपस्थिति का अभिकथन मौजूद नहीं – उच्च न्यायालय ने उचित रूप से प्रत्यर्थी को दोषमुक्त किया। (राम सुन्दर सेन वि. नरेन्दर उर्फ बोदे सिंह पटेल) (SC)...341

Penal Code (45 of 1860), Sections 304-B & 498-A – Acquittal – **No evidence of cruelty soon before death – No definite evidence of ill treatment having immediate proximity with date of death of deceased. [State of M.P. Vs. Ramkishan]** (DB)...541

दण्ड संहिता (1860 का 45), धाराऐं 304–बी व 498–ए – दोषमुक्ति – मृत्यु के तुरंत पूर्व क्रूरता का कोई साक्ष्य नहीं – दुर्व्यवहार का कोई निश्चित साक्ष्य नहीं जो मृतिका की मृत्यु की तिथि के साथ तत्काल निकटता रखता हो। (म.प्र. राज्य वि. रामकिशन) (DB)...541

Penal Code (45 of 1860), Sections 304-B & 498-A and Evidence Act (1 of 1872), Section 113-B – Acquittal – Ground – **Dowry demand – Four years back – Reiterated seven months back – Thereafter no**

allegation of dowry demand or cruelty till incident – Held – "Soon before her death she was subjected to cruelty or harassment by her husband or any of his relative" is lacking. [State of M.P. Vs. Ramkishan] (DB)...541

दण्ड संहिता (1860 का 45), धाराऐं 304–बी व 498–ए एवं साक्ष्य अधिनियम (1872 का 1), धारा 113–बी – दोषमुक्ति – आधार – दहेज की मांग – चार वर्ष पूर्व – पुनः सात माह पहले दोहराई गई – तत्पश्चात् घटना होने तक दहेज की मांग या क्रूरता का कोई अभिकथन नहीं – अभिनिर्धारित – "मृत्यु के तुरंत पूर्व उसके साथ उसके पति या उसके किसी रिश्तेदार द्वारा क्रूरता या उत्पीड़न" का अभाव है। (म.प्र. राज्य वि. रामकिशन) **(DB)...541**

Penal Code (45 of 1860), Sections 304-B & 498-A and Evidence Act (1 of 1872), Section 113-B – Dowry death **– The cruelty, harassment and demand of dowry should not be so ancient, whereafter the couple and family members have lived happily – Such demand or harassment may not strictly and squarely fall within the provisions – Unless definite evidence led to show contrary. [State of M.P. Vs. Ramkishan] (DB)...541**

दण्ड संहिता (1860 का 45), धाराऐं 304–बी व 498–ए एवं साक्ष्य अधिनियम (1872 का 1), धारा 113–बी – दहेज मृत्यु – क्रूरता, उत्पीड़न एवं दहेज की मांग इतनी पुरानी नहीं होनी चाहिए कि जिसके पश्चात् दंपत्ति एवं परिवार के सदस्य राजी–खुशी से रह रहे हो – उक्त मांग या उत्पीड़न कठोर रूप से एवं संपूर्ण रूप से उपबंधों के भीतर नहीं आ सकता – जब तक कि इसके विपरीत दर्शाने का कोई निश्चित साक्ष्य पेश नहीं होता। (म.प्र. राज्य वि. रामकिशन) **(DB)...541**

Penal Code (45 of 1860), Section 325 **– Appellant convicted u/s 325 of IPC and was sentenced to undergo 7 years rigorous imprisonment with fine of Rs. 2,000/- – He himself has admitted that he has caused two injuries with lathi on the head of injured resulting fracture of the frontal bone – Hence notice was issued only limited to the quantum of sentence – Held – Since there is a fracture of frontal bone which brings offence within the definition of grevious hurt as defined u/s 320 of the IPC – High Court has rightly convicted the appellant u/s 325 of IPC – Considering the overall circumstances, as the incident was a result of sudden fight and in a fit of passion, 7 years sentence is excessive – Same is reduced to 3 years – Appeal is partly allowed. [Sakharam Vs. State of M.P.] (SC)...1**

दण्ड संहिता (1860 का 45), धारा 325 – अपीलार्थी भा.दं.सं. की धारा 325

के अंतर्गत दोषसिद्ध एवं 2,000/– अर्थदण्ड सहित 7 वर्ष के कठोर कारावास से दंडादिष्ट – उसने स्वयं स्वीकार किया है कि उसने आहत के सिर पर लाठी से दो चोटें कारित की जिसके परिणामस्वरूप ललाटास्थि भंग हुई – अतः जारी नोटिस केवल दंडादेश की मात्रा तक सीमित – अभिनिर्धारित – चूंकि ललाटास्थि भंग हुई है जो कि अपराध को भा.दं.सं. की धारा 320 के अंतर्गत परिभाषित घोर उपहति की परिभाषा में लाती है – उच्च न्यायालय ने अपीलार्थी को उचित रूप से भा.दं.सं. की धारा 325 के अंतर्गत दोषसिद्ध किया – समस्त परिस्थितियों पर विचार करने पर, चूंकि दुर्घटना अचानक झगड़े और आवेश में आने का परिणाम थी, 7 वर्ष का दंडादेश अत्याधिक है – उक्त को कम कर 3 वर्ष किया गया – अपील अंशतः मंजूर। (सखाराम वि. म.प्र. राज्य) (SC)...1

Penal Code (45 of 1860), Sections 337, 279 & 304-A, Criminal Procedure Code, 1973 (2 of 1974), Sections 300 & 482 and Constitution – Article 20(2) – Double jeopardy – Earlier petitioner was tried and convicted for the offence punishable under Section 337 and 279 of the IPC – **Subsequently tried for offence under Section 304-A of the IPC – If a person has been tried and convicted for less graver offence arising out of one particular incidence, then he can very well to be tried for a graver offence which may also arise out of the same incidence – Constitutional protection under Article 20(2) is against the offence and not against the act/incidence – Section 304A IPC gets attracted when, the death takes place due to rash and negligence act, whereas when mere hurt takes place, Section 337 of IPC can be invoked – Whereas Section 279 of IPC gets attracted merely by driving a vehicle on public way in a rash and negligent manner which endangers human life, which may or may not cause an injury to anyone – The applicant can very well be prosecuted for a graver offence despite having been earlier prosecuted and punished for a lesser offence – Application dismissed. [Nadimuddin Vs. State of M.P.] ...316**

दण्ड संहिता (1860 का 45), धाराऐं 337, 279 व 304–ए, दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धाराऐं 300 व 482 एवं संविधान – अनुच्छेद 20(2) – दोहरा संकट – पूर्व में याची को भा.दं.सं. की धारा 337 व 279 के अंतर्गत दण्डनीय अपराध के लिए विचारित एवं दोषसिद्ध किया गया – तदनंतर उसे भा.दं.सं. की धारा 304–ए के अंतर्गत अपराध के लिए विचारित किया गया – यदि किसी विशेष घटना से उत्पन्न हुए कम गंभीर अपराध के लिए किसी व्यक्ति को विचारित एवं दोषसिद्ध किया गया है तो उसे किसी अधिक गंभीर अपराध के लिए भी भली भांति विचारित किया जा सकता है जो उसी घटना से उत्पन्न हुआ हो – अनुच्छेद 20(2) के अंतर्गत संवैधानिक सुरक्षा अपराध के

विरूद्ध है और न कि कृत्य/घटना के विरूद्ध – भा.दं.सं. की धारा 304–ए तब आकर्षित होती है जब मृत्यु उतावलेपन एवं लापरवाही के कारण कारित होती हो, जबकि जब मात्र उपहति कारित होती है तो भा.दं.सं. की धारा 337 का अवलंब लिया जा सकता है – जबकि भा.दं.सं. की धारा 279 केवल उतावलेपन और लापरवाहीपूर्वक आम रास्ते में वाहन चलाने पर आकर्षित होती है जिससे मानव जीवन को खतरा हो, जिससे किसी को कोई उपहति कारित हो या न हो – किसी कम गंभीर अपराध के लिये पूर्व में अभियोजित एवं दंडित होने के बावजूद भी किसी अधिक गंभीर अपराध के लिए आवेदक को अभियोजित किया जा सकता – आवेदन खारिज। (नदीमुद्दीन वि. म.प्र. राज्य) ...316

Penal Code (45 of 1860), Section 376 and Criminal Procedure Code, 1973 (2 of 1974), Section 228 – Framing of charge – **Rape with two prosecutrix – In FIR, prosecutrix did not allege rape by applicant but it was alleged that he escorted both the prosecutrix, to bus stand and assured that he will help them to get marry with other two co-accused persons – Applicant was absconding – In trial against two co-accused, prosecutrix alleged that she was subjected to rape by applicant – Held – It appears that prosecutrix implicated the applicant subsequently with ulterior motive – Charge/ prosecution u/s 376 set aside. [Pukhraj Singh Vs. State of M.P.]** ...248

दण्ड संहिता (1860 का 45), धारा 376 एवं दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 228 – आरोप विरचित किया जाना – दो अभियोक्त्रियों के साथ बलात्कार – प्रथम सूचना प्रतिवेदन में, अभियोक्त्री ने आवेदक द्वारा बलात्कार का अभिकथन नहीं किया परंतु यह अभिकथित किया गया कि वह दोनों अभियोक्त्रियों को बस स्टैण्ड तक ले गया और आश्वासित किया कि वह उन्हें अन्य दोनों सह–अभियुक्तों से शादी करने में सहायता करेगा – आवेदक फरार था – दोनों सह–अभियुक्तों के विरूद्ध विचारण में अभियोक्त्री ने अभिकथित किया है कि आवेदक ने उसके साथ बलात्कार किया – अभिनिर्धारित – ऐसा प्रतीत होता है कि अभियोक्त्री ने अंतरस्थ हेतु से बाद में आवेदक को आलिप्त किया – धारा 376 के अंतर्गत आरोप/अभियोजन अपास्त। (पुखराज सिंह वि. म.प्र. राज्य) ...248

Penal Code (45 of 1860), Section 379 – See – Criminal Procedure Code, 1973, Section 482 **[Arpit Jain Vs. Vijay Sisodiya]** ...919

दण्ड संहिता (1860 का 45), धारा 379 – देखें – दण्ड प्रक्रिया संहिता, 1973, धारा 482 (अर्पित जैन वि. विजय सिसोदिया) ...919

Penal Code (45 of 1860), Section 406 – See – Criminal Procedure Code, 1973, Section 408 **[Sadhna Kothari (Smt.) Vs. Shri**

Abhay Kumar Dalal] ...262

दण्ड संहिता (1860 का 45), धारा 406 – देखें – दण्ड प्रक्रिया संहिता, 1973,, धारा 408 (साधना कोठारी (श्रीमती) वि. श्री अभय कुमार दलाल) ...262

Penal Code (45 of 1860), Sections 415 – Cheating – **Delivery of property or consent for retention of property by any person is not necessary in all cases of cheating – Offence of cheating may be committed without aforesaid elements under second limb of section 415 – However allegation that respondent was 60 years of age and obtained her (Applicant/ Complainant) consent by mispresenting that he is 45 years of age is preposterous – Revisional court rightly dismissed the complaint. [Nilofer Khan (Smt.) Vs. Mohd. Yusuf Khan]** ...882

दण्ड संहिता (1860 का 45), धारा 415 – छल – छल के समस्त प्रकरणों में संपत्ति का परिदान अथवा किसी व्यक्ति द्वारा संपत्ति के प्रतिधारण की सहमति होना आवश्यक नहीं है – छल का अपराध धारा 415 के द्वितीय भाग के अंतर्गत बिना पूर्वकथित तत्वों के भी कारित किया जा सकता है – यद्यपि, यह आक्षेप निरर्थक है कि प्रत्यर्थी की आयु 60 वर्ष थी एवं उसने दुर्व्यपदेशन द्वारा अपनी आयु 45 वर्ष बताते हुए उसकी (आवेदिका/परिवादी) सहमति प्राप्त की – पुनरीक्षण न्यायालय द्वारा परिवाद उचित रूप से खारिज। (नीलोफर खान (श्रीमती) वि. मोहम्मद यूसुफ खान) ...882

Penal Code (45 of 1860), Sections 417 & 420 – Cheating and dishonestly inducing delivery of property – **Guilty intention is an essential ingredient of offence of cheating – Mens rea on the part of the accused must be established – In order to establish the offence u/s 420 intention to deceive should be in existence at the time when inducement was done – If there is no inducement, then this does not constitute the offence of cheating and framing of charge u/s 417 and 420 was not proper. [Kalpana Parulekar (Dr.) (Ku.) Vs. Inspector General of Police Special Police Establishment Lokayukt] (DB)...599**

दण्ड संहिता (1860 का 45), धाराऐं 417 व 420 – छल एवं बेईमानी से संपत्ति के परिदान हेतु उत्प्रेरित करना – दूषित आशय, छल के अपराध का आवश्यक घटक है – अभियुक्त की ओर से आपराधिक मनःस्थिति स्थापित की जानी चाहिए – धारा 420 के अंतर्गत अपराध स्थापित करने के लिये प्रवंचित करने का आशय उस समय विद्यमान होना चाहिए जब उत्प्रेरित किया गया था – यदि कोई उत्प्रेरण नहीं है तब यह छल का अपराध गठित नहीं करता और धारा 417 व 420 के अंतर्गत आरोप विरचित किया जाना उचित नहीं था। (कल्पना पारुलेकर (डॉ.)(कुमारी) वि. इंसपेक्टर जनरल ऑफ पुलिस

स्पेशल पुलिस इस्टैब्लिशमेंट लोकायुक्त) (DB)...599

Penal Code (45 of 1860), Sections 457, 306 & 376, Protection of Children from the Sexual Offences Act (32 of 2012), Section 4, Juvenile Justice (Care and Protection of Children) Act (56 of 2000), Section 7A and Juvenile Justice (Care and Protection of Children) Rules, 2007, Rule 12(3) –Age determining enquiry – **Applicant – Date of incident is 15/09/2014 – Mark-sheet from 1st standard to 10th standard depicts date of birth as 05/05/1997 – Entry in admission register of school depicts date of birth as 07/04/1995 – Courts below held the date of birth as 07/04/1995 – Held – Mark–sheets of 1st standard to 10th standard produced as per Rule 12(3)(a)(i) will have precedence over any other document and in absence of it date of birth certificate from school as per Rule 12 (3)(a)(ii) will have precedence and so on – Applicant is a juvenile on date of commission of offence, being below 18 years of age – M.Cr.C accordingly disposed of. [Harsewak Vs. State of M.P.]** ...928

दण्ड संहिता (1860 का 45), धाराऐं 457, 306 व 376, लैंगिक अपराधों से बालकों का संरक्षण अधिनियम (2012 का 32), धारा 4, किशोर न्याय (बालकों की देख–रेख और संरक्षण) अधिनियम (2000 का 56), धारा 7ए एवं किशोर न्याय (बालकों की देख–रेख और संरक्षण) नियम, 2007, नियम 12 (3) – आयु निर्धारण हेतु जांच – आवेदक – घटना दिनांक 15/09/2014 – कक्षा 1 से कक्षा 10वीं तक की अंकसूची में जन्मतिथि 05/05/1997 अंकित है – विद्यालय की प्रवेश पंजी में जन्मतिथि 07/04/1995 अंकित है – निचले न्यायालयों ने जन्मतिथि 07/04/1995 अभिनिर्धारित की – अभिनिर्धारित – नियम 12(3)(ए)(i) के अनुसार प्रस्तुत कक्षा 1 से 10वीं तक की अंकसूचियों को अन्य किसी दस्तावेज के आगे प्राथमिकता होगी एवं उनकी अनुपस्थिति में नियम 12(3)(ए)(ii) के अनुसार विद्यालय के जन्मतिथि प्रमाणपत्र को प्राथमिकता दी जायेगी और इसी क्रम में आगे – अपराध कारित होने की तिथि को आवेदक 18 वर्ष से कम आयु का होने के नाते, किशोर है – एम.सी. आर.सी. तद्नुसार निराकृत। (हरसेवक वि. म.प्र. राज्य) ...928

Penal Code (45 of 1860), Section 460 – See – Uchcha Nyayalaya (Khand Nyaypeeth Ko Appeal) Adhiniyam, M.P. 2005, Section 2 (1) **[Mithlesh Rai Vs. State of M.P.]** (DB)...667

दण्ड संहिता (1860 का 45), धारा 460 – देखें – उच्च न्यायालय (खण्ड न्यायपीठ को अपील) अधिनियम, म.प्र., 2005, धारा 2(1) (मिथलेश राय वि. म.प्र. राज्य) (DB)...667

Penal Code (45 of 1860), Section 498A r/w 34 – See – Criminal Procedure Code, 1973, Section 397 & 401 [Abhilasha Vs. Ashok Dongre] ...266

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Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (1 of 1996), Sections 32, 33 & 36 – Appointment of hearing Impaired Candidates **– Posts of Samvida Shala Shikshak Grade-II and III in Panchayat & Social welfare department & Urban Administration & Development Department – Advertisement issued by M.P. Professional Examination Board does not reflect reservation for hearing Impaired persons – State Government notification dated 24.03.2006 provided 6% reservation for disabled persons in which 2% reserved for hearing Impaired persons – Subsequent notification dated 2.12.2011 includes School Education department of Urban Administration to appoint disabled persons on post of Assistant Teachers – Held – No question of depriving legitimate right guaranteed under the Act only because of omission in the advertisement. [State of M.P. Vs. Gajraj Singh] (DB)...349**

निःशक्त व्यक्ति (समान अवसर, अधिकार संरक्षण और पूर्ण भागीदारी) अधिनियम, 1995 (1996 का 1), धाराऐं 32, 33 व 36 – श्रवण बाधित अभ्यर्थियों की नियुक्ति – पंचायत एवं सामाजिक कल्याण विभाग तथा नगरीय प्रशासन एवं विकास विभाग में संविदा शाला शिक्षक वर्ग–II एवं वर्ग–III के पद – म.प्र. व्यवसायिक परीक्षा मण्डल द्वारा जारी विज्ञापन में श्रवण बाधित अभ्यर्थियों हेतु आरक्षण दर्शित नहीं – राज्य सरकार द्वारा जारी अधिसूचना दिनांक 24.03.2006 निःशक्त व्यक्तियों हेतु 6% आरक्षण उपबंधित करती है, जिसमें से 2% आरक्षण श्रवण बाधित व्यक्तियों हेतु है–निःशक्त व्यक्तियों को सहायक अध्यापकों के पदों पर नियुक्त किये जाने हेतु पश्चातवर्ती अधिसूचना दिनांकित 02.12.2011 में नगरीय प्रशासन विभाग के शाला शिक्षा विभाग को सम्मिलित किया गया–अभिनिर्धारित–मात्र विज्ञापन

में हुए लोप के कारण, अधिनियम द्वारा प्रत्याभूत विधिसम्मत अधिकार से वंचित रखे जाने का कोई प्रश्न नहीं है। (म.प्र. राज्य वि. गजराज सिंह) (DB)...349

Prevention of Corruption Act (49 of 1988), Sections 13(1)(d) & 13(2), Penal Code (45 of 1860), Sections 109, 417, 420 r/w 120-B and Criminal Procedure Code, 1973 (2 of 1974), Sections 197, 397 r/w 401 & 482 – Mahatma Gandhi Employment Guarantee Scheme – Vidhan Sabha Nirvachan Kshetra Vikas Yojana (M.P.) – Clause 2.1, 2.2, 3.5 & 4.1 – Vidhayak Nidhi – **Applicant alleged to have misused funds of Vidhayak Nidhi by spending the amount of funds for her personal gain – Guilty intention is an essential ingredient of the offence of cheating – Mens rea on the part of the accused must be established – In order to establish allegation u/s 420 intention to deceive should be in existence at the time when inducement was done – There is nothing on the part of the petitioner of having prepared a false report on the basis of which certain works were completed under government scheme – No prima facie case u/s 13(1)(d) and 13(2) and also section 417, 420 r/w section 120-B is made out – Charges framed against all accused persons set aside. [Kalpana Parulekar (Dr.) (Ku.) Vs. Inspector General of Police Special Police Establishment Lokayukt]** (DB)...599

भ्रष्टाचार निवारण अधिनियम (1988 का 49), धाराऐं 13(1)(डी) व 13(2), दण्ड संहिता (1860 का 45), धाराऐं 109, 417, 420 सहपठित 120–बी एवं दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धाराऐं 197, 397 सहपठित 401 व 482 – महात्मा गांधी रोजगार गारंटी योजना – विधान सभा निर्वाचन क्षेत्र विकास योजना (म.प्र.) – खंड 2. 1, 2.2, 3.5 व 4.1 – विधायक निधि – आवेदकगण ने अभिकथित रूप से अपने व्यक्तिगत लाभ हेतु निधि की रकम खर्च करके विधायक निधि का दुरूपयोग किया है – दूषित आशय छल के अपराध का आवश्यक घटक है – अभियुक्त की आपराधिक मनःस्थिति स्थापित की जानी चाहिए – धारा 420 के अंतर्गत अपराध स्थापित करने के लिये प्रवंचित करने का आशय उस समय विद्यमान होना चाहिए जब उत्प्रेरित किया गया था – याची की ओर से सरकारी योजना के अधीन पूर्ण किये गये कतिपय कार्यों के आधार पर मिथ्या प्रतिवेदन तैयार किये जाने के संबंध में कुछ नहीं है – धारा 13(1)(डी) व 13(2) और साथ ही धाराऐं 417, 420 सहपठित धारा 120–बी के अंतर्गत प्रथम दृष्ट्या प्रकरण नहीं बनता – सभी अभियुक्तगण के विरूद्ध विरचित आरोप अपास्त किये गये। (कल्पना पारुलेकर (डॉ.)(कुमारी) वि. इंसपेक्टर जनरल ऑफ पुलिस स्पेशल पुलिस इस्टैब्लिशमेंट लोकायुक्त) (DB)...599

Prevention of Cruelty to Animals Act (59 of 1960), Sections 11(b),

11(d) & 11(5) – See – Govansh Vadh Pratishedh Adhiniyam, 2004, Sections 4, 5, 6, 6-A, 9, 11(5) & 11(B) [Sheikh Kalim Vs. State of M.P.] ...924

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Protection of Children from the Sexual Offences Act (32 of 2012), Section 4 – See – Penal Code, 1860, Sections 457, 306 & 376 [Harsewak Vs. State of M.P.] ...928

लैंगिक अपराधों से बालकों का संरक्षण अधिनियम (2012 का 32), धारा 4 – देखें – दण्ड संहिता, 1860, धाराऐं 457, 306 व 376 (हरसेवक वि. म.प्र. राज्य) ...928

Protection of Women from Domestic Violence Act (43 of 2005), Section 12 – Nature of proceedings – Domestic violence *per se* not offence – Proceedings are quasi civil. [Yogendra Nath Dwivedi Vs. Smt. Vinita Dwivedi] ...575

घरेलू हिंसा से महिलाओं का संरक्षण अधिनियम (2005 का 43), धारा 12 – कार्यवाहियों का स्वरूप – घरेलू हिंसा अपने आप में अपराध नही – कार्यवाहियां अर्ध–सिविल हैं। (योगेन्द्र नाथ द्विवेदी वि. श्रीमती विनीता द्विवेदी) ...575

Protection of Women from Domestic Violence Act (43 of 2005), Section 12 (Proviso) – Whether it is obligatory to call for domestic violence report from Protection Officer or Service Provider at the time of issuance of notice, if it is not available or if report is available, then is it mandatory to consider it – Held – It is not obligatory for a Magistrate to call for or avail the report at the stage of taking cognizance and if report is available, then its consideration is obligatory even at the stage of issuance of notice or at the time of passing final order, as the case may be, affording opportunity to the other side – Application dismissed. [Ravi Kumar Bajpai Vs. Smt. Renu Awasthi Bajpai] ...302

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Protection of Women from Domestic Violence Act (43 of 2005), Section 29 and Criminal Procedure Code, 1973 (2 of 1974), Chapter 29 – Appeal u/s 29 of Protection of Women from Domestic Violence Act – Stricto sensu **is not an appeal under Chapter 29 of Cr.P.C. – Protection of Women from Domestic Violence Act is beneficial legislation. [Yogendra Nath Dwivedi Vs. Smt. Vinita Dwivedi] ...575**

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Protection of Women from Domestic Violence Act (43 of 2005), Section 29 **– No revision provided in Protection of Women from Domestic Violence Act – Appeal provided u/s 29 of the Act – Protection of Women from Domestic Violence Act beneficial legislation – Converting Court has jurisdiction to hear appeal – Conversion of revision into appeal – Permissible. [Yogendra Nath Dwivedi Vs. Smt. Vinita Dwivedi] ...575**

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घरेलू हिंसा से महिलाओं का संरक्षण अधिनियम में पुनरीक्षण उपबंधित नहीं – अधिनियम की धारा 29 के अंतर्गत अपील उपबंधित है – घरेलू हिंसा से महिलाओं का संरक्षण अधिनियम लाभकारी विधान है – संपरिवर्तन करने वाले न्यायालय को अपील सुनने की अधिकारिता है – पुनरीक्षण का अपील में संपरिवर्तन – अनुज्ञेय है। (योगेन्द्र नाथ द्विवेदी वि. श्रीमती विनीता द्विवेदी) ...575

Railways Act (24 of 1989), Sections 123(2) & 124 – Bonafide passenger – Railways – No witness examined – Burden of proof – Held – Burden of proof cannot be placed on the dependants and also the fact that deceased boarded the train, so presumption would be that he had valid authority to travel. [Hariram Vs. Union of India] ...205

रेल अधिनियम (1989 का 24), धाराऐं 123(2) व 124 – वास्तविक यात्री – रेलवे – किसी साक्षी का परीक्षण नहीं किया गया – सबूत का भार – अभिनिर्धारित – सबूत का भार आश्रितों पर नहीं डाला जा सकता और यह तथ्य भी कि मृतक रेलगाड़ी में सवार हुआ था, अतः यह उपधारणा की जायेगी कि उसके पास यात्रा करने का वैध प्राधिकार था। (हरीराम वि. यूनियन ऑफ इंडिया) ...205

Railways Act (24 of 1989), Sections 123(2) & 124 – Untoward incident – Tribunal – Finding – Case of runover – Written statement and Naksha Panchayatnama – Railways admitting that deceased fallen down from an unknown train – Held – The incident was an untoward incident – Appeal allowed. [Hariram Vs. Union of India] ...205

रेल अधिनियम (1989 का 24), धाराऐं 123(2) व 124 – अप्रिय घटना – अधिकरण – निष्कर्ष – कुचल कर निकलने का प्रकरण – लिखित कथन तथा नक्शा पंचायतनामा – रेलवे ने यह स्वीकार किया है कि मृतक एक अज्ञात रेलगाड़ी से गिरा था – अभिनिर्धारित – घटना एक अप्रिय घटना थी – अपील मंजूर। (हरीराम वि. यूनियन ऑफ इंडिया) ...205

Railway Claims Tribunal Act, (54 of 1987), Section 16 – Application for compensation – Interest – Held – Appellant entitled for interest @ 7.5% p.a. from the date of filing of claim application till its final payment. [Hariram Vs. Union of India] ...205

रेल दावा अधिकरण अधिनियम (1987 का 54), धारा 16 – प्रतिकर हेतु आवेदन – ब्याज – अभिनिर्धारित – अपीलार्थी दावा आवेदन प्रस्तुत करने की तिथि से उसके अंतिम भुगतान तक 7.5% प्रतिवर्ष की दर से ब्याज के लिये हकदार। (हरीराम वि. यूनियन ऑफ इंडिया) ...205

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रजिस्ट्रीकरण अधिनियम (1908 का 16), धाराऐं 17 व 49 – देखें – विनिर्दिष्ट अनुतोष अधिनियम, 1963, धारा 34, (अक्षय दूगड वि. म.प्र. राज्य) (DB)...217

***Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act (30 of 2013), Sections 5A & 24* – Land was acquired under Scheme no. 97 for construction of Ring Road – Later on Scheme no. 97 was held to be illegal, inoperative and was also declared lapsed by order passed in M.P. No. 268/91 – Pursuant to same, State Government issued direction on 20.12.94 whereby 8.023 hct. land was released from Scheme no. 97 – Thereafter impugned order was issued on 12.10.2012 reviewing earlier order dated 20.12.1994 without issuing show cause notice to the petitioners – Held – Since the award was passed on 26.02.1991 before more than 5 years – Land acquisition proceedings deemed to have lapsed because neither possession of the land has been taken nor compensation has been paid – Possession still rests with the petitioner – Respondent Indore Development Authority is directed to consider application regarding issuance of No Objection certificate confirming release of land from Scheme no. 97 – Petition is allowed. [Shwetank Grih Nirman Sahakari Sanstha Maryadit Vs. State of M.P.]** ...93

भूमि अर्जन, पुनर्वासन और पुनर्व्यवस्थापन में उचित प्रतिकर और पारदर्शिता का अधिकार अधिनियम, (2013 का 30), धाराऐं 5–ए व 24 – रिंगरोड के निर्माण के लिए स्कीम नं. 97 के अंतर्गत भूमि का अर्जन किया गया – बाद में स्कीम नं. 97 को अवैध, निष्क्रिय घोषित किया गया तथा एम.पी. नं. 268/91 में पारित आदेश के द्वारा उसे व्यपगत भी घोषित किया गया – उसी के अनुसरण में, राज्य शासन ने 20.12.94 को निर्देश जारी किया जिससे 8.023 हेक्टेयर भूमि को स्कीम नं. 97 से मुक्त किया गया – तत्पश्चात् याचियों को कारण बताओ नोटिस जारी किये बिना पूर्ववर्ती आदेश दिनांक 20.12.94 का पुनर्विलोकन करते हुए 12.10.2012 को आक्षेपित आदेश जारी किया गया – अभिनिर्धारित – क्योंकि अधिनिर्णय 5 वर्ष से अधिक अवधि के पूर्व 26.02.1991 को पारित किया गया था – भूमि अर्जन कार्यवाही व्यपगत मानी गई क्योंकि न तो भूमि का कब्जा लिया गया है न ही प्रतिकर का भुगतान किया गया है – कब्जा अभी भी याची के पास है – प्रत्यर्थी इंदौर विकास प्राधिकरण को स्कीम नं. 97 से भूमि मुक्त करने की पुष्टि करने वाले अनापत्ति

प्रमाणपत्र जारी करने से संबंधित आवेदन पर विचार करने के लिए निदेशित किया गया – याचिका मंजूर। (श्वेतांक गृह निर्माण सहकारी संस्था मर्यादित वि. म.प्र. राज्य) ...93

Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, (30 of 2013), Section 24 and Land Acquisition Act (1 of 1894), Section 31 – Non-payment of compensation – **Although Board had deposited the amount of compensation with Collector and possession was taken, however, there is nothing on record to show that the amount has been paid to the beneficiaries – No material to show that the amount was deposited in the Court as per Section 31 of the Act, 1894 where the proceedings u/s 18 of Act, 1894 were maintainable – Proceedings stood lapsed in view of Section 24 of Act, 2013 – Writ Appeal allowed. [Purushottam Lal Vs. State of M.P.]** **(DB)...713**

भूमि अर्जन, पुनर्वासन और पुनर्व्यवस्थापन में उचित प्रतिकर और पारदर्शिता का अधिकार अधिनियम, (2013 का 30), धारा 24 एवं भूमि अर्जन अधिनियम (1894 का 1), धारा 31 – प्रतिकर का भुगतान न किया जाना – यद्यपि, बोर्ड ने प्रतिकर की राशि कलेक्टर के समक्ष जमा कर दी थी और कब्जा लिया गया था, तथापि अभिलेख पर ऐसा कोई साक्ष्य नहीं है जो यह दर्शाता हो कि राशि का भुगतान हितग्राहियों को किया गया है – कोई तथ्य नहीं जिससे यह प्रकट हो कि अधिनियम, 1894 की धारा 31 के अनुसार उक्त राशि न्यायालय में जमा की गई थी जहां कि अधिनियम, 1894 की धारा 18 के अंतर्गत कार्यवाहियां पोषणीय थी – अधिनियम, 2013 की धारा 24 के आलोक में कार्यवाहियां व्यपगत की गई – रिट अपील मंजूर। (पुरूषोत्तम लाल वि. म.प्र. राज्य) **(DB)...713**

Sahayata Upkram (Vishesh Upabandh) Adhiniyam, M.P. (32 of 1978), Section 3 – **Notification issued under section 3 is applicable on "other legal proceedings" which includes winding up proceedings – Act of 1978 in pith and substance falls under concurrent list, therefore Article 254(2) will be attracted – It will prevail in the state even if there exists some repugnancy of earlier made law by parliament. [Citibank N.A. London Branch Vs. M/s. Plethico Pharmaceuticals Ltd.]** ...829

सहायता उपक्रम (विशेष उपबंध) अधिनियम, म.प्र. (1978 का 32), धारा 3 – धारा 3 के अंतर्गत जारी अधिसूचना "अन्य विधिक कार्यवाहियों" पर लागू होती है, जिनमें परिसमापन कार्यवाहियाँ भी सम्मिलित हैं – 1978 का अधिनियम तत्व और सार में समवर्ती सूची के अंतर्गत आता है, अतएव अनुच्छेद 254(2) आकर्षित होगा

– यहां तक कि संसद द्वारा पूर्व में निर्मित विधि में कुछ प्रतिकूलता विद्यमान होने पर भी, यह राज्य में अभिभावी होगा। (सिटीबैंक एन.ए. लंदन ब्रांच वि. मे. प्लेथिको फार्मास्यूटिकल्स लि.) ...829

Sahayata Upkram (Vishesh Upabandh) Adhiniyam, M.P. (32 of 1978), Section 5 – **Respondent company seeking stay on winding up proceedings – Based on notification issued by State Government u/s 3 of the Act declaring respondent/company as relief undertaking for one year – Held – Notification issued is within jurisdiction – Illegality of notification cannot be examined in collateral proceedings, proper remedy is to approach writ Court – Winding up proceedings stayed for one year from the date of notification – Notification u/s 3 alone without issuing notification u/s 4 will not effect on orders already passed in winding up proceedings – Respondent is directed to give inspection of books of accounts and records to inspecting officer – Application allowed. [Citibank N.A. London Branch Vs. M/s. Plethico Pharmaceuticals Ltd.]** ...829

सहायता उपक्रम (विशेष उपबंध) अधिनियम, म.प्र. (1978 का 32), धारा 5 – प्रत्यर्थी कंपनी द्वारा परिसमापन कार्यवाही पर स्थगन चाहा गया – राज्य सरकार द्वारा धारा 3 के अंतर्गत अनावेदक कंपनी को एक वर्ष के लिए सहायता उपक्रम घोषित किये जाने हेतु जारी की गई अधिसूचना के आधार पर – अभिनिर्धारित – जारी अधिसूचना अधिकारिता के अंतर्गत है – अधिसूचना की अवैधानिकता संपार्श्विक कार्यवाहियों में परीक्षित नहीं की जा सकती, रिट न्यायालय उचित उपचार है – परिसमापन कार्यवाहियां अधिसूचना दिनांक से एक वर्ष के लिए स्थगित की गई – धारा 4 के अंतर्गत अधिसूचना जारी किये बिना, केवल धारा 3 के अंतर्गत जारी की गई अधिसूचना, परिसमापन कार्यवाहियों में पूर्व में जारी किये गये आदेशों पर प्रभावी नहीं होगी – प्रत्यर्थी को लेखा पुस्तक एवं अभिलेख निरीक्षण हेतु निरीक्षणकर्ता अधिकारी को सौंपने हेतु निदेश – आवेदन मंजूर। (सिटीबैंक एन.ए. लंदन ब्रांच वि. मे. प्लेथिको फार्मास्यूटिकल्स लि.) ...829

Service Law – Degrading of entry in confidential report – **Reporting Authority awarded "Very good" grading to petitioner – Grading was also accepted by Reviewing Authority, however, the Accepti.. uthority downgraded the grading – No reason was assigned for downg. .ling the confidential report – No notice or opportunity of hearing was given to petitioner before downgrading the CR – Action of owngrading the CR is not sustainable in the eye of law – Matter**

remanded back to Accepting Authority to issue show cause notice indicating the reasons for downgrading of ACRs – After giving opportunity to petitioner, decide the matter in accordance with law within a period of three months – If Accepting Authority does not conclude the procedure within aforesaid time, then the ACRs recorded by Initiating Authority and Reviewing Authority shall be maintained and matter shall be proceeded with in favour of petitioner for grant of promotion and all consequential benefits along with juniors. [R.C. Choudhary Vs. State of M.P.] ...793

सेवा विधि – गोपनीय प्रतिवेदन में प्रविष्टि का निम्न श्रेणीकरण किया जाना – प्रतिवेदन प्राधिकारी ने याची को "बहुत अच्छा" श्रेणी में रखा – उक्त प्रविष्टि पुनर्विलोकन प्राधिकारी द्वारा भी स्वीकार की गई, यद्यपि, स्वीकारकर्ता प्राधिकारी ने उक्त प्रविष्टि का निम्न श्रेणीकरण कर दिया – गोपनीय प्रतिवेदन में निम्न श्रेणीकरण का कोई कारण दर्शित नहीं किया गया – गोपनीय प्रतिवेदन में प्रविष्टि के निम्न श्रेणीकरण किये जाने के पूर्व याची को कोई सूचना पत्र अथवा सुनवाई का अवसर भी प्रदान नहीं किया गया – विधि की दृष्टि में इस प्रकार गोपनीय प्रतिवेदन की प्रविष्टि में निम्न श्रेणीकरण किये जाने की कार्यवाही कायम रखे जाने योग्य नहीं है – याची के गोपनीय प्रतिवेदन में प्रविष्टि के निम्न श्रेणीकरण किये जाने के कारण प्रकट करते हुये कारण बताओ सूचना पत्र जारी किये जाने हेतु प्रकरण स्वीकारकर्ता प्राधिकारी की ओर प्रतिप्रेषित किया गया – याची को विधि अनुसार सुनवाई का अवसर प्रदान किया जाकर प्रकरण को तीन माह की अवधि में निराकृत किया जाये – यदि स्वीकारकर्ता प्राधिकारी उक्त अवधि में प्रकरण को निराकृत नहीं करता है तो प्रारंभिक प्राधिकारी एवं पुनर्विलोकन प्राधिकारी द्वारा अभिलिखित गोपनीय प्रतिवेदन मान्य किया जाएगा एवं याची को अन्य कनिष्ठ कर्मचारियों के साथ पदोन्नति एवं अन्य पारिणामिक लाभ प्रदाय किये जाने हेतु याची के हित में कार्यवाही की जायेगी। (आर.सी. चौधरी वि. म.प्र. राज्य) ...793

Service Law – Departmental enquiry **– Scope of judicial review – Law discussed. [Yogiraj Sharma (Dr.) Vs. State of M.P.] (DB)...689**

सेवा विधि – विभागीय जांच – न्यायिक पुनर्विलोकन का विस्तार – विधि विवेचित। (योगीराज शर्मा (डॉ.) वि. म.प्र. राज्य) **(DB)...689**

Service Law – Effect of interim order – Petitioner working as Sub Engineer was promoted as Asstt. Engineer, the said promotion was cancelled by the respondent **– Petitioner challenged the cancellation order – The effect and operation of cancellation order was stayed by the Court – The question involved, whether on dismissal of writ petition**

the petitioner is entitled to get the pension benefit by treating himself as Asstt. Engineer – Held – Stay of operation of order means that the order impugned very much exists but its operation is kept in abeyance because of the order of the Court – If ultimately the petition is dismissed or interim order is vacated, the order which was stayed comes into operation – Further held, petitioner is not entitled to get the benefit of pension for the aforesaid post. [Natthu Singh Chauhan Vs. State of M.P.] ...54

सेवा विधि – अंतरिम आदेश का प्रभाव – उपयंत्री के रूप में कार्यरत याची को सहायक यंत्री के रूप में पदोन्नत किया गया, उक्त पदोन्नति प्रत्यर्थी द्वारा रद्द की गयी – याची ने रद्दकरण आदेश को चुनौती दी – रद्दकरण आदेश के प्रभाव एवं प्रवर्तन पर न्यायालय द्वारा रोक लगाई गई – यह प्रश्न अंतर्ग्रस्त है कि क्या रिट याचिका खारिज होने पर याची स्वयं को सहायक यंत्री मानते हुए पेंशन लाभ लेने का हकदार है – अभिनिर्धारित – आदेश के प्रवर्तन पर रोक का अर्थ है कि आक्षेपित आदेश अस्तित्व में है परंतु न्यायालय के आदेश के कारण उसके प्रवर्तन को स्थगित रखा गया है – यदि अंतिमतः याचिका खारिज होती है अथवा अंतरिम आदेश निष्प्रभावी होता है, वह आदेश जिसे स्थगित किया गया था प्रवर्तनीय हो जाता है – आगे अभिनिर्धारित, याची उपरोक्त पद के लिये पेंशन का लाभ पाने का हकदार नहीं। (नत्थू सिंह चौहान वि. म.प्र. राज्य) ...54

Service Law – Grant of Kramonnati **– Held – That, the person is recruited by an organisation not just for a job, but for a whole career – The opportunity for advancement is an incentive for personnel development – Further, there cannot be any modern management, man power development etc. which is not related to a system of career progression – Hence, govt. cannot deny the facility of financial kramonnati. [Arun Kumar Singh Vs. State of M.P.] ...747**

सेवा विधि – क्रमोन्नति प्रदान किया जाना – अभिनिर्धारित – कोई भी व्यक्ति किसी संगठन द्वारा मात्र किसी एक कार्य हेतु नियुक्त न किया जाकर संपूर्ण करियर हेतु नियुक्त किया जाता है – प्रोन्नति का अवसर कर्मचारी विकास के लिए प्रोत्साहन की तरह होता है – इसके अतिरिक्त, ऐसा कोई आधुनिक प्रबंधन, मानव शक्ति विकास इत्यादि नहीं हो सकता जो कि सेवा प्रोन्नति से संबंध न रखता हो – अतः, शासन वित्तीय क्रमोन्नति से इंकार नहीं कर सकता है। (अरूण कुमार सिंह वि. म.प्र. राज्य) ...747

Service Law – Termination – Contractual appointment **– Petitioner in reply to show cause notice admitted that he is not staying**

in headquarter – Petitioner himself admitted that he had flouted the condition of appointment – The service conditions of contractual employees are governed by the terms of contract – Where on admitted or indisputable facts only one conclusion is possible, the court may not compel the observance of natural justice. [Nirbhay Singh Pal Vs. M.P. Police Housing Corporation] ...424

सेवा विधि – सेवा समाप्ति – संविदात्मक नियुक्ति – याची ने कारण बताओ नोटिस के जवाब में स्वीकार किया कि वह मुख्यालय में नहीं रह रहा है – याची ने स्वयं स्वीकार किया है कि उसने नियुक्ति की शर्त की अवहेलना की थी – संविदात्मक कर्मचारियों की सेवा शर्तें, संविदा के निबंधनों द्वारा शासित होती हैं – जहां स्वीकृत या अविवादित तथ्यों पर केवल एक निष्कर्ष संभव है, न्यायालय, नैसर्गिक न्याय का अनुपालन करने के लिए विवश नहीं कर सकता। (निर्भय सिंह पाल वि. म.प्र. पुलिस हाउसिंग कारपोरेशन) ...424

Service Law – Transfer **– Respondent no. 5 was substantially appointed on contract basis as Hostel Superintendent – Being a woman, she was required to be posted in a girls hostel but by mistake she was posted in boys hostel – This mistake was corrected by impugned order – Petitioner was only given the charge of Hostel Superintendent and was never appointed/promoted to the said post – Petitioner has to make room for respondent no. 5 – Petition dismissed. [Pratibha Kushram (Smt.) Vs. State of M.P.] ...427**

सेवा विधि – अंतरण – प्रत्यर्थी क्रमांक 5 को संविदा आधार पर छात्रावास अधीक्षक के रूप में मूलतः नियुक्त किया गया था – महिला होने के नाते, उसे बालिका छात्रावास में पदस्थ किया जाना अपेक्षित था परंतु मूलवश उसे बालक छात्रावास में पदस्थ किया गया – इस भूल को आक्षेपित आदेश द्वारा सुधारा गया था – याची को केवल छात्रावास अधीक्षक का पदभार दिया गया था और उसे कभी भी उक्त पद पर नियुक्त/पदोन्नत नहीं किया गया था – याची को प्रत्यर्थी क्र. 5 के लिए जगह बनानी/देनी पड़ेगी – याचिका खारिज। (प्रतिभा कुशराम (श्रीमती) वि. म.प्र. राज्य) ...427

Specific Relief Act (47 of 1963), Section 34, Civil Procedure Code (5 of 1908), Section 96 and Registration Act (16 of 1908), Sections 17 & 49 – Specific performance of contract **– Suit was dismissed only on the ground that agreement to sell was unregistered document and hence inadmissible in evidence – Held – Document required to be**

registered, if unregistered, can be admitted in evidence as evidence of a contract in a suit for specific performance – Suit filed by the appellant is decreed and impugned judgment and decree set aside. [Akshay Doogad Vs. State of M.P.] (DB)...217

विनिर्दिष्ट अनुतोष अधिनियम (1963 का 47), धारा 34, सिविल प्रक्रिया संहिता (1908 का 5), धारा 96 एवं रजिस्ट्रीकरण अधिनियम (1908 का 16), धाराऐं 17 व 49 – संविदा का विनिर्दिष्ट पालन – वाद केवल इस आधार पर खारिज किया गया कि विक्रय का अनुबंध अपंजीकृत दस्तावेज था और इस वजह से साक्ष्य में अग्राह्य है – अभिनिर्धारित – दस्तावेज का पंजीकृत होना अपेक्षित है, यदि अपंजीकृत है, विनिर्दिष्ट पालन के लिये वाद में संविदा के साक्ष्य के रूप में साक्ष्य में स्वीकार किया जा सकता है – अपीलार्थी द्वारा प्रस्तुत वाद डिक्रीत तथा आक्षेपित निर्णय एवं डिक्री अपास्त। (अक्षय दूगड वि. म.प्र. राज्य) (DB)...217

Telegraph Act, (13 of 1885), Section 7-B – Arbitration of disputes **– Civil Suit for recovery towards the use of telephone by defendant – Concurrent findings of fact – Whether Civil Court is divested for its jurisdiction to try a Suit for recovery of bills for user of telephone in the light of provisions of Section 7-B – Held – No, appellant failed to establish clear bar for the civil Court to adjudicate as regard to recovery of bills. [Vimla Sondhia (Smt.) Vs. Door Sanchar Zila Prabandhak] ...210**

तार अधिनियम, (1885 का 13), धारा 7–बी – विवादों का माध्यस्थम – प्रतिवादी द्वारा दूरभाष के उपयोग पर वसूली के लिए सिविल वाद – तथ्य के समवर्ती निष्कर्ष – क्या धारा 7–बी के उपबंधों के आलोक में दूरभाष के उपभोक्ता के बिल की वसूली के वाद का विचारण करने की अधिकारिता सिविल न्यायालय से छीन ली गयी है – अभिनिर्धारित – नहीं, बिलों की वसूली के संबंध में सिविल न्यायालय द्वारा न्याय निर्णयन करने की स्पष्ट रोक को स्थापित करने में अपीलार्थी असफल रहा। (विमला सोंधिया (श्रीमती) वि. दूर संचार जिला प्रबंधक) ...210

Tender – Quashing of Auction Notice **– As in the fact situation petitioner is failed to substantiate that he is entitled for the relief of execution of agreement in his favour – Auction notice can not be quashed – Petition is dismissed. [Manish Kumar Gupta Vs. State of M.P.] (DB)...789**

निविदा – नीलामी नोटिस को अभिखण्डित किया जाना – तथ्यात्मक परिस्थितियों में भी याची यह सिद्ध करने में विफल रहा है कि वह करार का निष्पादन उसके पक्ष में

किये जाने की सहायता हेतु हकदार है – नीलामी नोटिस अभिखंडित नहीं किया जा सकता – याचिका खारिज। (मनीष कुमार गुप्ता वि. म.प्र. राज्य) (DB)...789

Transfer of Property Act (4 of 1882), Section 3 – Attesting witness – **Held – The scribe appends his signature on the 'will' as scribe – He is not a witness to the 'will' but a mere writer of the 'will' – The element of the animus to attest is missing i.e., intention to attest is missing – His signature is only for the purpose of authenticating that he was a scribe of the 'will'. [Noorbaksh Khan Vs. Salim Khan]** ...520

सम्पत्ति अन्तरण अधिनियम (1882 का 4), धारा 3 – अनुप्रमाणक साक्षी – अभिनिर्धारित – लेखक 'वसीयत' पर अपने हस्ताक्षर लेखक के रूप में करता है – वह 'वसीयत' का साक्षी नहीं बल्कि मात्र 'वसीयत' का लेखक है – अनुप्रमाणित करने के आशय (animus) के तत्व का अभाव है अर्थात्, अनुप्रमाणित करने के आशय का अभाव है – उसके हस्ताक्षर का प्रयोजन केवल यह अधिप्रमाणित करने का है कि वह 'वसीयत' का लेखक था। (नूरबख्श खान वि. सलीम खान) ...520

Transfer of Property Act (4 of 1882), Section 54 – Contract for sale – **Does not confer any right and title – Not a document of acquisition of title and possession. [Kishorilal Tiwari Vs. Kandhilal]** ...512

सम्पत्ति अन्तरण अधिनियम (1882 का 4), धारा 54 – विक्रय के लिए संविदा – कोई अधिकार एवं स्वत्व प्रदान नहीं करती – स्वत्व या कब्जे के अर्जन का दस्तावेज नहीं। (किशोरीलाल तिवारी वि. कंधीलाल) ...512

Uchcha Nyayalaya (Khand Nyaypeeth Ko Appeal) Adhiniyam, M.P. 2005 (14 of 2006), Section 2 and Limitation Act (36 of 1963), Section 5 – Condonation of delay – Delay of three years – **Impugned order passed on the basis of judgment passed in another case against which Writ Appeal was already dismissed– Govt. Advocate clearly opined to comply with the impugned order – Appeal was filed only after issuance of notice for contempt – Held – Action on the part of State shows high handedness in not complying with the order of Court – Application for condonation of delay dismissed with cost of Rs. 25,000/-. [State of M.P. Vs. Moolchand Upadhyay]** (DB)...5

उच्च न्यायालय (खण्ड न्यायपीठ को अपील) अधिनियम, म.प्र., 2005 (2006 का 14), धारा 2 एवं परिसीमा अधिनियम (1963 का 36), धारा 5 – विलंब के लिये माफी – तीन वर्ष का विलंब – अन्य प्रकरण में पारित निर्णय, जिसके विरूद्ध रिट

अपील पहले ही खारिज हो चुकी है, के आधार पर आक्षेपित आदेश पारित किया गया – सरकारी अधिवक्ता ने आक्षेपित आदेश का अनुपालन करने का स्पष्ट अभिमत दिया है – अवमानना का नोटिस जारी होने के पश्चात् ही अपील प्रस्तुत की गयी – अभिनिर्धारित – शासन की ओर से न्यायालय के आदेश का अनुपालन न करने की कार्यवाही मनमानी दर्शाती है – विलंब के लिये माफी का आवेदन रू. 25,000/– के व्यय के साथ खारिज। (म.प्र. राज्य वि. मूलचन्द उपाध्याय) (DB)...5

Uchcha Nyayalaya (Khand Nyaypeeth Ko Appeal) Adhiniyam, M.P. 2005 (14 of 2006), Section 2 (1) and Penal Code (45 of 1860), Section 460 – Investigation by C.B.I. **– Accused persons not arrested inspite of information with regard to their involvement was already collected – Case diary also appears to be tampered – Section 302 of IPC added 12 days after crime – Murder of four persons of the same family – Considering the case diary entries, various police press notes, inaction on the part of investigating agency in not taking action against persons who had allegedly confessed their involvement in case – Investigation not fair and impartial – Held – Fit case for fresh investigation by C.B.I. – Appeal allowed. [Mithlesh Rai Vs. State of M.P.] (DB)...667**

उच्च न्यायालय (खण्ड न्यायपीठ को अपील) अधिनियम, म.प्र., 2005 (2006 का 14), धारा 2(1) एवं दण्ड संहिता (1860 का 45), धारा 460 – सी.बी.आई. द्वारा अन्वेषण – अभियुक्तगण के लिप्त होने की जानकारी पहले ही एकत्रित किये जाने के बावजूद उन्हें गिरफ्तार नहीं किया गया – केस डायरी से भी छेड़छाड़ किया जाना प्रकट होता है – अपराध के 12 दिनों के पश्चात् धारा 302 भा.दं.सं. जोड़ी गई – एक ही परिवार के चार व्यक्तियों की हत्या – केस डायरी की प्रविष्टियों, कई पुलिस प्रेस नोट के विचारोपरांत, उन व्यक्तियों के विरूद्ध जो कि कथित तौर पर मामले में अपनी संलिप्तता कबूल कर चुके थे, कार्यवाही न किये जाने से अन्वेषण एजेंसी की कार्यहीनता प्रकट होती है – निष्पक्ष एवं उचित अन्वेषण नहीं – अभिनिर्धारित – सी.बी.आई. द्वारा नये सिरे से अन्वेषण किये जाने हेतु उपयुक्त प्रकरण – अपील मंजूर। (मिथलेश राय वि. म.प्र. राज्य) (DB)...667

Uchcha Nyayalaya (Khand Nyaypeeth Ko Appeal) Adhiniyam, M.P. 2005 (14 of 2006), Section 2(1) – Interlocutory order **– Any order, even though interlocutory in nature decides a question/issue finally or affects a vital and valuable rights which may cause injustice to a person, the same is not an interlocutory order – Writ Appeal maintainable. [Durjan Ahirwar Vs. State of M.P.] (DB)...8**

उच्च न्यायालय (खण्ड न्यायपीठ को अपील) अधिनियम, म.प्र., 2005 (2006 का 14), धारा 2(1) – अन्तर्वर्ती आदेश – कोई भी आदेश, भले ही अन्तर्वर्ती प्रकृति का हो, किसी प्रश्न/विवाद्यक को अंतिम रूप से निर्णीत करता हो अथवा महत्वपूर्ण एवं मूल्यवान अधिकारों को प्रभावित करता हो जिससे किसी व्यक्ति के साथ अन्याय कारित हो, वह अंतर्वर्ती आदेश नहीं है – रिट अपील पोषणीय। (दुर्जन अहिरवार वि. म.प्र. राज्य) (DB)...8

Urban Land (Ceiling and Regulation) Act (33 of 1976), Sections 10 & 20 – **Notice of Collector requiring the petitioner to handover the possession of surplus land assailed on the ground that an application u/s 20 is pending consideration – Therefore, the notice is without jurisdiction – Though the name of Government entered in the revenue record, petitioner is in possession of the disputed land – Notice is vitiated and contrary to the provisions of law – Held – Kabza panchnama is merely a paper formality designed to frustrate the provisions of the Repeal Act – Even the impugned notice does not indicate that the possession was with the State Government – There is no compliance of provisions contained u/s 10 (5) of the Act – Possession still rests with the petitioner – Although the possession is alleged to have been taken in the year 1984 but Khasra entry upto 1988 indicates the possession of the petitioner – Notice requiring hand over the possession is quashed – Petition is allowed. [Sunil Vs. State of M.P.]** ...86

नगर भूमि (अधिकतम सीमा और विनियमन) अधिनियम (1976 का 33), धाराएं 10 व 20 – कलेक्टर का नोटिस जिसके द्वारा यह अपेक्षित है कि याची अतिरिक्त भूमि का कब्जा सौंप दे को इस आधार पर चुनौती दी गई कि धारा 20 के अंतर्गत आवेदन विचारण हेतु लंबित है – अतः, नोटिस अधिकारिता विहीन है – यद्यपि राजस्व अभिलेख में शासन का नाम दर्ज है, विवादित भूमि पर याची का कब्जा है – नोटिस दूषित है तथा विधि के प्रावधानों के विपरीत है – अभिनिर्धारित – कब्ज़ा पंचनामा केवल कागज़ी औपचारिकता है जिसकी रचना निरसन अधिनियम के प्रावधानों को विफल करने के लिये की गई है – यहाँ तक कि आक्षेपित नोटिस भी यह नहीं दर्शाता कि कब्ज़ा राज्य शासन के पास था – अधिनियम की धारा 10(5) के अंतर्गत दिये गये प्रावधानों का अनुपालन नहीं किया गया – कब्ज़ा अभी भी याची के पास है – यद्यपि अभिकथित रूप से कब्ज़ा 1984 में ले लिया गया परंतु 1988 तक की खसरा प्रविष्टि याची का कब्ज़ा दर्शाती है – कब्ज़ा सौंपने की अपेक्षा का नोटिस अभिखंडित – याचिका मंजूर। (सुनील वि. म.प्र. राज्य) ...86

Vas-Sthan Dakhalkar (Bhumiswami Adhikaron Ka Pradan Kiya Jana) Adhiniyam, M.P. (4 of 1980), Section 4 – **Charnoi land – Revenue**

Authorities – No power to grant patta. [Ravi Shankar Sarathe Vs. State of M.P.] ...404

वास–स्थान दखलकार (भूमिस्वामी अधिकारों का प्रदान किया जाना) अधिनियम, म.प्र. (1980 का 4), धारा 4 – चरनोई भूमि – राजस्व प्राधिकारी – पट्टा प्रदान करने की शक्ति नहीं। (रविशंकर सराठे वि. म.प्र. राज्य) ...404

***Words and phrases* – Protection of Women from Domestic Violence Act (43 of 2005), Section 12(1) – Words 'Proviso', 'any order' and 'before passing any order' explained. [Ravi Kumar Bajpai Vs. Smt. Renu Awasthi Bajpai] ...302**

शब्द और वाक्यांश – घरेलू हिंसा से महिलाओं का संरक्षण अधिनियम (2005 का 43), धारा 12(1) – शब्द 'परंतुक', 'कोई आदेश' एवं 'कोई आदेश पारित करने से पूर्व' स्पष्ट किया गया। (रवि कुमार बाजपेयी वि. श्रीमती रेणु अवस्थी बाजपेयी) ...302

***Words & Phrases* – 'Telegraph line', 'Appliance' or 'Apparatus' – Definition – Wide connotation given. [Vimla Sondhia (Smt.) Vs. Door Sanchar Zila Prabandhak] ...210**

शब्द और वाक्यांश – 'तारयंत्र लाईन', 'साधित्र' या 'यंत्र' – परिभाषा – विस्तृत अर्थ दिया गया। (विमला सोंधिया (श्रीमती) वि. दूर संचार जिला प्रबंधक) ...210

***Workmen's Compensation Act (8 of 1923), Section 30(1) – See – Payment of Wages Act, 1936, Sections 15(2) & 17(1A),* [Saabir & Brothers Vs. Rajesh Sen] ...786**

कर्मकार प्रतिकर अधिनियम (1923 का 8), धारा 30(1) – देखें – मजदूरी संदाय अधिनियम, 1936, धाराऐं 15(2) व 17(1ए), (साबिर एंड ब्रदर्स वि. राजेश सेन) ...786

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THE INDIAN LAW REPORTS M.P. SERIES, 2016

(VOL-1)

JOURNAL SECTION

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

[Published in the Gazette of India (Extraordinary) Part II, Section 3, Sub-section (ii) dated 16.02.2016]

MINISTRY OF LAW AND JUSTICE

(Department of Justice)

NOTIFICATION

New Delhi, the 16th February, 2016

S.O. 495(E).—In pursuance of clause (b) of section 22A of the Legal Services Authorities Act, 1987 (39 of 1987), the Central Government, in the public interest, hereby declares the following services to be public utility services with effect from the date of publication of this notification in the Official Gazette, namely:-

"(a) education or educational institutions; or

(b) housing and real estate service".

[F. No. A-60011/37/2004-Admn.III (LAP)-JUS]

ATUL KAUSHIK, Jt. Secy.

MADHYA PRADESH ACT

NO. 6 OF 2016

THE INDIAN STAMP (MADHYA PRADESH AMENDMENT) ACT, 2015

[Received the assent of the Governor on the 12th January, 2016; assent first published in the "Madhya Pradesh Gazette (Extra-ordinary)", dated the 14th January, 2016, page no. 66(4) to 66(7)]

An Act further to amend the Indian Stamp Act, 1899 in its application to the State of Madhya Pradesh.

Be it enacted by the Madhya Pradesh legislature in the Sixty-sixth year of the Republic of India as follows:-

1. Short title.- This Act may be called the Indian Stamp (Madhya Pradesh Amendment) Act, 2015.

2. Amendment of Central Act No. II of 1899, in its application to the State of Madhya Pradesh. The Indian Stamp Act, 1899 (No. II of 1899) (hereinafter referred to as the principal Act), shall in its application to the State of Madhya Pradesh, be amended in the manner hereinafter provided.

3. Amendment of Schedule 1-A. In Schedule 1-A to the principal Act,—

(i) in article 6, after clause (g), the following clauses and entries relating thereto shall be inserted, namely:—

"(ga)	If relating to advertisement on Radio, Television, Cinema, Cable network or any media other than newspaper.	0.25 percent of the amount of consideration specified in such agreement, subject to a minimum of rupees five hundred and a maximum of rupees twenty five thousand

"(gb)	Work contract, not being a Development/ Construction agreement or a Security bond, containing an agreement to secure the due performance of a contract or due discharge of a liability.	0.25 percent of the amount or value secured by such deed, subject to a minimum or rupees five hundred and a maximum of rupees twenty five thousand.";

(ii) for article 19 and entry relating thereto, the following article and entry relating thereto shall be substituted, namely:—

"19. Certificate of Sale		
	(in respect of each property put up as a separate lot and sold), granted to the purchaser of any property sold by public auction by a Civil or Revenue Court or Collector or other Revenue Officer or an officer authorised to do so under any law for the time being in force.	The same duty as a conveyance (No. 25) on the market value of the property or purchase amount, whichever is higher.";

(iii) for article 38 and entries relating thereto, the following article and entries relating thereto shall be substituted, namely:—

"**38.(a) Lease,** including an under-lease or sub-lease and any agreement to let or sub-let or any renewal of lease, other than mining lease—

(i) where the lease purports to be for a term less than one year.	0.01 percent of the whole amount payable or deliverable under such lease, or of the market value of the property, whichever is higher.
(ii) where the lease purports to be for a term of one year or more but up to five years.	0.1 percent of the sum of the amount of premium or money advanced or to be advanced and the average annual rent reserved, or of the market value of the property, whichever is higher.
(iii) where the lease purports to be for a term exceeding five years but up to ten years.	0.5 percent of the sum of the amount of premium or money advanced or to be advanced and the average annual rent reserved, or of the market value of the property, whichever is higher.
(iv) where the lease purports to be for a term exceeding ten years but up to twenty years.	one percent of the sum of the amount of premium or money advanced or to be advanced and the average annual rent reserved, or of the market value of the property, whichever is higher.
(v) where the lease purports to be for a term exceeding twenty years but less than thirty years.	two percent of the sum of the amount of premium or money advanced or to be

		advanced and the average annual rent reserved, or of the market value of the property, whichever is higher.
	(vi) where the lease purports to be for a period of thirty years or more, or in perpetuity, or does not purport to be for a definite period.	five percent of the sum of the amount of premium or money advanced or to be advanced and the average annual rent reserved, or of the market value of the property, whichever is higher.
(b)	**Mining Lease,** of any term including an under-lease or sub-lease and any agreement to let or sub-let or any renewal of lease.	0.75 percent for the whole amount payable or deliverable under such lease.
	Explanation I. When an instrument of agreement to lease is stamped with the ad-valorem duty required for a lease, and a lease in pursuance of such agreement is subsequently executed, the duty on such lease deed shall be the duty payable under the article less the duty already paid, subject to a minimum of one thousand rupees.	
	Explanation II. Where a decree or final order of any Civil Court in respect of a lease is stamped with ad-valorem duty required for a lease,	

and a lease in pursuance of such decree or final order is subsequently executed, the duty on such lease deed shall be the duty payable under the article less the duty already paid, subject to a minimum of one thousand rupees.

Explanation III. Any consideration in the form of premium, or money advanced or to be advanced by whatever name called except which is refundable or adjustable against any other amount payable under the lease shall, for the purpose of this article, be treated as consideration passed on.

Explanation IV. The renewal period, if specifically mentioned in the lease deed, shall be treated as part of the present lease period.

Explanation V. When a lessee undertakes to pay any recurring charge, such as Government revenue, the landlord's share of cesses or the owner's share of municipal rates or taxes, which is by law recoverable from the lesser, the amount so agreed to be paid by the lessee shall be deemed to

be part of the rent. Also, rent paid in advance shall be deemed to be money advanced, unless it is specifically provided in the lease that rent paid in advance shall be set off towards the installments of rent.

Explanation VI. For the purpose of this article royalty shall be treated as rent.

Explanation VII. For the purpose of this article market value, premium and rent of any property, which is subject matter of lease executed by or on behalf of the Central Government or the State Government or any undertaking of the State Government or any municipal body in the State shall be as shown in the instrument.

Explanation VIII. For the purpose of this article document of Leave and Licence or Conducting Licence, if relating to immovable property and in the nature of a lease shall be treated as lease deed.";

(iv) after article 41, the following article and entries relating thereto shall be inserted, namely:—

"**41A. Licence,** relating to arms or ammunitions, that is to say, document evidencing the licence or renewal of licence relating to arms or ammunitions under the provisions of the Arms Act, 1959 (No. 54 of 1959).

(a) Licence relating to—	
(i) Revolvers and Pistols	Five thousand rupees,
(ii) Weapons other than Revolvers and Pistols	Two thousand rupees,
(b) Renewal of licence relating to—	
(i) Revolvers and Pistols	Two thousand rupees,
(ii) Weapons other than Revolvers and Pistols	One thousand rupees.".

I.L.R. [2016] M.P., 641
SUPREME COURT OF INDIA
Before Mr. Justice Fakkir Mohamed Ibrahim Kalifulla &
Mr. Justice Uday Umesh Lalit
Cr.Appeal No. 2110/2009 decided on 29 September, 2015

NARENDER SINGH & ors. ...Appellants
Vs.
STATE OF M.P. ...Respondent

(Alongwith Cr.Appeal No. 2111/2009)

A. ***Penal Code (45 of 1860), Sections 147, 148, 149 & 302*** **- Incident took place on 27/06/1997 at about 10 p.m. - Deceased was attacked with sword, 'Farsa', axe and 'lathis' - Accused seven in number - Grounds - Report u/s 157 of Cr.P.C. sent with delay to Magistrate on 30/06/1997 - None of injured eye- witness mentioned in column no. 6 of Crime Details Form, names of accused persons not there in P.M. report etc. - Held - These are minor discrepancies which do not affect the conviction of the appellants and it is sufficiently established that occurrence took place as spoken by the prosecution witnesses - Conviction upheld - Appeal dismissed. (Paras 12 to 20)**

क. दण्ड संहिता (1860 का 45), धाराऐं 147, 148, 149 व 302 – घटना दिनांक 27/06/1997 को रात्रि लगभग 10 बजे घटित हुई – मृतक पर तलवार, 'फरसा', कुल्हाड़ी एवं लाठी से हमला किया गया – अभियुक्तगण की संख्या सात – आधार – दं.प्र.सं. की धारा 157 के अंतर्गत प्रतिवेदन दण्डाधिकारी को दिनांक 30/06/1997 को विलंब से भेजा गया – अपराध विवरण पत्रक के कॉलम क्र. 6 में किसी भी चक्षुदर्शी साक्षी का नाम अंकित नहीं किया गया, शव परीक्षण प्रतिवेदन इत्यादि में भी अभियुक्तगण के नाम अंकित नहीं किये गये – अभिनिर्धारित – यह गौण असंगतियां है जो कि अभियुक्तगण की दोषसिद्धि को प्रभावित नहीं करती हैं एवं यह पर्याप्त रूप से स्थापित किया गया है कि अभियोजन साक्षीगण के कथनानुसार घटना घटित हुई थी – दोषसिद्धि कायम रखी गई – अपील खारिज।

B. ***Criminal Procedure Code, 1973 (2 of 1974), Section 157*** **- Sending of report to Magistrate - Forthwith - F.I.R. registered on 27/06/1997 at 10 p.m. - Report forwarded to Magistrate on 30/06/1997 at 1.20 p.m. - Delay - Whether delay in forwarding the report to Magistrate speaks about falsity of the case - Held - Though there was delay in forwarding the report to the Magistrate but such a delay has**

not caused any serious prejudice to the appellants and even otherwise there was over whelming and incriminating evidence, both oral as well as documentary to support the case of the prosecution. (Para 18)

ख. दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 157 – दण्डाधिकारी को प्रतिवेदन भेजा जाना – तत्काल – प्रथम सूचना प्रतिवेदन दिनांक 27/06/1997 को रात्रि 10 बजे दर्ज किया गया – दण्डाधिकारी को प्रतिवेदन दिनांक 30/06/1997 को दिन के 1.20 बजे प्रेषित किया गया – विलंब – क्या दण्डाधिकारी को प्रतिवेदन विलंब से भेजे जाने से प्रकरण का झूठा होना प्रकट होता है – अभिनिर्धारित – यद्यपि, दण्डाधिकारी को प्रतिवेदन भेजे जाने में विलंब कारित हुआ था, परंतु उससे अपीलार्थीगण को कोई भी गंभीर हानि कारित नहीं हुई है एवं अन्यथा भी अभियोजन के प्रकरण के समर्थन हेतु मौखिक एवं दस्तावेजी दोनों ही प्रकार के प्रबल और अपराधसूचक साक्ष्य उपलब्ध थे।

Cases referred :

(1972) 2 SCC 640 para 8, (1996) 8 SCC 167 paras 15 & 16, (2011) 7 SCC 421 paras 29 & 36.

JUDGMENT

The Judgment of the Court was delivered by : **FAKKIR MOHAMED IBRAHIM KALIFULLA, J. :-** Out of 7 accused, A2 to A6 are the appellants before us in these two appeals.

2. These appeals are directed against the common judgment and order dated 7th September, 2006 of the Division Bench of the High Court of Madhya Pradesh at Jabalpur in Criminal Appeal No. 666 of 2000. Altogether there were seven accused. One accused by name Ravi was a juvenile and, therefore, his case was separated and dealt with separately. As A1 has not preferred any appeal, we are not concerned with his case.

3. Shorn of unnecessary details, the case of the prosecution is that on 27th June, 1997 at 10:00p.m. P.W.3, 6 and the deceased were sitting and conversing with each other along with one Rangnath Sharma behind the Hotel of Jaggi Chourasia of village Katra. The deceased was the Sarpanch of the village near Katra which is part of Nayagaon. According to P.W. 3, there was sufficient light since the street lights were on apart from a chimney burning near the hotel. It was stated that the accused arrived at the spot, among whom A5 was holding a sword, A6 was holding a Farsa, A2 was having an axe while A1, A3 and A4 were having lathis. On arrival at that spot, it was alleged that

A5 while abusing the deceased and making a pronouncement that he cannot escape that day, dealt with a sword blow on the head of the deceased pursuant to which blood flush out and that thereafter A6 dealt a farsa blow which also landed on the head of the deceased. Closely followed by that A2 caused an injury with an axe again on the head of the deceased, after which the deceased fell down. The other accused A1, A3 and A4 stated to have caused further injuries with lathis. P.W. 3, P.W. 6 and others pleaded with the accused to spare the deceased upon which A5 with a warning to the deceased that he should not contest against him in future left the place of occurrence along with other accused. P.W.3, thereafter stated to have reached the Police Station Saleha which was hardly within one kilometer from the place of occurrence where the FIR Exhibit P3 came to be registered at 10:45 p.m.

4. P.W. 15, the Investigating Officer after registration of the FIR stated to have rushed to the place of occurrence between 11:00 and 11:15p.m. whereafter he prepared Exhibits P7 P/1A, P/1B and subsequently ended with P10 which are the crime details form [Form No.2], application for examination of injured P.W. 3 and the application for post mortem. P.W. 3 was examined by P.W.1 who issued Exhibit P1, M.L.C. Report. Pursuant to the requisition Exhibit P10 made by P.W.15, the post mortem was conducted on the body of the deceased by P.W.10 and as many as 8 injuries were noted on the body of the deceased. Out of the 8 injuries, injury Nos. 4,5, 6 and 7 were noted as grievous injuries while the other injuries were contusions.

5. Based on the above details gathered, prosecution laid the charge sheet as against the accused for offences under Sections 147, 148, 149, 302 and 294 of the Indian Penal Code. The trial Court, having considered the oral as well as documentary evidence namely, P.Ws. 1 to 16 and Exhibits P1 to P31 convicted the appellants accused for the offence under Section 302 read with Sections 148 and 149 IPC. The appellants were imposed with the punishment of life imprisonment. As against the above conviction and sentence imposed, the appellants along with other accused namely, A1 preferred the appeal before the High Court. The Division Bench having confirmed the conviction and sentence imposed on the appellants, they are before us.

6. We heard Mr. Tripurari Ray, learned counsel for the appellants and Mr. Arjun Garg, learned counsel for the State.

7. The main plank of attack on the judgment impugned in these appeals

are two-fold namely, that the FIR was ante-dated and that the appellants were falsely implicated. In support of the above submissions, Mr. Ray while making reference to the version of P.Ws. 1,3,10 and 15 and Exhibits P/1A, P/1B, P7 and P10, contended that there were very many inconsistent circumstances which would show that the case was not as projected by the prosecution for implicating the appellants and, therefore, the conviction and sentence imposed are liable to be set aside. The learned counsel, by referring to the evidence of P.W. 3 as compared to the evidence of P.W. 15 contended that there were serious doubts as to whether the said FIR was registered at 10:45p.m. on 27th June, 1997 as claimed; whether P.W.3 was injured at all as claimed by him and as stated by P.W.1, that non-mentioning of the various details relating to the FIR, the names of accused in Exhibits P1A, P7 and P10 would also belie the case of the prosecution and would support the stand of the appellants that the FIR was ante-dated. The learned counsel submitted that it was further strengthened by the fact that it was claimed by P.Ws. 3 and 6 that one Ranganath Sharma was also present at the place of occurrence and that for no reason he was not examined by the prosecution. It was further contended that while the registration of the FIR was claimed to be 10:45p.m.on 27th June, 1997, there was no valid explanation as to why the Express Report under Section 157 of the Code of Criminal Procedure was not forwarded to the Judicial Illaka Magistrate forthwith which in the case on hand admittedly reached the learned Magistrate only at 1:20p.m. on 30the June, 1997.

8. While elaborating his submission, learned counsel pointed out that Exhibit P7 is the statutory form namely, Form No.2 called 'Crime Details Form', wherein there is a specific column, namely, Column No.6 to note the description of the injured persons, that the name of deceased Ram Bhuvan, son of Sunder Lal Sharma alone was noted and without any valid explanation the name of P.W.3 who was stated to have been injured in the same transaction was not mentioned. Learned counsel then pointed out that in Exhibit P1A, which is the application for examination of injured P.W. 3, either the Crime Number or the FIR Number was not noted apart from the fact of non-mentioning of the time at which the said application was sent to the Doctor on 28th June, 1997. The learned counsel while making reference to the application for post mortem Exhibit P10 also dated 28th June, 1997, pointed out that while the said application was presented to the Doctor at 7:30a.m. on 28th June, 1997, for conducting the post mortem, there was no reference to any of

the names of the accused whose names were already disclosed to the police at 10:45p.m. as per FIR registered at 10:45p.m.on 27th June, 1997.

9. The learned counsel also brought to our notice Exhibit D8 to show that the Express Report was received by the Illaka Magistrate only at 1:20p.m.on 30th June, 1997. The learned counsel also while making reference to the evidence of P.W.1 contended that there was a specific suggestion put to P.W. 1 that the injuries alleged to have been sustained by P.W.3 was a fake one and that the examination of P.W.10, the Doctor who conducted post mortem also revealed that the injuries which were noted on the body of the deceased were not specifically attributed to the alleged seized weapons from the accused and thereby creating serious doubts as to whether or not such weapons were used and were the cause for the death of the deceased. The learned counsel also drew our attention to various other minor infirmities in the evidence of the prosecution and contended that the prosecution failed to establish the charges levelled against the appellants and consequently the impugned judgment deserves to be set aside.

10. As against the above submissions, Mr. Arjun Garg, learned counsel for the State by drawing our attention to the arrest of the appellants effected on 28th June, 1997 and the subsequent seizure made on 29th June, 1997 supported by Exhibits P22 to 24, as well as, Section 27 Statement under Exhibits P18 to P21, contended that the arrest of the accused and the seizure made by the panch witnesses duly established that the appellants were involved in the killing of the deceased as well as causing of the injuries on P.W.3. The learned counsel for the State submitted that even though there was a delay in forwarding the Express Report to the Illaka Magistrate the same did not cause any prejudice to the appellants and that the charges were found proved against the appellants. The learned counsel, further, contended that P.W.15 after registering the FIR forwarded the Express Report through the Police Constable Narendra Chauhan on 27th June, 1997 itself by noting it down in the Despatch Register and that though under Exhibit D8 the receipt of the same by the Illaka Magistrate is noted as 1:20p.m.on 30th June, 1997, he was unaware as to the reason which caused the delay. The learned counsel would contend that the Illaka Magistrate was at Panna which was 60KMS away from the place of occurrence and that though there was some delay in forwarding the receipt of the Express Report, since there was every clinching evidence in the form of eye witness account as well as other material evidence supported by

medical evidence as well, as no prejudice was caused to the appellants on account of such delay, no infirmity can be found in the judgment impugned in these appeals.

11. Having heard respective counsel for the appellants as well as the State, we are also convinced that the judgment impugned does not call for interference. When we considered the submission of learned counsel for the appellants with particular reference to the evidence of P.W. 3 who was an injured eye witness, it was contended that the FIR itself could not have been registered at 10:45p.m. inasmuch as even according to P.W. 3 his signature was obtained at a later point of time. At the very outset, it must be stated that by referring to this part of the evidence, we are not able to state that registration of FIR could not have been made at 10:45p.m. inasmuch as other consequential steps taken thereafter with particular reference to Exhibit P7,P1A to B and P10 which were all contemporaneous documents which disclose that immediately after the registration of FIR at 10:45p.m., P.W. 15 reached the place of occurrence and proceeded with further course of action. Therefore, the said contention stands rejected.

12. As far as the contention that the injuries sustained by P.W. 3 could have been a fake one and consequently his presence itself was not true, the said contention is also liable to be rejected, inasmuch as we do find from the evidence of P.W. 1 who examined P.W.3 on the night of 27th/28th June, 1997 itself noted the various injuries sustained by him in Exhibit P1B based on the application made under Exhibit P1A dated 28th June, 1997 Exhibit P1B discloses the time as 1:30a.m. in the night on 28th June,1997. In the evidence of P.W. 1 at the end of the examination there was a specific question put to P.W. 1 as to the examination of P.W.3, wherein he made it explicit to the effect that P.W. 3 was examined in the night intervening 27th and 28th June,1997 and the injuries noted by him in Exhibit P1B was also confirmed by him in his oral evidence. In fact, there was a broad reference to the nature of injuries sustained by P.W.3 in Exhibit P1A. Therefore, reading Exhibits P1A and P1B together with the oral evidence of P.W.1, it has come out in evidence that P.W.3 sustained the injuries on the night of 27th June,1997. Therefore,the submission that P.W. 3 could not have been present at the place of occurrence cannot be accepted.

13. We come to the rest of the contentions. It must be stated that evidence

of P.W.3 as an eye witness was cogent in every respect, as he narrated the manner in which the occurrence took place on the night of 27th June, 1997, the role played by each of the accused and the subsequent events that occurred thereafter such as the complaint which he preferred in the Saleha Police Station, the registration of the FIR at 10:45p.m., the subsequent visit of P.W. 15 to the place of occurrence and the shifting of the body of the deceased to the hospital for carrying out the post mortem by P.W.10. The said part of the evidence of P.W. 3, as an eye witness account was fully supported by the version of P.W.6, and also fully corroborated by the evidence of P.Ws. 7 and 11 who reached the place of occurrence on hearing the shouts of P.Ws. 3 and 6.

14. The contention raised on behalf of the appellants was that P.W. 15 was not truthful in registering the FIR as well as launching the prosecution case against the appellants inasmuch as according to P.W. 5, the Constable who shifted the body of the deceased to the hospital in his evidence stated that there was a short post mortem report issued by the Doctor which he delivered at the Police Station and that thereafter in consultation with the so-called eye witness Ranganath Sharma who was not examined for no good reasons and who had a grudge against the appellants who all belonged to same community, the appellants were implicated in the offence. Though in the first blush, such a contention raised on behalf of the appellants appeared to be appealing, when we refer to the various other contentions raised in support of the said submission, we find no substance in the said contention. First of all, we do not find any serious discrepancy or infirmities in the preparation of the statutory records as well as any serious lacuna in the oral version of the witnesses examined in support of the charges.

15. It was contended that in the Crime Details Form, Exhibit P7, which is a statutory form wherein there was no mention as to the nature of weapons used as well as the name of the so-called injured eye witness P.W.3 and also the names of the accused though their names were very much known to the prosecution as early as at 10:45p.m. on 27th June, 1997. When we consider the said submission, we find that Form No. 2 is an enclosed Report prepared by P.W. 15 in which in Column No.5 it is specifically mentioned while referring to motive of the crime either due to old enmity, it is mentioned "due to old enmity, attacked with sharp weapon with intention to kill". Similarly, in Column No. 6, under the heading " description of injured persons", the name of deceased alone has been mentioned and there is no reference to the injured

eye witness P.W.3. Insofar as the non-mention of P.W. 3 in the said column is concerned, we have also referred in detail as to how and why such a non-mention would not in any way vitiate the case of the prosecution by virtue of the other clinching evidence which established the presence of P.W. 3 at the place of occurrence and the same reason will hold good here as well.

16. Insofar as Column No. 5 is concerned, it has been duly noted as to the use of sharp weapon. When we looked into Column No. 10 the place of incident, the descriptionof the place, the facility of chimney which was available and all other minute details have been noted. It must also be stated that the said Form was prepared on the basis of the visit made by P.W. 15, Investigating Officer at 23:10 hours i.e. 11;10P.M. on 27TH June, 1997. In fact, when we later made a further reference to Exhibit P10 which is an application for carrying out the post mortem on the dead body of the deceased, it contains separate statements about the details of the dead body of the deceased. The same was despatched at 7:00a.m. on 28th June, 1997 and was received at the mortuary by 7:30a.m. on the same day. We have also noted the time of the existence of P1A and P1B which when read along with the evidence of P.W.1 it is quite clear that the same came into existence by 1:30a.m. on the intervening night of 27th and 28th June, 1997.

17. Having regard to the above features, namely, the registration of FIR at 10:45p.m. on 27th June, 1997; the inspection made by P.W.15 at 11:10p.m. on the same date; the sending of P.W. 3 for medical examination which was concluded by 1:30a.m. on 28th June, 1997; and the shifting of the body of the deceased from the place of occurrence to the hospital by 7:30a.m. on 28th June, 1997 read along with the version of P.Ws. 3, 6 and other supporting witnesses it was sufficiently established that the occurrence took place as spoken to by P.W. 3, 6 and others and the involvement of the appellants was, therefore, fully established.

18. With that we come to the submission relating to the delay in forwarding of the Express Report to state that the implication of the appellants was false. As has been rightly contended by the learned counsel for the State, even though the delay was quite apparent by virtue of Exhibit D8, in the first place, it must be stated that when there was overwhelming and incriminating evidence both oral as well as documentary to support the case of the prosecution, as regards registration of the FIR and the subsequent investigation carried on

coupled with the arrest of the accused on 28th June, 1997 supported by reference made in Exhibits P22 to P24 as well as Section 27 Reports under Exhibits P18 to 21, it must be held that in spite of such minor discrepancies pointed out on behalf of the appellants, the case of the prosecution cannot be faulted. Therefore, the delay in forwarding the Express Report to the Illaka Magistrate was concerned, it must also be noted that in the evidence of P.W. 15 he stated that in the Despatch Register on 27th June, 1997, itself a mention was made to the effect that he handed it over to the Head Constable Narendra Chuahan for delivering it to the Magistrate which cannot be doubted, inasmuch as, we do not find any suggestion having been put to him that as to what transpired after he directed the said Head Constable to deliver it to the Illaka Magistrate. Further, the Illaka Magistrate was in Panna, which is 60 kms. away from the place of occurrence. In any event, even assuming the delay did really happen in forwarding the Express Report, we find that such a delay has not caused any serious prejudice to the appellants. In this context, reliance was placed on the decisions of this Court reported in *Pala Singh v. State of Punjab* (1972) 2 SCC 640, para 8 *State of Karnataka v. Moin Patel* (1996) 8 SCC 167 Paras 15 and 16, *Bhajan Singh @ Harbhajan Singh & Ors. v. State of Haryana* (2011) 7 SCC 421 Paras 29 and 36, which decisions fully support the stand of the respondents. We only refer to the last of the said decisions wherein in paras 29 an (sic:and) 36 it has been held as under:-

> *"29. It is not that as if every delay in sending the report to the Magistrate would necessarily lead to the inference that the FIR has not been lodged at the time stated or has been ante-timed or ante-dated or investigation is not fair and forthright. Every such delay is not fatal unless prejudice to the accused is shown. The expression "forthwith" mentioned there in does not mean that the prosecution is required to explain delay of every hour in sending the FIR to the Magistrate. In a given case, if number of dead and injured persons is very high, delay in dispatching the report is natural. Of course, the same is to be sent within reasonable time in the prevalent circumstances.*
>
> *36. The evidence of the stamped witness must be given due weightage as his presence on the place of occurrence*

cannot be doubted. His statement is generally considered to be very reliable and it is unlikely that he has spared the actual assailant in order to falsely implicate someone else. The testimony of an injured witness has its own relevancy and efficacy as he has sustained injuries at the time and place of occurrence and this lends support to his testimony that he was present at the time of occurrence. Thus, 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 the crime and is unlikely to spare his actual assailant(s) in order to falsely implicate someone. "Convincing evidence is required to discredit an injured witness." Thus, the evidence of an injured witness should be relied upon unless there are grounds for the rejection of his evidence on the basis of major contradictions and discrepancies therein. (Vide Abdul Sayeed v. State of M.P. (2010) 10 SCC 259; Kailas v. State of Maharashtra (2011) 1 SCC 793; Durbal v. State of U.P. (2011) 2 SCC 676 and State of U.P. v. Naresh (2011) 4 SCC 324.)"

19. As far as minor discrepancies noted and pointed out by learned counsel for the appellants are concerned, here again we find that such discrepancies does not in any way seriously impinge on the judgment impugned in these appeals.

20. As far as the submissions made based on the injuries, we do not find any scope to interfere with the decision in the impugned judgment on that score inasmuch as on a detailed reading of evidence of P.W. 10, we find that his evidence fully supported the case of the prosecution in regard to the nature of injuries inflicted upon the deceased on his hand by the appellants and it was also further supported by the weapons which were recovered at the instance of the appellants. For all the above reasons, we do not find any merit in these appeals and the same are dismissed.

Appeal dismissed.

I.L.R. [2016] M.P., 651
FULL BENCH

Before Mr. Justice A.M. Khanwilkar, Chief Justice, Mr. Justice Shantanu Kemkar & Mr. Justice J.K. Maheshwari

F.A. No. 514/2012 (Jabalpur) decided on 15 September, 2015

TECHNOFAB ENGINEERING LIMITED (M/S) ...Appellant
Vs.
BHARAT HEAVY ELECTRICALS LIMITED & ors. ...Respondents

(Alongwith F.A. No.1134/2012 & M.A. No.1774/2011)

***Court Fees Act (7 of 1870), Schedule I Article 1- A [As substituted by Court Fee (M.P. Amendment) Act (6 of 2008), w.e.f. 2-4-2008]* - Amendment is a beneficial legislation - Benefit of upper limit of Court Fees prescribed by the Amendment Act, must be applied uniformly to all litigants instituting their claim after 02-04-2008 - Be it in the form of plaint before the subordinate court or memorandum of appeal before the High Court, as the case may be - Being beneficial court fee regime - Reference answered accordingly. (Para 18)**

न्यायालय फीस अधिनियम (1870 का 7), अनुसूची I अनुच्छेद 1–ए [न्यायालय फीस (म.प्र. संशोधन) अधिनियम, (2008 का 6) द्वारा प्रतिस्थापित, 02.04.2008 से प्रभावी] – संशोधन एक लाभकारी कानून है – संशोधन अधिनियम में विहित न्याय शुल्क की ऊपरी सीमा का लाभ 02.04.2008 के पश्चात् दावा संस्थित करने वाले सभी पक्षकारों पर समान रूप से लागू किया जाना चाहिए – चाहे वह अधीनस्थ न्यायालय के समक्ष वाद के रूप में हो अथवा उच्च न्यायालय के समक्ष अपील मेमोरेण्डम के रूप में, जैसा भी मामला हो – लाभकारी न्याय शुल्क व्यवस्था होने के नाते – तद्नुसार निर्देश का उत्तर दिया गया।

Cases referred :

2009 (4) MPLJ 50, AIR 1960 SC 980, MA No.2110/2008 decided on 25.6.2008, 1980 MPLJ 801, 2002 (1) MPLJ 168, (1978) 4 SCC 15, 1989 Supp (1) SCC 696, AIR 1977 SC 879, (2004) 8 SCC 1, (2011) 8 SCC 737, 1983 JLJ 385 (Full Bench), 1989 JLJ 675, AIR 1955 Bombay 287, AIR 1955 (Bombay) 332, AIR 1953 SC 221, AIR 1957 SC 540, 1956 NLJ 382, 1980 MPLJ 801.

Rajendra Tiwari with *Varun Kumar,* for the appellant in F.A. No. 514/2012.

S.K. Rao with *Ajit Agrawal, Sanjiv Kumar Chaturvedi & Vineet Kumar Pandey,* for the appellant in F.A. No.1134/2012.

R.K. Sanghi with *Kapil Patwardhan,* for the appellant in M.A. No. 1774/2011.

Ravish Chandra Agrawal, A.G. with Amit Seth, G.A. for the respondents/State.

JUDGMENT

The Judgment of the Court was delivered by : **A.M. KHANWILKAR, C.J. :-** These matters have been referred by the Division Bench for reconsideration of the principle expounded in the decision of Division Bench of our High Court in the case of *Fatehchand vs. Land Acquisition and Rehabilitation Officer and others*[1].

2. The questions to be considered by the Full Bench have been formulated by the Division Bench in F.A. No.514/2012 and F.A. No.1134/2012 vide order dated 28.11.2014, as follows:-

> "1. Whether the ratio of the decision in Fateh Chand Supra (supra) is correct?
>
> 2. Whether the decision of the Supreme Court in the State of Bombay vs. M/s. Supreme General Films Exchange Limited, AIR 1960 SC 980 has application to Article 1-A of Schedule I to the Court Fees Act, 1870 as amended by Court Fees (Madhya Pradesh Amendment) Act, 2008?"

3. M.A. No.1774/2011 has been ordered to be heard analogously with the two appeals vide order dated 01.09.2015, hearing whereof was already in progress on the aforesaid two questions. As similar question was ordered to be considered by the Larger Bench even in the said appeal, request made by the counsel for the appellant in this appeal was acceded to on clear understanding that the appellant in this appeal will not ask for adjournment of the case which was already in progress before the Full Bench, merely because his appeal has now been ordered to be heard analogously. That condition was accepted by the counsel for the appellant in the said appeal.

4. Accordingly, hearing in all the three appeals finally concluded on 07.09.2015 and was reserved for recording opinion on the two questions

1. 2009 (4) M.P.L.J 50

referred to us for consideration.

5. The questions posed by the Division Bench, are in the appeals filed before this Court, arising from the judgment and decree or order passed by the subordinate Court in suit/proceedings instituted prior to 02.04.2008 – before coming into force of the Court Fees (Madhya Pradesh Amendment) Act, 2008 (No.6 of 2008). In each of these cases, the suit/proceedings so filed have been decided by the subordinate Court after coming into force of the Amendment Act. In that background, the appellant claims that since the cause to present the appeal before this Court arose after coming into force of Amendment Act of 2008, which is more beneficial legislation to the appellant, providing for upper limit of Court Fees to be paid on the memorandum of appeal, the appellant cannot be charged Court Fees on the basis of unamended provisions.

6. This very question was considered by the Division Bench of our High Court in the case of *Fatehchand* (supra). The Division Bench opined that the Amendment Act was not made retrospective in nature either expressly or impliedly. In absence thereof, it was required to be treated as prospective in nature. Relying on the decision of the Supreme Court in the case of *State of Bombay vs. M/s Supreme General Films Exchange Ltd.*[2] and the decision of the Division Bench of our High Court in the case of *Smt. Supriya Kathand and others vs. Shri Lal Singh and others*[3] and two Single Judge judgments in *Dinaji Tukaram Pawar vs. Jiwanlal Pawar*[4] and *Chairman, Gramin Vidyut Sahkari Samiti and others vs. Rajesh Kushwaha and others*[5], held that the amended provision had no applicability to appeals filed after the amendment arising out of the suit instituted prior to the amendment. The Division Bench distinguished the decision of the Supreme Court in *Lakshmi Ammal vs. K.M. Madhavakrishnan and others*[6] and answered the issue against the appellant holding that the appellant, who incidentally files the appeal, after the Amendment of 2008, was not entitled to get the benefit of upper limit of Court Fees. But, would be liable to pay ad valorem Court Fees as per the unamended provisions. The correctness of this view is the subject matter before us.

7. Concededly, the conclusion and opinion recorded by the Division Bench in *Fatehchand's* case (supra) is, essentially, on the principle stated by

2. AIR 1960 SC 980
3. MA No.2110/2008 decided on 25.6.2008
4. 980 MPLJ 801
5. 2002 (1) MPLJ 168
6. (1978) 4 SCC 15

the Supreme Court in the case of *State of Bombay* (supra). Just as the Division Bench relied on the said decision, even the other decisions referred to by the Division Bench in *Fatehchand's case* (supra), of this Court, of Division Bench and Single Bench respectively, essentially, rely on the principle stated in the case of *State of Bombay* (supra) of the Supreme Court, referred to above. Let us, therefore, straightaway turn to the decision of the Supreme Court.

8. Notably, the matter before the Supreme Court arose from the decision of the Bombay High Court where the argument was in relation to the amended provision "enhancing the Court Fees". That was obviously a converse situation. In other words, the unamended provision regarding the Court Fees amount was more beneficial to the plaintiff. By amendment, however, the Court Fees amount, on the same claim, was enhanced precipitously. In the context of that amendment, the Supreme Court considered the argument of the plaintiff. The Supreme Court held that right of appeal is a substantive right which vests in a litigant at the date of the filing of the suit, and cannot be taken away unless the legislature expressly or by necessary intendment says so; furthermore, an appeal is a continuation of the suit, and it is not merely that a right of appeal cannot be taken away by a procedural enactment which is not made retrospective, but the right cannot be impaired or imperiled nor can new conditions be attached to the filing of the appeal; "nor can a condition already existing be made more onerous or more stringent so as to affect the right of appeal arising out of a suit instituted prior to the amendment".

9. Indeed, in paragraph No.8 of the reported decision, the Supreme Court has unambiguously mentioned the core controversy examined by it. It was in respect of grievance of the plaintiff/appellant about impairment of the right of appeal by imposing a more stringent or onerous condition thereon, is not a matter of procedure only or is it a matter of substantive right? In paragraph 12 after analyzing the arguments and the decisions pressed into service, by the parties, the Supreme Court concluded thus:-

> "12. It is thus clear that in a long line of decisions approved by this Court and at least in one given by this Court, it has been held that an impairment of the right of appeal by putting a new restriction thereon or imposing a more onerous condition is not a matter of procedure only; it impairs or imperils a substantive right and an enactment which does so is not retrospective unless it says so expressly or by necessary

intendment."

(emphasis supplied)

10. Indubitably, the right of appeal is a substantive right. Further, it vests in the litigant on the date of filing of the suit. That vested remedy cannot be taken away directly or indirectly by putting a new condition which is more onerous, unless the legislature expressly or by necessary intendment makes that provision. In our considered opinion, this Supreme Court decision is not an authority on the proposition that the quantum of Court Fees specified on the date of filing of the suit, even though much higher and irrational, must govern the filing of an appeal by the party to the said suit/proceedings before the superior Court, notwithstanding the beneficial legislation introduced in the shape of amendment to the Court Fees Act to rationalize the Court Fees leviable on such proceedings.

11. Providing for upper limit of Court Fees instead of *ad valorem* Court Fees is not only a measure of rationalization of Court Fees, but a just and proper approach to expatriate and dissipate the cause of discrimination and to uphold the rights guaranteed to the litigating public under Articles 14 and 21 of the Constitution of India - of easy access to justice by making it cost effective and in particular restricted Court Fees in the form of upper limit therefor.

12. The decision in the case of *State of Bombay* (supra), as aforesaid, deals with a converse position wherein by virtue of amendment, the legislature precipitously enhanced the Court Fees amount making it more stringent or onerous condition affecting and impairing or imperiling the vested right of the litigant. That logic will have no application to a situation where the amendment is a beneficial legislation and is intended to remove the mischief caused to the litigant due to recovery of irrational Court Fees in the form of *ad valorem* Court Fees, without prescribing any upper limit therefor.

13. With utmost respect to the Division Bench, the decision in the case of *State of Bombay* (supra) is not an authority for interpreting the amended provisions introduced by the M.P. Amendment Act of 2008. Just as the Division Bench in the case of *Fatehchand* (supra) has relied on the principle stated in the case of *State of Bombay* (supra), even the other decisions referred to in *Fatehchand's case* (supra) of Division Bench and Single Bench of this Court, proceeded on the same erroneous basis.

14. We may now usefully refer to the Court-Fees (Madhya Pradesh Amendment) Act, 2008 (No.6 of 2008). Section 2 of the Amendment Act postulates that the Court Fees Act, 1970 (Cent. Act No.7 of 1870) in its application to the State of Madhya Pradesh be amended in the manner mentioned therein. Section 3 of the Amendment Act with which we are concerned, reads thus:-

> **"3. Amendment of Schedule I.—** In Schedule I to the principal Act, for Article 1-A, the following article shall be substituted, namely : –

"1-A. Plaint, written statement pleading a set-off or counter claim, or memorandum of appeal (not otherwise provided for in this Act) presented to any Civil or Revenue Court except those mentioned in Section 3.	When the amount or value of the subject matter in dispute does not exceed five lacs rupees.	Twelve percent subject to a minimum of one hundred rupees.
	When such amount or value exceeds five lacs rupees but does not exceed ten lacs rupees.	Sixty thousand rupees plus seven percent on the amount or value in excess of five lacs rupees.
	When such amount or value exceeds ten lacs rupees. :	Ninety five thousand rupees plus three percent on the amount or value in excess of ten lacs rupees subject to a maximum of one lac and fifty thousand rupees.
	Provided that minimum fee leviable on a memorandum of appeal shall be one hundred rupees."	

(emphasis supplied)

15. The statement of objects and reasons necessitating the above amendment reads thus:-

> **"Statement of objects and reasons.**—In order to rationalize the court fees leviable on plaint, written statement pleading a set-off or counter-claim, or memorandum of appeal presented to any Civil or Revenue Court, it is decided to amend Article 1-A of Schedule I to the Court-fees Act, 1870 (No.7 of 1870) in its application to the State of Madhya Pradesh.
>
> 2. At present incidences of dishounoured cheques are in abundance and there is no provision of levy of court fees in such complaints. Therefore, it is decided to levy court fees on application or complaint of an offence triable under Section 138 of the Negotiable Instruments Act, 1881 (No. 26 of 1881), by suitable amendment of Article 1 of Schedule II to the principal Act in its application to the State of Madhya Pradesh.
>
> 3. It is also decided to provide for levy of court fees on memorandum of appeal when presented to the High Court by the Claimant for enhancement of award passed by the Motor Accident Claims Tribunal, by suitable amendment of Article 11 of Schedule II to the principal Act in its application to the State of Madhya Pradesh.
>
> 4. Hence this Bill."

(emphasis supplied)

16. A fortiori, we are fortified in our opinion that the Amendment of 2008 vide Amendment M.P. Act No.6 of 2008 is a beneficial legislation and also intends to remove the mischief caused to the litigating public because of *ad valorem* Court Fees without any upper limit therefor. The Division Bench in *Fatehchand's case* (supra) has no doubt distinguished the decision in *Lakshmi Ammal* (supra) but the principle underlying the said decision would apply on all fours for interpretation of amended provisions of 2008. In that, the Court Fee, if it seriously restricts the rights of a person to seek his remedies in courts of justice, should be strictly construed. That, access to justice is the basis of the legal system. Further, when there is a doubt, reasonable, of course, the benefit must go to the litigating public who says that lesser court fee alone

be paid.

17. Besides this decision, it may be useful to advert to another Supreme Court decision in the case of *P.M. Ashwathanarayana Setty and others vs. State of Karnataka and others*[7]. In that case, the Supreme Court was called upon to consider the question about the legality of the levy of court fees – *ad valorem* on the value or amount of the subject matter of suits and appeals without any prescription of upper limit in the concerned States (Karnataka, Rajasthan and Maharashtra) enactments. The point no.(d) considered by the Supreme Court in this decision, as articulated in paragraph 31 of the judgment, is more or less similar to the issue that arises for our consideration. That has been considered in paragraph 90 to 94 and answered in the following words:-

> **"90.** In the appeal of the State of Maharashtra arising out of the Bombay Court Fees Act, 1959, the High Court has struck down the impugned provisions on the ground that the levy of court fee on proceedings for grant of probate and letters of administration advalorem without the upper limit prescribed for all other litigants–the court fee in the present case amounts to Rs.6,14,814 –is discriminatory. The High Court has also held that, there is no intelligible or rational differentia between the two classes of litigation and that having regard to the fact that what is recovered is a fee, the purported classification has no rational nexus to the object. The argument was noticed by the Learned Single Judge thus:
>
> > "Petitioners next contend that the impugned clause discriminates as between different types of suiters and that there is no justification for this discrimination. Plaintiffs who go to civil courts claiming decrees are not required to pay court-fees in excess of Rs.15,000. This is irrespective of the amounts claimed over and above Rs.15 lacs. As against this, persons claiming probates have no such relief in the form of an upper limit to fee payable."
>
> **91.** This contention was accepted by the Learned Single Judge who has upheld the appeal. Indeed, where a

7. 1989 Supp (1) SCC 696

proceeding for grant of probate and letters of administration becomes a contentious matter, it is registered as a suit and proceeded with accordingly. If in respect of all other suits of whatever nature and complexity an upper limit of Rs.15,000 on the court fees is fixed, there is no logical justification for singling out this proceeding for an ad valorem impost without the benefit of some upper limit prescribed by the same statute respecting all other litigants. Neither before the High Court – nor before us here – was the impost sought to be supported or justified as something other than a mere fee, levy of which is otherwise within the State's power or as separate 'fee' from another distinct source. It is purported to be collected and sought to be justified only as court fee and nothing else.

92. The discrimination brought about by the statute, in our opinion, fails to pass the constitutional master as rightly pointed out by the High Court. The High Court, in our opinion rightly, held:

> "There is no answer to this contention, except that the legislature has not thought it fit to grant relief to the seekers of probates, whereas plaintiffs in civil suits were thought deserving of such an upper limit. The discrimination is a piece of class legislation prohibited by the guarantee of equal protection of laws embodied in Article 14 of the Constitution. On this ground also item 10 cannot be sustained "

93. We approve this reasoning of the High Court and the decision of the High Court is sustained on this ground alone. In view of this any other ground urged against the constitutionality of the levy is unnecessary to be examined.

94. Contention (d) is accordingly held an answer against the appellant and the appeals preferred by the State of Maharashtra are liable to be and are hereby dismissed."

In para 98 the Court observed thus:-

"98. Though we have abstained from striking down

the legislation, yet, it appears to us that immediate steps are called for and are imperative to rationalise the levies. In doing so the States should realise the desirability of levying on the initial slab of the subject matter – say upto Rs.15,000 – a nominal court-fees not exceeding 2 to 2-1/2 per cent so that small claims are not priced out of courts. "Those who have less in life" it is said "should have more in law". Claims in excess of Rs.15,000 might admit of an ad volorem (sic:valorem) levy at rates which, preferably, should not exceed 7-1/2 per cent subject further to an upper limit which, having regard to all circumstances, could be envisaged at Rs.75,000. The upper limit even prior to 1974 under the 'Bombay Act' was Rs.15,000 and prior to 1961 under the 'Rajasthan Act' at Rs.7500. Having regard to steep inflation over the two decades the upper limit could perhaps go upto Rs.75,000. After that limit is reached, it is appropriate to impose on gradually increasing slabs of the value of the subject matter, progressively decreasing rates, say from 7-1/2 per cent down to 1/2 per cent in graduated scales. The governments concerned should bestow attention on these matters and bring about a rationalisation of the levies."

(emphasis supplied)

18. The principle underlying this decision would apply on all fours for considering the argument as to whether the litigating public in the State of Madhya Pradesh must be compelled and strong-armed to pay court fee on *ad valorem* basis without any upper limit, even though remedy of appeal became available to them after coming into force of M.P. Act No.6 of 2008 w.e.f. 02.04.2008. The answer is an emphatic "No". The State must not only bear in mind the unimpeachable words of the Supreme Court that, those who have less in life should have more in law, but also the inviolable policy of impost of Court Fee must be just, fair and rational. For, irrational Court Fees *(ad valorem* basis without any upper limit), is bound to dissuade the have-nots or persons coming from the humble background, who have to work to make both ends meet. They anyway have to come to the Court for resolution of their disputes, not by choice. Our Constitution enjoins the State to guarantee socialist dispensation, besides ensuring that its action and law should be non-discriminatory, non-arbitrary, just and fair. Further, viewed from the prism of

Article 14 of the Constitution of India, if a person files the original suit/ proceeding before the trial Court after coming into force of the Amendment Act on 02.04.2008, gets the advantage of the provision of upper limit of Court Fees. But, that benefit, if not extended to another person, who, perforce, is required to file a memorandum of appeal before the High Court on or after 02.04.2008 in respect of identical subject matter, would result in treating equals as unequals. Both must be considered as equals for the limited purpose of extending benefit of amended provision regarding upper limit of Court Fees, having approached the Court after the coming into force of the amendment, to get justice in relation to similar subject matter – albeit the form of proceedings may be different. Else, the latter (who files appeal) will be obliged to pay Court Fees on *ad valorem* basis absent any upper limit, as per the unamended provision. In the context of the amended provision (beneficial legislation), the condition in the unamended provision attached to the remedy of appeal becomes more onerous to him. Viewed thus, the interpretation of the amended provision under consideration, given by the Division Bench, inevitably, results in amendment becoming a class legislation, prohibited by guarantee of equal protection of laws embodied in Article 14 of the Constitution. In our opinion, the benefit of upper limit of Court Fees prescribed by the Amendment Act, must be applied uniformly to all litigants instituting their claim after 02.04.2008 – be it in the form of plaint before the subordinate Court or memorandum of appeal before the High Court, as the case may be – being beneficial Court Fee regime.

19. Accordingly, the two questions articulated for our consideration, will have to be answered in favour of the appellants, who have or would institute appeal in the Civil Court or Revenue Court after coming into force of the M.P. Act No.6 of 2008 w.e.f. 02.04.2008, substituting Article 1-A of Schedule I of the Court Fees Act, 1870 as applicable to the State of Madhya Pradesh, irrespective of the fact that the original suit/proceedings instituted in relation to the said remedy was filed prior to the coming into force of the said Act.

20. Besides the logic applicable to the amended Article 1-A of Schedule-I of the Act, referred to above, there is yet another argument canvassed by the counsel for the appellants, which commends to us. The argument proceeds that the intent behind the Amendment Act, 2008 being M.P. Act No.6 of 2008 was to substitute Article 1-A, as is explicitly mentioned in Section 3 of the said Act; and not to amend the existing provision, as such. We find force

in this submission. As it is a case of substitution, in view of the exposition of the Supreme Court in para 15 onwards in the case of *State of Maharashtra vs. The Central Provinces Manganese Ore Co. Ltd.*[8], the amended provision results in repeal and replacement of a legislative provision by a fresh enactment, as in this case. The same view has been taken in the case of *Zile Singh vs. State of Haryana and others*[9]. In para 24 the Supreme Court observed that the substitution of one text for the other pre-existing text is one of the known and well-recognised practices employed in legislative drafting. "Substitution" has to be distinguished from "supersession" or a mere repeal of an existing provision. In para 25 the Court observed thus:-

> "**25.** Substitution of a provision results in repeal of the earlier provision and its replacement by the new provision *(Principles of Statutory Interpretation, ibid, p.565)*. If any authority is needed in support of the proposition, it is to be found in *West U.P. Sugar Mills Assn. v. State of U.P., State of Rajasthan v. Mangilal Pindwal, Koteswar Vittal Kamath v. K. Rangappa Baliga and Co.* and *A.L.V.R.S.T. Veerappa Chettiar v. S. Michael.* In West U.P. Sugar Mills Assn. case a three- Judge Bench of this Court held that the State Government by substituting the new rule in place of the old one never intended to keep alive the old rule. Having regard to the totality of the circumstances centering around the issue the Court held that the substitution had the effect of just deleting the old rule and making the new rule operative. In *Mangilal Pindwal* case this Court upheld the legislative practice of an amendment by substitution being incorporated in the text of a statute which had ceased to exist and held that the substitution would have the effect of amending the operation of law during the period in which it was in force. In *Koteswar* case a three-Judge Bench of this Court emphasized the distinction between "supersession" of a rule and "substitution" of a rule and held that the process of substitution consists of two steps : first, the old rule is made to cease to exist and, next, the new rule is brought into existence in its place."

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8. AIR 1977 SC 879 9. (2004) 8 SCC 1

Also see *State of Tamil Nadu and others vs. K. Shyam Sunder and others*[10], para 55:

> **"55.** In *State of Rajasthan v. Mangilal Pindwal,* this Court held that when the statute is amended, the process of substation of statutory provisions consists of two parts:
>
> (i) the old rule is made to cease to exist;
>
> (ii) the new rule is brought into existence in its place.
>
> In other words, the substitution of a provision results in repeal of the earlier provision and its replacement by the new provision. (See also *Koteswar Vittal Kamath v. K. Rangappa Baliga & Co.*)."
>
> *(emphasis supplied)*

21. As a result, we hold that the decision of the Division Bench in the case of *Fatehchand* (supra) does not lay down the correct legal position. Further, we hold that the principle expounded by the Supreme Court in *State of Bombay* (supra) is inapplicable to the fact situation arising on account of the amended provisions, which are more beneficial to the litigating public in the State of Madhya Pradesh; and not onerous, much less more onerous condition so as to result in impairment or imperilment of the substantive right of remedy of appeal of the concerned appellant.

22. Two other questions arose for our consideration. The first was about the efficacy of "comma (,)" inserted in the amended Article 1-A of Schedule I after the word expression "counter claim" and before the expression "or memorandum". However, that question need not detain us because of the Hindi version of the official Act which does not contain such "," at the given place. In view of the provisions in the Madhya Pradesh Official Language Act, 1957 (M.P. Act No.5 of 1958), in particular, Section 3 thereof, we may have to accept the Hindi publication as more authentic and prefer the same. Section 3 of the Act of 1957 reads thus:-

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10. (2011) 8 SCC 737

> **"3. Official language for official purposes of the State.**—[1] Subject as hereinafter provided, Hindi shall be the official language of the State for all purposes except such purposes as are specifically excluded by the Constitution and in respect of such matters as may be specified by Government from time to time by notification.
>
> [(2) The form of numerals to be used for the official purposes of the State shall be the Devanagari form of numerals:
>
> Provided that the State Government may, by notification, authorize the use of the international form of Indian numerals for any official purpose of the State.]"

23. The Full Bench of our High Court in the case of *Mangilal and another vs. Board of Revenue, M.P. and others*[11] has authoritatively held that after the enactment of the Madhya Pradesh Official Language Act, 1957, the Hindi version published, be relied in a case of doubt. The Full Bench has considered the provisions of the Madhya Pradesh Official Language Act as also Article 345 of the Constitution of India while answering the question considered in that behalf.

24. Our attention was invited to the decision of the Division Bench of our High Court in the case of *Vikramsingh and others vs. Collector, Dewas and others*[12]. This decision, no doubt, refers to the exposition of the Full Bench in the case of *Mangilal* (supra) but has distinguished the same on the ground that the Court was concerned with a notification and not question of any interpretation involved in it.

25. Be that as it may, the other incidental question, which arose for our consideration, was in the context of the expression used in Article 1-A of Schedule-I as "Civil Court". The expression "Civil Court" has not been defined in the Court Fees Act or for that matter in the Civil Procedure Code, as such. The question posed was whether the High Court can be considered as a Civil Court. This doubt has been answered by relying on the definition of High Court as given in the General Clauses Act, 1897. Section 3(25) defines the expression "High Court" which reads thus:-

> "(25) "***High Court***", used with reference to civil proceedings,

11. 1983 JLJ 385 (Full Bench) 12. 1989 JLJ 675

shall mean the highest Civil Court of appeal (not including the Supreme Court) in the part of India in which the Act or Regulation containing the expression operates."

26. In view of this definition, the expression "Civil Court" occurring in Article 1-A of Schedule-I encompasses the High Court being the highest civil court of appeal (not including the Supreme Court) in the part of India (the State of Madhya Pradesh) to which the Court Fees Act operates, as is applicable to the State of Madhya Pradesh.

27. Although, the counsel appearing for the respective parties have invited our attention to other decisions which, however, we find it to be only repetitive. Nevertheless, we may refer to the same for the sake of completing the record, without analyzing in detail. The learned Advocate General has additionally placed reliance *In re Reference under S. 5, Court-fees Act*[13] and of the Division Bench in *Sawaldas Madhavdas vs. Arati Cotton Mills Ltd.*[14], which decisions have been considered by the Supreme Court in the case of *State of Bombay* (supra).

28. Reliance was also placed on the decision in the case of Messrs. Hoosein *Kasam Dada (India) Ltd. vs. The State of Madhya Pradesh and others*[15] on the proposition that amendment does not apply to proceedings commenced before amendment. For the same reasons, as recorded while analyzing the decision of the *State of Bombay* (supra), even this decision will be of no avail and is not an authority on the proposition answered by us.

29. Reliance was also placed on the decision of the Supreme Court in *Garikapati Veeraya vs. N. Subbiah Choudhry and others*[16] to buttress the contention that suit filed before the specified date, gives rise to vested right of appeal and that right of appeal is not a mere matter of procedure but is a substantive right. We have already considered this aspect and also find that the principle expounded in this decision, in no way, alter the interpretation of Article 1-A in Schedule-I as amended by M.P. Act No.6 of 2008. We have already analyzed this aspect in the earlier paragraphs of the judgment in detail.

30. Reliance was also placed on the decision of Division Bench in the case of *Arjuna Govinda (Plaintiff) vs. Amrita and others*[17]. This decision

13 AIR 1955 BOMBAY 287
14. AIR 1955 (Bombay) 332
15. AIR 1953 SC 221
16. AIR 1957 SC 540
17. 1956 NLJ 382

is on the same lines as in the case of *State of Bombay* (supra). In that, the amendment of Court Fees Act resulted in enhancement of Court Fees and not beneficial to the litigating public, as is in this case. Accordingly, even this judgment, for the same reasons, will be of no avail in answering the questions under consideration, being a converse case.

31. Reliance was also placed on another decision of Full Bench reported in the case of *Radhakisan Laxminarayan Toshnival vs. Shridhar Ramchandra Alshi and others*[18]. The question considered in this decision was right of appeal being a substantive and a vested right, cannot be taken away by the rule making powers of the High Court and in any event the amended rule was not expressly made retrospective, it cannot affect the pending appeals. The logic considered in the said decision is not strictly applicable to the questions considered in the context of the amendment to the provisions of the Court Fees Act, making it more favourable and beneficial to the litigating public for resorting to the remedy of appeal against the decision rendered by the subordinate Court in the original proceedings/suit instituted prior to 02.04.2008. We may make it clear that the view taken by us necessarily applies to all appeals filed or to be filed in the Civil or Revenue Court after the cut off date, i.e., coming into the force of M.P. Act No.6 of 2008 w.e.f. 02.04.2008.

32. We do not intend to examine any other situation as that does not arise for our consideration.

33. Reliance has also been placed by the learned Advocate General on the decision of the Single Judge of our High Court in the cases of *Dinaji Tukaram Pawar vs. Jiwanlal*[19] and *Chairman, Gramin Vidyut Sahkari Samiti Maryadit* (supra). For the view that we have taken to overturn the opinion of the Division Bench, for the same reasons, even these decisions will have to be held as not laying down the correct position of law; and to have misapplied the exposition of the Supreme Court in State of Bombay (supra), which decision deals with a converse situation of enhanced Court Fees, making it more onerous to the litigant for resorting to remedy of appeal.

34. We place a word of appreciation on record for the able assistance given not only by the learned Advocate General and the Senior Counsels for the appellants who have appeared before us but also by Shri R.K. Sanghi,

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18. AIR (37) 1950 Nagpur 177 (Full Bench) 19. 1980 MPLJ 801

Advocate, having filed the written submissions which enabled us to conclude the hearing of the cases expeditiously.

35. As the reference has been answered, the matters may now be placed before the appropriate Court for further consideration in accordance with law.

Order accordingly.

I.L.R. [2016] M.P., 667
WRIT APPEAL

Before Mr. Justice Krishn Kumar Lahoti & Mr. Justice U.C. Maheshwari

W.A.No. 20/2013 (Jabalpur) decided on 24 January, 2014

MITHLESH RAI ... Appellant
Vs.
STATE OF M.P. & ors. ... Respondents

(Alongwith W.A. No.803/2012)

A. Uchcha Nyayalaya (Khand Nyaypeeth Ko Appeal) Adhiniyam, M.P. 2005 (14 of 2006), Section 2 (1) and Penal Code (45 of 1860), Section 460 - Investigation by C.B.I. **- Accused persons not arrested inspite of information with regard to their involvement was already collected - Case diary also appears to be tampered - Section 302 of IPC added 12 days after crime - Murder of four persons of the same family - Considering the case diary entries, various police press notes, inaction on the part of investigating agency in not taking action against persons who had allegedly confessed their involvement in case - Investigation not fair and impartial - Held - Fit case for fresh investigation by C.B.I. - Appeal allowed. (Paras 23 to 27)**

क. उच्च न्यायालय (खण्ड न्यायपीठ को अपील) अधिनियम, म.प्र., 2005 (2006 का 14), धारा 2(1) एवं दण्ड संहिता (1860 का 45), धारा 460 – सी.बी.आई. द्वारा अन्वेषण – अभियुक्तगण के लिप्त होने की जानकारी पहले ही एकत्रित किये जाने के बावजूद उन्हें गिरफ्तार नहीं किया गया – केस डायरी से भी छेड़छाड़ किया जाना प्रकट होता है – अपराध के 12 दिनों के पश्चात् धारा 302 भा.दं.सं. जोड़ी गई – एक ही परिवार के चार व्यक्तियों की हत्या – केस डायरी की प्रविष्टियों, कई पुलिस प्रेस नोट के विचारोपरांत, उन व्यक्तियों के विरूद्ध जो कि कथित तौर पर मामले में अपनी संलिप्तता कबूल कर चुके थे, कार्यवाही न किये जाने से अन्वेषण

एजेंसी की कार्यहीनता प्रकट होती है – निष्पक्ष एवं उचित अन्वेषण नहीं – अभिनिर्धारित – सी.बी.आई. द्वारा नये सिरे से अन्वेषण किये जाने हेतु उपयुक्त प्रकरण – अपील मंजूर।

B. ***Constitution - Article 226*** **- Whether investigation of a criminal case by State Agency is open to judicial review in the writ jurisdiction - Held - Yes, if rights as enshrined under the Constitution are violated by the authorities. (Para 28)**

ख. *संविधान – अनुच्छेद 226* – क्या रिट अधिकारिता के अंतर्गत, किसी दाण्डिक प्रकरण में राज्य अभिकरण द्वारा किये जा रहे अन्वेषण के न्यायिक पुर्नविलोकन की स्वतंत्रता है – अभिनिर्धारित – हां, यदि प्राधिकारियों द्वारा संविधान में प्रतिष्ठापित अधिकारों का उल्लंघन किया जाता है।

C. ***Constitution - Article 226*** **- Whether fresh investigation through independent agency like C.B.I. can be ordered without consent of the State - Held -Yes, in an exceptional situation it can be ordered. (Para 28)**

ग. *संविधान – अनुच्छेद 226* – क्या राज्य की सहमति के बिना सी.बी. आई. जैसे स्वतंत्र अभिकरण के माध्यम से नये सिरे से अन्वेषण कराये जाने हेतु आदेशित किया जा सकता है – अभिनिर्धारित – हां, आपवादिक परिस्थिति में ऐसा आदेशित किया जा सकता है।

Cases referred :

(2010) 3 SCC 571, 2009 Vol. 1 SCC 441, (2011) 12 SCC 328.

Adarshmuni Trivedi with *S.K. Mishra*, for the appellant in W.A. No. 20/2013.

Parag Chaturvedi, for the appellant in W.A. No. 803/2012.

Piyush Dharmadhikari, G.A. for the respondent Nos. 1 to 4.

ORDER

The Order of the Court was delivered by :

U.C. MAHESHWARI, J. :- This order shall govern the disposal of the aforesaid both the Intra Court Writ appeals.

2. The appellants have filed their respective W.A. No. 20 of 2013 and W.A. No. 803 of 2012 being aggrieved by the order dated 17.5.2012 passed by the learned Single Bench in W.P. No. 7426 of 2012 whereby their joint

petition filed under Article 226/227 of the Constitution of India to issue the appropriate writ for the following reliefs has been dismissed:-

> 1. To issue a writ of Mandamus and command the respondents and call the entire records of the investigation related to crime no. 50/2012 of police station Kotwali Umariya, district Umariya 460 of IPC, incident dated intervening night of 17.2.2012.
>
> 2. To direct the CBI established under the Delhi Special Police Establishment Act, to carry out the fresh investigation of the Chandrika Rai and his family murder case dated 17.2.2012.
>
> 3. And pass such other and further order which this Hon'ble Court deems fit and proper.

3. For the convenience the name of the aforesaid appellants, Santan Rai @ Pappu Rai and Mithlesh Rai respectively are hereinafter referred as "the petitioner nos. 1 and 2" respectively or "petitioners" as stated in the impugned order.

4. The appellants had filed the writ petition with their joint names contending that deceased Chandrika Rai, the brother of petitioner no. 2, the brother in law of the petitioner no. 1, was fearless and dynamic journalist of Umaria. He had waged the war against the Coal and Bhoo Mafias of Shahdol and Umaria region, so also against their protectors, the local politicians by publishing the news and articles against them. Due to such reasons, he was subjected to threats for his life, inspite of that he had not left his principles and had continued to publish the news and articles against such Mafias. On his published news, the authorities had intercepted and seized the coal having the worth of Rs.80,00,000/- when the same was being illegally transported by them. He had also published the news of illegal allotment of mining tender by the authorities, on which the Chief Minister of the State had intervened in the matter and had cancelled such tenders. In this regard, the copies of the news paper cuttings were annexed with the petition as Annexure P-1.

5. As per averments, before his murder, he being a journalist was covering the news of kidnapping case of Anant Jhariya, S/o Hamant Jhariya, the SDO of PWD, Umaria. As on 15.2.2012 such Anant Jhariya, a seven years old boy on his returning from the coaching class on the way was kidnapped and

thereafter his kidnappers had demanded five crores ransom from his father to release such boy. In connection of such case, the deceased had collected some material evidence against some very eminent persons of the society and was on the verge of exposing them.

6. Due to collection of such material by Chandrika Rai under his fear the kidnappers without taking any sum of ransom had left said child Anant Jhariya at Beohari Railway Station. Besides this, on the basis of the news and articles published at his instant in the newspapers as many as 58 cases were registered by the administration against the persons involved in the illegal mining, Bhoo Mafias and other related influential persons.

7. On 18.2.2012 the house of the deceased Chandrika Rai was found to be locked upto the evening as nobody had come out from the house and none was picking up the phone of Vinay Yadav, who continuously between 12.00 to 3.00 PM tried to contact the deceased, Chandrika Rai, on which Vinay Yadav asked the petitioner no. 2, the younger brother of the deceased in this regard, then he replied that the deceased might have gone to his farm house. But thereafter Raju Sharma, Brijendra Tiwari and Santosh Gupta had reached to the house of deceased and found it locked. Then at 6 o'clock in the evening he called the petitioner no. 2, on his reaching, he had broken the lock and entered in the house, where they had found that Chandrika Rai, his wife Smt. Durga Rai and their son Jalaj Rai and daughter Nisha Rai were brutally murdered and their bodies were lying in four different rooms and the rooms were massed. Thereafter on information of Mithlesh Rai, the Police Umaria had registered the FIR as Crime No. 50/2012 against the unknown persons only for the offence of Section 460 of IPC. Copy of such FIR is annexed with the writ petition as Annexure P-3.

8. The deceased Chandrika Rai being a journalist was exposing the white collar criminals and due to that his entire family have been brutally murdered by the criminals and the Police were unable to solve the case, so the local news papers and Journalist of all over country had published many articles and criticized the working of local Police and also accused the State Government for not providing the adequate security to Chandrika Rai who was fighting against the Bhoo Mafias and Coal Mafias. In support of such contention the copy of newspapers cutting are annexed with the petition as Annexure P-4.

9. Subsequent to registration of the offence in the course of investigation, respondent no. 3 Superintendent of Police, Umaria organized a press conference on 24.2.2012 and issued the press note, Annexure P-5 (with the petition) by which he had claimed that the murder mistry of Chandrika Rai and his family members has been solved. In such note, it was also stated that the deceased Chandrika Rai was blackmailing the kidnappers of Anant Jharia by giving threat to expose their names, therefore, such kidnappers had brutally murdered the entire family of Chandrika Rai in the intervening night of 17th and 18th of February 2012 between 10.30 PM to 1.00 AM and the Police has arrested two accused namely Vidhya Niwas Tiwari and Amit singh who have also confessed their crime.

10. Subsequent to aforesaid press note, the then Director General of Police, Sri S.K. Raut had visited Umaria and refuted to accept the aforesaid story found in primary investigation and had directed the respondent no.3, Superintendent of Police to reinvestigate the matter. Thereafter on 29.2.2012, the respondent no. 3 had organized another press conference and issued fresh press note stating that after collecting sufficient evidence , they had solved the mistry of the alleged four murder case according to which the Driver of the deceased Chandrika Rai namely Ramesh Yadav on non fulfilling his demand of money had murdered the entire family of such Chandrika Rai. He had also robbed the house and stolen the ATM card and other articles and by using such ATM card had withdrawn Rs.3000/- from the ATM of Union Bank of India. It was further stated that the Police had arrested Ramesh Yadav and at his instance also seized the mobile phone, ATM card and other things of the deceased. Besides this, on disclosing information by Ramesh Yadav, at his instance, the Police had also seized the other articles relating to the occurrence. It was also claimed that Ramesh Yadav had confessed his crime, a copy of such press note is annexed with the petition as Annexure P-6.

11. In further averments of the petition, the aforesaid story put fourth in second press note that "the alleged accused, Ramesh Yadav had demanded some money from Chandrika Rai, on his refusal for the same, he had murdered Chandrika Rai and at that time his wife Durga Rai and children, Jalaj Rai and Nisha Rai were sleeping. After killing Chandrika Rai, he had murdered these three persons by assaulting on their forehead with the Kamani Patta and Iron Pipe and also used the scissor and fork in murder of Nisha Rai because she was struggling." Such projected story was apparently suspicious, because of

all the deceased were not only major but were having good health as they could not be murdered by one person and it could also not be assumed that none of them had made any noise. In such circumstance, the projected story of press note that Ramesh Yadav assaulted 4-5 times to every deceased by Kamani Patta and Iron Pipe and also used scissor and fork in murder of Nisha Rai could not be prima facie believed to draw the interference that only Ramesh Yadav had committed the murder of four persons.

12. Apart from the aforesaid, the prosecution did not collect finger prints of the culprits from the entire house. The investigation, to trace out the weapon or articles used by the accused to open the Almirah and other lockers, was also not carried out with proper approach. As per investigation carried out, the dead body of Jalaj Rai was lying on his bed having the injuries on his head but from the photograph, it is clear that there was no sign to assault on his head. There was no blood stains on his white colour shirt. So in such a situation, the entire investigation from the initial stage was not fair.

13. The process of investigation adopted by the Police was not only suspicious and shallow but also not trustworthy. After arresting Ramesh Yadav the Assistant Public Prosecutor moved an application before the Judicial Magistrate for grant of permission to carry out the Brain Mapping Test of such accused for which he was also ready. Considering such application, the Magistrate had permitted such agency to carry out the Brain Mapping Test of such accused but subsequent to such permission, the Investigation Agency had not taken any step to carry out such Brain Mapping test of the accused.

14. In view of the available evidence the approach of the Police investigation was neither natural nor reliable. According to the postmortem report of Nisha Rai, besides the injuries on her head, deep scratches on her legs were found, the same could have been caused on holding her legs tightly by some one and on making the assault on her head by another person. As the Police had also admitted that in her murder, various things, the iron rod, scissor and fork were used. In the available, scenario it appears that more than six persons were involved in the alleged crime and the impugned incident was directly or indirectly connected with the aforesaid kidnapping case of Anant Jharia and was the revengeful reaction either of such accused of kidnapping case or of the persons of Bhoo Mafia and Coal Mafias.

15. It is beyond imagination that a servant who is graduate B.Sc. can

commit the murder of entire family of his employer including the minor children. It is also stated that the investigation of the case was not carried out fairly on the correct line, therefore, the case requires fresh investigation through some independent agency like CBI to trace out the actual culprits of the crime to send them behind the bars. It is further stated that in view of the aforesaid shallow and weak type of Police investigation, the petitioners and other different organizations had submitted their respective representations before the competent authorities of the State, including the Chief Minister, Director General of Police, Home Minister with the request to carry out the investigation of the impugned crime through independent agency, like the Central Bureau of Investigation. Copies of the same are annexed with the writ petition as Annexure P-7.

16. It appears from the record of writ petition that the impugned order of dismissing the petition has been passed at the initial stage of the case without calling or filing any response/return on behalf of authorities of respondent nos. 1 to 4, so also without calling the case diary of the impugned case, as we have not found any averment in the impugned order showing that any averment of the response/ return and the circumstances of the case diary were taken into consideration. The entire order of the learned Single Bench appears to be based only on the averments of the petition as well as of the papers annexed with the same.

17. Being dis-satisfied with the dismissal order of the petition, the petitioners nos. 2 and 1 with their respective Intra Court Appeals have come to this court. In their respective appeal memos besides the aforesaid grounds, some additional ground : that in the available scenario of the case the charge sheet filed against said accused Ramesh Yadav being based on improper investigation and contrary to procedure with intention to save the real culprits, is not sustainable, is also taken in the writ appeal no. 20/2013. Such ground is also raised on the basis of alleged extra judicial confession of the impleaded accused Ramesh Yadav before some Advocate, in which he categorically stated the names and particulars of the other culprits alongwith their acts with whom he had committed the alleged crime.

18. In response of in both the appeals, on behalf of the authorities of respondent nos. 1 to 4 by filing the separate return, it is stated that the learned Single Bench has thoroughly considered the FIR and investigation carried out by the Police for recording the finding that no extra ordinary circumstances

are prevailing in the matter, as would lead to an opinion that the investigation should be held by CBI and in such premises dismissed the writ petition in a speaking manner. It is further stated that at the threshold the answering respondents hereby raise a preliminary objection with regard to maintainability of two different writ appeals against the impugned order as the same amounts to sheer abuse of process of law. Pursuant to it, it is stated that against the impugned order only one appeal is sufficient which has already been filed by the petitioner no. 1, i.e. W.A. No. 803/2012, then W.A. No. 20/2013 deserves to be dismissed. In W.A. No. 20/2013, the authorities of respondents by filing the concise return have adopted the return filed in W.A. No. 803/2012. In further averments of the return of W.A. No. 803/2012 interalia, by justifying the FIR registered at the initial stage, only for the offence punishable under Section 460 of IPC against the unknown persons stated that subsequently Section 302 of IPC was also invoked in the matter. In further averments, it is stated that in any case fresh investigation of the impugned case through Central Bureau of Investigation is neither necessary nor required.

19. Shri Adarshmuni Trivedi, learned Sr Adv assisted by Shri S.K. Mishra, learned counsel for the appellant of W.A. No. 20/2013 and Shri Parag Chaturvedi, learned counsel for the appellant of W.A. No. 803/2012 after taking us through the record of writ petition alongwith the impugned order, so also the grounds of the appeals mentioned therein argued that while passing the impugned order the grounds, raised by the petitioners in the petition, were not considered with proper approach by the learned Single Bench. The process of investigation adopted by the Police was questioned in the writ petition on various grounds but the same were neither examined nor considered, as such the learned Single Bench has not considered the matter keeping in view the settled propositions and the provisions enacted by the legislature in that regard. In continuation they said that the learned Single Bench under its majesty was bound to consider the material circumstances of the case, according to which after receiving the information that dead bodies of four persons were lying at the different places of the house of deceased Chandrika Rai, the Police had reached to such place and prima facie had found that all four persons had died due to the injuries caused by some others. In such premises, it was the apparent case of culpable homicide amounting to murder of four persons, inspite that the FIR was registered against unknown person only for the offence punishable under Section 460 of IPC and not for the offence of Section 302 of IPC alongwith the other Sections in which offence of dacoity with murder

is made punishable. They further said that according to the case of prosecution, after reaching the Police to the place of occurrence had registered four different inquest intimations of such dead bodies. According to them though the sign of fatal injuries were found on all such corpus, inspite but the offence of Section 302 of IPC was not registered. It was further said that all the dead bodies were sent to the hospital on next day to carry out their autopsy, where the same were carried out and probably their postmortem reports were might have been prepared by the Doctors and the same were given to the Police either on the same day or the subsequent day. In such reports, the cause of death of all the deceased was stated to be shock and hemorrhage due to the injuries found on their bodies and in such premises, the same were homicidal death. Inspite that for a longer period for the reasons best known to the Investigating Officer or its superior authority the offence of Section 302 of IPC was neither invoked nor inserted in the case diary, the same was invoked in the first week of March 2012. In continuation, it was said that after commencement of the investigation on 18.2.2012, the respondent no. 3, Superintendent of Police had organized a press conference on 24.2.2012 and issued a press note contending that the kidnappers of Hemant Jharia, son of Anant Jharia, had committed the alleged murders and out of them the Police had arrested two persons namely Vidhya Niwas Tiwari and Amit singh who had also confessed their crime, but subsequent to this press note the investigation agency had taken "u" turn and in the second press conference, organized by the respondent no. 3 on 29.2.2012 issued another press note contending that on collecting the evidence, it was revealed that Ramesh Yadav, the Driver of the deceased had murdered the entire family of Chandrika Rai. In view of such contradictory press note, it is apparent that in order either to save the real culprits or with intention not to make efforts to find out the real culprits the then Investigating Agency as well as STF of the State have manipulated the investigation or with some ulterior motive to save the real culprits have changed the line of investigation. Looking to the scenario of the occurrence, it could not be deemed that four persons were murdered only by aforesaid one person, Ramesh Yadav. There was no motive with the Driver to commit the murder of four persons of the same family as he had not have any enmity with any of the deceased. They also said that according to such subsequent investigation, Ramesh Yadav had entered by breaking the house with intention to commit robbery, then ornaments worn by the wife of Chandrika Rai should not have been found on her body but the same were found on her

dead body and if he had committed theft of other ornaments from the Almira, then the same was probably broken by some implements but for that no evidence was collected in the Investigation. Challenging the act of Police changing the line of investigation, they said that as per prosecution, Ramesh Yadav had confessed to commit the impugned crime. If such confession was the only criteria to implead him as sole accused in the case, then why the earlier two arrested accused namely Vidhya Niwas Tiwari and Amit singh who had also confessed the offence as per press note of respondent no. 3 dated 24.9.2012 were given the clean chit by the Police. All these material questions require answer by carrying out fair investigation through some independent agency. He said that the prosecution has failed to establish prima facie reasons either in the charge sheet or before this court that why the fingers prints of the culprits were available at the place of occurrence, but were not collected in the initial investigation to trace out the actual culprits and to carry out the fair investigation. Counsel further said the Investigation Officer on the basis of the collected evidence had decided to carry out the Brain Mapping Test of the impleaded accused Ramesh Yadav and in that dimension by filing the application he had obtained permission from the court of the Judicial Magistrate, inspite that such test was not carried out. Accordingly, such order of the Judicial Magistrate has also not been complied with by the Investigating Agency. He further said that it is undisputed position in the matter that deceased Chandrika Rai being dynamic journalist of the town, had disclosed the illegal activities of many persons involved in the illegal mining and/or working as Coal and Bhoo Mafias. He had also collected some material and important information regarding kidnappers of Hemant Jharia, who had kidnapped him for the ransom. On his information, various offences were registered against the persons involved in illegal minings or other activities as Bhoo and Coal Mafias so also other white collar criminals. On his report and publication, some tenders of such persons relating to the mines were also cancelled by the State Authorities. So involvement of such persons or their criminal conspiracy in committing the murder of entire family of Chandrika Rai could not be ruled out. The initial investigation was started by the local Police on that line but subsequently after some days either under some political pressure or/and with some ulterior motive, the entire line of investigation was changed. In such premises, he said that even on filing the charge sheet on the basis of such improper and incomplete investigation, the real culprits have not been brought before the court to hold the trial and send them behind the bars. They further

said that in such a scenario, it is apparent that the local Police and the STF had filed the impugned charge sheet without carrying out the proper investigation of the crime, therefore, the trial of the case on such charge sheet should not be permitted. They further said that looking to such improper conduct of the State Agency in investigation to assure the appellants as well as the residents of Umariya at large that the investigation of the case is being/ has been carried out by the independent agency on the right dimension by making efforts to bring the real culprits before the court of law for their prosecution a fresh investigation of the impugned case through some independent agency of the outside of the State, like Central Bureau of Investigation is necessary and prayed to set aside the impugned order and allow their writ petition with appropriate direction. They also placed their reliance on the decisions of the Apex Court in the matter of *West Bengal Vs. Criminal Protection of Domestic Rights* reported in 2010, Vol. 3, SCC 571, and in the matter of *Nirmala Singh Khalanand and others Vs. State of P.B.* reported in 2009 , Vol. 1, SCC 441.

20. On the other hand responding the aforesaid arguments by justifying the impugned order, Shri Piyush Dharmadhikari, learned Govt. Adv said that the same being based on proper appreciation of the available factual matrix is in conformity with law, it does not require any interference at this stage. In continuation he said that immediately after receiving the information, the Police went to the spot and thereafter registered the inquest reports with respect of all four murders and during investigation, the progress of the same was shown by issuing the different press notes on the basis of collected evidence by the investigating agency upto the then stage of investigation. In the available circumstances, subsequent to beginning investigation and issuing a first press note, on collecting the other evidence in further investigation, changing the line of investigation became necessary and that is why after issuing the first press note by respondent no. 3, such line of investigation was changed to another dimension also. As such on collecting the further evidence, there was no option with the investigation agency except to change the line and proceed with further investigation. He also said that in order to carry out the fair investigation, the matter was also made over to the S.T.F., the special agency constituted by the State of M.P. to assist and carry out the fair investigation of the serious cases like the impugned case. The investigation carried out with the assistance of such agency could not be questioned on the flimsy grounds raised by the appellants in the petition as well as by their counsel. He further

said that after registering the crime no. 50/12 on 18.2.2012 for the offence punishable under Section 460 of IPC against unknown persons, during the course of investigation on establishing the ingredients of Section 302 of IPC, such Section was also invoked at later stage on 3.3.2012. In this regard he also referred the affidavit of C.R. Patel, one of the Investigating Officer of the Crime No. 50/12, filed in compliance of the order dated 16.8.2013 in W.A. No. 803/2012. He further said, that the investigation has been carried out by the investigating agency in accordance with the procedure prescribed under the law, therefore, the charge sheet filed on such investigation could not be a subject matter of the judicial review and in such premises, the fresh investigation through C.B.I. is not required. He further submitted that in the impugned investigation carried out with the assistance of S.T.F. if there are some lacuna left in the same, then by virtue of Section 156 (3) and Section 173 (3) of Cr.P.C. the concerning Magistrate is empowered to take cognizance, on such issue and can give appropriate direction to carry out the investigation or supplementary investigation. In such premises, the appellants could have approached or may approach such forum and prayed to affirm the impugned order by dismissing both the appeals. He also placed his reiliance on the decision of the Apex Court in the matter of *T.C. Thangaraj Vs. V. Engammal and others* reported in (2011), 12, SCC, 328.

21. Having heard the counsel at length, we have carefully gone through the writ petition alongwith the annexed papers, the impugned order and the grounds raised in the appeal memos, so also the returns of the State authorities alongwith the aforesaid affidavit of Shri C.R. Patel one of the Investigation Officers of the crime. Apart from these papers, we have also carefully gone through the case diary of the impugned crime.

22. Undisputedly after holding investigation by Police with the assistance of the S.T.F. the charge sheet has already been filed by State prosecution agency against the impleaded accused Ramesh Yadav alleging that he being in need of money and demanded the same, from Chandrika Rai, and on his refusal to give the same under such revenge he had murdered the entire family of Chandrika Rai. According to such charge sheet, the impleaded accused has confessed his act of committing the murders of aforesaid four persons and at his instance, some articles connecting him with the crime have also been recovered. The counsel assisted apprised us that on the basis of said charge sheet the trial of the case is pending against impleaded accused, Ramesh Yadav

before the Sessions Court of Umariya.

23. Before proceeding further, we deem fit to examine the matter from the case diary of the crime and undisputed papers annexed with the petition. On perusing the same, we have found the following circumstances:-

(i) On information of Mithlesh Rai, the brother of the deceased Chandrika Prasad that dead bodies of aforesaid four persons having the fatal injuries are lying in the house of Chandrika Rai at P.S. Umariya, instead to register the crime for the offence of Section 302 of IPC, the crime no. 50/12 was registered against the unknown persons for the offence of Section 460 of IPC. It shows that inspite the information of murder of such persons either with intention to conceal the incident or to protect the actual culprits the offence of Section 302 of IPC was not registered at the initial stage.

(ii) Regarding unnatural death of such four persons, their different inquest were registered under Section 174 of Cr.P.C. and the dead bodies were sent to the hospital on next day to carry out autopsy. Inspite that the offence of Section 302 of IPC was not invoked.

(iii) After carrying out the postmortem of such dead bodies, the concerning Doctors had prepared their postmortem reports on the same day, i.e. 19.2.2012 and probably such reports were handed over to the Police on the same day or day subsequently. In such report the cause of death of all the corpus was commonly stated as under:-

> "In our opinion the cause of death was shock as a result of severe hemorrhage and the injuries to vital organ like brain, all injuries are anti mortem in nature."

From the aforesaid opinion of Doctors within three days from the date of incident, it was revealed that such persons had died with homicidal death as a result of ante mortem fatal injuries caused to them by others. Inspite, that offence of Section 302 of IPC was not invoked for a longer period.

(iv) The respondent no. 3, Superintendent of Police, Umariya had organized a press conference on 24.2.2012 and issued a press note (Ann. P-5) annexed with the writ petition. In such press note after stating various facts of the case including registration of the crime for the offence of Section 460 of IPC, it was apprised to the Press Reporters that in investigation on obtaining the call details of the suspicious mobile calls it was revealed that Amit Singh, one of

the accused of kidnapping case of Hemant Jharia was the accused of the crime. On which after taking him in custody in the kidnapping case, on carrying out his interrogation, he had confessed that he alongwith Home guard Soldier, Vidhya Niwas Tiwari, Sunil, Manish Kori, Harendra Singh and Raj were involved in the kidnapping case of Hemant Jharia, on which such other accused were also arrested. In further interrogation carried out by an officer of S.T.F., A.I.G. Shri Arvind Tiwari, said Vidhya Niwas Tiwari and Amit Singh had confessed their involvement in the murder of Chandrika Rai and his family members. In such press report, it was also stated that yesterday on 23.2.2012, Additional DGP, S.T.F., Sanjay Choudhari came to Umariya and after taking the information of aforesaid carried out investigation, was satisfied with the aforesaid interrogation of the Vidhyaniwas Tiwari, in which he had stated that Chandrika Rai came to know that they had kidnapped Anant Jharia and on account of that Chandrika Rai was blackmailing with a threat to expose them and due to such reason they had to leave Anant Jharia without taking any ransom. It is also stated that Amit Singh used to visit the house of Chandrika Rai to carry out the electricity work and in such premises, he was acquitted with the situation of the deceased's house. In such press note, it was further stated that due to aforesaid activities of Chandrika Rai, blackmailing Vidhyaniwas Tiwari and Amit Singh with the threat to expose them in kidnapping case, they accompanied with their unknown friends entered into the house of Chandrika Rai between 10.30 to 1 o'clock in the intervening night of 17-18/2/2012 and murdered the entire family of Chandrika Rai.

(v) In the return of the State - authorities filed as a response in these appeals the issuance of the aforesaid press note dated 24.2.2012 has not been denied. So in such premises, prima facie inference could be drawn that investigating agency of the State had already collected the evidence in initial investigation against Vidhyaniwas Tiwari, Amit Singh and their unknown friends regarding their involvement in the impugned crime of four murder, inspite that none of them was arrested because we have not found any arrest memo of any of such persons or the memorandum recorded by the Police on disclosing the aforesaid information by said Vidhyaniwas Tiwari and Amit Singh. If they were arrested and such papers were prepared, then why the same are not available in the case diary. It shows that during investigation with some ulterior motive best known to the investigation agency, the case diary of the crime has also been tempered.

(vi) The factum of collection of the aforesaid information and evidence by the investigating agency in initial investigation appears to be correct from the Parcha of the case diary dated 22.2.2012 as on backside of this parcha having page no. 170 of the case diary, it is stated that interrogation of Amit Singh and other persons connected with him was carried out and the inquiry of their mobile calls through cyber technic is being carried out by the STF but till writing such purcha, the above mentioned accused had not given any special information. It is apparent that any report of STF regarding inquiry of the mobile call details carried out through the cyber technic are not annexed with case diary. In such premises, it could be assumed that no effort to collect or obtain such material evidence was made by the investigating agency. In the lack of such report, the impugned investigation of the State agency could not be said to be fair and impartial.

(vii) In the investigation prima facie, it has come in the case diary that deceased Chandrika Rai was a renowned journalist of Umariya and had published so many news and articles in the newspapers to expose the persons involved in the illegal mining, so also against bhoo mafias, coal mafias and on such information the concerning authorities had also taken the actions against some persons and registered the cases against them and on some occasions cancelled the tenders of such type of persons and on account of that white collar persons having status in the society had serious enmity with Chandrika Rai. But it appears that in such dimension no effort was made to carry out the investigation.

(viii) In the course of investigation, the information regarding withdrawal of the money Rs.3000/- from the account of deceased Chandrika Rai from the ATM through his ATM Card was received, on which after obtaining the clips of CCTV of such ATM from the concerning bank, it was found that implicated accused Ramesh Yadav had withdrawn such sum through ATM Card and only on that count the line of entire investigation was centralized against Ramesh Yadav and no effort was made by the prosecution agency to find out the involvement of the above mentioned or other persons in causing the alleged murder of four persons, either separately or accompanied with Ramesh Yadav. In the available circumstances, Ramesh Yadav may be one of the accused and even on that count the line of investigation should not have been stopped by the Investigating Agency against the aforesaid or other unknown persons but it is apparent from the case diary that subsequent to obtaining the aforesaid

CCTV footage, the process of investigation of the case to find out the other culprits or the actual culprits was stopped.

(ix) On going through the subsequent press note issued by the respondent no.3, Superintendent of Police, Umariya on dated 29.2.2012, (Ann. P-6) with the petition, it is apparent that by this press note, the authorities of the Police and the Investigation Agency had taken a "u" turn and stated that on collecting the evidence in the course of investigation regarding aforesaid ATM Card and CCTV footage whereby Rs.3000/- was withdrawn by the accused Ramesh Yadav through the ATM card of the deceased, it has been revealed that only Ramesh Yadav had murdered all the aforesaid four persons and he had also confessed to commit such crime and the articles used by him in the incident and stolen from the house of occurrence have been recovered at his instance with further information that due to temptation of money, he murdered the entire family of Chandrika Rai. It is apparent from para 2 of subsequent press note (Ann. P-6) that a day before of such press note, Shri S.K. Raut, the then Director General of Police of M.P. visited Umaria in connection of this case and after inspecting the place of occurrence and looking to the seriousness of the offence immediately constituted a special team to resolve the mistry of such serious offence. Names of some other senior Police Officials of the State are also stated in such press note. In such premises, and it appears that only after the visit of said high official, the line and dimension of investigation was entirely changed. But commencing sufficient reasons to change the line of investigation are not available in the case diary.

(x) In view of aforesaid two different versions of the Police in the course of investigation by interval of 4-5 days shows that for the reasons best known to the STF or the local Police agency involved in the investigation that why they had not continued further investigation of the case against whom they have found prime facie reliable information for committing the alleged offence for which according to the press note the interrogated accused Vidhyaniwas Tiwari and Amit Singh have also confessed the same. Such situation gives sufficient circumstance to draw an inference against the fairness of Stage (sic:State) Agency in carrying out the investigation.

(xi) We have also found in the case diary that as many as three used condoms with some substance inside of them were found at the place of the incident and dead body of one woman and one girl were also found in the injured conditions with anti mortem fatal injuries and as per averments of page

no. 143 of the case diary such condoms were sent to FSL but we have not found any report in the case diary given by the FSL after carrying out the chemical examination of the same. In this regard some averments are made by the Investigating Officer on the parcha of the case diary, dated 2.3.2012. In such premises, the question rises why such report was not obtained and if it was obtained then why the copy of the same has not been kept with the case diary even if the same was filed alongwith the charge sheet. In such situation, it seems that probably some other offence relating to the women was also committed by the concerning culprits. In such premises, the report of chemical examination of such condoms was also relevant to proceed with the investigation of the crime with another dimension. But in that dimension no effort was made by the investigating agency.

(xii) It is also apparent from the parcha of case diary dated 1.3.2012 that the investigating agency itself was not sure that only the impleaded accused Ramesh Yadav was involved in the alleged crime because in such parcha, it is stated that memorandum of Ramesh Yadav is being prepared in presence of three witnesses, because on arising the occasion, if some of the witnesses are found to be involved in committing the alleged offence, then their names could be deleted from the list of prosecution witnesses.

(xiii) Apart from the aforesaid, it is apparent from the parcha of the case diary dated 7.3.2012 that investigating officer was directed by the Senior Police Officials to obtain permission from the court to carry out Brain Mapping Test of the impleaded accused, Ramesh Yadav because on arising the occasion, the same would be necessary, on which the investigating officer had taken such permission in writing from the concerning court on the same day, i.e. on 7.3.2012. Inspite of that for the reasons best known to the investigating agency or its superior officers, for which no reasons are stated in the case diary, such test of the impleaded accused was not carried out, till filing the charge sheet. We deem fit to mention here that the impleaded accused Ramesh Yadav had also given his consent to carry out such test inspite that the same was not carried out. It gives circumstance to draw a prima facie inference that to avoid fair investigation such test was not carried out.

(xiv) It is apparent that till 3.3.2012 inspite availability of cogent and clear circumstance from the date of registration of the crime, such Section was not invoked and after twelve days, on 3.3.2012 such Section of 302 of IPC at the direction of senior officials was invoked. Such conduct of the Investigating

Agency gives circumstance to draw an inference that State Investigation Agency had not remained fair in holding the investigation of the crime impartially.

24. Keeping in view the aforesaid position of the case diary on perusing the impugned charge sheet filed by the prosecution against alleged accused, Ramesh Yadav, we have found that the investigation agency even after taking the assistance of the S.T.F. or prior to it had not taken any pain to investigate the matter on the proper line and dimension and in such premises, the impugned investigation carried out by the State Agency and its filed charge sheet could not be said to be fair and impartial.

25. In view of the aforesaid circumstances of the case diary, it is apparent that investigation was not conducted and continued in the right dimension for which it was initially started. It appears that for one reason or another just to save the real culprits of the incident with some ulterior motive after beginning the initial investigation on right dimension only after some days with intention to complete the formalities of investigation to file the charge sheet, the entire line of investigation was changed and the real culprits against whom prima facie evidence was collected at the initial stage, before releasing the first press note by respondent no. 3, who had also admitted about commission of such crime, were left free and only Ramesh Yadav, Driver of the deceased has been impleaded as accused and was charge sheeted. Infact in the light of aforesaid lacunas left by the investigation agency of the local Police as well as of the S.T.F. the investigation carried out by such agencies could not be said to be fair and impartial. Infact such agency had failed to investigate the matter fairly completely and impartially.

26. In the available circumstances of the case, we are of the considered view that aforesaid act of the local Police of the State as well as of the S.T.F. had not given a healthy massage (sic:message) to the appellants or the related persons of the family of the deceased, so also the citizens of the town of Umaria and the community of journalists at large.

27. The fair and impartial investigation of a crime is condition precedent and obligation on the part of any investigating agency, the same has not been carried out by the State Agencies in the impugned case of brutal murder of four persons of the entire family of Chandrika Rai. As per available record of the case diary, stated above, the fair investigation on right dimension has not been carried out and by such act the actual culprits have been saved by the

Investigation Agency. Consequently the appellants had rightly lost their faith at large on the system and such situation is not tolerable. As per settled position of law every citizen of this country has right to get fair investigation of the case and justice free from any bias and polluted act of the State authorities including the investigating agency. In such premises, it is held that the investigation of the crime has not been carried out by the State Agency with correct approach fairly and impartially keeping in view all probable dimensions. Therefore, to keep and intact the faith of the appellants and people at large in the existing system in the available circumstances, we are of the considered view that the impugned crime requires fresh investigation through some independent agency of the outside of the State, i.e. Central Bureau of Investigation established under the Delhi Special Police Establishment Act and the same is ordered.

28. True it is that in the normal circumstances, the investigation of the criminal case carried out by the State Agency could not be a subject matter of the juridical review in the writ jurisdiction of this court but where there special facts and circumstances are involved, thereby the right of any citizen either he is the accused or the victim has/have been violated by the authorities, then certainly this High Court has jurisdiction to rectify such mistake under Article 226 of the Constitution of India by judicial review. It is settled proposition of law that justice should not only be done but it should be appeared that the same is being done and it has been done. Such approach is of this court is fully based on the principle laid down by the Constitutional Bench of the Apex Court presided over by five Hon'ble Judges in the matter of *State of West Bengal and others Vs. Committee for Protection of Democratic Rights, West Bengal* reported in (2010), 3 SCC 571 in which it was held as under:-

"68. Thus, having examined the rival contentions in the context of the constitutional scheme, we conclude as follows :

(i) The fundamental rights, enshrined in Part III of the Constitution, are inherent and cannot be extinguished by any constitutional or statutory provision. Any law that abrogates or abridges such rights would be violative of the basic structure doctrine. The actual effect and impact of the law on the rights guaranteed under Part III has to be taken into account in determining whether or not it destroys the basic structure.

(ii) Article 21 of the Constitution in its broad

perspective seeks to protect the persons of their lives and personal liberties except according to the procedure established by law. The said Article in its broad application not only takes within its fold enforcement of the rights of an accused but also the rights of the victim. The State has a duty to enforce the human rights of a citizen providing for fair and impartial investigation against any person accused of commission of a cognizable offence, which may include its own officers. In certain situations even a witness to the crime may seek for and shall be granted protection by the State.

(iii) In view of the constitutional scheme and the jurisdiction conferred on this Court under Article 32 and on the High Courts under Article 226 of the Constitution the power of judicial review being an integral part of the basic structure of the Constitution, no Act of Parliament can exclude or curtail the powers of the Constitutional Courts with regard to the enforcement of fundamental rights. As a matter of fact, such a power is essential to give practicable content to the objectives of the Constitution embodied in Part III and other parts of the Constitution. Moreover, in a federal constitution, the distribution of legislative powers between the Parliament and the State Legislature involves limitation on legislative powers and, therefore, this requires an authority other than Parliament to ascertain whether such limitations are transgressed. Judicial review acts as the final arbiter not only to give effect to the distribution of legislative powers between the Parliament and the State Legislatures, it is also necessary to show any transgression by each entity. Therefore, to borrow the words of Lord Steyn, judicial review is justified by combination of "the principles of separation of powers, rule of law, the principle of constitutionality and the reach of judicial review".

(iv) If the federal structure is violated by any legislative action, the Constitution takes care to protect the federal structure by ensuring that the Courts act as guardians and interpreters of the Constitution and provide remedy under Articles 32 and 226, whenever there is an attempted violation. In the

circumstances, any direction by the Supreme Court or the High Court in exercise of power under Article 32 or 226 to uphold the Constitution and maintain the rule of law cannot be termed as violating the federal structure.

(v) Restriction on the Parliament by the Constitution and restriction on the Executive by the Parliament under an enactment, do not amount to restriction on the power of the Judiciary under Article 32 and 226 of the Constitution.

(vi) If in terms of Entry 2 of List II of The Seventh Schedule on the one hand and Entry 2-A and Entry 80 of List I on the other, an investigation by another agency is permissible subject to grant of consent by the State concerned, there is no reason as to why, in an exceptional situation, the Court would be precluded from exercising the same power which the Union could exercise in terms of the provisions of the Statute. In our opinion, exercise of such power by the constitutional courts would not violate the doctrine of separation of powers. In fact, if in such a situation the court fails to grant relief, it would be failing in its constitutional duty.

(vii) .....

"69 In the final analysis, our answer to the question referred is that a direction by the High Court, in exercise of its jurisdiction under Article 226 of the Constitution to CBI to investigate a cognizable offence alleged to have been committed within the territory of a State without the consent of that State will neither impinge upon the federal structure of the Constitution nor violate the doctrine of separation of power and shall be valid in law. Being the protectors of civil liabilities of the citizens, this Court and the High Courts have not only power and jurisdiction but also an obligation to protect the fundamental rights, guaranteed by Part III in general and under Article 21 of the Constitution in particular, zealous and vigilantly."

Thus, the High Court has jurisdiction and give direction to carry out the investigation afresh through independent agency like Central Bureau of

Investigation even without consent of the State.

29. So far other case laws cited by the parties, stated above are concerned, it is suffice to say that this Bench does not have any dispute regarding the principles laid down in the same but the same being distinguishable on facts, in the available circumstances of the case at hand are neither applicable nor helping to the State's authorities of the respondents.

30. True it is that the CBI is already overburdened with the investigations and the enquiries of the various high profiles cases of the national and international ramifications and in such premises, on the basis of available infrastructure of the CBI it may be difficult for it to carry out the investigation of the impugned case but in order to maintain the faith of the people at large in the system, so also to protect the right of the citizens like appellants, the investigation of the impugned serious case of four murder out of them one Chandrika Rai was allegedly renowned journalist and was fighting with different Mafias and politicians as stated above is necessary through CBI and, therefore, the same is ordered.

31. In view of aforesaid, the impugned order of the learned Single Bench being perverse is not sustainable. Consequently by allowing these appeals, the same is set aside and pursuant to it, the writ petition filed by the petitioners is allowed with the following directions: -

"The Director General of Police, Madhya Pradesh alongwith its subordinate officers, i.e. Inspector General of Police and Deputy Inspector General of Police of Umariya Range alongwith Superintendent of Police, Umariya are directed to send the case diary of impugned Crime No. 50/2012 alongwith all connected documents and copy of this order to the Head Quarter of Central Bureau of Investigation within 30 days through special messenger to hold fresh investigation of Crime No. 50/2012 in compliance of this order and pursuant to it, the Director of Central Bureau of Investigation is directed to take appropriate steps to carry out the investigation of the aforesaid crime afresh without influencing from the investigation carried out and the charge sheet filed by the State Agency and submit its report or charge sheet as the case may be, before the appropriate court within ninety days from the date of receipt of the case diary alongwith the copy of this order from the aforesaid State Authorities so also under intimation to this Court and till filing the charge sheet or the report in this regard before the appropriate court, the further trial

of the sessions case based on the charge sheet filed by the State Agency against Ramesh Yadav is hereby stayed and shall be subject to filing the fresh charge sheet by the Central Bureau of Investigation On filing of such charge sheet, it shall be deemed to be quashed. "

32. Both the writ appeals are allowed, as indicated above. Original copy of this order is being placed in W.A. No.20 of 2013 with a direction to the office to place its photocopy with the record of W.A. No. 803 of 2012.

There shall be no order as to cost.

Appeal allowed.

I.L.R. [2016] M.P., 689
WRIT APPEAL

Before Mr. Justice Rajendra Menon & Mr. Justice S.K. Seth
W.A. No. 266/2015 (Jabalpur) decided on 6 October, 2015

YOGIRAJ SHARMA (DR.) ...Appellant
Vs.
STATE OF M.P. & ors. ...Respondents

A. Civil Services (Classification, Control and Appeal) Rules, M.P. 1966, Rule 3 & 4 - Documents - Departmental enquiry - **Charges levelled against petitioner were not vague or incapable of understanding the same - Rule 3 & 4 of Rules, 1966 do not contemplate supply of documents along with charge-sheet - Only requirement is to forward a list of documents, by which charges are proposed to be proved - Record shows that all the documents were supplied during the course of enquiry - Petitioner also did not raise any objection with regard to production of documents - Non supply of documents which were not considered by Enquiry Officer would not prejudice the petitioner - Writ Court has gone into each and every aspect of the matter in detail and has recorded a finding to say that the order passed by the Disciplinary Authority and findings recorded by Enquiry Officer is legal and proper - No reason to interfere with the reasonable judgment and decree passed by the writ Court. (Paras 17 to 19)**

क. सिविल सेवा (वर्गीकरण, नियंत्रण और अपील) नियम, म.प्र. 1966, नियम 3 व 4 – दस्तावेज – विभागीय जांच – याची के विरूद्ध लगाये गये आरोप अस्पष्ट अथवा न समझे जाने योग्य नहीं थे – नियम 1966 के नियम 3 व 4 आरोपपत्र के साथ

दस्तावेज प्रदाय किये जाना अनुध्यात नहीं करते – ऐसे दस्तावेजों की एक सूची प्रेषित किया जाना मात्र अपेक्षित है, जिनके द्वारा आरोप प्रमाणित किये जाना प्रस्तावित है – अभिलेख से प्रकट होता है कि जांच के दौरान समस्त दस्तावेज प्रदाय किये गये थे – याची ने भी दस्तावेजों के प्रस्तुतीकरण के संबंध में कोई आपत्ति नहीं उठाई – जांच अधिकारी द्वारा विचार में नहीं लिये गये दस्तावेजों को प्रदाय न किये जाने से याची को कोई प्रतिकूल प्रभाव कारित नहीं होगा – रिट न्यायालय ने मामले के प्रत्येक पहलू का विस्तार से अध्ययन किया है तथा यह निष्कर्ष अभिलिखित किया है कि अनुशासनिक प्राधिकारी द्वारा पारित आदेश एवं जांच अधिकारी द्वारा अभिलिखित निष्कर्ष वैध एवं उचित है – रिट न्यायालय द्वारा पारित युक्तियुक्त निर्णय एवं डिक्री में हस्तक्षेप करने का कोई कारण नहीं।

B. ***Service Law - Departmental enquiry*** **- Scope of judicial review - Law discussed.** **(Paras 31 to 35)**

ख. *सेवा विधि – विभागीय जांच* – न्यायिक पुनर्विलोकन का विस्तार – विधि विवेचित।

Cases referred :

(1986) 3 SCC 454, (2013) 6 SCC 515, (2011) 14 SCC 379, (2010) 2 SCC 772, AIR 1961 SC 1623, (1975) 1 SCC 155, (1967) 1 SLR 759, (2005) 1 LLN 242, (2009) 2 SCC 541, (1998) 7 SCC 569, (1993) Supp. 1 SCC 431, (2006) 7 SLR 849 (AP HC), (1994) 2 SCC 416, (2006) 5 SCC 88, 2011 (2) MPLJ 317, (2009) 12 SCC 78, (2001) 1 SCC 65, (2010) 13 SCC 494, (2010) 11 SCC 278, (2010) 10 SCC 539, (2014) 7 SCC 340, (2013) 10 SCC 324, (2006) 7 SCC 558, (2011) 2 SCC 316, 1987 (Suppl) SCC 518, (2006) 3 SCC 150, (2009) 10 SCC 32, 1999 SCC (L&S) 620, (2009) 8 SCC 310, (1997) 3 SCC 72, (1996) 3 SCC 364, (2008) 16 SCC 276, (2010) 5 SCC 349, (2010) 3 SCC 556, (2013) 6 SCC 602, AIR 1984 SC 1182, (2011) 10 SCC 249, (2006) 13 SCC 449.

Siddharth Gupta, for the appellant.
R.N. Singh with *Arpan J. Pawar*, for the respondents.

JUDGMENT

The Judgment of the Court was delivered by :
RAJENDRA MENON, J. :- Seeking exception to an order dated 15.4.2015 passed by the learned Writ Court in W.P. No.2167/2013, this appeal has been filed under Section 2(1) of Madhya Pradesh Uchcha Nyayalya (Khand Nyay Peeth Ko Appeal) Adhiniyam, 2005.

2. Appellant was working as a Director in the Public Health and Family Welfare Department. It is said that he was appointed on 29.5.1982 as an Assistant Surgeon and on the basis of his excellent service, was promoted from time to time and finally, became the Director, Public Health and Family Welfare Department on 2.12.1998. On account of certain income tax raid conducted and based on certain adverse report submitted by the Income Tax Department, appellant was compulsorily retired on 10.12.2007. This retirement was challenged in W.P. No.386/2008 and a learned Single Bench of this Court had found that as the compulsory retirement was by way of punishment, was not in public interest, the petition was allowed. Matter went to a Division Bench in an appeal filed and in W.A. No.134/2009 this Court quashed the order of Compulsory retirement vide judgment dated 23.7.2009, however, liberty was granted to the department to proceed in accordance with law. It is said that the charge sheet in question which culminated into the impugned action, was issued to the appellant under Rule 14 of M.P. C.C.S. (CCA) Rules on 28.6.2009. An enquiry officer was appointed to conduct a enquiry. The same was conducted by the Commissioner of Departmental Enquiries, Government of Madhya Pradesh, Bhopal, who submitted his report and based on the same vide order dated 2.4.2013 punishment of dismissal from service was imposed. Initially appellant challenged the same in W.P. No.7618/2013 but withdrew it with liberty to file an appeal under Rule 23 of the Discipline and Appeal Rules. Appeal preferred was dismissed vide order dated 23.11.2013, thereafter, matter again came to this Court in a second Writ Petition i.e. W.P. No.21670/2013. Initially finding that opportunity of showing cause before imposing the punishment is not granted, after the enquiry report was submitted the writ petition was disposed of with a direction to conduct the enquiry from the stage of submitting report, but on an appeal being filed, i.e. W.A. No.884/2013, a Division Bench on 18.11.2014, remanded the matter back to the Writ Court for deciding all the grounds raised in the writ petition. Accordingly, by the impugned order as all the questions with regard to challenge to the Departmental Enquiry have been negated and the Writ Court having directed the departmental authorities to proceed in the matter from the stage of furnishing of the enquiry report in accordance to the Discipline and Appeal Rules, this appeal has been filed.

3. Shri Siddharth Gupta, learned counsel for the appellant argued that the appellant had challenged the action initiated against him and the termination order on the following grounds :-

(a) The charge sheet was vague and incapable of being understood;

(b) Documents as indicated in the charge sheet and necessary for defending the appellant and submitting his defence was not supplied and therefore, proceeding with the departmental enquiry without supplying these documents is illegal;

(c) Essential witnesses for establishing charge No.2 and 3 were not called;

(d) The findings recorded by the Enquiry Officer is only against charge No.1. No specific finding has been recorded by the Enquiry Officer with regard to Charge No.2 and 3 and the finding of the enquiry officer is perverse;

(e) Without supplying copy of the enquiry report the decision for dismissal was taken. No second show cause notice was issued and the appellant was apprised of the enquiry report being submitted from Newspaper report. As the punishment order has been imposed after considering the past service record of the appellant without notice to him and therefore, consideration of the past record without notice is unsustainable.

4. Shri Siddharth Gupta, took us through the charge sheet, the stipulations contained in the charge sheet, the application submitted by the appellant for supply of documents, the action of the respondents in not supplying the documents, not only the documents annexed to the charge sheet but even other documents requested for by the appellant, non grant of proper opportunity to submit his written statement, the requirement of Rule 14 of M.P. CCS (CCA) Rules and tried to argue that the entire enquiry stands vitiated. He took us through the findings of the Enquiry Officer, the manner in which the charges were held proved and submitted that the findings are perverse. In support of his contention, he placed reliance on the following judgments in support of his contentions :-

Savai Singh Vs. State of Rajasthan - (1986)3 SCC 454; *Anand R. Kulkarni Vs. YP Education Society and others* - (2013)6 SCC 515; *Anil Glorkar Vs. Bilaspur Raipur Kshetriya Gramin Bank and others* - (2011)14 SCC 379; *State of U.P. Vs. Saroj Kumar Sinha* - (2010)2 SCC 772; *State of M.P. Vs. Chintaman Sadashiv Vaishampayan* - AIR 1961 SC 1623;

State of Punjab Vs. Bhagat Ram - (1975) 1 SCC 155; *Trilok Nath Vs. UOI & Ors.* - (1967)1 SLR 759; *Venkatesh Guru Rao Vs. Syndicate Bank* (Kar HC)- (2005)1 LLN 242; *UOI Vs. Prakash Kumar Tandon* - (2009)2 SCC 541; *UOI Vs. Dinanath S. Karekar* - (1998)7 SCC 569; *R. K. Vashishth Vs. UOI and ors.* - (1993) Supp. 1 SCC 431; *PCCF, AP Hyderabad Vs. T. Bhaskar Rao* - (2006)7 SLR 849 (AP HC); *Dr. Ramesh Chandra Tyagi Vs. UOI and ors.*- (1994)2 SCC 416; *MV Bijlani Vs. UOI & Ors.* - (2006)5 SCC 88; *Swami Prasad Yadav Vs. State of M.P. & Ors.* - 2011(2) MPLJ 317; *UOI Vs. Gyanchand Chattar* - (2009)12 SCC 78; *UOI Vs. K.A. Kittu and ors.* - (2001)1 SCC 65; *PNB Vs. K. K. Verma*- (2010)13 SCC 494; *Indu Bhushan Dwivedi Vs. State of Jharkhand & Ors.* - (2010)11 SCC 278; *Mohd. Yunus Khan Vs. State of UP and ors.* - (2010)10 SCC 539; *UOI & Ors. Vs. R. P. Singh* - (2014)7 SCC 340 & *Deepali Gundu Surwase Vs. Kranti Junior Adhyapak Mahavidhyalaya & Ors.* - (2013)10 SCC 324.

5. While making submissions Shri Siddharth Gupta referred to the applications submitted by the appellant and argued that the documents called for by the appellant vide his application dated 30.9.2009 and 7.2.2011, were not supplied and by referring to the findings recorded by the learned Writ Court to say that no such application was ever submitted, Shri Gupta argued by referring to a letter of Department to say that in this letter of the Department, reference has been made to the application submitted by the appellant on 30.9.2009 and therefore, the finding of the Writ Court that the appellant never submitted the application dated 30.9.2009 is a perverse finding. Detailed submissions were made by Shri Siddharth Gupta to say that essential documents, particularly the document of RCH Society for which the vehicle was allotted by the Government of India was not produced and this has resulted in denying reasonable opportunity of defence to the appellant. He argued that in an arbitrary and illegal manner, his services have been terminated and without taking note of all these factors, the impugned order is passed by the learned Writ Court.

6. He further argued that with regard to Charge No.2 and 3, learned Writ Court has held that burden of proof of this charges was on the appellant and by shifting the burden of proof, an error has been committed by the learned Writ Court. He further argued that relevant witnesses like one Shri Chouhan and Shri Minglani were not examined and this vitiates the entire proceedings.

He submitted that the record of RCH Society was not produced or called for by the Enquiry Officer and therefore, the entire action stands vitiated. He reiterated that the finding recorded by the Writ Court are perverse and unsustainable.

7. Shri R. N. Singh, learned Senior Counsel appearing for the State Government placed reliance on the following judgments and indicated the scope of review in a Writ Appeal and argued that on the grounds canvassed, the submissions made are not made out:-

Om Prakash Mann Vs. Director of Education (Basic) & Ors. - (2006)7 SCC 558; *Anant Kulkarni Vs. YP Education Society and Ors.* - (2013)6 SCC 515; *SBI Vs. Bidyut Kumar Mitra and Ors.* - (2011)2 SCC 316; *Chandrama Tewari Vs. UOI* - 1987 (Suppl) SCC 518; *Syndicate Bank and Ors. Vs. Venkatesh Gururao Kurati* - (2006)3 SCC 150; *Biecco Lawrie Vs. State of W.B.* - (2009)10 SCC 32; *Food Corporation of India Vs. Padmakumar Bhuvan* - 1999 SCC (L&S) 620; *State of UP Vs. Man Mohan Nath Sinha and Anr.* - (2009) 8 SCC 310 & *IOC Ltd. And Anr. Vs. Ashok Kumar Arora* - (1997)3 SCC 72.

8. Shri R. N. Singh, learned Senior Counsel refuted each and every contention of the appellant, took us through the charge sheet, allegations contained in the charge sheet, imputation of the misconduct, findings recorded by the Enquiry Officer, the Writ Court and argued that there is no vagueness in the charge sheet, the findings of the Enquiry Officer are proper, all relevant documents were supplied, no prejudice has been caused and also indicating the scope of judicial review in such matters, learned Senior Counsel prays for dismissal of the appeal.

9. We have heard learned counsel for the parties at length and we have also gone through the record of the case and the detailed order passed by the learned Writ Court. The charges levelled against the appellant, who was working as Director of Health Services is to the effect that in the year 2002 a "Matiz Car" was sanctioned by the Government of India and was allotted to the Ministry of Health and Family Welfare Department, Satpura Bhawan, Bhopal. It is alleged that the appellant got the vehicle registered in his own name under a private number, i.e. not the registration number normally allotted to Government vehicles, in the series of MP02, used the vehicle for his own personal purpose, misused his official authority and thereby, committed grave

act of misconduct, accordingly, the impugned action was taken. It was alleged that the vehicle should have been registered as a Government vehicle under the series of MP02. It was not done by misusing his official position and by misrepresentation to the RTO, Bhopal, the vehicle was registered as a private vehicle in the series MP04, that also in the personal name of the appellant Shri Yogiraj Sharma and was used by him as a private vehicle.

10. These charges having been found to be proved, the impugned action was taken.

11. The first and foremost ground canvassed by Shri Siddharth Gupta was that the charges are vague and incapable of being understood and therefore, the entire enquiry stands vitiated in view of the above, in support of this contention he had relied to the judgment in the case of *Anant Kulkari* (supra) and *Anil Glorkar* (supra). In para 19 of the order passed by the learned Writ Court, this aspect of the matter has been considered and after taking note of the principles of law laid down by the Supreme Court as relied upon by Shri Siddharth Gupta and by Shri R. N. Singh, learned Senior Counsel, a finding is recorded to say that the charges are not vague and the question has been answered in the negative.

12. We have perused the charges levelled against the appellant, the allegations and the statement of imputation and we find no reason to disagree from the finding recorded by learned Writ Court. In fact, the learned Writ Court has reproduced the complete charges and the imputation of allegations in Hindi and on going through the same, we find that all material and facts in detail, necessary to understand, the allegations levelled against the appellant are contained in the charge sheet and it cannot be said that charges are vague or incapable of being understood, as a consequence thereof the appellant was handicapped in his defense. On the contrary, we find that each and every aspect, fact and details about the charges, total three in number are indicated. That being so, we find that the contention of the appellant that the charge sheet was vague, is not correct. The second ground canvassed by the appellant was that necessary documents in support of the charges were not supplied to the appellant. Appellant refers to two sets of documents in this regard. The first set of document are those contained in the list of documents annexed to the charge sheet and as indicated in the list of documents i.e. total 9 in numbers and the second set of documents are those said to have been summoned by the appellant by filing an application before the Enquiry

Officer on 30.9.2010 and 7.2.2011. By referring to Rule 14, Shri Siddharth Gupta tried to indicate that non supply of the documents along with the charge sheet to enable the appellant to submit his reply vitiates the entire enquiry. He took us through the requirement of Rule 14(3) sub clause (d) of clause 14(3)(2) and tried to indicate that all the documents along with list of documents has to be supplied along with the charge sheet. He also referred to sub rule 6 of Rule 14 and clause (iv) thereof, to say that evidence providing the delivery of document indicated in sub rule 3 means delivery of the documents itself. It was tried to be indicated that in not supplying the documents along with the charge sheet to enable the applicant to submit his reply to the charges, the statutory rule has been violated and therefore, the entire enquiry stands vitiated. Thereafter, it was argued that as documents summoned by the appellant before the Enquiry Officer vide his application dated 7.2.11 is also not supplied, this also vitiates the enquiry.

13. With regard to supply of documents to the appellant two folds submissions are made. The first was that it was obligatory on the part of the Disciplinary Authority to supply all the documents alongwith the charge sheet and as this was not done, the inquiry stands vitiated. The second submission was that the relevant documents called for by the appellant should have been supplied before directing the appellant to submit reply to the charge sheet and as this is not done, the same vitiates the inquiry. Further submission was made to say that even thereafter, if the documents are not supplied at the stage of the inquiry, this is also fatal to the inquiry.

14. The learned writ court has taken note of requirement of Rule 14 and has recorded a specific finding holding that at the stage of issuance of the charge sheet and at the stage of directing the delinquent employee to file his reply to the charge sheet, only list of documents and inspection of documents, if requested for, is necessary and supplying the documents is not necessary.

15. Rule 14 of the Discipline & Appeal Rules contemplates a detailed procedure to be followed for imposing major penalties. Sub Rule-1 of Rule 14 contemplates that no order imposing any of the penalties specified in Rule 10 shall be made except after an inquiry held, as far as may be, in accordance to the provisions made therein. Thereafter, Sub rule 2 contemplates the power of the Disciplinary Authority to initiate the inquiry and Sub rules 3 and 4 which are relevant in the present context read as under :

"3. Where it is proposed to hold an inquiry against a Government servant under this rule and rule 15, the disciplinary authority shall draw up or cause to be drawn up-

(i) the substance of the imputation of misconduct or mis-behaviour into the definite and distinct articles of charge:

(ii) a statement of the imputations of misconduct or mis-behaviour in support of each article of charge, which shall contain:-

(a) a statement of all relevant facts including any admission or confession made by the Government servant;

(b) a list of documents by which, and a list of witnesses by whom, the articles of charge are proposed to be sustained.

4. The disciplinary authority shall deliver or cause to be delivered to the Government servant a copy of the article of charge, the statement of the imputations or misconduct or misbehavior and a list of documents and witnesses by which article of charge is proposed to be sustained and shall require the Government servant to submit, within such time as may be specified, a written statement of his defence and to state whether he desires to be heard in person."

(Emphasis Supplied)

A perusal of the aforesaid rule clearly indicates that where it is proposed to hold an inquiry against a Government servant either under Rule 14 or under Rule 15, the Disciplinary Authority shall draw up or cause to draw substance of the imputation of misconduct or mis-behaviour into definite and distinct articles of charge, statement of the imputations of misconduct or misbehavior in the form of relevant fact and list of documents and a list of witnesses by which the article of charges are proposed to be proved. It is, therefore, clear that the charge sheet is only to contain the list of documents and list of witnesses. Thereafter under Sub rule-4, the disciplinary authority is required to deliver to the Government servant a copy of the article of charge, the statement of the imputations of misconduct or misbehavior and a list of documents and witnesses by which article of charges are proposed to be proved. Till that stage, the statutory requirement no where contemplate supply of documents , it only contemplates supply of the list of documents. Further Rule 4 contemplates that within a period of time specified, written statement

of defence should be submitted by the delinquent employee, a conjoint reading of Sub Rules 3 and 4 of the Discipline & Appeal Rules clearly indicates that before submitting the written statement of defence, the rule does not contemplate supply of the documents alongwith the charge sheet. Thereafter, the procedure followed on receipt of the statement of defence is indicated in sub rule 6 of Rule 14, which reads as under :

'6. The disciplinary authority shall, where it is not the inquiring authority, forward to the inquiring authority-

(i) A copy of the articles of charge and the statement of the imputations of misconduct and misbehavior;

(ii) A copy of the written statement of defence, if any, submitted by the Government servant;

(iii) A copy of the statements of witnesses, if any, referred to in sub-rule(3);

(iv) Evidence providing the delivery of the documents referred to in sub-rule (3), to the Government servant; and a copy of the order appointing the "Presiding Officer".

(Emphasis Supplied)

16. During the course of hearing by referring to clause (iv) of Sub Rule-6, Shri Siddharth Gupta, learned counsel for the appellant tried to indicate that the evidence providing delivery of the documents referred to sub-rule (3) means evidence with regard to delivery of the documents forming part of the charge sheet.

17. We are unable to accept the aforesaid contentions. What is contemplated under this rule are the material which is to be forwarded to the Inquiry Officer by the Disciplinary Authority, apart from including the documents and other material indicated in sub clauses (i), (ii) and (iii), the same should also include the evidence providing delivery of documents referred to in sub-rule-3 of Rule 14 and sub rule 3 only provides for the manner in which the charge sheet is to be drawn, namely, the substance of the imputation of misconduct or mis-behaviour, the statement of the relevant facts including any admission and confession of the Government employee and the list of documents and evidence.

18. That being so, the contention of Shri Siddharth Gupta, learned counsel for the appellant to say that under rule 14, the statute contemplates delivery of documents alongwith the charge sheet is not correct. What is contemplated under the statutory rule is only to forward a list of documents, by which charges are proposed to be proved. That is the intention of the Rule Maker. This is further clear when we see the charges, which were communicated to the appellant and requirement of rule which was indicated in the charge sheet. In the charge sheet Annexure P-11 issued to the petitioner on 26-08-2009, in para-2 it was clearly brought to the notice of the appellant that he has to submit his reply to the charge sheet within 15 days to the Principal Secretary, Government of M.P. Public Health & Family Welfare Department and he was also informed as to whether he wants personal hearing, whether he wants to take assistance of co worker, whether he wants any documents in defence or whether he wants to call for any witness in his defence and finally in para-2-C of the charge sheet, it was clearly indicated that in case before submitting his defence to the charge sheet, the appellant wants to refer or see the documents as indicated in the list, he may by giving notice to the competent authority within 10 days inspect the documents by approaching the officer concerned as specified in para 2-C. It is therefore, clear that at the stage of issuance of charge sheet, neither in the statutory rule nor in any other provisions, is there a requirement for supplying the documents to the appellant. The only requirement is to provide the list of documents and further, in the present case it is seen that the appellant was granted permission to inspect the documents, if he so desired. Neither was any inspection sought for by the appellant nor was any application submitted after the charge sheet was issued to the a appellant on 26-08-2009 for supplying of the documents. In fact the charge sheet was issued to the appellant on 26-08-2009 and the Inquiry proceedings in fact effectively commenced after more than 2 ½ years and during this period, there is no communication available on record to show that the appellant either inspected the documents or called for the documents. Appellant only refers to letters dated 30.9.2009 and 7.2.2011 to say that documents were not supplied in spite of demand. Accordingly, we are of the considered view that in holding that the inquiry is not vitiated because documents were not issued along with the charge sheet, the learned Writ Court has not committed any error. That apart in the matter of supply of documents to the appellant, the learned writ court has dealt with the matter in detail in para-20 while considering Issue No. D as formulated by the Writ

Court, it is held that all the documents were supplied to the appellant during the course of enquiry by the Inquiry Officer.

19. Before adverting to consider this question, further, we may take note of the contentions of the appellant that the documents sought for vide his applications dated 30.9.2009 and 07-2-11 were not supplied . The learned writ court has gone into this aspect of the matter and it is found that in the original records of the proceedings of inquiry, this application dated 30.9.2009 is not available. That apart the copy of application filed along with the writ petition does not bear the acknowledgment of any person or official of the department nor is it precisely indicated in the order sheet maintained by the Enquiry Officer. We have also verified the record and we find that this finding of the learned writ court is correct. The appellant wants this court to draw an inference that because in a communication available on record i.e. Annexure R-2 dated 12-11-2009, reference is made to appellant's application dated 30th Sept. 2009, therefore, the appellant says that he had submitted the application for supplying of the documents . Even though there is a reference as alleged in Annexure R-2, but the letter dated 30.9.2009 is written by the appellant to the Secretary of the Department, whereas there is no acknowledgment of this letter and the appellant contention is that another letter was also submitted by him requesting for documents before the Inquiry Officer on 07-2-2011. These facts are not established from the documents available on record, that apart we are of the considered view that this aspect of the matter which was highlighted by Shri Siddharth Gupta, learned counsel for the appellant at the time of hearing is not found to be correct , if we go through the detailed submissions recorded by the writ court from paras 20 onwards , it is also borne out from the original record which is available with us. We also find that the charge sheet was issued to the appellant as indicated hereinabove on 26-08-2009. Thereafter, the appellant did not submit any reply to the charge sheet and the Inquiry was ordered in the year 2010 and after the order of appointing Inquiry Officer and the Presenting Officer was passed the enquiry proceeding commenced on 5.5.2010 and effectively from 3.5.2012, between 5-5-2010 to 03-05-2012 i.e. for a period of two and half years, record does not indicate that the appellant ever inspected the documents or requested for any inspection as noticed to him while issuing the charge sheet or made any endeavor to see the documents . On the contrary the proceedings of the inquiry available on record, show that the inquiry officer initiated the proceeding on 19-03-2010, on 05-05-

2010, the appellant appeared in the proceedings of the inquiry. On the same day, the appellant demanded copies of the documents as per list. The list was given to the Presenting Officer and the inquiry was adjourned to 24-05-2010. On 24-05-2010, the appellant was not present and therefore, the inquiry was adjourned to 08-07-2010. On 08-07-2010, the Inquiry Officer recorded that the appellant did not file his written statement of defence and the matter was fixed for recording of the departmental evidence to 07-02-2011. On 07-02-2011, the Presiding Officer produced certain documents before the Inquiry Officer. The proceedings of 07-02-11 are noted and reproduced by the writ court in para-20 which shows that the proceedings were held in the presence of the appellant, he had signed the order sheet and it is indicated in these proceedings that all the documents that were produced before the Inquiry Officer on 07-02-2011 were given to the appellant. The appellant accepted this and thereafter on 27-06-2011 also the proceedings of the inquiry shows that the request made by the appellant to produce the documents in defence was permitted and the inquiry was adjourned to 04-08-2011. That apart the proceedings of the inquiry dated 26-09-2011 indicates that all the documents including defence documents of the appellant were produced and the Inquiry Officer has noted that now all the preliminary process for production of the documents etc. by both the parties are concluded and the enquiry was fixed for evidence to be produced by the Presenting Officer. Thereafter on 27-11-2011, the appellant was present alongwith his defence assistance, he cross examined the witnesses produced by the Presenting Officer and did not raise any objection in the matter of production or supply of document.

20. In the findings recorded by the writ court in para 20 reference is made to, all the specific dates of the inquiry, the enquiry proceedings in Hindi is reproduced and it is held that the appellant has not raised any objection in the matter during the proceedings of the inquiry on the question of production of documents. On the contrary records shows that all the documents were produced in the inquiry and the appellant participated with the inquiry without any objection after counter signing on the order sheets and proceeding. Thereafter, now a complaint is made to say that the relevant documents were not produced. The relevant documents referred, are nothing but the records of RCH Society, these documents did not form part of the prosecution documents and was never relied upon by the department or the enquiry officer, accordingly, if the appellant felt that these documents were required by him,

he should have summoned the same during the enquiry. On the contrary he accepted the documents produced in the inquiry, did not raise any objection and proceeded to participate in the inquiry without any objection. The question now would be as to whether the inquiry stands vitiated on the grounds canvassed in the light of this conduct of the petitioner a Senior Officer of the Department holding the post of Director and whether the requirement of law i.e. demonstration of prejudice is discharged by the appellant. Normally, if the relevant documents are not supplied to the delinquent officer and the inquiry is proceeded with, the law contemplates that the court is required to examine as to whether the documents requested for and not produced are the mandatory requirement as per the rules for conducting the inquiry and if they are the mandatory requirements then, no production of the documents vitiates the inquiry. As far as this aspect of the matter is concerned the mandatory requirement was only to supply the list of documents along with the charge sheet and production of the documents referred to in the charge sheet in the Enquiry before evidence of the department is adduced, this mandatory requirement is complied with. The other documents required by the appellant are the documents which he wanted for his defence and if the appellant felt that non production of these documents which are not mandatory requirement vitiates the inquiry then the appellant is required to demonstrate, plead and prove the prejudice caused to him due to non production of these documents. In this regard, at this stage, we may refer to the law with regard to violation of principles of natural justice.

21. As far as violation of principles of natural justice and holding an enquiry to be vitiated on account of non supply of documents are concerned, it is a well settled principle of law that if the violation of a procedure alleged, is not a mandatory violation or is not contrary to the requirement of rules then prejudice caused has to be proved and established for seeking interference into the matter. In this regard, a judgment of the Supreme Court in the case of *Bidyut Kumar Mitra* (supra) may be taken note of. In this case, it was the contention of the employee concerned that certain recommendations of the Central Vigilence Commission and certain other documents were not supplied to him and as the enquiry was held without supplying these documents, the enquiry stands vitiated. The Supreme Court took note of the aforesaid and found that neither the recommendation of the Chief Vigilence Commission was considered by the enquiry officer, it was not part of the material which formed the basis for recording a finding and therefore, if the appellant wanted

to say that non production or non supply of these documents vitiates the enquiry or amounts to non observance of the principles of natural justice, it has been held by the Supreme Court that the appellant has to plead, prove and establish the prejudice caused. In the aforesaid judgment, Hon'ble Supreme Court has taken note of various principles laid down by the Supreme Court in earlier judgments i.e. *State Bank of Patiyala Vs. S. K. Sharma* - (1996)3 SCC 364; *Nagarjun Construction Co. Ltd. Vs. Govt. of A.P.* - (2008)16 SCC 276 and finally it has been held that mere non supply of a document by itself cannot be a ground to hold the enquiry to be vitiated. Consequently burden heavily lies on the delinquent employee to prove that the non supply of document has caused prejudice to him which has resulted in miscarriage of justice. Until and unless miscarriage of justice and prejudice is not proved, it is held that the enquiry cannot be held vitiated. Similar is the principle laid down in the case of *UOI vs. Alok Kumar* - (2010)5 SCC 349. In this case also, it has been held that merely because certain reports pertaining to earlier action taken have not been produced in the departmental enquiry that by itself is not a ground for holding the enquiry to be vitiated. Here also advise of the Chief Vigilance Commissioner was not produced and the Supreme Court held that until and unless prejudice cause and miscarriage of justice is not established, the enquiry cannot be held to be vitiated. It has been held that onus lies on the delinquent employee to establish, plead and prove prejudice. Similar is the principle laid down in the case of *Sarvat Upgramin Bank Vs. Manoj Kumar* - (2010)3 SCC 556. That being so, in the present case, as far as the ground of non supply of document with the charge sheet, the same being not the requirement of statutory rule i.e. Rule 14, we find that the appellant has not pleaded or proved prejudice cause and therefore, on this ground we cannot hold the enquiry to be vitiated.

22. It was tried to be emphasized by Shri Siddharth Gupta by referring to the non production of documents and findings recorded with regard to charge No.2 and 3 to say that appellant is alleged to have got the vehicle registered as a private vehicle under the MP04 series and while doing so, the vehicle was not registered through the Transport Section of the Department of Health and Family Welfare Department. Shri Gupta submits that in the invoice sent by the Union of India the vehicle was in the name of the appellant Dr. Yogiraj Sharma and as the vehicle was to be used for a society the entire registration was done through the Society, the documents and other process were rooted through the Society and therefore, the documents with the RCH Society should

have been produced. The case in the charge sheet was that the vehicle was allotted to the Health and Family Welfare Department, even though shown as in the name of Dr. Yogiraj Sharma, Director, Health and Family Welfare Department. The appellant did not get the vehicle registered through the Transport Section of the Department and in doing so, it is said that he has violated the rules. If it was the case of the appellant or if it was his defence that the vehicle was allotted to the society in question and it was the society which registered the vehicle, then it was for the appellant to summon the documents from the society and establish his defence. Except for contending that the documents were not produced, appellant has not made any effort to summon the documents from this Society itself. On the contrary, the documents available in the original enquiry file shows that the appellant himself wrote to the RTO, Bhopal for registering the vehicle as a private vehicle and there is nothing available on record to show that efforts were made by the appellant to get it registered in the name of the Society. That being so, we find that in holding that the enquiry was properly held and the charges leveled against the appellant are proved in accordance with the requirement of law, learned Writ Court has not committed any error. If we go through the various judgments and reasons given by the learned Writ Court to arrive at such a conclusion, we find that Writ Court has not committed any error. Contention of the appellant that enquiry officer has only held charge No.3 to be proved and no finding has been recorded with regard to charge No.2 and 3, is not correct. Findings recorded by the Enquiry Officer is in detail. He has discussed the charges and evidence that came on record and held all the charge to be proved. At the very outset, Enquiry Officer had recorded a finding that all the charges are interlinked to each other, are common and overlapping and, therefore, he is deciding all the charges together and has recorded a finding based on the same. That being so, we find no error in the procedure followed by the Enquiry Officer and by following such a procedure, no prejudice has been caused to the appellant. Appellant by referring to Rule 14(23) of M.P. CCS (CCA) Rules and judgment in the case of *Swami Prasad Yadav* (supra) has tried to indicate that as specific finding to each charge has not been recorded or discussed, the finding of the Enquiry Officer is vitiated. In para 23 while deciding issue No. (h) learned Writ Court has gone into detail with regard to this aspect of the matter and has found that article of charges are interlinked to each other and Enquiry Officer having decided all the charges together, the principles laid down in the case of *Swami Prasad Yadav* (supra) will not

apply. In our view, learned Writ Court has not committed any error in doing so.

23. Accordingly, grounds (a), (b), (c) and (d) as raised by the appellants in this appeal is found to be unsustainable. As far as the findings of the Enquiry Officer is concerned, we find that the Enquiry Officer has discussed the matter in detail and has recorded a reasonable finding.

24. It is seen that the inquiry in question was not held by any Officer of the Department in question. On the contrary, the inquiry was conducted by the Commissioner, Departmental Enquiries, Government of MP and a sitting Senior District Judge had conducted the inquiry. It was the case of the appellant that in the departmental inquiry sufficient evidence has not been adduced to hold that the charges are proved; the findings are perverse and because documents of the RCH Project were not produced, the inquiry is vitiated. We have already dealt with the matter of non-production of documents and its consequential effect.

25. As it was argued that the finding of the Enquiry Officer was perverse, even though the scope of judicial review may not permit reassessment of the evidence led before the inquiry, but to consider the question of perversity we have gone through the finding of the Enquiry Officer and we find that in the departmental inquiry, four witnesses were examined on behalf of the prosecution. They were Shri Rakesh Munshi - PW/1; Shri Om Prakash Garg - PW/2; Shri V.K. Gupta - PW/3; Shri P.N.S. Chouhan - PW/4. Shri Rakesh Munshi- PW/1 was holding the post of Deputy Director Transportation, in the Directorate of Health Services, and he has indicated the procedure for registration of vehicles, which are received in the Health Department. He states that all vehicles received either from Government of India for various Projects or for any other purpose are received in the Transport Department, the documents are given to the Transport Department, thereafter the registration is undertaken by the Transport Department normally as a government vehicle. As far as the vehicle in question is concerned, this witness categorically states that it is not registered through the department. Even its receipt from the Government of India is not recorded in the Department and without routing the vehicle through the department, appellant Dr. Yogiraj Sharma got it registered as a private vehicle. As far as defence of the appellant that he got the vehicle registered as it was allotted to the RCH Project is concerned, this witness says that this contention is also not correct, as the documents

forwarded by the Government of India alongwith the vehicle indicates that it is allotted to the Directorate of Family Planning and Health and only the name of the appellant Dr. Yogiraj Sharma is shown as a representative of the department. This witness further says that the appellant misrepresented to the RTO, showing this vehicle to have been received for the RCH Project and got it registered in his name and not in the name of the Society. The witness says that this is an irregularity committed by the appellant. The learned Enquiry Officer has taken note of the statement of this witness in paragraph 12 and 13, with regard to the vehicle being allotted to the RCH Project and its registration. The learned Enquiry Officer finds that the vehicle has been registered as a private number in the services MP-04, in the name of Dr. Yogiraj Sharma. It is held by the enquiry officer that there is nothing to show that the vehicle was registered in the name of the society or was allotted for the project.

26. Similarly, the learned Enquiry Officer has taken note of Ex.D/1 - the invoice cum delivery challan issued by Daewoo Motors Limited and it is held that it has been issued in the following name - Deputy Comptroller of the Ministry of Health and Family Welfare, Nirmal Bhawan, New Delhi - assignee Dr. Yogiraj Sharma, Director, Department of Family Welfare, Satpura Bhawan, Bhopal. Accordingly, taking note of all these facts, the learned Enquiry Officer has recorded a finding that the vehicle is allotted in the name of Dr. Yogiraj Sharma, Director, Department of Family Welfare and not in the name of any Society or any Project and, therefore, by writing to the RTO that the vehicle has been allotted to the RCH Project and then getting it registered in his name, it is held that the charge of misrepresentation to the RTO for getting the vehicle registered is proved.

27. Thereafter, statement of Shri Om Prakash Garg - PW/2 is taken note of and it is found that according to this witness he is also working in the Transport Department as a Sub Engineer. He is working in the Department for more than 24 years and he says that more than 800 vehicles were received during his service period from the Government of India. All the vehicles are allotted in the name of Director, Health Service and Family Planning by the Government of M.P.. He describes about the manner of delivery of the vehicle and says that every time the vehicle is registered in the name of the department and not in a private name or number as done in the present case. Taking note of the statement of this witness, it is held that the vehicle has been registered in a manner which is not permissible under law.

28. Thereafter, similar statements made by Shri P.N.S. Chouhan - PW/4 - State Health Transport Officer; and Shri V.K. Gupta - PW/3 - also an employee of the Transport Department, is taken note of and the conclusion of the Enquiry Officer is that the vehicle was allotted in the name of the Director, Family Welfare Department. There was nothing in the document or the material available on record, including allotment of vehicle by the Government of India to show that the vehicle was allotted to RCH Project and instead of getting the vehicle registered in the name of the department, as a government vehicle in the series MP-02, after routing it through the Transport Department, it is held that the appellant himself by writing a letter through his Personal Secretary, in his individual capacity got the vehicle registered; did not inform the Transport Department and without making entry of the vehicle in the Transport Department or in the log books of this Department etc, the vehicle was used.

29. Finally, in paragraph 24 of his report, the Enquiry Officer takes note of the preliminary inquiries conducted by Shri Ajit Kesri, Secretary, Government of MP, Department of Family and Health Welfare; Smt. Alka Upadhyaya; and, Shri K.K. Shukla and Shri M.B. Asthana, and holds that they are not inquiry in the proper sense. They are only the comments and observes of the Officers concerned, based on the querries made by them, they are not based on any proper inquiry and the same is not binding on the Enquiry Officer. On the contrary, the Enquiry Officer has recorded his finding based on the evidence that came on record. We have gone through the so called departmental preliminary inquiry reports as alleged by Shri Sidharth Gupta and we find that these documents only show the comments of the Officers and they are findings which are not based on any enquiry or evidence recorded in the matter, in accordance to the requirement of law and, therefore, in rejecting the same the Enquiry Officer has not committed any error.

30. We have gone through the report of Enquiry Officer and the findings as recorded hereinabove and we find that the Enquiry Officer has gone into all the aspects in details and the conclusions as has been arrived at is that normally in the Family Welfare & Health Department vehicles received are registered through the Transport section by the officers of the said Section; the registration fees are paid by the Transport section; entry of the vehicle is made in the Transport section and it is the Transport section which gets the vehicle registered with the RTO. In this case none of these procedure were followed, the appellant got the vehicle registered as a private number, in his

own name, without routing it through the Transport Section and used it for his personal use. However, in the inquiry it was his defence that the vehicle was allotted to a Project, namely the RCH Project and it is the Project that registered the vehicle. However, there is nothing available on record to show that the Government of India had allotted the vehicle for the Project and if the Project was being run by a Society then the vehicle should have been registered in the name of the Society. The registration book available on record indicates that there is no mention of the vehicle being registered in the name of the society, it is registered in the name of Dr. Yogiraj Sharma, Director, Family Welfare Department. Taking note of all these circumstances, the Enquiry Officer has held the charges to be proved and in doing so, we find no error committed warranting reconsideration. The finding of the Enquiry Officer is based on due appreciation of the evidence that came on record and we cannot say that the same is perverse or unsustainable.

31. The scope of judicial review in the matters of administrative action pertaining to disciplinary proceeding has been discussed in detail by the learned Writ Court and it has been found that while exercising the limited scope of judicial review in this case, interference cannot be made. In this regard we may refer to a judgment of Supreme Court in the case of *S. R. Tiwari Vs. Union of India* - (2013)6 SCC 602, in para 19 and 20 of the aforesaid judgment, the scope of judicial review has been crystallized in the following manner :-

> **"19.** In *Commissioner of Income Tax, Bombay & Ors. Vs. Mahindra & Mahindra Ltd. & Ors.*, AIR 1984 SC 1182, this Court held that various parameters of the court's power of judicial review of administrative or executive action on which the court can interfere had been well settled and it would be redundant to recapitulate the whole catena of decisions. The Court further held:
>
> "It is a settled position that if the action or decision is perverse or is such that no reasonable body of persons, properly informed, could come to, or has been arrived at by the authority misdirecting itself by adopting a wrong approach, or has been influenced by irrelevant or extraneous matters the court would be justified in interfering with the same."

20. The court can exercise the power of judicial review if there is a manifest error in the exercise of power or the exercise of power is manifestly arbitrary or if the power is exercised on the basis of facts which do not exist and which are patently erroneous. Such exercise of power would stand vitiated. The court may be justified in exercising the power of judicial review if the impugned order suffers from mala fide, dishonest or corrupt practices, for the reason, that the order had been passed by the authority beyond the limits conferred upon the authority by the legislature. Thus, the court has to be satisfied that the order had been passed by the authority only on the grounds of illegality, irrationality and procedural impropriety before it interferes. The court does not have the expertise to correct the administrative decision. Therefore, the court itself may be fallible and interfering with the order of the authority may impose heavy administrative burden on the State or may lead to unbudgeted expenditure. (Vide: *Tata Cellular Vs. Union of India,* AIR 1996 SC 11; *People's Union for Civil Liberties & Anr. Vs. Union of India & Ors.*, AIR 2004 SC 456; and *State of N.C.T. Of Delhi & Anr. V. Sanjeev alias Bittoo,* AIR 2005 SC 2080). "

(Emphasis Supplied)

32. Further after considering various judgments including the judgment in the case of *Union of India Vs. Bodupalli Gopalaswami* and *Sanjay Kumar Singh Vs. Union of India* relied upon by the learned Writ Court in para 28, the principle is so laid down :-

"**28.** The role of the court in the matter of departmental proceedings is very limited and the court cannot substitute its own views or findings by replacing the findings arrived at by the authority on detailed appreciation of the evidence on record. In the matter of imposition of sentence, the scope for interference by the court is very limited and restricted to exceptional cases. The punishment imposed by the disciplinary authority or the appellate authority unless shocking to the conscience of the court, cannot be subjected to judicial review. The court has to record reasons as to why the punishment is

disproportionate. Failure to give reasons amounts to denial of justice. The mere statement that it is disproportionate would not suffice. (Vide: *Union of India Vs. Bodupalli Gopalaswami* (2011) 13 SCC 553 and *Sanjay Kumar Singh Vs. Union of India* , AIR 2012 SC 1783)."

(Emphasis Supplied)

33. Once we find that the enquiry has been properly conducted, in accordance to the requirement of rules, no prejudice has been caused to the appellant and there is no violation of the principles of natural justice, we cannot exercise any further power of judicial review and interfere into the matter. That apart, it has been held by the Supreme Court in the case of *SBI Vs. Ram Lal* - (2011)10 SCC 249 that while exercising powers of judicial review in administrative matters pertaining to disciplinary action being taken, this Court does not sit as a appellate authority over a finding of the disciplinary authority. In para 12 and 13 the matter has been so dealt with by the Hon'ble Supreme Court in the aforesaid case :-

"12. This Court has held in *State of Andhra Pradesh and Others v. Sree Rama Rao* (AIR 1963 SC 1723):-

"The High Court is not constituted in a proceeding under Article 226 of the Constitution a Court of appeal over the decision of the authorities holding a departmental enquiry against a public servant: it is concerned to determine whether the enquiry is held by an authority competent in that behalf, and according to the procedure prescribed in that behalf, and whether the rules of natural justice are not violated. Where there is some evidence, which the authority entrusted with the duty to hold the enquiry has accepted and which evidence may reasonably support the conclusion that the delinquent officer is guilty of the charge, it is not the function of the High Court in a petition for a writ under Article 226 to review the evidence and to arrive at an independent finding on the evidence."

13. Thus, in a proceeding under Article 226 of the Constitution, the High Court does not sit as an appellate authority over the

> findings of the disciplinary authority and so long as the findings of the disciplinary authority are supported by some evidence the High Court does not re-appreciate the evidence and come to a different and independent finding on the evidence. This position of law has been reiterated in several decisions by this Court which we need not refer to, and yet by the impugned judgment the High Court has re-appreciated the evidence and arrived at the conclusion that the findings recorded by the enquiry officer are not substantiated by any material on record and the allegations leveled against the respondent no.1 do not constitute any misconduct and that the respondent no.1 was not guilty of any misconduct."

That being the legal position and scope of judicial review in a petition under Article 226 of the Constitution, we see no reason to interfere into the matter. That apart, in the judgment relied upon by Shri R. N. Singh, learned Senior Counsel i.e. in the case of *B. Venkataramani Vs. C.J Ayodhya Ram Singh* - (2006)13 SCC 449 in para 11 the powers of the Division Bench in an Intra Court Appeal has been discussed in the following manner :-

> In an intra-court appeal, the Division Bench undoubtedly may be entitled to re-apprise both questions of fact and law, but the following dicta of this Court in *Umabai & Anr. vs. Nilkanth Dhondiba Chavan (Dead) By Lrs. & Anr.* [(2005) 6 SCC 243], could not have been ignored by it, whereupon the learned counsel for Respondents relied:
>
> "It may be, as has been held in *Asha Devi v. Dukhi Sao* (1974) 2 SCC 492 that the power of the appellate court in intra-court appeal is not exactly the same as contained in Section 100 of the Code of Civil Procedure but it is also well known that entertainment of a letters patent appeal is discretionary and normally the Division Bench would not, unless there exist cogent reasons, differ from a finding of fact arrived at by the learned Single Judge. Even as noticed hereinbefore, a court of first appeal which is the final court of appeal on fact may have to exercise some amount of restraint."

And finally after considering various judgments on the same issue in para 25 it

has been held by the Division Bench should be slow in interfering with the finding of fact arrived at by the Writ Court. If we analyze the judgment rendered by the learned Writ Court in the backdrop of the aforesaid legal principle, we find that learned Writ Court has gone into each and every aspect of the matter in detail and has recorded a finding to say that the order passed by the Disciplinary Authority and findings recorded by Enquiry Officer is legal and proper. Therefore, we see no reason to interfere with the reasonable judgment and decree passed by the learned Writ Court.

34. Even though during the course of hearing Shri Siddharth Gupta had referred to various judgments as are indicated herein above and has also submitted a written note with regard to relevancy of the judgment, we have not discussed the judgments separately as we find that the learned Writ Court has gone into each and every judgment and his detailed order give reason as to why judgments are not applicable. That apart, as we have applied the principles of law applicable in the matter with reference to the fact of the case, it is not necessary to refer to each and every judgment relied upon by Shri Siddharth Gupta as they do not apply in the facts and circumstances of the present case.

35. That apart, we find that the learned Writ Court has after holding the enquiry to be properly held, has remanded the matter back to the Disciplinary Authority for proceeding with the enquiry from the stage of supply of Enquiry Officer report. That being so, question No. (e) and (f) pertaining to hearing after submission of the enquiry report and consideration of the past record before imposing the punishment are now to be reconsidered by the Disciplinary Authority and while reconsidering the matter in the light of the remand ordered by the learned Writ Court, the Disciplinary Authority shall take note of the requirement of law in the matter of issuing show cause notice with regard to accepting the finding of the Enquiry Officer and considering the past record before imposing the punishment. Taking note of all these aspects of the matter, the Disciplinary Authority may proceed in the matter in accordance with law.

36. With the aforesaid observations, finding no case made out for interference with the order passed by the learned Writ Court, we dismiss this appeal.

Appeal dismissed.

I.L.R. [2016] M.P., 713
WRIT APPEAL

Before Mr. Justice Rajendra Menon & Mr. Justice C.V. Sirpurkar
W.A. No. 305/2007 (Jabalpur) decided on 15 October, 2015

PURUSHOTTAM LAL & ors. ...Appellants
Vs.
STATE OF M.P. & ors. ...Respondents

Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, (30 of 2013), Section 24 and Land Acquisition Act (1 of 1894), Section 31 - Non-payment of compensation **- Although Board had deposited the amount of compensation with Collector and possession was taken, however, there is nothing on record to show that the amount has been paid to the beneficiaries - No material to show that the amount was deposited in the Court as per Section 31 of the Act, 1894 where the proceedings u/s 18 of Act, 1894 were maintainable - Proceedings stood lapsed in view of Section 24 of Act, 2013 - Writ Appeal allowed.** **(Para 9)**

भूमि अर्जन, पुनर्वासन और पुनर्व्यवस्थापन में उचित प्रतिकर और पारदर्शिता का अधिकार अधिनियम, (2013 का 30), धारा 24 एवं भूमि अर्जन अधिनियम (1894 का 1), धारा 31 – प्रतिकर का भुगतान न किया जाना – यद्यपि, बोर्ड ने प्रतिकर की राशि कलेक्टर के समक्ष जमा कर दी थी और कब्जा लिया गया था, तथापि अभिलेख पर ऐसा कोई साक्ष्य नहीं है जो यह दर्शाता हो कि राशि का भुगतान हितग्राहियों को किया गया है – कोई तथ्य नहीं जिससे यह प्रकट हो कि अधिनियम, 1894 की धारा 31 के अनुसार उक्त राशि न्यायालय में जमा की गई थी जहां कि अधिनियम, 1894 की धारा 18 के अंतर्गत कार्यवाहियां पोषणीय थी – अधिनियम, 2013 की धारा 24 के आलोक में कार्यवाहियां व्यपगत की गई – रिट अपील मंजूर।

Cases referred :

(2014) 3 SCC 183, (2014) 6 SCC 564, (2014) 6 SCC 583, (2014) 6 SCC 586, (2015) 3 SCC 341.

Vivek Tankha with *Varun K. Chopra & Akshay Sapre*, for the appellants.

Swapnil Ganguly, G.A. for the respondents/State.

Anjali Banerjee, for M.P. Housing Board.

JUDGMENT

The Judgment of the Court was delivered by : RAJENDRA MENON, J. :- In this appeal filed under Section 2(1) of M.P. Uchcha Nyayalaya (Khand Nyay Peeth Ko Appeal) Adhiniyam, 2005, exception is sought to an order dated 6.3.2003 passed by the Writ Court in W.P. No.1719/1999 whereby, challenge made to the acquisition proceedings under the Land Acquisition Act, 1994, has been rejected. Even though various grounds are raised, an interlocutory application has been filed and it is said that now in view of Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition Rehabilitation and Re-settlement Act 2013 (hereinafter referred to as Act of 2013), the acquisition be lapsed and appeal be allowed and disposed of in terms thereof.

2. The M.P. Housing Board with a view to establish and implement a land development scheme approached the State Government and in the year 1987-88, the Collector, Bhopal and the Land Acquisition Officer, Bhopal, initiated proceedings under the Land Acquisition Act of 1894 for acquiring 25.57 acres of land bearing Khasra No.57, 58, 59, 60, 69 and 70 situated in Village Khajuri kala, Tahsil Huzur, District Bhopal. Challenging this acquisition proceeding, Purushhotam Lal and others filed a writ petition before the Writ Court being W.P. No.1719/1999 raising various grounds to say that the acquisition under the land acquisition Act of 1894 is illegal. By an order passed on 6.3.2003, the learned Writ Court having rejected the prayer made by Purushottam Lal and others, this appeal has been filed.

3. Even though various grounds are raised to say that the acquisition proceedings are illegal and cannot be sustained, during the pendency of the matter, I.A. No.15129/2014 was filed seeking amendment in the writ appeal and pointing out that after coming into force of Act of 2013 w.e.f. 1.1.2014 and in view of Section 24 of the said Act and particularly, the provisions of Section 24(2), now after the award was passed in the year 1991 and as till date no compensation has been paid to the land owners or beneficiaries nor is the same deposited in the accounts of the beneficiaries, the acquisition proceedings have lapsed and the land should be restored back to the appellants. Accordingly, it is contended that in accordance to the Act of 2013 the appeal should be allowed and land restored back to the appellants.

4. Shri Vivek Tankha, learned Senior Counsel appearing for the

appellants, took us through the provisions of Section 24 of the Act of 2013, particularly, sub section (2), meaning and import of the words "payment of compensation" or deposit of the same in the Court as contemplated under Section 31 of the Act of 1984, the law laid down by the Supreme Court in the case of *Pune Municipal Corporation and another Vs. Harakchand Misirimal Solanki and others* - (2014)3 SCC 183; *Union of India & Others Vs. Shiv Raj and others* - (2014)6 SCC 564; *Bimla Devi and others Vs- State of Haryana* -(2014)6 SCC 583; *Bharat Kumar Vs- State of Haryana and another* (2014)6 SCC 586 and another judgment of the Supreme Court in the case of *Sharma Agro Industries Vs. State of Haryana and others* - (2015)3 SCC 341, argued that now as the award under Section 11 of the Land Acquisition Act, 1894 has been passed more than five years back prior to commencement of the Act of 2013 and as compensation has not been paid to the beneficiaries, the law laid down in the case of *Pune Municipal Corporation* (supra) will squarely apply and land is liable to be restored back to the petitioners, they also referred to reply filed by the respondents, particularly, M.P. Housing Board to the applications in question and pointed out that Housing Board has only deposited the compensation with the State Government namely, Collector, Bhopal but as the amount is not paid to the beneficiaries, the ingredients necessary for invoking Section 24 of the Act of 2013 are made out.

5. Shri Swapnil Ganguly, learned Govt. Advocate refuted the aforesaid contention and argued that as the Housing Board has paid the compensation, no relief can be granted. The Housing Board has filed a detailed reply to I.A. No. 15129/2014 and from the said reply filed and the documents annexed thereto as Annexure R/1 to R/6, respondents only say that after the award was passed on 30th March, 1999 the Housing Board deposited the amount with the Collector, Bhopal vide various cheques as is indicated in para 2 of the reply and as the compensation has been deposited with the Collector, the petitioners and the appellants should have collected the amount from the Collector. It is indicated in para 4 of this reply that after passing of the award, no efforts were made by the petitioners or the appellants to receive the compensation and the amount remained with the competent authority and it is said that as no reference was also made under Section 18 of the Old Act by the appellants, they cannot make any complaint. It is tried to be indicate by Ku. Anjali Banerjee, learned counsel for the Housing Board, that the provisions

of Section 24(2) will not apply in the present case as M.P. Housing Board has already complied with the award passed on 21.3.1999 and deposited the compensation with the Collector.

6. After the matter was heard and closed, time was granted to the State Government and the Housing Board to file additional affidavit in support of their contention, if any. Even though the State Government has not filed any affidavit, on behalf of the Housing Board, an additional reply has been filed on 5th October 2015. In the additional reply filed, nothing new has been pointed out, except to say that after the acquisition proceedings were conducted the possession of the land has been taken over and documents showing taking over of the possession has been filed. That apart, various agreements and documents have been filed to show that tender has been granted and some agreement has been entered into for development of the land and therefore, now the appellants cannot claim back the land from the Board. It is indicated that once the Board has deposited the compensation award with the Collector and the possession of the land is taken over, the application cannot be allowed.

7. We have heard learned counsel for the parties at length and we have considered the rival contentions. Section 24 of the Act of 2013 reads as under :-

> **"24. Land acquisition process under Act No.1 of 1984 shall be deemed to have lapsed in certain cases-**
>
> (1) Notwithstanding anything contained in this Act, in any case of land acquisition proceedings initiated under the Land Acquisition Act, 1894(1 of 1894).
>
> (a) where no award under Section 11 of the said Land Acquisition Act has been made, then, all provisions of this Act relating to the determination of compensation shall apply; or
>
> (b) where an award under said Section 11 has been made, then such proceedings shall continue under the provisions of the said Land Acquisition Act, as if the said Act has not been repealed.
>
> (2) Notwithstanding anything contained in sub section (1), in case of land acquisition proceedings initiated under the Land

Acquisition Act, 1894, where an award under the said Section 11 has been made five years or more prior to the commencement of this Act but the physical possession of the land has not been taken or the compensation has not been paid the said proceedings shall be deemed to have lapsed and the appropriate Government, if it is so chooses, shall initiate the proceedings of such land acquisition afresh in accordance with the provisions of this Act :

Provided that where an award has been made and compensation in respect of a majority of land holdings has not been deposited in the account of the beneficiaries, then, all beneficiaries specified in the notification for acquisition under Section 4 of the said Land Acquisition Act, shall be entitled to compensation in accordance with the provisions of this Act."

Similarly, Section 31 of the Land Acquisition Act, 1894 reads as under :-

"31. Payment of compensation or deposit of same in the court -

i. On making an Award u/s 11, the Collector shall tender payment of compensation awarded by him to the person interested entitled thereto according to the Award and shall pay it to them unless prevented by someone or more of the contingencies mentioned in the next subsection.

ii. If they shall not consent to receive it or if there be no person competent to alienate the land or if there be any dispute as to the title to receive compensation or to the apportionment of it, the Collector shall deposit the amount of the compensation in the Court to which a reference u/s 18 would be submitted."

8. A perusal of sub section (2) of Section 24 indicates that - Notwithstanding anything contained in sub section (1) of Section 24, in case where land acquisition proceedings are initiated under the Land Acquisition Act of 1894 and when an award under Section 11 has been made five years prior to commencement of the Act of 2013 but physical possession of the land has not been taken or compensation has not been paid, the said proceeding shall be deemed to have been lapsed. Further Section 31 of the

Land Acquisition Act, 1984 pertains to payment of compensation or deposit of the same in Court. This provision contemplates that on making of an award under Section 11, the Collector shall tender the payment of compensation awarded by him to the person interested, entitled thereto according to the award and shall pay to them unless prevented by someone or some competency. Sub section (2) contemplates that if for any reason, amount is not paid or there is no competent person to receive the compensation, Collector shall deposit the amount of compensation to the Court to which reference under Section 18 would be submitted. A conjoint reading of both these sections clearly indicates that if award under land acquisition proceeding held under the Land Acquisition Act of 1894 is passed five years prior to coming into force of Act of 2013 and if either physical possession of the land has not been taken over or compensation is not paid to the beneficiaries, then the land acquisition proceedings lapse. The manner of payment of compensation is contemplated under Section 31 of the 1894 Act and the eventualities or non receipt of compensation warrants the Collector to deposit the amount with the Court where the reference can be submitted. Both these provisions, particularly, the provisions of Section 24 has been interpreted by the Supreme Court in the case of *Pune Municipal Corporation* (supra) and after considering various aspects of the matter in para 11, 19 and 21 the following principles have been laid down :-

> **"11.** Section 24(2) also begins with non obstante clause. This provision has overriding effect over Section 24(1). Section 24(2) enacts that in relation to the land acquisition proceedings initiated under 1894 Act, where an award has been made five years or more prior to the commencement of the 2013 Act and either of the two contingencies is satisfied, viz; (i) physical possession of the land has not been taken or (ii) the compensation has not been paid, such acquisition proceedings shall be deemed to have lapsed. On the lapse of such acquisition proceedings, if the appropriate government still chooses to acquire the land which was the subject matter of acquisition under the 1894 Act then it has to initiate the proceedings afresh under the 2013 Act. The proviso appended to Section 24(2) deals with a situation where in respect of the acquisition initiated under the 1894 Act an award has been made and compensation

in respect of a majority of land holdings has not been deposited in the account of the beneficiaries then all the beneficiaries specified in Section 4 notification become entitled to compensation under 2013 Act.

.....

19. Now, this is admitted position that award was made on 31.01.2008. Notices were issued to the landowners to receive the compensation and since they did not receive the compensation, the amount (Rs.27 crores) was deposited in the government treasury. Can it be said that deposit of the amount of compensation in the government treasury is equivalent to the amount of compensation paid to the landowners/persons interested? We do not think so. In a comparatively recent decision, this Court in Agnelo Santimano Fernandes[2], relying upon the earlier decision in Prem Nath Kapur[3], has held that the deposit of the amount of the compensation in the state's revenue account is of no avail and the liability of the state to pay interest subsists till the amount has not been deposited in court.

21. The argument on behalf of the Corporation that the subject land acquisition proceedings have been concluded in all respects under the 1894 Act and that they are not affected at all in view of Section 114(2) of the 2013 Act, has no merit at all, and is noted to be rejected. Section 114(1) of the 2013 Act repeals 1894 Act. Sub-section (2) of Section 114, however, makes Section 6 of the General Clauses Act, 1897 applicable with regard to the effect of repeal but this is subject to the provisions in the 2013 Act. Under Section 24(2) land acquisition proceedings initiated under the 1894 Act, by legal fiction, are deemed to have lapsed where award has been made five years or more prior to the commencement of 2013 Act and possession of the land is not taken or compensation has not been paid. The legal fiction under Section 24(2) comes into operation as soon as conditions stated therein are satisfied. The applicability of Section 6 of the General Clauses Act being subject to Section 24(2), there is no merit in the contention of

the Corporation. "

It has been clearly laid down by the Supreme Court in the aforesaid case, that if compensation is not paid or if possession of the land is not taken over and if five years period or more is over, prior to commencement of the Act of 2013, the land acquisition proceedings lapse. Section 31(1) of the Act is also taken note of and it has been clearly held that if compensation is neither paid to the beneficiaries nor deposited in the Court where reference would be met under Section 18 , land acquisition proceedings would lapse. It is also held that deposit of the amount as per the award with the treasury of the Government of State Revenue Department is not sufficient compliance. This judgment of the Supreme Court in the case of *Pune Municipal Corporation* (supra) has been subsequently considered in the case of *Shiv Raj and others* (supra) and after taking note of the said judgment certain other judgments in the case of *Bharat Kumar* (supra) and *Bimla Devi and others* (supra) have been taken note of and in para 26 and 27 the matter has been crystallized in the following manner :-

> **"26.** The objects and Reasons of the 2013 Act and particularly Clause 18 thereof fortify the view taken by this Court in the judgments referred to hereinabove. Clause 18 thereof reads as under :-
>
> > **"18.** The benefits under the new law would be available in all the cases of the land acquisition under the Land Acquisition Act 1894 where *award has not been made or possession of land has not been taken." (Emphasis added)*
>
> **27.** However, the aforesaid appeals have to be decided in the light of the above settled legal prepositions. The admitted facts of the case remain that the respondent tenure holders had filed objections under Section 5-A of the 1894 Act as admitted in the affidavit filed by Smt. Usha Chaturvedi, Deputy Secretary (Land Acquisition), Land and Building Department, Vikas Bhawan, New Delhi, filed in January 2014 before this Court. Award No.15/87-88 had been made on 5.6.1987 and possession has not been taken till date though compensation has been deposited with the Revenue Department, which cannot

be termed as "deemed payment" as has been held in *Harakchand case*."

9. Similar is the view taken by the Supreme Court in the case of *Sharma Agro Industries* (supra) wherein also the principles laid down in the case of *Pune Municipal Corporation* (supra) etc., has been considered and principle reiterated. It is therefore, clear from these judgments and interpretation of Section 24 of the Act of 2013 and implication of Section 31 of the Act of 1894 that if after passing of the award and five years prior to coming into force of Act of 2013, amount is not paid in accordance to the requirement of law, the entire proceedings lapsed. If aforesaid principle is applied in the present case, we find that award in question was passed on 15.4.1999 and from the averments made by the M.P. State Housing Board in their counter affidavit filed, it is only indicated that the amount of compensation has been deposited with the competent authority namely the Collector, Bhopal. Thereafter, in the additional affidavit filed on 5.10.2015, they only indicate about taking over of possession. However, nothing is said with regard to payment of the compensation to the beneficiaries in accordance to the requirement of Section 24(2). The Supreme Court has clearly laid down the principle that if either of the eventualities contemplated under sub section 2 of Section 24 are in existence, the land acquisition proceedings lapsed. The two eventualities are that possession is not taken over or compensation in accordance to law is not given to the beneficiaries. In this case even though the affidavit filed by the Housing Board indicates that possession is taken over by them and they have entered into some agreement with the contractor for development of the area and have also paid some amount in furtherance thereto but the amount of compensation has not been paid to the beneficiaries in accordance to the requirement of Section 31 of the Land Acquisition Act of 1894. On the contrary, the note sheet of the Collector dated 17.1.2003 available in the record of W.P. No.2633/2002 filed along with an interlocutory application I.A. No.9867/2015 which was heard by us along with this appeal, goes to show that after the amount of compensation was deposited by the Housing Board with the Revenue Department, namely the Collector on 17.1.2003. It was indicated that the amount has not been paid to the beneficiaries and therefore, in accordance to the provisions of Section 31 of the Act of 1894, the amount should be deposited in the Court where the proceeding under Section 18 are normally held. However, there is no material

to show as to when, how and in what manner the amount has been deposited in the Court where the proceeding under Section 18 is maintainable. Inspite of granting repeated opportunities respondents have failed to demonstrate before this Court that the amount of compensation as required under law was paid. As held by the Supreme Court mere deposit of the amount in the Government Treasury or with the Revenue Department is not sufficient, it has to be paid to the beneficiaries or deposit in the Court where a reference under Section 18 is normally filed. That being so, we are satisfied that documents overwhelming available on record do demonstrates that inspite of award having been passed more than five years prior to coming into force of the Act of 2013 i.e. w.e.f. 1.1.2014, the award of compensation has not been paid to the beneficiaries as required under law and therefore, in the light of legal principles laid down by the Supreme Court as referred to herein above, entire proceedings lapsed.

10. Accordingly, interlocutory applications are allowed. Petition and appeal are also allowed. Order passed in W.P. No.1719/1999 is quashed. It is held that the acquisition proceedings are lapsed and now the land be restored back to the land owners and if required, the respondents may proceed in accordance with law.

11. With the aforesaid, appeal and writ petition stands allowed and disposed of. No order on costs.

Petition allowed.

I.L.R. [2016] M.P., 722
WRIT PETITION

Before Mr. Justice S.K. Gangele & Mr. Justice B.D. Rathi
W.P. No. 2179/2014 (Gwalior) decided on 5 April, 2014

RAMSEWAK SHARMA ...Petitioner
Vs.
STATE OF M.P. & ors. ...Respondents

***Motor Vehicle Taxation Act, M.P., (25 of 1991), Section 3 and Motor Vehicle Rules, M.P., 1994, Rule 72 (3) - Grant of permanent permit* - Order granting permanent permit passed by RTO was set aside in revision on the ground that sons of petitioner, who are engaged in same business are in arrears of tax - Arrears of taxes - Lacs of**

rupees were due on the members of the joint family of the petitioner - No dues certificate not filed - Hence, impugned order does not require any interference. (Paras 4 & 10)

मोटरयान कराधान अधिनियम, म.प्र., (1991 का 25), धारा 3 एवं मोटरयान नियम, म.प्र., 1994, नियम 72 (3) – स्थायी अनुज्ञापत्र प्रदान किया जाना – आर. टी.ओ. द्वारा स्थायी अनुज्ञा स्वीकृत करने संबंधी आदेश पुनरीक्षण में इस आधार पर अपास्त किया गया कि याची के पुत्रगण जो कि उसी व्यापार में संलग्न हैं, पर कर की राशि बकाया है – बकाया कर – याची के संयुक्त परिवार के सदस्यों पर लाखों रूपये बकाया थे – अदेयता प्रमाणपत्र प्रस्तुत नहीं – अतः, आक्षेपित आदेश में किसी हस्तक्षेप की आवश्यकता नहीं।

Case referred :

W.P. No. 555/2013 decided on 11.02.2014 .

R.D. Sharma, for the petitioner.
Vivek Khedkar, Dy.A.G. for the respondent/State Nos. 1 & 2.
N.K. Gupta, for the respondent No. 3.

ORDER

The Order of the Court was delivered by : **B.D. RATHI, J. :-** Present petition under Article 226/227 of the Constitution of India has been preferred against the order dated 22.03.2014 passed by the State Transport Appellate Tribunal in Revision No.237/2013, seeking following reliefs:

> "It is, therefore, humbly prayed that this Hon'ble Court may be pleased to allow this petition by issuing a writ of certiorari or any suitable writ, order, or direction and the order impugned dated 22.03.2014 (Anex. P/1) may kindly be quashed restoring permit (Anex.P/5) in the interest of justice.
>
> Any order, which this Hon'ble Court deem fit and proper in the facts & circumstances of case may kindly be passed, awarding cost of petition to the petitioner."

2. Brief facts necessary for just disposal of the present petition are that petitioner on 19.06.2013 had moved an application for grant of permanent permit of the Vehicle No. MP06-P-0406 of 2010 model having capacity of 50+2 seats from Guna to Gwalior via Shivpuri, Mohana Route for two single

trips daily by depositing requisite fee 1500/-. The said application was heard by the Regional Transport Authority, respondent No.2, on 30.07.2013 which was objected by the objector, respondent No.3, on the basis of dues of taxes on the vehicles of the sons of petitioner. Learned Regional Transport Authority vide its order dated 18.09.2013 allowed the application filed by the petitioner rejecting the objections raised by respondent no.3.

3. Being aggrieved by the said order, objector, respondent No.3 preferred a revision which was registered at No.237/2013 and was allowed by the learned STAT cancelling the permit granted to the petitioner. Against the order of such cancellation of permit, the petitioner has filed the present petition.

4. The moot question for consideration is that whether Revision No.237/2013 could have been allowed by the STAT on the sole ground of non-payment of arrears of taxes by the sons of the petitioner.

5. It is submitted by the learned counsel for the petitioner that the learned STAT has not considered the case of the petitioner in right perspective and quashed the grant of permit of the petitioner on the basis of dues of taxes of his son i.e. respondent No.4. It is submitted by the learned counsel that respondent No.4 who is his son is doing the business of transport independently and is having no connection with the business of the petitioner. It is further submitted by the learned counsel that as per provisions of M.P. Motor Vehicles Taxation Act tax is imposed and recovered from the owner of such vehicle in whose name it is registered as per the procedure prescribed therein. The provisions contained under the rules and the Act do not provide that any other person i.e. other than the owner of the vehicle is liable to be held responsible for non-payment of tax of such vehicle.

6. *Per contra,* learned counsel for respondent No.3/objector denied the case of the petitioner in *toto* and finally it was submitted that the impugned order passed by the learned State Transport Appellate Tribunal is well merited and thus no interference in it is called for.

7. Having regard to the arguments put forth by the learned counsel for the parties, the order impugned has been perused.

8. On perusal of the order impugned, it is gathered that the learned STAT, in para 52, has held that plea taken by the revisionist is worth acceptable that the sons of respondent No.2 (petitioner herein) are in arrears of tax of lacs of

the rupees and also the proof of it has been filed. It is further mentioned by the learned STAT in the said para that when this objection was raised before the Regional Transport Authority it ought to have been resolved at the moment. The sons of respondent No.2 (petitioner herein) are in arrears of taxes of lacs of rupees and they are all doing the same business being the members of joint family and therefore they cannot be considered to be separate and thus the petitioner is not entitled to new permit.

9. Division Bench of this Court in the case of *Mohammed Safique Vs. The State Transport Appellate Tribunal and others* [order dated 11.02.2014 passed in Writ Petition No.555/2013] has mentioned thus:

> "Division Bench of this Court in *Kishan V. State of M.P. and others* reported in 2008(I) MPJR 87 has considered the provisions of Rule 72(3) of the M.P. Motor Vehicles Rules, 1994 and held as under in regard to eligibility of a person to receive permit if the tax is due against him:
>
> "11. In this context it is apposite to refer Rule 72(3) of the 1994 Rules. It reads as under :
>
> "72(3). The application for stage carriage permit or reserved stage carriage permit as required under sub-section (1) of Section 70 shall be accompanied by the following documents, namely :
>
> (a) an authentic route map along with certified distance between various stages and certificate regarding motorability of the route from the departments which have control over such road;
>
> (b) Certificate from Registering Authority containing make, model and seating capacity of the vehicles owned by the applicant at the time of making the application;
>
> (c) details of the stage carriage and reserved stage carriage permits already held by the applicant.
>
> (d) no dues certificate issued by the Regional Transport Officer concerned;
>
> (e) declaration duly certified by an officer of the Madhya Pradesh State Road Transport Corporation authorized by the Managing Director about the portion and distance of the route covered by

any nationalization scheme; and

(f) any other information as may be required by the Transport Authority."

12. A Division Bench of this Court in the case of *M.P. State Road Transport Corporation, Gwalior Vs. Ram Prasad Purohit and others*, 2001(3) MPLJ 339 has held that the said rule is not mandatory. Under the Rule a no due certificate issued by the Regional Transport Officer concerned is required to be furnished. It has been held that the said rule is not mandatory. Thus, the learned Single Judge has rightly held that it was not essential on the part of the appellant to submit a certificate alongwith the application for permit. But that does not necessarily mean that the appellant who is in arrears of dues would become entitled for grant of permit. What it means is if the no dues certificate is not accompanied, the application cannot be thrown overboard on the ground of non-compliance of the mandatory requirement but when an issue is raised that a candidate is in arrears, the authority concerned is under obligation to scrutinized the same. Regional Transport Officer had not scrutinized the same. In revision the tribunal scrutinized the same and bestowed consideration. Learned single Judge has referred to Annexure P/7 from which it is noticeable that the appellant was in arrears of dues of taxes, composition fees and interest at the time of consideration of the application. Learned single Judge has not lent credence to the instance that vehicle was not in use as the relevant documents were not produced before the tribunal.

10. In view of the principle laid down as aforementioned, the impugned order has been perused. On perusal, it is clear that lacs of rupees were due on the members of the joint family of the petitioner and he has not filed any no dues certificate before the STAT when objection was raised. Therefore, we are of the considered view that the order passed by the learned STAT is well merited and does not require any interference.

11. *Ex consequenti,* present petition fails and is hereby dismissed.

Petition dismissed.

I.L.R. [2016] M.P., 727
WRIT PETITION
Before Mr. Justice U.C. Maheshwari
W.P. No. 3161/2003 (Jabalpur) decided on 11 July, 2014

ROHIT KUMAR ...Petitioner
Vs.
STATE OF M.P. ...Respondent

Arms Act (54 of 1959), Section 13 - Transfer of weapon licence **- Petitioner's application for grant of licence by transferring the licence of pistol from the name of father to the petitioner has been rejected by non-speaking order - Neither the merits nor the recommendation of District Magistrate and Commissioner were considered - Held - Any authority either judicial, quasi judicial or administrative, are bound to pass speaking order by assigning reasons - Impugned order being non-speaking is set aside - Matter is remanded back to respondent No. 1 & 2 to reconsider as per rules and regulation existing on the date of filing the application - In case of change of rules, petitioner may file fresh application which shall be considered in accordance with new policy. (Paras 5 & 6)**

आयुध अधिनियम (1959 का 54), धारा 13 – शस्त्र अनुज्ञप्ति का अंतरण – याची द्वारा उसके पिता के नाम से जारी पिस्तौल की अनुज्ञप्ति को उसके नाम अंतरित करते हुए शस्त्र अनुज्ञप्ति जारी किये जाने हेतु प्रस्तुत आवेदन पत्र कारण विहीन आदेश द्वारा खारिज किया गया – न तो प्रकरण के गुण दोष पर एवं न ही जिला दण्डाधिकारी एवं आयुक्त द्वारा की गई अनुशंसा पर विचार किया गया – अभिनिर्धारित – कोई भी प्राधिकारी चाहे वह न्यायिक, अर्ध–न्यायिक अथवा प्रशासनिक हो, कारण प्रकट करते हुए सकारण आदेश पारित करने हेतु बाध्य है – आक्षेपित आदेश कारण विहीन होने से अपास्त किया जाता है – आवेदन प्रस्तुत करने की तिथि को विद्यमान नियमों एवं विनियम के अनुसार पुनः विचार किये जाने हेतु प्रत्यर्थी क्र. 1 व 2 को मामला प्रतिप्रेषित – नियमों में परिवर्तन होने की दशा में, याची नये सिरे से आवेदन पत्र प्रस्तुत कर सकेगा, जिस पर नवीन नीति के अनुसार विचार किया जायेगा।

Manish Datt with *Lokesh Jain*, for the petitioner.
Rahul Jain, G.A. for the respondent/State.

ORDER

U.C. MAHESHWARI, J. :- The petitioner, a practicing lawyer of Hoshangabad, has filed this petition under Article 226/227 of the Constitution of India, for quashment of the impugned order dated 10.04.2013 (Annexure-P-2) passed by the respondent no.1 Secretary, Department of Home, Bhopal whereby, his application for grant of licence by transferring the licence of pistol/revolver of his father, has been rejected.

2. After taking me through the petition, return as well as the papers annexed with them, the petitioner's counsel argued that so many objections have been raised in the return of the respondents to defend this matter, but mere perusal of the impugned order Annexure- P-2, it is apparent that for dismissing his application neither the merits of the matter nor the recommendations of the District Magistrate as well as of Commissioner for transferring the alleged licence in favour of the petitioner, were considered. He further said that the impugned order has not been passed by supplying the reasons in a speaking manner. While according to principle of natural justice and the settled propositions, the authorities either judicial, quasi judicial or administrative, are bound to pass the reasoned order in a speaking manner. He further submits that there is no bar under the law to transfer the weapon of licence by one family member to another family member, if he is otherwise eligible and qualified, but such aspect was also not considered by the State authorities in passing the impugned order. So far other objections stated in the return are concerned, he said that, such aspect could be considered by the authorities only on passing the speaking order in the matter after extending the opportunity of hearing to the petitioner in accordance with the procedure prescribed under the law, but at present, in the available circumstances the impugned order is not sustainable and prayed to quash the same by allowing this petition. In alternative he said that, in any case, in the aforesaid circumstances even on dismissing the petition, a liberty to file the fresh application for grant of such licence be given to the petitioner with a further direction to the authorities of the respondents to consider such fresh application of the petitioner without influencing from any observations, findings or directions given by the respondents no.1 and 2 in the impugned order Annexure-P-2.

3. Responding the aforesaid arguments, by justifying the impugned order Annexure-P-2, learned State counsel by referring the contentions of the return

said that, the impugned order being passed on proper appreciation of the available circumstances is in conformity with law, it does not require any interference at this stage under the superintending jurisdiction of this Court enumerated under Article 226/227 of the Constitution of India and firstly prayed for dismissal of the petition. In continuation he said that, in case if it found that the impugned order has not been passed in a speaking manner by supplying the reasons, then in such circumstances, after quashing the impugned order, the respondent no.1 be extended the liberty to reconsider the matter and pass the fresh order in a speaking manner.

4. Having heard the counsel, keeping in view their arguments, after perusing the record along with the aforesaid impugned order Annexure- P-2, I have found that initially the application of the petitioner filed for transfer of the licence of the weapon of his father in his name was recommended by the District Magistrate as well as by the Commissioner, but the respondent no.1 has rejected the same without assigning any reasons and in non-speaking manner.

5. I am of the considered view that while sitting as State authority to consider the matter for transfer of the arm license in respect of any type of weapon, then such authority is bound to pass the speaking order by assigning the reasons. My such approach is based on the principle that any authority either judicial, quasi judicial or administrative, are bound to pass the speaking order by assigning the reasons. So, in the available circumstances, the impugned order Annexure-P-2 being passed in a non-speaking manner and without assigning any reasons, deserves to be set aside with some further directions.

6. In view of the aforesaid discussions, by allowing this petition in part, the impugned order dated 10.04.2003 (Annexure-P-2) is hereby set aside and pursuant to it, the matter is remitted back to the respondents no.1 and 2 to reconsider the matter and pass the order afresh with reasons and in a speaking manner. The respondents no.1 & 2 shall follow this direction in the light of the then rules and regulations which was existing on the date of filing the application and passing the impugned order (Annexure-P-2), and if such rules/policy/procedure by the time have been changed as submitted by the petitioner's counsel, then in that circumstances, the petitioner shall be at liberty to file the fresh application in this regard in accordance with the procedure prescribed under the law and the concerning authority shall consider the same on it's own merit in accordance with the rules, new policy/enactment.

7. Petition is allowed as indicated above.

8. There shall be no order as to the costs.

Certified copy as per rules.

Petition allowed.

I.L.R. [2016] M.P., 730
WRIT PETITION
Before Mr. Justice Sujoy Paul
W.P. No. 6541/2014 (Gwalior) decided on 25 November, 2014

KAMLESH (SMT.) & ors. ...Petitioners
Vs.
SMT. URMILA DEVI ...Respondent

***Civil Procedure Code (5 of 1908), Section 35-B - Cost of causing delay* - Held - The payment of cost is a condition precedent to the further prosecution of defence by the defendant - If defendant does not ultimately pay the cost and his right of further prosecution is taken away because of non payment of cost, yet the court while passing the judgment and decree will ensure that said amount is included in decree - Further held, the effect and impact of section 35-B (1) & (2) are different and are applicable in different stages. (Para 7)**

सिविल प्रक्रिया संहिता (1908 का 5), धारा 35–बी – विलंब के लिये खर्चा – अभिनिर्धारित – प्रतिवादी द्वारा अपने बचाव को अग्रसर करने हेतु खर्चे का भुगतान एक पुरोभाव्य शर्त है – यदि कोई प्रतिवादी अंततः खर्चे की राशि अदा नहीं करता है एवं ऐसे अभुगतान के कारण उसका बचाव का अधिकार समाप्त कर दिया जाता है, तब भी निर्णय एवं डिक्री पारित करते समय न्यायालय यह सुनिश्चित करेगा कि ऐसे खर्चे की राशि डिक्री में सम्मिलित की जाये – आगे यह भी अभिनिर्धारित, धारा 35–बी(1) एवं (2) के प्रभाव एवं परिणाम भिन्न हैं एवं भिन्न भिन्न अवस्थाओं में प्रयोज्य हैं।

Cases referred :

AIR 1992 SC 1981, AIR 1981 Punjab and Haryana 269 Full Bench, (2005) 6 SCC 344, (2010) 8 SCC 329.

None for the petitioners.

ORDER

SUJOY PAUL, J. :- The petitioners/defendants No. 1, 2 & 3 have invoked the jurisdiction of this Court under Article 227 of the Constitution to challenge the order dated 15.9.2014 passed in Case No. 99/12 ED by first Civil Judge, Class-II, Jaura, District Morena.

2. The respondent/plaintiff filed the present suit for declaration and injunction. The petitioners filed their written statements. The trial Court framed issues on 5.12.2013. The plaintiff's witnesses filed their affidavits under Order 18 Rule 4 CPC. The Court below decided the application under Order 9 Rule 7 CPC filed by defendants No. 11 to 13. The said application was allowed on payment of Rs.2000/- as cost. Thereafter, on 9.9.2014, the defendants No. 1 to 3 and 11 to 13 prayed for time to cross-examine the plaintiff. The Court below by order dated 9.9.2014 allowed the adjournment to the counsel for the defendants No. 1 to 3 subject to payment of Rs.200/- as cost. It was made clear by the Court below that in absence of paying the cost, the right to cross-examination may be closed.

3. The matter was taken up on 15.9.2014. A plain reading of the order sheet Annexure P-1 shows that the learned counsel for the petitioners appeared on the said date and intended to proceed without paying the cost. It was objected by the counsel for the plaintiff. The petitioners/defendants No. 1 to 3's counsel stated before the Court below that he will not pay the amount of cost. He will either cross-examine the witnesses on behalf of all the defendants or will not undertake the exercise of cross examination at all. He informed the Court that he has filed a revision before the High Court and within few days he will get the order. On more than one occasion, the petitioner's counsel stated before the Court below that he is not ready to pay the amount of cost. He is ready to cross-examine without paying the cost.

4. The Court below rejected the said contention and opined that no order of High Court is produced to show that the earlier orders are stayed. It is mentioned by Court below that payment of cost was the condition precedent for cross-examination. Since the petitioner has refused to pay the amount of cost, the Court below closed the right of cross-examination of the petitioners. In the petition, it is challenged on the ground that if cost was not paid, the Court below could have passed a separate order indicating the amount of cost which could be executable against the petitioners. It is further submitted that the Court below has erred in imposing the cost. Reliance is placed on Section 35-B of CPC to submit that if cost is not paid, it can be included in

the judgment/decree. Lastly, it is pleaded that in similar circumstances, the Court below passed an order dated 13.10.2014 (Annexure P-6) and in the said case upon not depositing the cost, the amount of cost is directed to be included in the decree. Same course should have been followed in the present matter.

5. Before dealing with the points raised by the petitioners, it is apt to quote Section 35-B of CPC, which reads as under:-

> "35-B. Costs for causing delay.-(1) If, on any date fixed for the hearing of a suit or for taking any step therein, a party to the suit--
>
> (a) fails to take the step which he was required by or under this Code to take on that date, or
>
> (b) obtains an adjournment for taking such step or for producing evidence or on any other ground,
>
> the Court may, for reasons to be recorded, make an order requiring such party to pay to the other party such costs as would, in the opinion of the Court, be reasonably sufficient to reimburse the other party in respect of the expenses incurred by him in attending the Court on that date, and payment of such costs, on the date next following the date of such other, shall be a condition precedent to the further prosecution of--
>
> (a) the suit by the plaintiff, where the plaintiff was ordered to pay such costs,
>
> (b) the defence by the defendant, where the defendant was ordered to pay such costs.
>
> *Explanation.*--Where separate defences have been raised by the defendants or groups of defendants, payment of such costs shall be a condition precedent to the further prosecution of the defence by such defendants or groups of defendants as have been ordered by the Court to pay such costs.
>
> (2) The costs, ordered to be paid under subsection (1), shall not, if paid, be included in the costs awarded in the decree passed in the suit; but, if such costs are not paid, a

separate order shall be drawn up indicating the amount of such costs and the names and addresses of the persons by whom such costs are payable and the order so drawn up shall be executable against such persons.

6. A careful reading of Section 35-B shows that it in no uncertain terms makes it clear in sub-section 1(b) that payment of cost on the next date shall be a *condition precedent to the further proceedings* of (a) the suit by the plaintiff, where the plaintiff was ordered to pay such costs, (b) the defence by the defendant where the defendant was ordered to pay such costs. No doubt sub-section (2) provides that if cost ordered to be paid under sub-section (1) is not paid, it be included in the costs awarded in the decree passed in the suit. This is trite that a statute must be interpreted in a manner so that every part of statute is given full meaning and effect. This is also settled that when the words of a statute are clear, plain or unambiguous, i.e., they are reasonably susceptible to only one meaning, the courts are bound to give effect to that meaning irrespective of consequences. (*See Nelson Motis v. Union of India,* AIR 1992 SC 1981). Section 35-B(1)(b) makes it clear that payment of cost is a 'condition precedent'. It is to be given full meaning otherwise the words "shall be a condition precedent" will become redundant or become dead letters. Section 35-B (1)(b), in my view, ensures that if cost is not paid, the right of plaintiff or defendant for further prosecution of suit/defence, as the case may be, will be taken away. Whereas, sub-section (2) ensures that if ultimately cost is not paid, it shall be included in the decree. Thus, the provision has two limbs: (1) sub-section (1) ensures that plaintiff/respondent, as the case may be, cannot prosecute their case unless cost is paid, whereas, sub-section (2) ensures that at the end, the cost is provided to the other side.

7. A plain reading of S.35-B makes it clear that payment of cost is a condition precedent to the further prosecution of defence by the defendant. If defendant does not ultimately pay the cost and his right of further prosecution is taken away because of non-payment of said cost, yet the Court while passing the judgment and decree will ensure that said amount is included in the decree. The effect and impact of Section 35-B (1) (b) and sub-section (2) are different and the same are applicable in different stages.

8. In AIR 1981 Punjab and Haryana 269 Full Bench (*Anand Parkash v. Bharat Bhushan Rai and another*), the Punjab and Haryana High Court opined that a bare scrutiny of the provisions of Section 35-B would show that

the Legislature has made its intention absolutely clear and beyond the pale of any doubt that the provisions are mandatory in nature and any non-compliance with the same would result in penal consequences as envisaged therein. If the Legislature had not intended to make the provisions of the Section mandatory, then it was not at all necessary for the Legislature to have qualified the word "shall" by using words "condition precedent". The said court considered the purpose of imposition of cost and opined that the costs are ordered to be paid to compensate the other party who for no fault of his has to undergo inconvenience and incur expenses. If an adjournment is sought and the same is granted on payment of costs, then on the next date of hearing the party who sought adjournment is bound to pay the costs. The court is only required to see whether the costs have been paid or not and if a party does not pay the costs, then the only course open to the Court is to disallow the prosecution of the suit or the defence any further. (Emphasis supplied).

9. The Apex Court in (2005) 6 SCC 344 *(Salem Advocate Bar Association, T.N. Vs. Union of India)* opined that as per Section 35 if an order is passed, requiring the other party to pay costs, the other party shall be required to reimburse the said costs to the other side on the date next following the date of such order, which shall be a condition precedent to the further prosecution of the suit of the defence. Hence, order impugned is passed in accordance with law.

10. The petitioner has not chosen to challenge those orders whereby cost was imposed and, therefore, it is not open to the petitioner to state that the Court below has erred in imposing the cost. So far passing of different order dated 13.10.2014 (Annexure P-6) is concerned, even if such order is passed, that will not make the present order vulnerable. The present order, in the opinion of this Court, is in consonance with the mandate of Section 35-B of CPC.

11. There is no jurisdictional error in the order impugned. The order does not suffer from any manifest procedural impropriety or perversity. The Court below has taken a plausible view. Thus, no case is made out for interference in this petition under Article 227 of the Constitution. (*See Shalini Shyam Shetty and another Vs. Rajendra Shankar Patil* reported in (2010) 8 SCC 329).

12. Petition is bereft of merits and is accordingly dismissed. No cost.

Petition dismissed.

I.L.R. [2016] M.P., 735
WRIT PETITION
Before Mr. Justice Sanjay Yadav
W.P. No.4559/2014 (Jabalpur) decided on 25 November, 2014

STATE OF M.P. & ors. ... Petitioners
Vs.
M/S LION ENGINEERING CONSULTANTS ... Respondent

A. ***Madhyastham Adhikaran Adhiniyam, M.P. (29 of 1983), Section 7 and Arbitration and Conciliation Act (26 of 1996), Section 34 - Works contract*** **- State Govt. one of the party - Jurisdiction over the subject matter - Held - In case of work contract the tribunal constituted under the Act of 1983 will have exclusive jurisdiction excluding the jurisdiction of forum under the Act of 1996 Act. (Paras 14 to 16)**

क. माध्यस्थम् अधिकरण अधिनियम, म.प्र. (1983 का 29), धारा 7 एवं माध्यस्थम् और सुलह अधिनियम (1996 का 26), धारा 34 – कार्य संविदा – पक्षकारों में से एक राज्य शासन है – विषयवस्तु पर अधिकारिता – अभिनिर्धारित – कार्य संविदा के प्रकरण में अधिनियम, 1996 के अंतर्गत फोरम की अधिकारिता को अपवर्जित करते हुये, अधिनियम, 1983 के अंतर्गत गठित अधिकरण की अनन्य अधिकारिता होगी।

B. ***Arbitration and Conciliation Act (26 of 1996), Section 34 and Madhyastham Adhikaran Adhiniyam, M.P. (29 of 1983), Section 7 - Agreement*** **- Arbitration clause - State Govt. or a public undertaking a party - Whether in such a case the Forum under the 1996 Act will have the jurisdiction - Held - No, as the consent of parties cannot confer jurisdiction nor an estoppel against statute as the jurisdiction is conferred on Arbitration Tribunal under the 1983 Act. (Paras 17 & 18)**

ख. माध्यस्थम् और सुलह अधिनियम (1996 का 26), धारा 34 एवं माध्यस्थम् अधिकरण अधिनियम, म.प्र. (1983 का 29), धारा 7 – करार – माध्यस्थम् खंड – राज्य शासन अथवा कोई लोक उपक्रम पक्षकार है – क्या ऐसे प्रकरण में अधिनियम, 1996 के अंतर्गत फोरम की अधिकारिता होगी – अभिनिर्धारित – नहीं, क्योंकि पक्षकारों की सहमति न तो अधिकारिता प्रदान करती है और न ही कानून के विपरीत विबंधन प्रदान करती है, जबकि अधिनियम, 1983 के अंतर्गत माध्यस्थम् अधिकरण को अधिकारिता प्रदान की गई है।

C. ***Arbitration and Conciliation Act (26 of 1996), Section***

***34 and Madhyastham Adhikaran Adhiniyam, M.P. (29 of 1983), Section 7 - Works contract* - Agreement - Arbitration clause - Award passed by arbitrator - Application seeking amendment in the objection dismissed - State Govt. a party - Whether having travelled a substantial distance in an arbitration proceedings under the 1996 Act, one of the party can turn around at a later stage to question the jurisdiction of forum over the subject matter - Held - When the objection is in respect of jurisdiction over subject matter it is immaterial at what stage it is taken because it strikes at the very jurisdiction of the court or the forum exercising the jurisdiction - Amendment application allowed - Petition allowed.** **(Paras 19 to 26)**

ग. माध्यस्थम् और सुलह अधिनियम (1996 का 26), धारा 34 एवं माध्यस्थम् अधिकरण अधिनियम, म.प्र. (1983 का 29), धारा 7 – कार्य संविदा – करार – माध्यस्थम् खंड – मध्यस्थ द्वारा पारित अधिनिर्णय – आक्षेप में संशोधन चाहने का आवेदन पत्र खारिज – राज्य शासन एक पक्षकार है – क्या अधिनियम, 1996 के अंतर्गत माध्यस्थम् कार्यवाहियों में पर्याप्त दूरी तय करने के पश्चात्, कोई पक्षकार पश्चात्वर्ती प्रक्रम पर विषय वस्तु के संबंध में फोरम की अधिकारिता पर प्रश्न उठाने हेतु वापस मुड सकता है – अभिनिर्धारित – जब विषय वस्तु पर अधिकारिता के संबंध में कोई आक्षेप हो तब यह बात महत्वहीन है कि उसे किस प्रक्रम पर लिया गया है, क्योंकि वह ऐसी अधिकारिता का प्रयोग करने वाले न्यायालय या फोरम की अधिकारिता पर ही प्रहार करता है – संशोधन आवेदन मंजूर – याचिका मंजूर।

Cases referred :

(2008) 7 SCC 487, (2011) 13 SCC 261, (2011) 13 SCC 258, (2012) 3 SCC 495, (1993) 2 SCC 507, (2005) 7 SCC 791, (2009) 4 SCC 299.

Anshuman Singh, for the petitioners.
Naman Nagrath with *Swapnil Sohgaura,* for the respondents.

ORDER

SANJAY YADAV, J. :- Rejection of application seeking amendment in the application for setting aside Arbitration Award under the Arbitration and Conciliation Act, 1996 (hereinafter referred to as 'AC Act') by order dated 14.2.2014 by the Seventh Additional District Judge, Bhopal has led the objector to an Award file this writ petition under Article 227 of the Constitution of India.

2. Undisputed facts borne from the record are that a contract for

consultancy and its implementation services for third party evaluation and quality control/assurance for construction of building costing about Rs.75,372.31 lakh in accordance with specifications and relevant I.S. Codes using funds provided by Rajya Shiksha Kendra Bhopal was entered into between the petitioner and respondent on 29.1.2007.

3. That, on there being certain allegations of contractor entering into certain unlawful activities in respect of payment of first and second bills, an enquiry was caused. Pending the outcome of said enquiry, respondent-contractor was stopped from carrying out further work. This gave rise to a dispute for non-payment of bills and associate claim.

4. Since there exists an arbitration clause 16 in the Agreement stipulating that "Any dispute arising out of the contract, which cannot be amicably settled between the parties, shall be referred to adjudication at Bhopal in accordance with the Arbitration and Conciliation Act, 1996; contractor invoking the same sought the resolution of the dispute through an arbitration by filing an application under Section 11(6) of the Arbitration and Conciliation Act, 1996 before the High Court vide Arbitration Case No.15/2008 for appointment of Arbitrator. That, sole arbitrator, retired Judge of this Court Hon. Shri Justice S.S. Jha, was appointed by order-dated 4.9.2008.

5. An Award came to be passed on 10.7.2010; whereby, while allowing the claim by the contractor, the counter claim by the State of M.P. (petitioner) was dismissed.

6. Aggrieved, the State Govt. and its functionaries brought an action under Section 34 of AC Act on 28.10.2010; wherein, on 7.8.2013, an application seeking amendment in the objection under Section 34 was filed to the effect of incorporating the objection as regard to jurisdiction of the Arbitrator to entertain the dispute under AC Act on the plea that being a 'work contract' and the State Government being one of the parties to the contract, the jurisdiction lay with the Arbitration Tribunal constituted under the M.P. Madhyastham Adhikaran Adhiniyam, 1983. The amendment was objected at by the respondents herein on three grounds, viz. that -

(i) the ground for challenge being sought to be added after a period of 120 days is barred by time as the time limit prescribed under AC Act is absolute and unextendable;

(ii) the order appointing the sole arbitrator having been allowed to attain finality and the objector having participated in the proceedings is precluded from raising the objection having acquiesced and

(iii) the judgment in *M.P. Rural Road Development Authority vs. L.G. Choudhary Engineers and Contractors* (2012) 3 SCC 495 is not applicable in the given facts.

7. Objections to amendment having found favour led the Court reject the application for amendment by impugned order by taking into consideration the fact that the objector having not questioned the appointment of Arbitrator which, in turn, was by virtue of order by the High Court in a proceeding under Section 11(6) of AC Act and thus, acquiesced to the proceedings is estopped from raising the objections which, if allowed, would swipe the very appointment of the Arbitrator. In order words, the objection as to jurisdiction of the Arbitrator, if allowed, to be taken the same would tantamount to question the correctness of order under Section 11(6) of AC Act, which attained finality. The Court also found that the preliminary objection raised at the stage of Section 34 of AC Act also suffers from limitation.

8. Assailing the order, it is urged that the same being contrary to law, facts and circumstances deserves to be set aside.

9. Since it is not in dispute that the contract in question is works contract; therefore, before dwelling on the contentions and counter contentions, and the effect of clause 16 in the agreement opportune it would to first take note of the law relating to work contract as it is applicable in the State of Madhya Pradesh.

10. That, the M.P. Madhyastham Adhikaran Adhiniyam, 1983 which received the assent of President on 7th October, 1983, was enacted to provide for the establishment of a Tribunal to arbitrate in disputes to which the State Government or a Public Undertaking wholly or substantially controlled by the State Government is a party and for matters incidental thereto or connected therewith. And, as observed in *State of Madhya Pradesh vs. Anshuman Shukla* : (2008) 7 SCC 487 by their Lordships "14. The Act is a special Act. It provided for compulsory arbitration. It provides for a reference. The Tribunal has the power of rejecting the reference at the threshold. It provides for a special limitation. It fixes a time limit for passing an Award. Section 14 of the Act provides that proceeding and the award can be challenged under special

circumstances. Section 17, as noticed hereinbefore, provides for finality of the award, notwithstanding anything to the contrary contained in any other law relating to arbitration."

11. It was also observed by their Lordships in *Anshuman Shukla* (supra) :

> "28. The provisions of the Act referred to hereinbefore clearly postulate that the State of Madhya Pradesh has created a separate forum for the purpose of determination of disputes arising inter alia out of the works contract. The Tribunal is not one which can be said to be a Domestic Tribunal. The Members of the Tribunal are not nominated by the parties. The disputants do not have any control over their appointment. The Tribunal may reject a reference at the threshold. It has the power to summon records. It has the power to record evidence. Its functions are not limited to one Bench. The Chairman of the Tribunal can refer the disputes to another Bench. Its decision is final. It can award costs. It can award interests. The finality of the decision is fortified by a legal fiction created by making an Award a decree of a Civil Court. It is executable as a decree of a Civil Court. The Award of the Arbitral Tribunal is not subject to the provisions of the Arbitration Act, 1940 and the Arbitration and Conciliation Act, 1996. The provisions of the said Acts have no application. "

12. Some ripples were caused with a decision in *Va Tech Escher Wyass Flovel Limited vs. Madhya Pradesh State Electricity Board & another* : (2011) 13 SCC 261 wherein it was held :

> "3. ... In our opinion, the 1983 Act and the 1996 Act can be harmonised by holding that the 1983 Act only applies where there is no arbitration clause but it stands impliedly repealed by the 1996 Act where there is an arbitration clause. We hold accordingly. Hence, the impugned judgment cannot be sustained and we hold that the application under Section 9 of the 1996 Act was maintainable."

13. Placing reliance on the decision in *Va. Tech* (supra) in a similar facts situtation as in the present case Supreme Court in *APS Kushwaha (SSI UNIT) vs. Municipal Corporation, Gwalior and others* : (2011) 13 SCC 258

held :

> "7. This court, in V.A.Tech Escher Wyass Flovel Ltd. vs. M.P. S.E.Board (C.A. No.3746/2005 decided on 14.1.2010) held that the provisions of the Act would apply where there was an Arbitration clause and the provisions of the 1983 Adhiniyam would apply where there was no Arbitration clause. In this case it is not in dispute that the contract between the parties contained an arbitration clause (clause 29). The decision of the High Court that the provisions of the 1983 Adhiniyam would apply and sole arbitrator appointed by the designate of the Chief Justice lacked inherent jurisdiction, cannot therefore be sustained. Though the said Arbitration clause provided for reference of disputes to a three member Arbitration Board, the designate chose to appoint a sole arbitrator and that order dated 11.5.2007 attained finality."

14. However, the aspect of applicability of the Act of 1983 or the Act of 1996 in a 'works contract' came to be considered in *Madhya Pradesh Rural Road Development Authority & another vs. L.G.Chaudhary Engineers & Contractors* : (2012) 3 SCC 495 wherein after taking into consideration the provisions of Act 1983 being saved under Section 2(4) & 2(5) of 1996 Act declared the decision in *Va Tech* (supra) being per incuriam, holding :

> "18. If this Court compares the provisions of the M.P. Act with A.C. Act 1996 then the Court finds that the provisions of M.P. Act are inconsistent with the provisions of A.C. Act 1996. The M.P. Act is a special law providing for statutory arbitration in the State of Madhya Pradesh even in the absence of arbitration agreement. Under the provisions of A.C. Act 1996 in the absence of an arbitration agreement, arbitration is not possible. There is also difference in the formation of arbitration tribunal as is clear from Section 2(1)(d) of A.C. Act 1996. Again under A.C. Act 1996, arbitral tribunal is defined under Section 2(1)(d) as a sole arbitrator or a panel of arbitrators. But under M.P. Act such a tribunal is created under Sections 3 and 4 of the Act. And under the M.P. Act dispute has a special meaning as defined under Section 2(1)(d) of the Act whereas dispute has not been defined under the A.C. Act 1996.

19 . It is clear from its long title that the M.P. Act provides :

" .... for the establishment of a tribunal to arbitrate in disputes to which the State Government or a public undertaking [wholly or substantially owned or controlled by the State Government], is a party, and for matters incidental thereto or connected therewith."

20. The structure of the Tribunal under the Madhya Pradesh Act is also different from the structure of a Tribunal under the AC Act, 1996 ..... "

23. It is clear from the aforesaid enumeration of the statutory provisions that under the M.P. Act the parties' autonomy in the choice of Arbitaral Tribunal; is not there.

(emphasis supplied)

26. It is clear, therefore, that in view of the aforesaid finding of a co-ordinate Bench of this Court on the distinct feature of an arbitral tribunal under the said M.P. Act the provisions of M.P. Act are saved under Section 2(4) of A.C. Act 1996. This Court while rendering the decision in *Va Tech* (supra) has not either noticed the previous decision of a co-ordinate Bench of this Court in *Anshuman Shukla* (supra) or the provisions of Section 2(4) of A.C. Act 1996. Therefore, we are constrained to hold that the decision of this Court in *Va Tech* (supra) was rendered per incuriam.

39. The M.P. Act of 1983 was made when the previous Arbitration Act of 1940 was in the field. That Act of 1940 was a Central Law. Both the Acts operated in view of Section 46 of 1940 Act. The M.P. Act 1983 was reserved for the assent of the President and admittedly received the same on 17.10.1983 which was published in the Madhya Pradesh Gazette Extraordinary dated 12.10.1983. Therefore, the requirement of Article 254(2) of the Constitution was satisfied. Thus, M.P. Act of 1983 prevails in the State of Madhya Pradesh. Thereafter, A.C. Act 1996 was enacted by Parliament repealing the earlier laws of arbitration of 1940. It has also been noted that A.C. Act 1996 saves the provisions 24 of

M.P. Act 1983 under sub-sections 2(4) and 2(5) thereof. Therefore, there cannot be any repugnancy. (See the judgment of this Court in *T. Barai vs. Henry Ah Hoe*.)

41. It is clear from the aforesaid observation that in instant case the latter Act made by the Parliament i.e. A.C. Act 1996 clearly showed an intention to the effect that the State Law of Arbitration i.e. the M.P. Act should operate in the State of Madhya Pradesh in respect of certain specified types of arbitrations which are under the M.P. Act 1983. This is clear from Sections 2(4) and 2(5) of A.C. Act 1996. Therefore, there is no substance in the argument of repugnancy and is accordingly rejected.

42. Therefore, appeal is allowed and the judgment of the High Court which is based on the reasoning of *Va Tech* (supra) is set aside. This Court holds the decision in *Va Tech* (supra) has been rendered in per incuriam. In that view of the matter the arbitration proceeding may proceed under M.P. Act of 1983 and not under A.C. Act 1996."

15. This view that in respect of works contract it is the Tribunal constituted under 1983 Act and no other forum is available was concurred with by Hon'ble Justice Gyan Sudha Mishra in the following terms :

"49. In view of this, the legal and logical consequence which can be reasonably drawn from the definition of 'works contract' would be, that if there is a dispute between the contracting parties for any reason relating to works contract which include execution of any work, relating to construction, repair or maintenance of any building or super-structure, dam, weir, canal, reservoir, tank, lake, road, well, bridge, culvert, factory, workshop, power house, transformers or such other works of the State Government or Public Undertaking including an agreement for the supply of goods or material and all other matters relating to the execution of any of the said works, the same would fall within the ambit of the definition of 'works contract' and hence all disputes pertaining or arising out of execution of the works contract will have to be referred to the

> M.P. State Arbitration Tribunal as envisaged under Section 7 of the Act of 1983. Hence, in addition to the reasons assigned in the judgment and order of learned Brother Justice Ganguly, disputes arising out of execution of works contract has to be referred to the M.P. State Arbitration Tribunal and not under the Arbitration and Conciliation Act, 1996."

16. Thus, there remains no iota of doubt that in case of works contract covered by the provisions of 1983 Act, any dispute is compulsorily has to be raised before the Tribunal constituted under the Act of 1983 which necessarily means that the forum under 1996 Act are excluded.

17. The question would then be whether in a given case, as the present one, where the parties have entered into a contract State Government or a public undertaking wholly or substantially owned or controlled by the State Government, as in the case at hand, agrees to a forum under 1996 Act, are they bound by it and any action thereon could be termed to be within jurisdiction. The emphatic answer is no.

18. In *Chiranjilal Shrilal Goenka vs. Jasjit Singh & ors.* : (1993) 2 SCC 507 whole holding that a consent to refer the dispute for arbitration of dispute in the pending probate proceedings, cannot confer jurisdiction nor an estopple (sic:estoppel) against statute, their Lordships were pleased to hold :

> "17. We agree with Mr. Chidambaram that the applicant had consented to refer the dispute for arbitration of dispute in the pending probate proceedings, but consent cannot confer jurisdiction nor an estoppel against statute. The other legatees in the Will were not parties to it. In *A.R. Antulay Vs R.S. Nayak* when a Constitution Bench directed the High Court Judge to try the offences under the Prevention of Corruption Act with which the petitioner therein was charged and the trial was being proceeded with, he questioned by way of writ petition the jurisdiction of this Court to give such a direction. A Bench of seven judges per majority construed meaning of the word 'jurisdiction', Mukharji, J. as he then was, speaking per himself. Oza and Natarajan, JJ. held that the power to create or enlarge jurisdiction is legislative in character. So also the power to confer a right of appeal or to take away a right of appeal. The Parliament

alone can do it, by law and not Court, whether superior or inferior or both combined, can enlarge the jurisdiction of a Court and divest a person of his rights of appeal or revision. Ranganath Mishra, J. as he then was, held that jurisdiction comes solely from the law of the land and cannot be exercised otherwise. In this country, jurisdiction can be exercised only when provided for either in the Constitution or in the laws made by the Legislature. Jurisdiction is thus the authority or power of the Court to deal with a matter and make an order carrying binding force in the facts. Oza, J. supplementing the question held that the jurisdiction to try a case could only be conferred by law enacted by the legislature. The Supreme Court could not confer jurisdiction if it does not exist in law. Ray, J. held that the Court cannot confer a jurisdiction on itself which is not provided in the law. In the dissenting opinion Venkatachaliah, J., as he then was, lay down that the expression jurisdiction or prior determination is a "verbal coat of many colours". In the case of a Tribunal an error of law might become not merely an error in jurisdiction but might partake of the character of an error of jurisdiction. But, otherwise, jurisdiction is a 'legal shelter' and a power to bind despite a possible error in the decision. The existence of jurisdiction does not depend on the correctness of its exercise. The authority to decide embodies a privilege to bind despite error, a privilege which is inherent in and indispensable to every judicial function. The characteristic attribute of a judicial act is that it binds whether it be right or it be wrong. Thus this Court laid down as an authoritative proposition of law that the jurisdiction could be conferred by statute and this Court cannot confer jurisdiction or an authority on a tribunal. In that case this Court held that Constitution Bench has no power to give direction contrary to Criminal Law Amendment Act, 1952. The direction per majority was held to be void."

19. Next question is, whether having travelled at substantial distance in an arbitration proceedings, one of the party can turn around at a later stage to question the jurisdiction.

20. An answer can be found in the decision in *Chiranjilal Shrilal Goenka* (supra), *Harshad Chiman lal Modi vs. DLF Universal Ltd.& another* :

(2005) 7 SCC 791 and *Rajasthan State Road Transport Corporation and another vs. Bal Mukund Bairwa* : (2009) 4 SCC 299.

In *Harshad Chiman lal Modi* (supra) it is held :

"30. We are unable to uphold the contention. The jurisdiction of a court may be classified into several categories. The important categories are (i) Territorial or local jurisdiction; (ii) Pecuniary jurisdiction; and (iii) Jurisdiction over the subject matter. So far as territorial and pecuniary jurisdictions are concerned, objection to such jurisdiction has to be taken at the earliest possible opportunity and in any case at or before settlement of issues. The law is well settled on the point that if such objection is not taken at the earliest, it cannot be allowed to be taken at a subsequent stage. Jurisdiction as to subject matter, however, is totally distinct and stands on a different footing. Where a court has no jurisdiction over the subject matter of the suit by reason of any limitation imposed by statute, charter or commission, it cannot take up the cause or matter. An order passed by a court having no jurisdiction is nullity.

32. In Bahrein Petroleum Co., this Court also held that neither consent nor waiver nor acquiescence can confer jurisdiction upon a court, otherwise incompetent to try the suit. It is well-settled and needs no authority that 'where a court takes upon itself to exercise a jurisdiction it does not possess, its decision amounts to nothing.' A decree passed by a court having no jurisdiction is non-est and its validity can be set up whenever it is sought to be enforced as a foundation for a right, even at the stage of execution or in collateral proceedings. A decree passed by a court without jurisdiction is a coram non judice."

21. In *Bal Mukund Bairwa (2)* (supra) there Lordships were pleased to hold :

"50. We may also observe that the application of doctrine of prospective overruling in Krishna Kant may not be correct because either a court has the requisite jurisdiction or it does not have. It is well settled principle of law that the court cannot confer jurisdiction where there is none and neither can the

parties confer jurisdiction upon a court by consent. If a court decides a matter without jurisdiction as has rightly been pointed out in Zakir Hussain in view of the seven-Judge Bench decision of this Court in A.R. Antulay, the same would be nullity and, thus, the doctrine of prospective overruling shall not apply in such cases. Even otherwise doctrine of prospective overruling has a limited application. It ordinarily applies where a statute is declared ultra vires and not in a case where the decree or order is passed by a court/tribunal in respect whereof it had no jurisdiction. [See *Golak Nath & ors. vs. State of Punjab*.]"

22. In *Chiranjilal Shrilal Goenka* (supra) their Lordships while holding:

"18. It is settled law that a decree passed by a court without jurisdiction on the subject matter or on the grounds on which the decree made which goes to the root to its jurisdiction or lacks inherent jurisdiction is a corum non judice. A decree passed by such a court in a nullity and is non-est. Its invalidity can be set up whenever it is sought to be enforced or is acted upon as a foundation for a right, even at the stage of execution or in collateral proceedings. The defect of jurisdiction strikes at the very authority of the court to pass decree which cannot be cured by consent or waiver of the party."

23. Thus, when the objection is in respect of jurisdiction over subject matter it is immaterial at what stage it is taken because it strikes at the very jurisdiction of the Court or the forum exercising the jurisdiction.

24. The impugned order when tested on the anvil of the principle of law laid down and the analysis thereof is not substantiable; therefore, set aside. The amendment application filed by the objector, present petitioner is allowed. Let the same be incorporated within 15 days from the date of communication of this order.

25. Consequential amendment if any within four weeks therehence.

26. Learned trial Court is expected to decide the matter expeditiously.

Petition is allowed to the extent above. However, no costs.

Petition allowed.

I.L.R. [2016] M.P., 747
WRIT PETITION
Before Mr. Justice Sujoy Paul
W.P. No. 1524/2013 (Gwalior) decided on 8 December, 2014

ARUN KUMAR SINGH ...Petitioner
Vs.
STATE OF M.P. & ors. ...Respondents

(Alongwith W.P.No. 5404/2008, W.P.No. 7041/2010, W.P.No. 5879/2012, W.P.No. 935/2013, W.P.No. 1427/2013, W.P.No. 1523/2013, W.P.No. 2065/2013, W.P.No. 2726/2013, W.P.No. 3632/2013, W.P.No. 4173/2013, W.P.No. 4216/2013, W.P.No. 4512/2013, W.P.No. 4679/2013, W.P.No. 4807/2013, W.P.No. 4808/2013, W.P.No. 4885/2013, W.P.No. 4888/2013, W.P.No. 4889/2013, W.P.No. 5006/2013, W.P.No. 5493/2013, W.P.No. 5717/2013, W.P.No. 5718/2013, W.P.No. 6222/2013, W.P.No. 6224/2013, W.P.No. 6456/2013, W.P.No. 6596/2013, W.P.No. 7449/2013, W.P.No. 8037/2013, W.P.No. 8171/2013, W.P.No. 8173/2013, W.P.No. 8732/2013, W.P.No. 8733/2013, W.P.No. 8734/2013, W.P.No. 1418/2014.

Service Law - Grant of Kramonnati - **Held - That, the person is recruited by an organisation not just for a job, but for a whole career - The opportunity for advancement is an incentive for personnel development - Further, there cannot be any modern management, man power development etc. which is not related to a system of career progression - Hence, govt. cannot deny the facility of financial kramonnati. (Para 9)**

सेवा विधि – क्रमोन्नति प्रदान किया जाना – अभिनिर्धारित – कोई भी व्यक्ति किसी संगठन द्वारा मात्र किसी एक कार्य हेतु नियुक्त न किया जाकर संपूर्ण करियर हेतु नियुक्त किया जाता है – प्रोन्नति का अवसर कर्मचारी विकास के लिए प्रोत्साहन की तरह होता है – इसके अतिरिक्त, ऐसा कोई आधुनिक प्रबंधन, मानव शक्ति विकास इत्यादि नहीं हो सकता जो कि सेवा प्रोन्नति से संबंध न रखता हो – अतः, शासन वित्तीय क्रमोन्नति से इंकार नहीं कर सकता है।

Cases referred :

2002(1) MPHT 315, AIR 2007 SC 663, (2002) 3 SCC 463, (2003) 8 SCC 718, (1989) 4 SCC 635, (1990) (Supp.) SCC 688, (2004) 9 SCC 65, W.P. No. 2092/2003 decided on 28.02.2008, (1994) JLJ 73.

Vivek Jain, for the petitioner in W.P.No. 1524/2013, W.P.No. 5404/2008, W.P.No. 5879/2012, W.P.No. 935/2013, W.P.No. 1523/2013, W.P.No. 2065/2013, W.P.No. 2726/2013, W.P.No. 3632/2013, W.P.No. 4173/2013, W.P.No. 4216/2013, W.P.No. 4512/2013, W.P.No. 4679/2013, W.P.No. 4807/2013, W.P.No. 4808/2013, W.P.No. 4885/2013, W.P.No. 4888/2013, W.P.No. 4889/2013, W.P.No. 5006/2013, W.P.No. 5493/2013, W.P.No. 5717/2013, W.P.No. 5718/2013, W.P.No. 6222/2013, W.P.No. 6224/2013, W.P.No. 6456/2013, W.P.No. 6596/2013, W.P.No. 7449/2013, W.P.No. 8037/2013, W.P.No. 8171/2013, W.P.No. 8173/2013.

R.B.S. Tomar, for the petitioner in W.P. No. 7041/2010.

Nitin Agrawal, for the petitioner in W.P.No. 1427/2013.

D.S. Raghuvanshi, for the petitioner in W.P.No. 8732/2013, W.P.No. 8733/2013, W.P.No. 8734/2013.

S.K. Sharma, for the petitioner in W.P.No. 1418/2014.

Praveen Newaskar, Dy. G.A. for the respondents/State.

ORDER

Sujoy Paul, J. :- This writ petition was finally heard with the connected matters on the joint request of the parties.

Facts are taken from W.P.No.1524/2013.

2. The petitioners are teachers/employees of aided institutions. It is canvassed by learned counsel for the petitioners that all the petitioners in these writ petitions were appointed prior to 1.1.1996. It is submitted that the petitioners are entitled to enjoy the same pay-scale and other benefits which are being given to their counter parts in Governmental institutions. It is submitted that the State Government introduced "Krammonati" scheme whereby the employees are given financial up-gradation after rendering 12 and 24 years of service. The said Krammonati is made applicable to such employees who have not been given any promotion in 12/24 years of service. It is submitted that the respondents initially extended this benefit in favour of the employees of aided institutions but later on by impugned communication dated 11.4.2002 (Annexure P-1) has discontinued the said benefit.

3. Shri Vivek Jain, while submitting the leading submissions in these batch of matters, criticized the impugned order on the ground that such order is based on the decision of the Government to discontinue the grant-in-aid w.e.f.1.4.2000. In the year 2000, the amendment was made in Madhya Pradesh Ashasakiya Shikshan

Sanstha (Adhyapakon Tatha Anya Karmahariyon Ke Vetano Ka Sandaya) Adhiniyam, 1978. The amendment act (No.26 of 2000) was put to test before Division Bench of this Court in *Dr. Sharique Ali and others Vs. State of M.P. & Others.* In the judgment reported in 2002(1) MPHT. 315, the Division Bench opined that the amendment which has been brought on the statute book by way of amended act (No. 26 of 2000) are ultra vires being hit by Articles 14 and 21 of the Constitution of India. He submits that this judgment was unsuccessfully challenged by the State before the Supreme Court. The Apex Court in its recent order passed in Civil Appeal No. 6362/04 opined that the said amendment cannot be made applicable against those Teachers/non-teaching staff, who are appointed prior to the promulgation of amended act. He submits that in the light of this judgment of Supreme Court, the action of respondents in discontinuing the benefits of *"Krammonati"* is bad in law. He also relied on the revised grant-in-aid rules for non Government institutions (Annexure P-4). By placing reliance on Rule 33(1), it is submitted that petitioners had a valuable right of consideration and grant of "Krammonati" on completion of 12/24 years of service because the said benefits were admittedly available to their counter parts working in Govt. institutions. He relied on certain unreported judgments of this Court. He also relied on the judgments of Supreme Court in *Kamla Devi Vs. Kushal Kanwar* (AIR 2007 SC 663), *Land Acquisition Officer Vs. B.V. Reddy & Sons* (2002) 3 SCC 463 and *Maitri Koley Vs. New India Assurance* (2003) 8 SCC 718. Lastly it is submitted that an employee must get an avenue of career progression in service in order to get encouragement, enthusiasm which is beneficial to the employee and to the employer.

4. *Per contra*, Shri Praveen Newaskar, learned Deputy Government Advocate opposed the relief. By taking this Court to various paragraphs of the return, it is contended that although it is not in dispute that the institution wherein petitioners were working are receiving grant-in-aid from the State Government, the petitioners have no right to get the benefit of *"Krammonati"*. He heavily relied on the amendment in the Adhiniyam w.e.f. 31.3.2000 whereby the State Government withdrew from the liability to pay grant-in-aid in faced manner. It is contended in the return that the Supreme Court has passed an interim order against the judgment of this Court passed in the case of *Dr. Sharique Ali* (supra). It is further submitted that in certain matters, the Principal Seat granted the benefit of 5th Pay Commission to the employees which was not implemented and, therefore, a contempt petition was filed. However, the Supreme Court has stayed the contempt proceedings. The said order of

Supreme Court dated 1.9.2008 is placed on record as Annexure R-7. In the return, heavy reliance is placed on the amended Adhiniyam (26 of 2000) and the interim order of Supreme Court passed in the case of *State of MP Vs. Dr. Sharique Ali* (supra) dated 6.5.2002 (Annexure R-1).

5. No other point is pressed by learned counsel for the parties.

6. I have heard the learned counsel for the parties at length and perused the record.

7. It is gathered that during the pendency of this petition, Civil Appeal No. 6362/2004 *(State of M.P. Vs. Dr. Sharique Ali)* is decided by the Apex Court. In the final order, the Apex Court made it clear that the amendment act (26 of 2000) shall not be made applicable to the respondents and similarly situated persons. The further clarification given in para 7 of the order makes it crystal clear that the said amendment is applicable to those Teachers/lecturers/ non-teaching staff, who are appointed by the private aided educational institutions in Madhya Pradesh after promulgation of the amended act. Thus, the curtains are finally drawn by the Apex Court on the applicability of the amendment act. The petitioners being appointees of prior to promulgation of the amended act are not governed by the said amendment.

8. Admittedly, the petitioners were getting the same pay-scale which were enjoyed by their counter parts working in the Government institutions. The Government also passed a circular dated 18.4.1996 (Annexure P-5). In the said circular the State Government decided that the employees who have completed stipulated years of service shall be entitled for senior scale on completion of stipulated years of service. The singular reason for discontinuance of this benefit is introduction of the amended act. A minute reading of impugned order dated 11.4.2002 shows that the operative reason for discontinuance of the benefit of senior scale/Krammonati was that w.e.f.1.4.2000 the State Government has withdrawn its liability to pay the salary to the employees working in aided institutions. It is stated in the said order that the State Government neither appoints the employees in aided institutions, nor decides pay of these employees. The management of those institutions are in the hands of respective private institutions. The Government only provides annual block grant to these institutions. Apart from this yearly block grant, the State Government is not liable to pay any other amount. It is apparent that the basic reason for issuance of Annexure P-1 is completely based on the amended act which was made applicable w.e.f. 1.4.2000. Once it is held by the Apex Court that such

amended act cannot be made applicable against such employees, who were appointed prior to 1.4.2000, the very foundation for issuance of Annexure P-1 does not survive. Putting it differently, the impugned order dated 11.4.2002 was passed based on the amended act which has lost its complete shine as against the petitioners/ employees who were appointed prior to the amended act. Thus, the impugned order cannot withstand judicial scrutiny.

9. The matter may be examined from yet another angle. The Apex Court in (1989) 4 SCC 635 *(Council of Scientific and Industrial Research and another Vs. K.G.S. Bhatt and another)* opined that, it is often said and indeed, adroitly, an organisation public or private does not 'hire a hand' but engages or employs a whole man. The person is recruited by an organisation not just for a job, but for a whole career. One must, therefore, be given an opportunity to advance. This is the oldest and most important feature of the free enterprise system. The opportunity for advancement is a requirement for progress of any organisation. It is an incentive for personnel development as well. In view of this judgment, it is clear that there cannot be any modern management much less any career planning, manpower development, management development etc. which is not related to a system of career progression.

10. The Apex Court in (1990) (Supp.) SCC 688 *(O.Z. Hussain (Dr) Vs. Union of India)* opined that, promotion is thus a normal incidence of service. There too is no justification why while similarly placed officers in other ministries would have the benefit of promotion, the non-medical 'A' Group scientists in the establishment of Director General of Health Services would be deprived of such advantage. In a welfare State, it is necessary that there should be an efficient public service and, therefore, it should have been the obligation of the Ministry of Health to attend to the representations of the Council and its members and provide promotional avenue for this category of officers.

11. The Apex Court in *State of Tripura and others Vs. K.K.Roy,* (2004) 9 SCC 65 again considered the aforesaid judgments and opined that the employees must get two higher grades, one upon expiry of period of 12 years from the date of joining and other upon expiry of 24 years of service. The basic reason for providing these benefits is to provide a ladder for advancement. Such opportunity of career advancement either in the shape of promotion or in absence of promotion as financial up-gradation is necessary to instill enthusiasm amongst the employees. The avenues of promotion/financial up-gradation kills stagnation and creates a healthy atmosphere in the institution. This gives boost to employees and ultimately

helps the institution in terms of development and ultimate output of the organization. For said reason also there is no justification in curtailing the benefit of financial up-gradation in favour of the petitioners. It is seen that this Court in W.P.No. 2092/2003 *(Ram Naresh Tiwari & Others Vs. The State of M.P. & others)* decided on 28.2.2008 followed the Division Bench judgment of this Court in *Suresh Kumar Vs. State of M.P.* (1994) JLJ 73 and opined that the analogy flowing from *Suresh Kumar* (supra) can be applied in the present case because the State Government is paying the revised pay-scale to the teachers and, therefore, it cannot deny the facility of financial up-gradation/Krammonati. The other judgments cited by petitioners are not applicable in the facts of this case.

12. As analyzed above, the impugned order dated 11.4.2002 (Anenxure P-1) cannot be permitted to stand. Resultantly, the order dated 11.4.2002 (Annexure P-1) is set aside. The respondents are directed to consider the cases of the petitioners for grant of *krammonati* completion of 12/24 years of service (as the case may be). The aforesaid exercise be completed within four months from the date of production of copy of this order. If the petitioners are found entitled, they be given financial up-gradation with arrears from due date within the aforesaid time.

13. Petitions are allowed. No cost.

14. Registry is directed to keep true copy of this order in all the connected writ petitions.

Petition allowed.

I.L.R. [2016] M.P., 752
WRIT PETITION
Before Mr. Justice Sujoy Paul
W.P. No. 6457/11 (Gwalior) decided on 11 December, 2014

PARMANAND GUPTA ... Petitioner
Vs.
SMT. BHAGWATI DEVI & ors. ...Respondents

***Evidence Act (1 of 1872), Section 33 - Evidence given by witness in judicial proceeding* - Whether the statement recorded by the police authorities during investigation is covered u/s 33 of the Act - Held - Making the said evidence admissible in subsequent proceedings following three conditions must be fulfilled - (1) that the earlier**

proceeding was between the same parties (2) that the adverse party in the first proceeding had the right and opportunity to cross-examine and (3) that the question in issue in both proceedings were substantially the same - In absence of any of three prerequisites Section 33 would not be attracted. (Paras 11 & 14)

साक्ष्य अधिनियम (1872 का 1), धारा 33 – न्यायिक कार्यवाही में साक्षी द्वारा दिया गया साक्ष्य – क्या पुलिस प्राधिकारियों द्वारा विवेचना के दौरान लेखबद्ध किया गया कथन अधिनियम की धारा 33 से आच्छादित है – अभिनिर्धारित – पश्चात्वर्ती कार्यवाहियों में ऐसे साक्ष्य की ग्राह्यता हेतु निम्नलिखित तीन शर्तों की पूर्ति आवश्यक है – (1) यह कि, पूर्ववर्ती कार्यवाही समान (उन्हीं) पक्षकारों के मध्य थी (2) यह कि, पहली कार्यवाही के दौरान विरोधी पक्ष को प्रतिपरीक्षण का अधिकार एवं अवसर उपलब्ध था; एवं (3) यह कि, उक्त दोनों ही कार्यवाहियों में वाद के प्रश्न तात्विक रूप से समान थे – इन तीनों पूर्वापेक्षित शर्तों में से किसी एक के भी अभाव में धारा 33 के प्रावधान आकर्षित नहीं होंगे।

Cases referred :

(2011) 11 SCC 275, (1995) 6 SCC 122, (2004) 4 SCC 236.

Santosh Agrawal, for the petitioner.
Sunil Jain, for the responent No.1.

ORDER

SUJOY PAUL, J. :- This petition filed under Article 227 of the Constitution challenges the order dated 14.9.2011 passed by the learned District Judge, Shivpuri in Case No. 6074/11.

2. The respondent No.1/plaintiff filed a suit for declaration and possession. The respondent No.1, mother of petitioner, filed the aforesaid suit. It is alleged that petitioner has manufactured a power of attorney and on the basis of said fake power of attorney, sold some part of property to respondent No.3. The present petitioner/defendant No.1 filed the written statement and challenged the plaintiff's allegations. It is submitted that plaintiff herself executed power of attorney in favour of petitioner. The property was sold on the basis of a genuine and valid power of attorney. It is stated that the suit was filed on the pressure of plaintiff's sons Lalit and Harisharan because they have enmity with the petitioner.

3. In the said civil suit, the Court below framed issues. It is the case of the petitioner that his brothers who are with plaintiff/respondent No.1 lodged a report against the petitioner in police Kotwali, Shivpuri. The report was regarding the

same facts, i.e., preparation of forged power of attorney by the petitioner. It is submitted that after investigation and recording of evidence of plaintiff and other witnesses, police found no case against the petitioner and filed the ending report. A copy of ending report, evidence and FIR are filed as Annexure P-5.

4. In the suit, plaintiff's evidence was already recorded. Thereafter, by application dated 9.9.2011 (Annexure P-6), the petitioner prayed that under Order 18 Rule 17 read with Section 151 CPC, the plaintiff be recalled and she be permitted to be cross examined. The said prayer was made on the ground that the plaintiff preferred a complaint which was enquired into by the police authorities and allegations of complaint were not found proved. The petitioner obtained these documents lateron and, therefore, she be permitted to cross-examine the plaintiff on the basis of said documents.

5. Shri Santosh Agrawal, learned counsel for the petitioner submits that Court below has erred in rejecting the said application by order dated 14.9.2011 on the ground that the finding of criminal investigation is not binding on the Court and, therefore, the said documents are not sufficient to recall the witness. He submits that even if report of police is not binding on the civil court, the petitioner has a valuable right to cross examine the plaintiff on the basis of the evidence which were recorded by the police authorities in the investigation. This includes the statement of plaintiff recorded by the police authorities. In support of his submissions, he relied on Section 33, 145 & 158 of the Evidence Act.

6. *Per contra*, Shri Sunil Jain, learned counsel for respondent No.1 submits that under Order 18 Rule 17 CPC, the Court alone can recall the witnesses and it cannot be permitted to be recalled on an application of a litigant. In addition, he submit that there is no error in the finding of the court below.

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

8. I deem it proper to first deal with the objection of Shri Sunil Jain that the Civil Court can recall the witness *suo motu* but this cannot be done on an application filed by the other side. In my view, the curtains are finally drawn by the Apex Court on this aspect in the case reported in (2011) 11 SCC 275 *(K.K. Velusamy Vs. N. Palanisamy)*. This judgment makes it clear that u/o 18 R.17 CPC, court can recall a witness on an application preferred by a party. The Apex Court opined that power under Order 18 Rule 17 CPC cannot be used in a routine manner or on mere asking which can be used

when application is found to be bonafide and where the additional evidence, oral or documentary, will assist in rendering justice.

9. The contention of Shri Santosh Agrawal is based on Section 33, 145 and 158 of the Evidence Act. Section 33 reads as under:-

> "33. Evidence given by a witness in a judicial proceedings, or before any person authorized by law to take it, is relevant for the purpose of proving, in a subsequent judicial proceeding, or in later stage of the same judicial proceeding, the truth of the facts which it states, when the witness is dead or cannot be found, or is incapable of giving evidence, or is kept out of the way by the adverse party, or if his presence cannot be obtained without an amount of delay or expense which, under the circumstances of the case, Court considers unreasonable:
>
> **Provided--**
>
> that the proceeding was between the same parties of their representatives in interest;
>
> that the adverse party in the first proceeding had the right and opportunity to cross-examine; that the questions in issue were substantially the same in the first as in the second proceeding.
>
> *Explanation:* A criminal trial or inquiry shall be deemed to be a proceeding between the prosecutor and the accused within the meaning of this section. (Emphasis supplied).

10. Shri Agrawal placed heavy reliance on the underlined portion of Section 33 to bolster his submission that before the police authorities, the statement of plaintiff under Section 161 Cr.P.C. must have been recorded. The police must be treated as "person authorized by law to take evidence" as per Section 33. By relying on the explanation of Section 33, it is contended that its scope is very wide which includes the evidence recorded during the police investigation. Putting it differently, Shri Santosh Agrawal submits that any evidence collected by police during the investigation of complaint preferred by the plaintiff amounts to "evidence given by witness" as per Section 33. He further submitted that Section 158 refers Section 33 and once it is clear that the statement/evidence in police investigation is covered under Section 33, Section 158 comes into play. He relied on Section 145 of Evidence Act to

submit that plaintiff needs to be cross-examined as to previous statement made by him in writing or reduced into writing is relevant for the purpose of establishing the defence of the petitioner.

11. In section 33, the words used are "or before any person authorized by law to take it" for the purpose of proving in the same judicial proceedings or in a subsequent judicial proceeding the truth of the fact etc. The pivotal question is whether the statement recorded by police authorities during investigation is covered under Section 33 of the Evidence Act? In my opinion, the contention of Shri Agrawal is misconceived. In section 33, the words 'judicial proceeding' are used. The investigation by the police authorities cannot be treated as judicial proceeding. In explanation to the said Section on which heavy reliance is placed, the words used are "enquiry shall be deemed to be a proceeding."

12. Section 2(g) of Cr.P.C. defines "enquiry" which reads as under:-

> "inquiry" means every inquiry, other than a trial, conducted under this Code by a Magistrate or Court;" (Empahsis (sic:Emphasis) supplied).

Section 2(h) defines investigation which reads as under:-

> "investigation" includes all the proceedings under this Code for the collection of evidence conducted by a police officer or by any person (other than a Magistrate) who is authorized by a Magistrate in this behalf;"

13. The law makers in their wisdom have chosen the word "inquiry" in the explanation of Section 33 and not "investigation". Enquiry, as evident from the definition, is conducted under the Code by Magistrate or Court, whereas the investigation is conducted by the police officer or any person (other than a Magistrate). Thus, I am unable to hold that either in Section 33 or in its explanation, the 'enquiry' means 'investigation' by the police authorities. The statement recorded by police authorities during investigation is not covered under Section 33 of the Evidence Act.

14. The matter may be examined from yet another angle. A plain reading of Section 33 will make it clear that evidence given by a witness in a judicial proceeding or before any person authorized to take it is admissible for the purpose of proving in a subsequent judicial proceeding or in a later stage of the same judicial proceeding, the truth of the facts which it states in its evidence.

given in earlier judicial proceeding or earlier stage of the same judicial proceeding, but under proviso there are three prerequisites for making the said evidence admissible in subsequent proceeding or later stage of the same proceeding and they are: *(i)* that the earlier proceeding was between the same parties; *(ii)* that the adverse party in the first proceeding had the right and opportunity to cross-examine; and *(iii)* that the questions in issue in both proceedings were substantially the same, and in the absence of any of the three prerequisites aforesaid, Section 33 of the Act would not be attracted. (See (1995) 6 SCC 122 (*V.M. Mathew Vs. V.S.Sharma & Ors*) and (2004) 4 SCC 236 (*Sashi Jena and others Vs. Khadal Swain and another*). This cannot be doubted that the proposed accused/accused has no right of cross-examination of a witness whose statements were recorded under Section 161 Cr.P.C. Thus, the said statement cannot be treated as an evidence under Section 33 of the Act. The prerequisites aforesaid are not satisfied in this case. As analyzed above, Section 33 is of no help to the petitioner. Resultantly, Section 158 is also not applicable. Section 145 of Evidence Act is also of no help to the petitioner in the facts and circumstances of the case.

15. On the basis of aforesaid analysis, it is clear that the Court below was not powerless in recalling the plaintiff witness under Order 18 Rule 17 CPC. The very reason put forth for seeking recall of witness is not supported by Section 33, 145 and 158 of Evidence Act. Thus, for different reasons, I deem it proper to upheld the order of the Court below.

16. Resultantly, petition is dismissed. No cost.

Petition dismissed.

I.L.R. [2016] M.P., 757
WRIT PETITION
Before Mr. Justice B.D. Rathi
W.P. No. 7101/2014 (Gwalior) decided on 22 December, 2014

VIMLESH VANSHKAR (KU.) ... Petitioner
Vs.
STATE OF M.P. ...Respondent

Constitution - Article 226 - Writ **- Petitioner declared disqualified to take part in coming election of 2014 for the post of Chairman, Nagar Panchayat, due to failure to furnish accounts of election expenses of earlier election held in 2009 - Show cause notice**

was not served to the petitioner, instead it was served to the father of petitioner - Held - Such an order of disqualification cannot be sustained under the law. (Paras 7, 8)

संविधान – अनुच्छेद 226 – रिट – नगर पंचायत, अध्यक्ष पद हेतु वर्ष 2009 में आयोजित पूर्व चुनाव के दौरान किए गए खर्चों का ब्यौरा प्रस्तुत करने में असफल रहने के कारण याची को वर्ष 2014 में होने वाले चुनाव में भाग लेने हेतु अयोग्य घोषित किया गया – कारण बताओ सूचना पत्र याची पर तामील न कराया जाकर उसके पिता पर तामील कराया गया – अभिनिर्धारित – अयोग्यता का उक्त आदेश विधि अंतर्गत कायम नहीं रखा जा सकता।

Case referred :

2005 (1) MPLJ 245.

D.S. Raghuvanshi, for the petitioner.
Ami Prabal, for the respondents.

(Supplied: Paragraph numbers)

ORDER

B.D. RATHI, J. :- Heard finally with the consent of the counsel for the parties.

2. Present writ petition filed under Article 226 of the Constitution of India has been preferred seeking the following reliefs to the extent mentioned below:

> (i) By allowing the writ petition, the impugned order dated 21/8/2014 (Annexure-P/1) be quashed.
>
> (ii) The petitioner be permitted to participate in Nagar Panchayat Election held for the post of Chairman in the month of February, 2015.
>
> (iii) Any other relief which the Hon'ble court deems fit and proper."

3. The facts in short are that the impugned order dated 21/8/2014, marked as Annexure-P/1 was communicated to the petitioner on 4/9/2014 whereby she was declared as disqualified to take part in coming election held for the post of Chairman of Nagar Panchayat, Badoni, district Daita (sic:Datia) for

next five yeas (sic:years) on her failure to furnish accounts of election expenses which were held in the year 2009. It was alleged that the petitioner took part in the said election but failed to submit accounts of election expenses.

4. It is submitted by the counsel for the petitioner that previously election was held in the year 2009 whereas the impugned order has been passed in the year 2014, after a period of five years which indicates *malafide* on the part of the respondents. Apart that, no show-cause notice was given to the petitioner. Opportunity of hearing was also not given. Therefore on these two counts, firstly in violation of principles of natural justice in not affording opportunity of hearing to the petitioner and because the impugned order was passed after a period of five years, the petition is sought to be allowed and the impugned order dated 21/8/2014 (Annexure-P/1) is prayed to be set aside by permitting the petitioner to participate in the election of Nagar Panchayat held for the post of Chairman in the month of February, 2015. In support of the arguments, learned counsel for the petitioner placed reliance on the decision in the case of *Mahendra s/o R.S.Palraiya Vs. M.P. State Election Commission and others* [2005(1) MPLJ 245].

5. Prayer was opposed by the learned counsel appearing for the other side on the ground that show-notice (sic:show-cause notice) (Annexure-R/2) was served on the father of the petitioner. The petitioner is one of the family members of the joint family who is residing with her father but despite serving of aforesaid notice no reply was submitted by her. Secondly, it was the duty of the petitioner to furnish the accounts of the election expenses within a period of 30 days from the date of election of the return candidate before the officer nominated for the said election as per the provisions given under Section 32-B of M.P. Municipalities Act, 1961 but same particulars have not been furnished, therefore, the respondents/election commission as per provisions given under section 32-C of the aforesaid Act held disqualification of the petitioner on her failure to lodge the account of election expenses. Hence, it is prayed that the petition having no substance be dismissed.

6. Having regard to the arguments advanced above, the entire case has been examined.

7. Before dwelling upon the issue involved in the case, the relevant provisions are quoted below:

"32-B. Lodging of account of election expenses.- Every

contesting candidate at an election of President shall, within thirty days from the date of election of the returned candidate lodge with the officer notified by the State Election Commission an account of his election expenses which shall be a true copy of the account kept by him or by his election agent under section 32-A.

32-C. Disqualification for failure to lodge account of election expenses. - If the State Election Commission is satisfied that a person -

(a) has failed to lodge an account of election expenses within the time and in the manner required by or under this Act; and

(b) has no good reason or justification for the failure, the State Election Commission shall, by order published in the Official Gazette, declare him to be disqualified and any such person shall be disqualified for being chosen as, and for being a Councillor or President of the Municipal Council or Nagar Parishad, as the case may be, for a period not exceeding five years from the date of the Order."

8. Admittedly, as per the facts on record, the previous election was held in the month of February, 2010 but the show-cause notice (Annexure-R/2) dated 9/9/2010 was not served on the petitioner at previous point of time. Instead the same was served on Harprasad, the father of the petitioner. Nowhere it was evidentially clear that the petitioner is residing with her father Harprasad as a member of joint family. Therefore, it is discernible from the record that opportunity of hearing was not afforded to the petitioner. Moreover, it was mentioned in the notice that previously the election was held in the month of February, 2010 under the M.P. Gazette Notification filed as Annexure-R/6. By the aforesaid Notification the election was held in the month of February, 2010 but in the impugned order dated 21/8/2014, Annexure P/1, it was mentioned that the election was held in the month of December, 2009. It means that impugned show cause notice for the election held in the month of December, 2009 was not given but the notice given was for the election held in the month of February, 2010. No order has been passed against the petitioner for the election held in the month of February, 2010. Therefore, in

the considered opinion of this court, the impugned order issued against the petitioner is bad in law. The same was issued without giving an opportunity of hearing to the petitioner. Suffice it to observe that if the election commission would have acted properly then the said order ought to have been passed in a proper manner for the election in question. But the election commission took a period of near about five years for consideration which cannot be appreciated. The petitioner cannot be penalized to contest the next election on the basis of the order which has been issued by the election commission after a lapse of five years. It is also pertinent to mention here that the impugned order dated 21/8/2014 (Annexure-P/1) was issued against in all fourteen candidates. It shows that a joint order was passed against all the aforesaid fourteen candidates which can be termed as stereo typed order. So, admittedly, the detailed order has not been passed and in a routine way the case of the petitioner has been examined by the respondents/authorities.

9. For the aforesaid reasons, the impugned order passed by the respondents disqualifying the petitioner for election with further disqualification for five years from the date of order cannot be sustained under the law. The order by Gazette Notification issued by the Election Commission in respect of the petitioner is hereby set aside. Accordingly, the petition is allowed.

10. No order as to costs.

Petition allowed.

I.L.R. [2016] M.P., 761
WRIT PETITION
Before Mr. Justice P.K. Jaiswal & Mr. Justice S.C. Sharma
W.P. No. 10875/2013 (Indore) decided on 22 January, 2015

MUKESH DANDEER & ors. ...Petitioners
Vs.
STATE OF M.P. & ors. ...Respondents

A. Constitution - Article 226 - Public Interest Litigation - Bonafide of the petitioner - **Stranger cannot be permitted to meddle in any proceedings unless he is aggrieved person - Writ petition maintainable for judicial enforceable legal right - Existing of such right is condition precedent for invoking writ jurisdiction - To exercise such extraordinary jurisdiction, relief prayed must be to enforce such legal right which is**

foundation of said jurisdiction - Person aggrieved does not include who suffers psychological or imaginary injury - Person aggrieved must be whose right or interest adversely affected. (Paras 19 & 20)

क. संविधान – अनुच्छेद 226 – लोक हित वाद – याची की सदभाविकता – पर–व्यक्ति को किन्हीं भी कार्यवाहियों में हस्तक्षेप करने की अनुमति नहीं दी जा सकती, यदि वह पीड़ित व्यक्ति नहीं है – न्यायिक रूप से प्रवर्तनीय विधिक अधिकारों हेतु प्रस्तुत रिट याचिका पोषणीय है – रिट अधिकारिता का अवलंब लेने के लिए ऐसे विधिक अधिकार की विद्यमानता पुरोभाव्य शर्त है – ऐसे असाधारण अधिकारिता का प्रयोग करने के लिये चाहा गया अनुतोष ऐसे विधिक अधिकार के प्रवर्तन हेतु होना चाहिए जो कि ऐसे अधिकारिता का आधार है – पीड़ित व्यक्ति की श्रेणी में ऐसे व्यक्ति सम्मिलित नहीं हैं जो किसी मनोवैज्ञानिक अथवा काल्पनिक क्षति से पीड़ित हों – पीड़ित व्यक्ति वह है जिसका कोई अधिकार अथवा हित प्रतिकूल रूप से प्रभावित हुआ हो।

***B. Constitution - Article 226 - Duty of Court* - Held - Must examine the case to ensure genuine public interest - Strict vigilance to ensure no abuse of process - Court should make an earnest endeavour to take up those cases, where the subjective purpose to the lis justifies the need of it. (Para 21)**

ख. संविधान – अनुच्छेद 226 – न्यायालय का कर्तव्य – अभिनिर्धारित – वास्तविक लोक हित सुनिश्चित करने के लिए न्यायालय को प्रकरण का परीक्षण अवश्य करना चाहिए – कड़ी सतर्कता बरतनी चाहिए कि प्रक्रिया का दुरूपयोग न हो – न्यायालय को ऐसे प्रकरणों को विचार में लेने का गंभीर प्रयास करना चाहिए जहां वाद का व्यक्तिपरक प्रयोजन उसकी आवश्यकता को न्यायोचित ठहराता हो।

***C. Constitution - Article 226 - Writ of certiorari* - In Public interest litigation, it cannot be allowed to affect contractual agreement itself which reduces a legal document in worthless piece of paper - If permitted, it is bound to lead to a chaotic situation affecting the fabric of law - No reason to interfere in the impugned order - Petition dismissed. (Para 26)**

ग. संविधान – अनुच्छेद 226 – उत्प्रेषण रिट – लोकहित वाद में किसी संविदात्मक करार को प्रभावित नहीं होने दिया जा सकता, क्योंकि ऐसा होने पर एक वैध दस्तावेज एक मूल्यहीन कागज का टुकड़ा मात्र रह जाता है – यदि इसकी अनुमति दी गई, तब ऐसी अव्यवस्था की स्थिति बनना निश्चित है जो कानून के ताने–बाने को प्रभावित करेगी – आक्षेपित आदेश में हस्तक्षेप हेतु कारण नहीं – याचिका खारिज।

Vivek Dalal, for the petitioners.
Vivek Patwa, for the respondent Nos. 1 to 8.
Piyush Mathur with *M.S. Dwivedi,* for the respondent No. 9.

ORDER

The Order of the Court was delivered by :
P.K. JAISWAL, J. :- Petitioners, who are twenty in numbers have filed this writ petition as Public Interest Litigation challenging the Revised board conceptual lay out plan in respect of construction of Khargone lift canal to develop the Irrigation facilities for cultural command area of 33140 hectares and to provide drinking water for 152 number of villages in the command area of the scheme of NVDA and prayed for quashment of changed plan/ sanctioned lay out dated 29/02/2012.

2. Brief facts of the case are that Narmada Valley Development Authority (NVDA) prepared a welfare scheme with an objective to provide drining (sic:drinking) water to approximaely (sic:approximately) 18,500 families residing in 152 villages and irrigation facility for 33,140 Hectare of land situated in four tehsils of Khargone district, which is a drought prone area without any dependable and perennial source of water. To achieve the basic aim of the scheme an indicative Detailed Project Report(DPR) was prepared envisaging lifting water from the main canal of Indira Sagar Project (ISP) at RD 79.80 Km. by installation of pressure pumps of appropriate power to fill three Balancing Reservoirs(BR) from where water will be supplied to the agricultural fields through canal network. These Balancing reservoirs shall also provide drinking water facility to 152 villages. As per the DPR prepared by the respondents the estimated cost of the scheme was Rs.669.67 Crores. Considering the physical dimensions of the scheme the Narmada valley Development Authority floated a Turn Key Tender for execution of the scheme. In a Turn Key Tender the successful tenderer is at liberty to do its own survey, estimation planning, prepare its own design and drawing to achieve the basic aim of the scheme with a rider to maintain the source as well as the total area to be benefited. On 29/09/2010, tender was floated. Out of seven tenders the bid of respondent No.9 was accepted being the lowest.

3. Clause 4.3.1 of the Special Conditions of the Contract gives a liberty to the tenderer to change the concept and designs provided that the irrigation facility at outlet remains the same and the recurring cost is reduced. For ready

reference, **Clause 4.3.1** is reproduced hereunder:-

> *During detailed Engineering* :- The present proposal is based on department's assessment and design. The contractor is free to change the concept and designs provided the irrigation facility at outlet remains the same and recurring cost are reduced. In present proposal the recurring cost of electricity equivalent to 42 MU at ISP, CHPH is considered. The contractor shall submit design of pumps, rising main, balancing reservoirs, distribution system and inline structures, flow measuring devices and pipes for networks keeping in view the safety, cost and time effectiveness provided always that the design of the pumps, rising main, balancing reservoirs(aggregate capacity 21 MCM) and distribution system shall be always in conformity with the basic parameters and in accordance with the nationally/internationally accepted practice and for the optimal performance of the works as warranted under the Contract. This shall not entitle the Contractor to additional cost, whatsoever, other than the contract price. The total scope of services under this section shall be as per Appendix-P.1. The number of copies of the Reports and other Documents to be submitted to the Engineer-In-Charge by the contractor is also specified in Contract Document.

4. The department, after the acceptance of the offer of the respondent No.9, on 27/03/2011, work order was issued and as per work order, the work was to be completed by March, 2014 i.e. within the stipulated period of 36 months. After the issuance of work order the respondent No.9 conducted the detailed survey and submitted its designs and drawings to the respondent No.5 i.e. the Chief Engineer for its approval and after due examination of the proposed design and drawings the third alternative given by the respondent No.9 was found technically viable and was accepted on 29/02/2012.

5. This writ petition was filed on 10/09/2013 i.e. after a period of more than 1 year and 7 months from the date of issuance of work order. By the time of filing of the writ petition, the respondent No.9 has completed the work of more than 300 Crores and in the process one Balancing Reservoir i.e. BR1 is under progress, distribution network of all the three Reservoirs is approximately

70% complete, work of Rising Main (Pumping Station and laying of pipeline) from pumping station to Balancing Reservoir BR1 is on the verge of completion and the construction of Jack Well for drawl of water from canal is at advance stage.

6. The revised lay out plan has been challenged by the petitioners on the ground that as per Auditor General report, due to the revision lay out plan the NVDA is going to suffer a loss of Rs.160 Crores. It is also submitted that the revised sanction lay out is violative of public interest and agriculturist would be deprived of back water of Kunda and Beda river to irrigate the farms. He also pointed out that the plan has been revived with a malafide intention to give benefit to the respondent No.9 Contractor.

7. In reply, learned counsel for the NVDA has submitted that the alteration made in the scheme are bonafide and for the optimum utility of the resources to achieve the object of the scheme in the welfare of the public at large and by saving Rs. 118.76 Crores of the State exchequer.

8. The tender of the respondent No.9 was 17.74% below SOR i.e. of Rs.550.88 Crores thereby saving a sum of Rs.118.76 Crores of State exchequer was accepted for achieving the basic aim of the scheme.

9. It is also pointed out that on the basis of the detailed survey conducted by the respondent No.9, it was found that as per the topography of the area under benefit, five villages namely Saikhedi, Neemkhedi, Aarampura, Shakarkhedi and Kajalpura were bound to be excluded as their elevation level was found higher than the adjoining water distribution network. But, in lieu thereof the department ensured inclusion of five villages namely Kedwa, Rehgaon, Sirlai Bujurg, Thibgaon Khurd Bujurj and Sonwara so as to ensure the basic project of the scheme remains intact i.e. to irrigate 33,140 Hectares of land. Therefore, the alterations/modifications suggested by the answering respondent No.9 were accepted by the respondent No.5 for the betterment of the project by the impugned letter dated 29/02/2012(Annexure-P/1) in accordance with the terms of contract. He submits that the challenge made by the petitioners are baseless, vague and unfounded and as per his instructions a detailed reply has been filed before the office of Auditor General and the team of officer of Auditor General has inspected the site and prepared their report. It is submitted that the alterations/ Revisions done in the drawings and design by the answering respondent are in accordance with the terms of the

contract and no loss has been caused to the State Exchequer.

10. Further, it is submitted that in the tender documents the names of the villages has not been specified and out of the total gross command area of approx 63,500 hect. the irrigation facility is being provided on 33,140 Hect. It is submitted that though the petitioners have alleged 20 villages have been left out from receiving the benefits of the canal network, but have mentioned names of 19 villages only as the name of village Kharadi is mentioned twice. Seven villages namely Badgaon, Meharaja, Rajpura, Khedibujurj, Piplai, Kharadi and Singarcholi are still under the command area under development with village Piplai being within the command area of Upper Beda Project and not under the present project. Nine villages namely Dabaria, Khatwas, Mowkundia, Banhar, Mominpura, Mukhlispura, Saikhedi and Kodla were never there in the DPR as these villages fall out of the gross command area for which the project is being implemented. Three villages namely Kajalpura, Aarampura and Shakkrkhedi though were in the DPR prepared by the State Government but on account of the Topography the same have been removed as the level of these villages is higher than the adjoining water distribution system.

11. The contention of respondents No. 1 to 8 is that the alterations/revisions done in the drawings and design are in accordance with the terms of the contract and no loss has been caused to the State Exchequer.

12. It is also pointed out that the alternations made in the scheme are bonafide and for the optimum utility of the resources to achieve the object of the scheme in the welfare of the public at large. In the initial scheme the water distribution system was proposed through RCC open ducts(canal), which has been substituted to underground pipeline in order to avoid loss of water by theft, seepage, evaporation and transmission losses. Infact, laying of underground pipelines is no way a cheaper option but a more efficient option, therefore, the same has been adopted.

13. As per revised plan, the contractor is required to construct two Balancing Tanks additionally. The length of the rising main has been altered as per the revised plan to ensure better efficiency of the project and further to escape the dependency of the BR-2 and BR-3 on BR-1. In fact by the said revision of plan all the three Reservoirs will be independent and in case of failure of one supply system, the others will not be affected. The diametre of the pipe has been increased from 0.3 meter and 0.45 meter to a maximum

diameter of 1.5 meter and the number of pipelines has been reduced to carry water between the same destination. The cost of laying pipeline of a bigger diametre is more expensive as it add on costs of laying, transportation etc.

14. Shri Piyush Mathur, learned Senior Counsel, who is appearing on behalf of respondent No.9 has submitted that the petition has been filed after a period of more than 18 months from the grant of contract and, therefore, the same is liable to be dismissed on the ground of delay and latches (sic:laches). On merit, he submits that the terms of the contract permits the respondent No.9 to alter the design and drawings of the project. The alteration made by the respondent No.9 are as per the requirement of the area and does not change the basic object of the contract i.e. for development of a command area of 33,140 Hectare. It is submitted that after the acceptance of the answering respondent No.9, on 27/03/2011 work order was issued to it so that the work be completed by March, 2014 i.e. within the stipulated period of 36 months. After the issuance of work order the answering respondent N.(sic:No.)9 conducted the detailed survey and submitted its desigans (sic:designs) and drawings to the respondent No.5 i.e. the Chief Engineer for its approval and after due examination of the proposed design and drawings the third alternative given by the answering respondent No.9 was found technically viable and was accepted on 29/02/2012. Thereafter, till date work worth Rs.401 Crores (approx) has been completed and in the process one Balancing Reservoir i.e. BR1 is complete, distribution network of BR1 and BR2 is approximately 95% complete whereas distribution network of BR3 is under progress and approx. 40% complete, work of Rising Main (Pumping Station and laying of pipeline) from pumping station to Balancing Reservoir BR 1 is complete and the construction of Jack Well for drawl of water from canal is also in advance stage. It is expected that the first phase of the project will be operationalized by June, 2014.

15. It is further submitted that no deviation from the basic parametres of the scheme has taken place as alleged by the petitioner. The basic aim of the scheme/tender was to provide irrigation facility to 33,140 hectare of land and drinking water to 152 villages which remains intact. It is submitted that in the initial scheme, as per the indicative DPR 8.29 Cumec water was required to be lifted from source i.e. main canal of ISP to BR-1 and from BR-1 5.29 Cumec of water was to be lifted to BR-2 (balance water was proposed to be utilized for irrigating 9387 hectare of land). Again from BR-2, 3.14 Cumec of water was to be lifted to BR-3 to irrigate 12,551 Hectare of land whereas

balance 2.80 Cumec of water was to be utilized to irrigate 11,202 hectare of land from BR-2.

16. His further submission is that the writ petition is totally misconceived and by challenging the plan, no loss has been caused to the State exchequer. The proposed revisions are for the betterment of the project without any change in the basic object of the scheme.

17. As per scope of work, as mentioned in the tender grants liberty to the respondent No.9 to implement the project as per its drawings and designs as mentioned and this fact has been admitted by the petitioners in para 5.9 of the writ petition. The respondent No.9 has been granted on Turn Key basis in which it has been clearly mentioned that the work awarded includes planning, design, drawing, estimation, preparation of land acquisition cases, forest cases, if any and shifting HT & LT electric lines, telephone lines and water supply lines etc. This clearly shows that the respondent No.9 is at liberty to prepare its plans subject to irrigation facility to 33,140 Hectare and raw water supply to 152 villages. The basic aim of the scheme has not been disturbed.

18. The petitioners who are agriculturist have failed to demonstrate as to how their land was unaffected prior to the revision which is now been effected.

19. It is a settled legal proposition that a stranger cannot be permitted to meddle in any proceeding, unless he satisfies the Authority/Court, that he falls within the category of aggrieved persons. Only a person who has suffered, or suffers from legal injury can challenge the act/action/order etc. in a court of law. A writ petition under Article 226 of the Constitution is maintainable either for the purpose of enforcing a statutory or legal right, or when there is a complaint that there has been a breach of statutory duty on the part of the Authorities. Therefore, there must be a judicially enforceable right available for enforcement, on the basis of which writ jurisdiction is resorted to. The Court can of course, enforce the performance of a statutory duty by a public body, using its writ jurisdiction at the behest of a person, provided that such person satisfies the Court that he has a legal right to insist on such performance. The existence of such right is a condition precedent for invoking the writ jurisdiction of the courts. It is implicit in the exercise of such extraordinary jurisdiction that, the relief prayed for must be one to enforce a legal right. Infact, the existence of such right, is the foundation of the exercise of the said jurisdiction by the Court. The legal right that can be enforced must ordinarily

be the right of the petitioner himself, who complains of infraction of such right and approaches the Court for relief as regards the same.

20. The expression, person aggrieved' does not include a person who suffers from a psychological or an imaginary injury; a person aggrieved must therefore, necessarily be one, whose right or interest has been adversely affected or jeopardised.

21. The Apex Court has consistently cautioned the courts against entertaining public interest litigation filed by unscrupulous persons, as such meddlers do not hesitate to abuse the process of the court. The right of effective access to justice, which has emerged with the new social rights regime, must be used to serve basic human rights, which purport to guarantee legal rights and, therefore, a workable remedy within the framework of the judicial system must be provided. Whenever any public interest is invoked, the court must examine the case to ensure that there is in fact genuine public interest involved. The court must maintain strict vigilance to ensure that there is no abuse of the process of court and that, ordinarily meddlesome bystanders are not granted a Visa. Many societal pollutants create new problems of non-redressed grievances, and the court should make an earnest endeavour to take up those cases; where the subjective purpose of the lis justifies the need for it.

22. In this case, as per Clause 4.3.1. of the Special Conditions of Contract gives a liberty to the respondent No.9 to change the concept and design and, therefore, proposal of respondent No.9 was accepted and plan/sanction layout was changed.

23. It is brought to our notice that the CAG/Auditor General has raised an audit objection that change of plan would caused additionally burden to the NVDA and would cause loss to the State Exchequer. We cannot entertain this writ petition when there is no legal foundation to entertain this writ petition.

24. The change would cause benefit to the villagers and will save theft/ illegal use of water and will provide irrigation facilities to 152 villagers and none of the villagers whose land comes as per the original plan would deprive with the irrigation facility

25. Under the circumstance, this Court would not ordinarily isuse a writ of certiorari to quash the changed plan.

26. It is no doubt true that in a public interest litigation the court at times

may forgo/overlook the technicalities coming in the way of issuance of any direction which may conflict or jeopardise the public interest. But the same cannot be allowed to reach to the extent or affect the contractual agreement itself which reduces a valid and a legal document into a worthless piece of paper or a waste paper which clearly means that the relationship between the parties although were to be governed and supported by a valid legal document, the same would finally turn out to be a document having no legal significance inspite of its validity in the eye of law. If this were to be permitted, it is bound to lead to a chaotic situation affecting the very fabric of the rule of law which cannot be allowed to prevail over a valid and legally supported document conferring certain rights on the person or entity possessing it.

27. In view of the above discussions and the law laid down by the Apex Court as well as this Court from time to time, we do not find any reason to interfere with the impugned order. We have not expressed any opinion about the audit objection which is pending before the Auditor General of India nor the said authority will be influenced by the order passed by this Court in this Public Interest Litigation in taking appropriate decision at their end.

28. Accordingly, we do not find any reason to quash the impugned Revised sanctioned lay out plan dated 29/02/2012. The writ petition fails and is dismissed with no order as to costs.

Petition dismissed.

I.L.R. [2016] M.P., 770
WRIT PETITION
Before Mr. Justice Alok Aradhe
W.P. No. 16150/2015 (Jabalpur) decided on 1 February, 2015

SHARMILA TAGORE (SMT.) & ors. ...Petitioners
Vs.
AZAM HASAN KHAN & ors. ...Respondents

***Civil Procedure Code (5 of 1908), Order 3 Rule 1 & 2 - Appearance by recognized agent or pleader* - A person holding unregistered general power of attorney can appear and act on behalf of a party to the proceeding in a Court. (Para 5)**

सिविल प्रक्रिया संहिता (1908 का 5), आदेश 3 नियम 1 व 2 – किसी मान्यताप्राप्त अभिकर्ता अथवा अभिवक्ता की उपस्थिति – अपंजीकृत मुख्तारनामा

धारक कोई व्यक्ति न्यायालयीन कार्यवाही मे किसी पक्षकार की ओर से उपस्थित होकर कार्यवाही कर सकता है।

Cases referred :

AIR 1979 SC 553, AIR 1971 SC 761, 2011 (1) All.L.J. 299, AIR 1950 SC 265.

Rajesh Pancholi, for the petitioners.
H. Ruprah, for the respondent No. 1.
Rajeev Mishra, for the respondent No. 2.
Janvhi Pandit, Dy. G.A. for the respondent No. 4.

ORDER

ALOK ARADHE, J. :- In this writ petition under Article 227 of the Constitution of India the petitioners have assailed the validity of the order dated 16.7.2015, by which, the lower appellate Court has rejected the powers of attorney executed by the petitioners.

2. Facts giving rise to filing of the writ petition, briefly stated, are that the respondent No.1/plaintiff filed the suit seeking the relief of declaration and permanent injunction. The dispute in the suit involves land admeasuring 2.20 acres. The petitioners on reciept (sic:receipt) of notice entered appearance through their power of attorney in the aforesaid suit before the trial Court. It is pertinent to mention that no objection on behalf of respondents at any point of time was taken with regard to power of attorney. The trial Court vide judgment and decree dated 07.4.2015 dismissed the suit. Being aggrieved, the respondent No.1 filed first appeal against the aforesaid impugned judgment and decree. The petitioners entered their appearance through their power of attorney before the lower appellate Court. The lower appellate Court directed the counsel for the petitioners to produce the original power of attorney, which was produced on 16.7.2015. Thereafter, the lower appellate Court vide imugned order dated 16.7.2015 has rejected the power of attorney of the petitioners, *inter alia*, on the following grounds

(i) power of attorney is not a registered one;

(ii) notary has not signed each page of the attorney;

(iii) each page of the power of attorney does not bear the full signature of the petitioner No.1 except the last page;

In addition, the trial Court also directed the petitioner to correct the address.

3. Learned counsel for the petitioner submitted that the impugned order is per se without jurisdiction and is liable to be quashed. On the other hand, learned counsel for the respondents have supported the order passed by the trial Court.

4. I have considered the submisions made by learned counsel for the parties and have perused the record. I deem it appropriate to deal with the grounds of rejection of power of attorney produced by petitioners, referred to by the lower appellate Court at seriatim:-

(i) Order 3 Rules 1 and 2 of the Code of Civil Procedure read as under:-

> *"1. **Appearances, etc. may be in person, by recognized agent or by pleader.**- Any appearance, application or act in or to any Court, required or authorized by law to be made or done by a party in such Court, may except where otherwise expressly provided by any law for the time being in force, be made or done by the party in person, or by his recogized (sic:recognized) agent, or by a pleader appearing applying or acting as the case may be on this behalf.*
>
> *Provided that any such appearance shall, if the court so directs, be made by the party in person.*
>
> *2. **Recognized agents.**- The recognized agents of parties by whom such appearnaces applications and acts may be made or done are-*
>
> *(a) persons holding powers-of-attorney, authorizing them to make and do such appearances, applications and acts on behalf of such parties;*
>
> *(b) persons carrying on trade or business for and in the nams (sic:names) of parties not resident within the local limits of the jurisdiction of the Court within which limits the appearance, application or act is made or done, in matters connected with such trade or business*

only, where no other agent is expressly authorized to make and do such appearances, applications and acts.

5. From perusal of aforesaid provision as amended by High Court on 16.9.1960 it is clear that a person holding unregistered general power of attorney can appear and act on behalf of a party to the proceeding in a Court. In this connection, reference may be made to decision in the case of *Syed Abdul Khader v. Kami Reddy,* AIR 1979 SC 553.

(ii) Section 56 and relevant extract of section 57(6) of the Evidence Act read as under:-

> ***56. Fact judicially noticeable need not be proved.--*** *No fact of which the Court will take judicial notice need to be proved.*
>
> ***57. Facts of which Court must take judicial notice.-*** *- All seals of which English Courts take judicial notice: the seals of all the [Courts in[India]], and all Courts out of [India] established by the authority of [the Central Government or the Crown Representative]; the seals of Courts of Admiralty and Maritime Jurisdiction and of Notaries Public, and all seals which any person is authorized to use by [the Constitution or an Act or Parliament of the United Kingdom or an] Act or Regulation having the force of law in [India];*

From perusal of section 57(6) as well as section 85 of the Evidence Act it is evident that the Court is bound to presume that every document purporting to be a power of attorney and to have been executed before and authenticated by a Notary Public and it was duly executed especially in the case of no rebuttal. In this connection, reference has been made to decison (sic:decision) in the case of *Jugraj Singh vs. Jaswant Singh,* AIR 1971 SC 761.

(iii) In view of law laid by Division Bench of Allahabad High Court reported in the case of *Dr. Yaduveer Singh vs. State of U.P.*, 2011 (1) All. L.J. 299 it is evident that signature by initials is a valid signature and the power of attorney need not contain full signature. In view of aforesaid decision the power of attorney need not contain full signatures. In *Commissioner of*

Agricultural Income Tax, West Bengal vs. Keshab Chandra Mandal, AIR 1950 SC 265 wherein it has been held that if a statute requires personal signature of a person, which includes a mark, the signature or mark must be that of the man himself. There must be physical contact between that person and the signature or mark put on the doucment.

6 It is pertinent to mention that the addresses given in memo of appeal of the respondents/petitioners are same which are recored (sic:recorded) in the power of attorney submitted in the Court and there was nothing on record to conclude that the addresses given are not corect (sic:correct). The lower appellate Court therefore grossly erred in issuing direction to the petitioners to correct the addresses.

7. In view of preceding analysis the impugned order suffers from an error apparent on the face of record. Accordingly, it is quashed.

8. In the result, the writ petition is allowed.

Petition allowed.

I.L.R. [2016] M.P., 774
WRIT PETITION
Before Mr. Justice K.K. Trivedi
W.P. No. 3719/2006 (Jabalpur) decided on 11 March, 2015

SAROJ KUMAR SHRIVASTAVA ... Petitioner
Vs.
STATE OF M.P. & ors. ... Respondents

A. ***Civil Services (Classification, Control and Appeal) Rules, M.P. 1966, Rule 14 (5) (b), Rule 14 (ii) and Civil Services (Pension) Rules, M.P. 1976, Rule 9 - Departmental enquiry*** **- Penalty of withholding 50% pension of the Petitioner for a period of 5 years - Lapses on part of the Respondents - First show cause notice issued on 25/02/1984 and upto 26/7/1995 notices were sent - Enquiry report submitted on 05/03/1999 - Enquiry kept pending for 14 years - No witnesses examined - Petitioner retired on 31/12/2001 - Imposition of penalty on 20/01/2006 - Held - As the lapses on part of the Govt. was so grave that penalty of withholding of 50% pension for a period of five years set aside - Withheld amount of pension be paid - Petition allowed. (Paras 5, 6, 13 &14)**

क. सिविल सेवा (वर्गीकरण, नियंत्रण और अपील) नियम, म.प्र. 1966, नियम 14(5)(बी), नियम 14 (ii) एवं सिविल सेवा (पेंशन) नियम, म.प्र. 1976, नियम 9 – विभागीय जांच – पांच वर्ष की अवधि हेतु याची की 50% पेंशन रोके जाने की शास्ति – प्रत्यर्थीगण की ओर से चूक – प्रथम कारण बताओ नोटिस 25/02/1984 को जारी एवं 26/07/1995 तक नोटिस भेजे जाते रहे – जांच प्रतिवेदन 05/03/1999 को प्रस्तुत – जांच 14 वर्षों तक लंबित रखी गई – किसी साक्षी का परीक्षण नहीं – याची 31/12/2001 को सेवानिवृत्त – शास्ति दिनांक 20/01/2006 को अधिरोपित – अभिनिर्धारित – चूंकि शासन की ओर से की गई चूक इतनी गंभीर थी कि पांच वर्ष की अवधि हेतु 50% पेंशन रोके जाने की शास्ति अपास्त की गई – रोकी गई पेंशन की राशि का भुगतान किया जाये – याचिका मंजूर।

***B. Civil Services (Classification, Control and Appeal) Rules, M.P. 1966, Rule 10 and Civil Services (Pension) Rules, M.P. 1976, Rule 9 - Departmental enquiry* - Whether penalty on retired Govt. servant can be imposed for enquiry initiated while he was in service - Held - Yes, as per Rule 9 of the Pension Rules, 1976 the penalty can be imposed. (Paras 8 & 9)**

ख. सिविल सेवा (वर्गीकरण, नियंत्रण और अपील) नियम, म.प्र. 1966, नियम 10 एवं सिविल सेवा (पेंशन) नियम, म.प्र. 1976, नियम 9 – विभागीय जांच – क्या किसी सेवानिवृत्त शासकीय सेवक पर उसके सेवाकाल के दौरान प्रारंभ की गई जांच के आधार पर शास्ति अधिरोपित की जा सकती है – अभिनिर्धारित – हां, पेंशन नियम, 1976 के नियम 9 के अनुसार शास्ति अधिरोपित की जा सकती है।

***C. Interpretation of Statutes* - Penalties under Rule 10 of the CCA Rule 1966 are to be imposed with prospective effect and not with retrospective effect. (Para 12)**

ग. कानूनों का निर्वचन – सी.सी.ए. नियम 1966 के नियम 10 के अंतर्गत शास्तियां भविष्यलक्षी प्रभाव से अधिरोपित की जाना होती है न कि भूतलक्षी प्रभाव से।

Abhishek Gulati, for the petitioner.
B.D. Singh, P.L. for the respondents.

ORDER

K.K. TRIVEDI, J. :- The petitioner has called in question the order of penalty of recovery of 50% pension and essentially the departmental enquiry initiated against him by way of filing this writ petition. It is contended that while the petitioner was serving on the post of Block Development Officer, he

was placed under suspension vide order dated 2.11.1981. The said order was called in question in a writ petition before this Court, on the grounds that the authority issuing the order of suspension was not competent to do so and that the suspension has automatically revoked as charge sheet was not issued to the petitioner within time. The said writ petition, M.P.No.7/1982, came up for hearing before this Court and was allowed vide order dated 29.9.1982 holding that the suspension of the petitioner is automatically revoked on expiry of the period of 90 days. After a considerable long time, the charge sheet was issued to the petitioner and the enquiry was initiated by orders of the Collector. The said enquiry was pending on account of the fact that Upper Collector Waidhan, who was made the enquiry officer was not posted in the said place for about a period of two years. Continuously, notices were issued to the petitioner, but since he has not appeared, treating as if charges levelled against the petitioner have been admitted by him, a report was given. However, during the pendency of the enquiry, the petitionrr (sic:petitioner) attained the age of superannuation and retired on 31.12.2001. A second show cause notice was issued to the petitioner on 14.8.203 (sic:2003), asking the explanation of the petitioner. A reply was submitted by the petitioner on 9.9.2003, but instead of considering the reply in appropriate manner, by order dated 20.1.2006, a penalty of withholding of 50% pension of the petitioner for a period of five years was imposed.

2. It is the contention of the petitioner that since the enquiry itself was not conducted while he was in service, no witnesses were examined, no findings were recorded, merely saying that the petitioner has admitted the charges because he has not filed his reply, the report was submitted. No action was taken on the report immediately when the petitioner was in service. The matter was thereafter referred to the higher authorities of the State only after the retirement of the petitioner and second show cause notice was issued to the petitioner. After a long time of his retirement, nothing was examined by the competent authority and mechanically the order impugned was issued imposing a penalty whereas, no misconduct of the petitioner was said to be proved. In view of this, it is contended that the order impugned is bad in law and is liable to be quashed.

3. Upon service of the notice of the writ petition, the respondents have filed their return contending *inter alia* that the charge sheet was issued to the petitioner levelling about 22 allegations regarding his misconduct. It was

necessary on the part of the petitioner to submit a reply to the said charges. The reply to the charges was not filed by the petitioner though he was issued the notices, nor did he not appear before the enquiry officer. Ultimately, when it was found that the petitioner was not taking part in the departmental enquiry, report was given against him holding him guilty of alleged misconduct on 5.3.1999. Since the petitioner has attained the age of superannuation and has retired, the enquiry against the petitioner remained continue under the provisions of Rule 9 of M.P. Civil Services (Pension) Rules, 1976 (hereinafter referred to as the Rules of 1976 for brevity) explanation was called from the petitioner and, ultimately, when it was found that there was no satisfactory explanation given by the petitioner, the penalty was imposed. Thus, it is contended that the action was rightly taken by the respondents and, as such, the order of penalty is not liable to be interfered with and the writ petition is liable to be dismissed.

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

5. First and foremost question is whether for any lapses on the part of the respondents could it be said that the petitioner was responsible for the misconduct or for that he was liable to be punished with severe penalty of withholding of pension after his superannuation. It is not in dispute that the misconducts of the petitioner were found in the year 1982, when he was placed under suspension by the order of the competent authority. It is also not in dispute that the said order of suspension was called in question in M.P.No.7/1982 by the petitioner which was decided on 27.9.1982. The fact remains that the misconducts of the petitioner were within the knowledge of the authorities. The suspension of the petitioner was treated to be revoked automatically only because the charge sheet was not issued to the petitioner within the stipulated period prescribed under rule 9 of the M.P. Civil Services (Classification, Control and Appeal Rules, 1966) (hereinafter referred to as CCA Rules for brevity). It was to be explained by the respondents in the return as to why the charge sheet could not be issued to the petitioner within time. If there were 22 allegations or charges against the petitioner, it was more important that departmental enquiry should be initiated immediately.

6. Yet another aspect is that after issuance of the charge sheet, it appears that the enquiry officer was appointed. The petitioner was given the notice to submit his reply and according to the report of the respondents placed on record vide Annx.P/3, the notice for the first time was issued on 25.2.1984.

If the petitioner was not coming forward to submit any reply to the charge sheet in terms of the provisions of Rule 14(5)(b) of CCA Rules, the enquiry officer was required to proceed ex parte against the petitioner as enquiry officer was already appointed. The enquiry officer was required to proceed in accordance to the provisions of Rule 14(11) of the CCA Rules and to record the evidence. There was no occasion for the respondents to continue sending the notices to the petitioner upto 26.7.1995 i.e. for a period of 11 years from the date of first notice. Thus, it appears that the enquiry officer was not interested or vigilant in completing the enquiry against the petitioner and kept it unnecesarily (sic:unnecessarily) pending. It further appears that since the enquiry officer was not posted in between 26.7.1995 to 4.5.1997, no action was taken in that respect. The proceedings again were started with effect from 4.1.1997. If that was the situation and even after notice, the petitioner has not appeared nor has filed any reply to the charge sheet, the proceedings were to be completed in terms of the provisions of Rule 14(11) of the CCA Rules and then to take final decision. From perusal of the report dated 5.3.1999 Annx.P/3, it is clear that for a period of 14 years, the enquiry was kept pending, the witnesses as shown in the list of witnesses were though summoned, but none has appeared before the enquiry officer and no statements whatsoever were recorded. Only on the basis of this it was held that the petitioner has admitted the charges and, therefore, report was sent to impose a penalty on the petitioner. This report dated 5.3.1999 was not acted upon immediately upto the date of superannuation of the petitioner i.e. 31.12.2001. In view of this, the submissions made by the respondents that the petitioner was found guilty of misconduct cannot be sustained.

7. Even when the enquiry was pending while the petitioner has attained the age of superannuation, proceedings could have been done in terms of Rule 9 of the Pension Rules. The competent authority of the State was required to see that there was no enquiry whatsoever conducted against the petitioner, no finding of guilt were recorded and the report was only this much that since the petitioner has not filed his reply to the charge sheet, it is deemed that he has admitted his guilt. In these circumstances, the disciplinary authority after the superannuation of petitioner should have directed conducting of the enquiry in appropriate manner and giving a report. Instead a second show cause notice was issued to the petitioner of which reply was submitted by the petitioner. Mechanically without examining all these aspects, without recording any finding, the respondents have passed the order on 20.1.2006 imposing a penalty of

withholding of 50% pension.

8. It is not in dispute that the enquiry was initiated against the petitioner while he was in service and has remained pending when he attained the age of superannuation and retired on 31.12.2001, and therefore, the moot question, which is to be looked into, is what should be the procedure for imposing penalty on a retired Government servant and to what extent penalty can be imposed on a retired Government servant, if a departmental enquiry was initiated during the service of the Government servant and has remained continue after his retirement. The right of Governor to withhold or withdraw the pension is prescribed under Rule 9 of the Pension Rules, which needs elaborate discussion and, therefore, same is reproduced below :

> **"9. Right of governor to withhold or withdraw pension.-** (1) The Governor reserves to himself the right of withholding or withdrawing a pension or part thereof, whether permanently or for a specified period, and of ordering recovery from pension of the whole or part of any pecuniary loss caused to the Government if, in any departmental or judicial proceeding, the pensioner is found guilty of grave misconduct or negligence during the period of his service, including service rendered upon re-employment after retirement:
>
> Provided that the State Public Service Commission shall be consulted before any final orders are passed:
>
> Provided further that where a part of pension is withheld or withdrawn, the amount of such pension shall not be reduced below [the minimum pension as determined by the Government from time to time];
>
> **2(a)** The Departmental proceedings [x x x], if instituted while the Government servant was in service whether before his retirement or during his re-employment, shall, after the final retirement of the Government servant, be deemed to be proceedings under this rule and shall be continued and concluded by the authority by which they were commenced, in the same manner as if the Government servant had continued in service:

Provided that where the departmental proceedings are instituted by an authority subordinate to the Governor, that authority shall submit a report regarding its findings to the Governor.

(b) The departmental proceedings, if not instituted while the Government servant was in service whether before his retirement or during his re-employment:-

(i) shall not be instituted save with the sanction of the Governor;

(ii) Shall not be in respect of any event which took place more than four years before such institution; and

[(iii) shall be conducted by such authority and in such place as the Government may direct and in accordance with the procedure applicable to departmental proceedings:-

(a) in which an order of dismissal from service could be made in relation to the Government servant during his service in case it is proposed to withhold or withdraw a pension or part thereof whether permanently or for a specified period; or

(b) in which an order of recovery from his pay of the whole or part of any pecuniary loss caused by him to the Government by negligence or breach of orders could be made in relation to the Government servant during his service if it is proposed to order recovery from his pension of the whole or part of any pecuniary loss caused to the Government].

(3) No judicial proceedings, if not instituted while the Government servant was in service, whether before his retirement or during his re-employment, shall be instituted in

respect of a cause of action which arose or in respect of an event which took place, more than four years before such institution.

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

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

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

Provided also that-

(a) If the departmental proceedings are not completed within a period of one year from the date of institution thereof, fifty per cent of the pension withheld shall stand restored on the expiration of the aforesaid period of one year;

(b) If the departmental proceedings are not completed within a period of two years from the date of institution the entire amount of

pension so withheld shall stand restored on the expiration of the aforesaid period of two years; and

(c) If in the departmental proceedings final order is passed to withhold or withdraw the pension or any recovery is ordered, the order shall be deemed to take effect from the date of the institution of departmental proceedings and the amount of pension since withheld shall be adjusted in terms of the final order subject to the limit specified in sub-rule (5) of rule 43].

(5) Where the Government decides not to withhold or withdraw pension but orders recovery of pecuniary loss from pension, the recovery shall not be made at a rate exceeding one-third of the pension admissible on the date of retirement of a Government servant.

(6) For the purpose of this rule-

(a) departmental proceedings shall be deemed to be instituted on the date on which the statement of charges is issued to the Government servant or pensioner, or if the Government servant has been placed under suspension form (sic:from) an earlier date, on such date; and

(b) judicial proceedings shall be deemed to be initiated-

(i) in the case of criminal proceedings, on the date on which the complaint or report of a police officer, of which the Magistrate takes cognizance, is made, and

(ii) In the case of civil proceedings, on the date the plaint is presented in the court."

9. The other part of the Rule referred to herein above, mainly sub-rule (2) of

Rule 9 of the Pension Rules, deals into different arena. First where the departmental enquiry is instituted while the Government servant was in service, whether before his retirement or during his re-employment, which according to the provisions of sub-rule (2)(a) of Rule 9 of the Pension Rules, be deemed to be proceedings under the Rule and shall be continued and concluded by the authority by which the same were commenced, in the same manner as if the Government servant had continued in service. The proviso prescribes that if the departmental enquiries are instituted by an authority subordinate to the Governor, that authority shall submit a report regarding its findings to the Governor. There is nothing except this provision made under the Rules in respect of departmental enquiry, which is initiated before the final retirement of the Government servant.

10. The other part of this Rule contained in sub-rule (2)(b) of Rule 9 of the Pension Rules contemplates that in case the departmental enquiry is not instituted when the Government servant was in service, shall not be instituted save with the sanction of the Governor, shall not be in respect of any event which took place more than four years before such institution, and shall be conducted by such authority and in such place as the Government may direct and in accordance with the procedure applicable to departmental proceedings. The most important part prescribed in this Rule is the nature of the penalty, which could be imposed and in what circumstances such a penalty is required to be imposed. It is specifically prescribed that such enquiry would be in respect of a misconduct for which a penalty of dismissal from service could be imposed, had the Government servant not been retired, if the charges are proved. The other part of the penalty is recovery of the loss caused to the State by the negligence or breach of orders by the Government servant concerned.

11. If this is the specific provision made for imposition of penalty on a retired Government servant, it is more important to see why such a prescription is made in the Rules. Normally a Government servant while in service is governed by the CCA Rules where specific penalties are prescribed under Rule 10 of the said Rules. The said penalties are as follow :

> "**10. Penalties.**- The following penalties may, for good and sufficient reasons and as hereinafter provided, be imposed on a Government servant, namely :-
>
> Minor penalties :-
>
> (i) Censure;

(ii) Withholding of his promotion;

(iii) recovery from his pay of the whole or part of any pecuniary loss caused by him to the Government by negligence or breach of order;

(iv) withholding of increments of pay or stagnation allowance;

Major Penalties :-

(v) reduction to a lower stage in the time scale of pay for a specified period with further directions as to whether or not, the Government servant will earn increments of pay or the stagnation allowance, as th (sic:the) case may be, during the period, on such reduction and whether on the expiry of such period, the reduction will or will not have the effect of postponing the further increments of his pay or stagnation allowance.

Note.- The expression "reduction to a lower stage in the time scale of pay" shall also include reduction of pay from the stage of pay drawn by a Government servant on account of grant of stagnation allowance, if any.

(vi) reduction to a lower time scale of pay, grade, post or service which shall ordinarily be a bar to the promotion of the Government servant to the time scale of pay, grade, post or service from which he was reduced, with or without further directions regarding conditions of restoration to the grade or post or service from which the Government servant was reduced and his seniority and pay on such restoration to that grade, post or service;

(vii) compulsory retirement;

(viii) removal from service which shall not be a disqualification for future employment under the Government;

(ix) dismissal from service which shall ordinarily be a disqualification for future employment under the Government;"

12. Any of such penalties referred to herein above are to be imposed with prospective effect and not with retrospective effect. For the purposes of imposition of such penalty, a Government servant must be in service otherwise none of the penalties referred to herein above can be imposed on a Government servant after his retirement. Precisely this was the reason when on earlier occasion it was held by the Courts of law that after the retirement there would not be any continuance of the departmental enquiry. The Rules which are made in the Pension Rules for imposition of penalty are subsequently added because of the fact that after the retirement a Government servant, if has committed even serious misconduct, should not go scot-free without imposition of penalties as none of the penalties under the CCA Rules could be imposed on such a Government servant. Therefore, it is necessary to examine whether for a minor misconduct, for which a minor penalty would have been imposed on the Government servant, had he remained in the employment and would not have retired from service, major penalty could still be imposed by way of withholding pensionary benefits.

13. In context of the aforesaid, it has to be examined whether allegations made against the petitioner were said to be proved to the extent that a major penalty of dismissal from service could have been imposed on him if all such charges were found proved. The findings as recorded by the enquiry officer in the case in hand is nothing, but admission of the guilt of the petitioner only because he has not appeared before the enquiry officer despite notice. Even the ex parte proceedings were not done in the said departmental enquiry against the petitioner expeditiously. The finding was recorded that because witnesses were not coming forward because of the long lapse of time and pendency of the departmental enquiry, it was deemed that allegations made against the petitioner are admitted by him. By no stretch of imagination, such a finding of the enquiry officer can be treated as a proof of the misconduct of the petitioner. Even the gravity of the misconduct was not discussed. The State authority has said only this much that a loss of Rs.50,000/- was caused to the State

Government on account of improper working of the petitioner. How such a loss was caused and how the petitioner alone was responsible for such a loss is also not discussed nor was found proved. In such a departmental enquiry, there was no basis to hold that the alleged misconduct of the petitioner was such grave that he would have been removed from service had he remained in service and would not have retired. Therefore, in view of the discussions made herein above, even the penalty of withholding of 50% pension for a period of five years could not have been imposed on the petitioner.

14. As a result, the writ petition is allowed. The order impugned dated 20.1.2006 stands quashed. The withheld amount of pension be paid to the petitioner within two months from the date of order passed today.

15. The writ petition is allowed and disposed of. There shall be no order as to costs.

Petition allowed.

I.L.R. [2016] M.P., 786
WRIT PETITION
Before Mr. Justice Prakash Shrivastava
W.P. No. 2888/2015 (Indore) decided on 12 May, 2015

SAABIR & BROTHERS ...Petitioner
Vs.
RAJESH SEN & anr. ...Respondents

***Payment of Wages Act (4 of 1936), Sections 15(2) & 17(1A), Workmen's Compensation Act (8 of 1923), Section 30(1) and Civil Procedure Code (5 of 1908), Order 9 Rule 13 - Arrears of wages - Deposit of amount - Mandatory condition - Appeals* - No appeal under Clause (a) of sub-section 1 of Section 17 shall lie unless the memorandum of appeal is accompanied by a certificate by the authority to the effect that the appellant has deposited the amount payable under the direction appealed against - Pre-condition of deposit the amount and filing the certificate of authority along with the memorandum of appeal disclosing that the amount has been deposited is a mandatory condition, without there being any power to relax or waive the requirement of pre-deposit - Amount not deposited - Appeal rightly dismissed. (Paras 5 & 6)**

मजदूरी संदाय अधिनियम (1936 का 4), धाराऐं 15(2) व 17(1ए), कर्मकार

प्रतिकर अधिनियम, (1923 का 8), धारा 30(1) एवं सिविल प्रक्रिया संहिता (1908 का 5), आदेश 9 नियम 13 – बकाया मजदूरी – राशि जमा की जाना – एक आज्ञापक शर्त है – अपीलें – धारा 17 की उपधारा 1 के खण्ड (ए) के अधीन कोई भी अपील तब तक नहीं होगी जब तक कि अपील ज्ञापन के साथ प्राधिकारी द्वारा इस आशय का जारी प्रमाण पत्र संलग्न न हो कि अपीलार्थी ने इस निर्देश के अधीन देय राशि जमा कर दी है, जिसके विरूद्ध अपील प्रस्तुत की गई है – राशि जमा करने तथा राशि जमा किया जाना प्रकट करते हुए प्राधिकारी के प्रमाण पत्र के साथ अपील ज्ञापन प्रस्तुत करने की पूर्व शर्त एक आज्ञापक शर्त है एवं पूर्व जमा की अपेक्षित शर्त को शिथिल अथवा अधित्यक्त करने की किसी शक्ति से रहित है – राशि जमा नहीं – अपील उचित रूप से खारिज।

Cases referred :

2004(2) MPLJ 445, 2005(3) MPLJ 45.

Kamal Yadav, for the petitioner.

(Supplied: Paragraph numbers)

ORDER

PRAKASH SHRIVASTAVA, J. :- Heard on the question of admission.

2. This writ petition under Article 227 of the Constitution of India is at the instance of the contractor challenging the order of the Labour court dated 29/10/13 as also order of the Industrial court dated 28/11/14 passed under the provisions of Payment of Wages Act, 1936 (for short Act).

3. In brief respondent No.1/employee had filed an application under Section 15(2) of the Act claiming arrears of wages in which labour court after giving opportunity to the parties to lead evidence had passed the order dated 24th November 2012 directing the petitioner and respondent No. 2 to pay the arrears of wages of Rs. 27,300/- to the employee for the period 5/1/11 to 5/6/11. An application under Order 9 Rule 13 CPC was filed by the petitioner and the Labour court by order dated 29/10/13 had rejected the said application on reaching to the conclusion that petitioner, inspite of service of notice, had failed to appear and application under Order 9 Rule 13 CPC was filed belatedly. Against the order of labour court petitioner had preferred an appeal before the Industrial court under Section 17 of Act and by the impugned order dated 28/11/14 Industrial court has rejected the appeal on the ground that petitioner had not deposited the requisite amount in terms of Section

17(1A) of the Act.

4. Learned counsel for petitioner has raised an issue that appeal was maintainable even without compliance of provision of Section 17(1A) of Act.

5. Section 17 of the Act provides for remedy of appeal and Section 17(1A) prescribes the mandatory condition of filing the certificate by the authority in respect of deposit of the amount in terms of the order under appeal. Section 17(1A) of the Act reads as under:

> "[17(1A) No appeal under clause (a) of sub-section (1)] shall lie unless the memorandum of appeal is accompanied by a certificate by the authority to the effect that the appellant has deposited the amount payable under the direction appealed against.]"

6. A bare perusal of the aforesaid provision reveals that pre-condition of deposit the amount and filing the certificate of the authority alongwith the memorandum of appeal disclosing that the amount has been deposited is a mandatory condition, without there being any power to relax or waive the requirement of predeposit. The unqualified condition to deposit the amount before filing the appeal has been incorporated by the Legislature considering the beneficial object of legislation and to protect the interest of workmen. The provision in clear terms indicates that the appeal would not be maintainable unless such a certificate is filed.

7. Similar provision is contained in third proviso to Section 30(1) of Workmen's Compensation Act and considering it Full Bench of this court in the matter of *New India Assurances Co.Ltd. Vs. Savita Sen and others,* reported in 2004(2) MPLJ 445 has held that it is necessary to file certificate of deposit of amount of compensation from the Commissioner alongwith the memorandum of appeal, without which the appeal would not be maintainable.

8. Division Bench of this Court in the matter of *Khemkaran s/o Tarachand Sanodiya Vs. Union of India and others,* reported in 2005(3) MPLJ 45 while considering the similar issue has held that the provisions for appeal in enactments like Workmen's Compensation Act, Payment of Wages Act and payment of Gratuity Act contain an absolute condition relating to deposit without any power to relax and these Acts are beneficial legislations intended to protect the interests of the workmen/employees, therefore,

Legislature has consciously imposed an absolute condition which is neither discriminatory or arbitrary.

9. In view of the aforesaid position in law, no error has been committed by the Industrial court in dismissing the appeal filed by the petitioner as not maintainable on the ground of not complying with the provisions of Section 17(1A) of the Act. The order passed by the Industrial court does not suffer from any illegality, therefore, no case is made out to interfere in the impugned order. The writ petition is accordingly dismissed.

10. C.c. as per rules.

Petition dismissed.

I.L.R. [2016] M.P., 789
WRIT PETITION
Before Mr. Justice A.M. Khanwilkar, Chief Justice &
Mr. Justice J.K. Maheshwari
W.P. No.10226/2015 (Jabalpur) decided on 05 August, 2015

MANISH KUMAR GUPTA ... Petitioner
Vs.
STATE OF M.P. & ors. ... Respondents

A. Constitution - Article 226 - **Petitioner's bid was accepted on the understanding that the agreement will be executed in his favour if he obtains all environmental clearances - Same could not be effectuated as the petitioner could not obtain such clearances within the time specified in the tender notice - Petitioner's claim for quashing of re-auction process and interest at the rate of 18% on the security amount - Held - Claim of interest - Maintainability of writ - Relief of interest in exercise of writ jurisdiction, as claimed, can not be countenanced - Petitioner is free to take recourse to appropriate remedy for interest in common law, if permissible - As the contractual or statutory obligation, is not established by the petitioner he is not entitled for the relief of interest. (Paras 6, 8 & 9)**

क. संविधान – अनुच्छेद 226 – याची की बोली इस सहमति पर स्वीकार की गई थी कि उसके पक्ष में करार तभी निष्पादित किया जायेगा यदि वह समस्त पर्यावरणीय मंजूरियां प्राप्त कर लेगा – उसे कार्यान्वित नहीं किया जा सका क्योंकि याची निविदा नोटिस में निर्दिष्ट अवधि के भीतर उक्त मंजूरियां प्राप्त नहीं

कर सका – याची का पुनः नीलामी प्रक्रिया को अभिखंडित किये जाने एवं सुरक्षा निधि पर 18% की दर से ब्याज का दावा – अभिनिर्धारित – ब्याज का दावा – रिट की पोषणीयता – रिट अधिकारिता का प्रयोग करते हुये ब्याज की सहायता के दावे का समर्थन नहीं किया जा सकता – याची ब्याज हेतु सामान्य विधि के अंतर्गत, उपयुक्त उपचार का सहारा ले सकता है, यदि अनुज्ञेय हो – चूंकि याची कोई भी संविदीय अथवा कानूनी दायित्व स्थापित नहीं कर सका है, वह ब्याज की सहायता पाने हेतु हकदार नहीं है।

***B. Tender - Quashing of Auction Notice* - As in the fact situation petitioner is failed to substantiate that he is entitled for the relief of execution of agreement in his favour - Auction notice can not be quashed - Petition is dismissed. (Para 10)**

ख. निविदा – नीलामी नोटिस को अभिखण्डित किया जाना – तथ्यात्मक परिस्थितियों में भी याची यह सिद्ध करने में विफल रहा है कि वह करार का निष्पादन उसके पक्ष में किये जाने की सहायता हेतु हकदार है – नीलामी नोटिस अभिखंडित नहीं किया जा सकता – याचिका खारिज।

Case referred :

(2004) 106 (1) Bombay Law Reporter 343.

R.S. Jaiswal with *Pradeep Banerjee,* for the petitioner.
Amit Seth, G.A. for the respondents/State.

ORDER

The Order of the Court was delivered by :
A.M. KHANWILKAR, C.J. :- Heard counsel for the parties on admission.

Two reliefs have been claimed in this writ petition filed under Article 226 of the Constitution of India. The first relief is to quash the auction process initiated by respondent No.2 for re-auctioning the area which was subject matter of previous auction conducted in the year 2013. The petitioner had participated in the previous auction and was the highest bidder. He deposited the bid amount on 19th March 2013. The bid was accepted on the understanding that agreement in favour of petitioner could be executed only after the petitioner obtains all environmental clearances. The contract period was for two years from the date of tender notice. Almost until the fag end of two years' period, the petitioner was not in a position to obtain environmental clearance from the appropriate Authority which is necessary as per law. Since the two years' period was about to expire, in anticipation, the Authorities

decided to initiate fresh tender process in January, 2015. It is only thereafter the petitioner submitted his representation to the Authority to refund security amount deposited by him in furtherance of the previous auction process on 19th March, 2013. It is not in dispute that the said amount has been refunded to the petitioner soon thereafter.

2. Petitioner, however, is claiming relief of interest at the rate of 18% on the security amount of Rs.59,47,000/- which was lying deposited with the Authorities for almost two years and forty-six days. Indeed, the amount is quite substantial, but, the question is: whether relief as claimed can be granted to the petitioner. It is fairly accepted by the petitioner that there is nothing in the tender notice pursuant to which the petitioner participated in the auction process in the year 2013, to indicate that if agreement cannot be executed for whatever reason, the amount deposited by the petitioner would be refunded to him along with interest at the rate of 18% p.a. or any other rate of interest.

3. In the present case, as noticed earlier, it was due to the inability of the petitioner to obtain environmental clearance from the appropriate Authority, the execution of agreement in favour of the petitioner could not be effectuated. Had the petitioner obtained such clearances, within the time specified in the tender notice, issued in the year 2013, the Authorities would certainly have favoured the petitioner by execution of agreement for the lease period specified in the tender notice.

4. According to the respondents the environmental clearance request was rejected vide Annexure P-9 dated 20.08.2014. According to the petitioner, however, the order passed by the appropriate Authority was set aside by the Green Tribunal with direction to the appropriate Authority to reconsider the proposal vide order dated 18.09.2014. The fact that the appropriate Authority thereafter did not take decision, therefore, does not create any right in favour of the petitioner for execution of the agreement. Notably, the term of contract specified in the auction notice was extinguished on expiry of two years from the date of auction notice issued in the year 2013, as held in the unreported decision of this Court dated 26.06.2015 in W.P.No.3854/2015.

5. The fact remains that the petitioner applied for refund of amount only in May, 2015 for the first time. The amount now demanded towards interest at the rate of 18% p.a. by the petitioner was not the condition referred to in the tender notice nor at the time of accepting the amount from the petitioner by the Authority

pursuant to finalization of the bid in favour of the petitioner, being the highest bidder in the year 2013. Thus, it is not a contractual obligation at all. Secondly, agreement could not be executed for the reasons attributable to the petitioner and not the Authority. The Authority, who was to execute the agreement was not responsible to obtain environmental clearance from the appropriate Authority. But, it was for the petitioner to do so. Due to failure of the petitioner, the Authority cannot be made liable to pay interest to the petitioner on the security amount deposited by him that too at the staggering rate of 18% p.a. as claimed. No express provision either in the Act or Rules or for that matter in the tender notice much less the security deposit receipt issued to the petitioner refers to liability of the State Government to refund the amount with interest inspite of failure of the petitioner to obtain environmental clearance for such a long time.

6. Suffice it to observe, that in such a situation the relief in exercise of writ jurisdiction, as claimed, cannot be countenanced. The petitioner is free to take recourse to any other appropriate remedy for damages/compensation and including interest in common law, if permissible in law.

7. The counsel for the petitioner invited our attention to the decision of Division Bench of the Bombay High Court reported in (2004) 106 (1) Bombay Law Reporter 343 in the case of *Andhra Pradesh Paper Mills Ltd. Vs. State of Maharashtra.* The observations in that case are essentially on the assumption that the Authority was liable to pay the deposit amount along with interest in the fact situation of that case. Inasmuch as, the petitioner in that case had withdrawn from the auction process because of refusal by the Collector to confirm the bid within reasonable time. It is in that context the Court proceeded to examine the quantum of interest to be awarded to the petitioner before the Court.

8. In the present case, the first question that State Authorities are liable to pay interest in the fact situation, as contractual or statutory obligation, is not established by the petitioner. In absence thereof, the question of considering the quantum of interest, does not arise. Somewhat similar contention had been considered and rejected recently by the Division Bench of this Court in W.P. No.3854/2015 dated 26.6.2015.

9. Taking any view of the matter, therefore, the petitioner is not entitled for the relief of interest.

10. Reverting to the relief of quashing of auction notice, unless the

petitioner is in a position to substantiate that he is entitled for the relief of execution of agreement in his favour on the basis of the auction process conducted in the year 2013, the relief claimed by the petitioner in terms of relief clause 7(i) cannot be taken forward. The petitioner has not asked for direction to the Authorities to execute agreement in his favour on the basis of auction conducted in the year 2013. Such direction, in any case, cannot be issued in absence of environmental clearance by the appropriate Authority and more so because the tenure specified in the auction notice conducted in the year 2013 has since expired. This aspect has been considered in the aforesaid unreported decision dated 26th June, 2015.

11. Taking any view of the matter, therefore, this petition is dismissed, being devoid of merits.

Petition dismissed.

I.L.R. [2016] M.P., 793
WRIT PETITION
Before Ms. Justice Vandana Kasrekar
W.P. No. 6310/2012 (Jabalpur) decided on 10 September, 2015

R.C. CHOUDHARY ...Petitioner
Vs.
STATE OF M.P. ...Respondent

Service Law - Degrading of entry in confidential report **- Reporting Authority awarded "Very good" grading to petitioner - Grading was also accepted by Reviewing Authority, however, the Accepting Authority downgraded the grading - No reason was assigned for downgrading the confidential report - No notice or opportunity of hearing was given to petitioner before downgrading the CR - Action of downgrading the CR is not sustainable in the eye of law - Matter remanded back to Accepting Authority to issue show cause notice indicating the reasons for downgrading of ACRs - After giving opportunity to petitioner, decide the matter in accordance with law within a period of three months - If Accepting Authority does not conclude the procedure within aforesaid time, then the ACRs recorded by Initiating Authority and Reviewing Authority shall be maintained and matter shall be proceeded with in favour of petitioner for grant of promotion and all consequential benefits along with juniors.**

(Paras 9 & 10)

सेवा विधि – गोपनीय प्रतिवेदन में प्रविष्टि का निम्न श्रेणीकरण किया जाना – प्रतिवेदन प्राधिकारी ने याची को "बहुत अच्छा" श्रेणी में रखा – उक्त प्रविष्टि पुनर्विलोकन प्राधिकारी द्वारा भी स्वीकार की गई, यद्यपि, स्वीकारकर्ता प्राधिकारी ने उक्त प्रविष्टि का निम्न श्रेणीकरण कर दिया – गोपनीय प्रतिवेदन में निम्न श्रेणीकरण का कोई कारण दर्शित नहीं किया गया – गोपनीय प्रतिवेदन में प्रविष्टि के निम्न श्रेणीकरण किये जाने के पूर्व याची को कोई सूचना पत्र अथवा सुनवाई का अवसर भी प्रदान नहीं किया गया – विधि की दृष्टि में इस प्रकार गोपनीय प्रतिवेदन की प्रविष्टि में निम्न श्रेणीकरण किये जाने की कार्यवाही कायम रखे जाने योग्य नहीं है – याची के गोपनीय प्रतिवेदन में प्रविष्टि के निम्न श्रेणीकरण किये जाने के कारण प्रकट करते हुये कारण बताओ सूचना पत्र जारी किये जाने हेतु प्रकरण स्वीकारकर्ता प्राधिकारी की ओर प्रतिप्रेषित किया गया – याची को विधि अनुसार सुनवाई का अवसर प्रदान किया जाकर प्रकरण को तीन माह की अवधि में निराकृत किया जाये – यदि स्वीकारकर्ता प्राधिकारी उक्त अवधि में प्रकरण को निराकृत नहीं करता है तो प्रारंभिक प्राधिकारी एवं पुनर्विलोकन प्राधिकारी द्वारा अभिलिखित गोपनीय प्रतिवेदन मान्य किया जाएगा एवं याची को अन्य कनिष्ठ कर्मचारियों के साथ पदोन्नति एवं अन्य पारिणामिक लाभ प्रदाय किये जाने हेतु याची के हित में कार्यवाही की जायेगी।

Cases referred :

2015 MPHT 319, AIR 2008 SC 2513, W.P. No. 8539/2011(s) dated 05/12/2012.

Sanjay K. Agrawal, for the petitioner.
Pushpendra Yadav, G.A. for the respondent Nos. 1 & 2 .

ORDER

VANDANA KASREKAR, J. :- The petitioner has filed the present writ petition challenging the order dated 20/1/2011 issued by respondent No.1 thereby promoting respondents No.3 to 5 to the post of Superintending Engineer although the petitioner was senior to respondents No.3 to 5 in the cadre of Executive Engineer and the order dated 20/9/2011 thereby rejecting his representation.

2. Brief facts of the case are that the petitioner is working on the post of Executive Engineer in the Public Works Department. He was initially appointed on the post of Assistant Engineer vide order dated 15/3/1984. He was thereafter promoted to the post of Executive Engineer in the year 2006 w.e.f. 1991. In compliance of the order dated 15/2/2008 passed by Gwalior Bench of this Court in W.P. No.1295/2004 a revised seniority list of Executive Engineer was published and the petitioner is placed at serial No.139 in the seniority list

while respondents No.3 to 5 were placed below to the petitioner. Thereafter a DPC was convened on 14/1/2011 for considering the cases of the eligible Executive Engineers for promotion to the post of Superintending Engineer. In the said DPC, the case of the petitioner as well as respondents No.3 to 5 was considered. On the recommendations of the said DPC, respondents No.3 to 5 were promoted on the post of Superintending Engineer vide order dated 20/1/2011. As the juniors were promoted, the petitioner, therefore, made enquiries and applied for issuance of copy of minutes of the DPC as well as copy of CR for the period under consideration. These documents were supplied to the petitioner.

3. On receipt of the aforesaid documents, the petitioner has found that the CR for the 2000-01, the reporting authority awarded 'Very good' grading to the petitioner. The grading of the reporting authority was also accepted by the reviewing authority, however, the accepting authority has down graded the grading from 'Very good' category to 'good' category, accordingly awarded 'B' category without assigning any reason whatsoever. Similarly, for the period 1/4/2001 to 31/3/2002 the reporting authority awarded 'very good' grading i.e. 'A', the reviewing authority awarded 'outstanding' grading i.e. A+, however, the accepting authority i.e. Chief Enginner, PWD, Jablapur has downgraded the CR for the said period by awarding 'average' grading i.e. 'C'. The petitioner has further stated that he was denied promotion only because for the year 2000-01 and 2001-02 the CRs of the petitioner were downgraded to 'good' and 'average' by the accepting authority and the DPC accepted the grading awarded by the accepting authority without making overall assessment of the grading awarded by the reporting authority as well as reviewing authority. He further submits that the Executive Engineer is a Class-I post and Superintending Engineer is also Class-I in the higher scale of pay. As per the provisions of Rule 4(3) of the M.P. Civil Services (Promotion) Rules, 2002, the criteria for promotion is merit-cum-seniority and because of the downgrading the petitioner could not get promotion to the higher post. He further submits that before downgrading the CRs, no opportunity of hearing whatsoever was afforded to the petitioner by the accepting authority. The petitioner, therefore, submitted a detailed representation dated 9/4/2011 to the respondents, however, the respondents have rejected the said representation vide order dated 20/9/2011.

4. Learned counsel for the petitioner contends that in the case of one Kanakmal Jain whose CRs were also downgraded by the accepting authority,

the respondents have reconsidered his case of downgrading by the accepting authority, has expunged and declared the said grading as *no nest*. To support his arguments, learned counsel for the petitioner placed reliance on a judgment passed by this Court in the case of *Tara Chand Soni Vs. State of M.P. and others* reported in 2015 MPHT 319 as well as the order dated 5/12/2012 passed by this Court in **W.P. No.8539/2011(s).**

5. On the other hand, learned counsel for the respondents/State by filing return, has submitted that the accepting authority has downgraded the CRs of the petitioner on the basis of overall evaluation of his CRs. It is further submitted that review DPC has rationally evaluated each and every CRs of the petitioner which were under consideration, accordingly, appropriate grading was awarded. The Secretary of the Department had no authority to reevaluate the grading assigned by the DPC and after issuance of the promotion order pursuant to the recommendations made by the DPC. It is further submitted that the petitioner was aware about the remarks assigned to him in the respective ACRs by the respective authorities since 2000, but he did not make any representation whatsoever before the department and only when the petitioner was declared unfit by the DPC, he filed a representation. Learned counsel for the respondents placed reliance on the judgment passed by Hon'ble the Apex Court in the case of *Dev Dutt Vs. Union of India and others* reported in AIR 2008 SC 2513. It is, therefore, prayed that the writ petition may be dismissed.

6. I have heard learned counsel for the parties and perused the record. From perusal of the record, it appears that for the year 2000-01 reporting authority has awarded 'very good' grading to the petitioner. The aforesaid grading was awarded by the reporting authority after making proper evaluation. The grading awarded by the reporting authority was also accepted by the reviewing authority and both have awarded 'Very good' grading to the petitioner for the period 1/4/2001 to 31/3/2002. The accepting authority considered the said grading for the period 21/12/2000 to 31/3/2001 i.e. only for a period of three months. For the said period of three months the accepting authority has downgraded the grading from 'very good' to 'good' category however, grading 'good' category to the petitioner, it appears that no reason whatsoever has been assigned by the accepting authority in downgrading CR to the petitioner nor any notice or opportunity of hearing has been given to the petitioner before downgrading the CR. Similarly, the CRs for the year 1/4/2001 to 31/3/2002 the reporting authority awarded 'very good' grading i.e. 'A', the reviewing authority awarded outstanding grading i.e. 'A+' to the petitioner,

however, the accepting authority has downgraded the said CR by three stages awarding 'Average' i.e. 'C'. For the said downgrading no reason whatsoever has been assigned and no opportunity of hearing or notice was given to the petitioner.

7. This Court in the case of *Tara Chand Soni* (supra) in paragraph-8 has held as under :

> "8. Now, in context of the aforesaid, it is to be seen how the ACRs of the petitioner were down graded and how they have been treated as insufficient to grant promotion to the petitioner. In the ACR of the year 1976, the Initiating Authority has treated the working of the petitioner as 'Very Good'. The immediate Senior Officer of the Initiating Authority recorded that the petitioner is required to take more interest in the land record work. He had graded the petitioner as "Good". However, the Final Authority simply recorded that the work of the petitioner is satisfactory and graded him as "Average". A "Very Good" remark by the Initiating Authority was converted into "Average" remark without any cogent reason. It was not the sweet will of the officer concerned to finally downgrade the petitioner in such manner. He was required to record the reason as to why he has downgraded the petitioner in the said ACRs. Similar was the situation for the ACRs of the years 1977 and 1978. The Initiating Authority has graded the petitioner as "Good", which was treated to be "Average" by the Final Authority that, too, without recording any reason. On one occasion, the Collector himself has written that he was agreeing with the assessment made by the Tehsildar. If the said Tehsildar has graded the petitioner as "Good" then grading of the ACR was to be treated as "Good".

8. In the said judgment, this Court has held that the accepting authority is required to record the reason as to why he has downgraded the petitioner in the said ACR. Similarly in the case of *Shambhu Dayal Richhariya Vs. State of M.P. and another* (W.P. No.8539/2011(s)) dated 5/12/2012, this Court has held as under :

> "Even though, Shri Sanjeev Kumar Singh tried to emphasize that the representation has been decided in accordance with

the circular Annexure R-1 dated 30th June, 1992. The fact remains that the initiating authority and the first reviewing authority have graded the applicant as outstanding i.e. A+ for the years in question and the second reviewing authority has downgraded the same to A, in the light of law laid down by the Supreme Court in the case of *Devdutt* (supra), the principles of natural justice has to be applied with in such cases and the downgrading by the second reviewing authority for the years in question having been done without notice to the petitioner and without hearing him, the same is unsustainable. To that extent, the relief has to be granted to the petitioner."

9. From perusal of the aforesaid judgment, it is clear that an opportunity of hearing or show cause notice is required to be given to the petitioner before downgrading his CRs. Thus, from perusal of both the judgments, as well as in the facts of the present case as no opportunity of hearing or any notice was issued to the petitioner before downgrading the CRs as well as no reason whatsoever has been assigned by the accepting authority in downgrading the CRs and, therefore, the action of the respondents in downgrading the CRs of the petitioner is not sustainable in law. Para-47 of the order passed by the Apex Court in the case of *Dev Dutt* (supra) relied on by learned counsel for the respondents relates to upgrading of CRs and, therefore, para-47 of the said judgment is not applicable in the present case.

10. Accordingly, the writ petition is allowed. The impugned order dated 20/9/2011 issued by respondent No.1 by which respondent has rejected the representation of the petitioner is set aside. Downgrading of ACRs for the year ending 2000-01 and 2001-02 as given by the accepting authority is quashed. The matter is remanded back to the accepting authority to issue show cause to the petitioner indicating the reasons for downgrading of the ACRs after giving opportunity of hearing to the petitioner and decide the matter in accordance with law within a period of three months thereof and if the Accepting Authority does not conclude the procedure within the aforesaid time, then the ACRs recorded by the Initiating Authority and Reviewing Authority shall be maintained and affirming the same, the matter shall be proceeded with in favour of the petitioner for grant of promotion and all consequential benefit along with his juniors.

Petition allowed.

I.L.R. [2016] M.P., 799
WRIT PETITION
Before Mr. Justice A.M. Khanwilkar, Chief Justice &
Ms. Justice Vandana Kasrekar
W.P. No. 553/1997 (Jabalpur) decided on 29 October, 2015

STATE OF M.P. ...Petitioner
Vs.
JAGDISH PANDEY & ors. ...Respondents

A. ***Ceiling on Agricultural Holdings Act, M.P.(20 of 1960), Section 4 - Transfers or Partitions made after the publication of Bill but before commencement of Act*** **- 14 sale deeds were executed on one day by holder of land in favour of his employees - Holder did not produce any document to show that he was in grave and urgent need of finance/ money for the treatment of his daughter - No documentary evidence was produced to establish that the daughter of holder of land had to undergo such treatment at London and incurred heavy expenses therefor - Passport of daughter also not produced - Finding by Board of Revenue regarding the fact that the holder was badly in need of money for treatment of his daughter at London is not based on any legal and tangible evidence - Petition allowed. (Para 8)**

क. कृषि जोत अधिकतम सीमा अधिनियम म.प्र. (1960 का 20), धारा 4 – विधेयक के प्रकाशन के पश्चात् परंतु अधिनियम के लागू होने के पूर्व किये गए अंतरण अथवा बंटवारे – भूमि धारक द्वारा अपने कर्मचारियों के पक्ष में एक दिन में ही 14 विक्रय विलेख निष्पादित किये गये – धारक ने ऐसा कोई भी दस्तावेज प्रस्तुत नहीं किया जिससे यह दर्शित हो कि उसे अपनी पुत्री के उपचार के लिये पैसों की तुरंत एवं घोर आवश्यकता थी – ऐसा भी कोई दस्तावेजी साक्ष्य प्रस्तुत नहीं किया गया जिससे यह स्थापित हो कि भूधारक की पुत्री का उक्त उपचार लंदन में करवाना पड़ा एवं जिसमें उसने भारी खर्च वहन किया – पुत्री का पासपोर्ट भी प्रस्तुत नहीं – राजस्व मंडल द्वारा इस तथ्य के संबंध में निकाला गया निष्कर्ष कि धारक को अपनी पुत्री का उपचार लंदन में कराने हेतु पैसों की अत्यंत आवश्यकता थी, किसी विधिक एवं मूर्त साक्ष्य पर आधारित नहीं है – याचिका मंजूर।

B. ***Ceiling on Agricultural Holdings Act, M.P.(20 of 1960), Section 4 - Transfers or Partitions made after the publication of Bill but before commencement of Act - Locus Standi*** **- 14 transactions were declared void transactions - Appeal was filed by purchasers who were**

claiming through holder - Holder allowed the finding of fact recorded by Competent Authority against him on the factum of failure of discharge the burden of proof to attain finality - Purchasers cannot be allowed to contend to the contrary - As per Section 4(4) of Act, 1960, transaction becomes rebuttable with regard to transfer or sale as void, only at the instance of transferor/holder of land - Only holder/transferor of land can rebut the transaction and not transferees. (Para 9)

ख. कृषि जोत अधिकतम सीमा अधिनियम म.प्र. (1960 का 20), धारा 4 – विधेयक के प्रकाशन के पश्चात् परंतु अधिनियम के लागू होने के पूर्व किये गए अंतरण अथवा बंटवारे – सुने जाने का अधिकार – 14 संव्यवहारों को शून्य संव्यवहार घोषित किया गया – अपील, क्रेतागण द्वारा प्रस्तुत की गई जो कि धारक के माध्यम से दावा कर रहे थे – सबूत के भार का निर्वहन करने में असफल रहने के तथ्य पर से धारक के विरूद्ध सक्षम प्राधिकारी द्वारा निकाले गये तथ्य के निष्कर्ष को धारक ने अंतिमता प्राप्त होने दी – क्रेतागण को इसके प्रतिकूल तर्क करने हेतु अनुमति नहीं दी जा सकती है – अधिनियम, 1960 की धारा 4(4) के अनुसार, केवल भूमि के अंतरक/भूधारक के सुझाव पर ही किसी शून्य अंतरण अथवा विक्रय से संबंधित संव्यवहार खण्डनीय हो जाता है – केवल भूधारक/भूमि का अंतरक ही संव्यवहार को खण्डित कर सकता है न कि कोई अंतरिती।

***C. Ceiling on Agricultural Holdings Act, M.P.(20 of 1960), Section 5 - Permission of Collector* - No prior permission of the Collector was obtained by the holder under Section 5 of the Act - In the light of non-compliance of mandatory provision, the sale ought to be treated as void. (Para 10)**

ग. कृषि जोत अधिकतम सीमा अधिनियम म.प्र. (1960 का 20), धारा 5 – कलेक्टर की अनुमति – अधिनियम की धारा 5 के अंतर्गत धारक द्वारा कलेक्टर की पूर्व अनुमति प्राप्त नहीं की गई – अनिवार्य प्रावधान का पालन न किये जाने के प्रकाश में, विक्रय को शून्य समझा जाना चाहिए था।

Cases referred :

(2003) 12 SCC 286, 1981 MPLJ 260, 1981 MPLJ 97, (2003) 6 SCC 675.

Piyush Dharmadhikari, G.A. for the petitioner.

T.S. Ruprah with *Harpreet Ruprah,* for the respondent Nos. 1, 4, 5, 7, 8, 9, 10, 12 & 13.

P.N. Dubey, for the interveners.

JUDGMENT

The Judgment of the Court was delivered by : **VANDANA KASREKAR, J. :-** The petitioner has filed the present writ petition challenging the order passed by Board of Revenue dated 6th June, 1996 (Annexure P-1) passed in Case No.A/11-4/R/342/96 by which the order passed by the Competent Authority under M.P. Ceiling on Agricultural Holdings Act, 1960 has been set aside and the Board has held that the transaction in respect of 357 acres of land by the holder i.e. respondent No.15 in favour of respondents No.1 to 14 is legal and valid and the transactions were not void transactions.

2. The brief facts of the case are that one N.R. Abbot was the owner of the disputed land i.e. respondent No.15 who had executed fourteen sale deeds dated 03/07/1972 in favour of the respondents/purchasers between 01/01/1971 to 07/03/1974. The Competent Authority under M.P. Ceiling on Agricultural Holdings Act, 1960 (hereinafter referred to as 'the Act') declared these transactions as void transactions under Section 4 of the Act. The respondents/purchasers preferred an appeal against the said order passed by the Competent Authority and the Board of Revenue vide order dated 7/9/1977 remanded the matter back to the Competent Authority. The Competent Authority vide order dated 16/4/1981 declared the said sale as void and declared the land admeasuring 495.17 acres as surplus. The appeal preferred by the holder and purchasers was dismissed by the Board of Revenue vide order dated 19/12/1981. Against the said order, the holder and purchasers approached this Court by filing a writ petition. The said writ petition was allowed vide order dated 22/01/1985 and this Court remanded the matter back to the Board of Revenue for rehearing. The Board of Revenue vide order dated 05/06/1985 dismissed the appeal preferred by the holder and purchasers. Against the said order, the holder preferred a review of the order dated 05/06/1986 which was also dismissed vide order dated 16/04/1986. On 20/09/1994 this Court passed an order in Writ Petition No.452/1985 and remanded the matter back to the Competent Authority to decide the matter afresh after granting opportunity of hearing to all the purchasers and holder. The Competent Authority thereafter passed an order dated 13/05/1996 and declared the sale deeds dated 03/06/1972 as void and made to defeat the provisions of the Act. It was also declared that the holder was holding surplus land admeasuring 495.17 acres. Being aggrieved by the said order

passed by the Competent Authority, the purchasers alone preferred appeal before the Board of Revenue. The Board of Revenue vide order dated 06/06/1996, allowed the appeal preferred by the purchasers. Against the said order the present writ petition has been filed by the State Government.

3. Learned Govt. Advocate for the petitioner argues that against the impugned order passed by the Competent Authority, only the purchasers had preferred appeal and not the holder, which was not maintainable. As per Section 4 (4) of the Act, the legal presumption that the transaction during the relevant period was void could be rebutted only at the instance of the transferor/holder of the land. Thus, the right to appeal, as provided under Section 4(3) of the Act has been given to the transferor/holder of the land in question. He further submits that in any case the Board of Revenue has exceeded its jurisdiction in re-appreciating the evidence and material on record and taking a different view on the facts duly established on the basis of the record available. He further argues that while exercising the power under Section 4(3) of the Act, the Board of Revenue cannot re-appreciate the evidence; and, therefore, the order passed by the Board of Revenue deserves to be set aside. He submits that the Board of Revenue has clearly exceeded its jurisdiction by taking into consideration some new facts and circumstances which were not pressed into service before the Competent Authority in the original proceeding. Further, the only ground on which the holder of the land has justified the transfers is for raising funds for the medical treatment of his daughter. He also submits that the holder has not produced any material to even remotely suggest and establish the fact that transfer of lands were made for the treatment of his daughter.

4. Learned Govt. Advocate further submits that the Board of Revenue has committed an error in law with regard to interpretation and scope of Section 4(1) of the Act by wrongly interpreting and holding that the burden of proof was on the Competent Authority – that the agreement was void and was made to defeat the provision of the Act. The Board of Revenue failed to consider that the transfers were made by the holder to his employees, who were not in actual physical possession of the stated land and neither the revenue records were corrected and modified nor the revenue was paid by the purchasers and the same was being paid by the holder himself which clearly established that the transfer of land was nothing but sham and bogus and was made only with an intention to defeat the provisions of the Act. He further argues that no prior permission of the Collector was taken by the holder as per Section 5 of the

Act, which is a mandatory provision; and, therefore, non-compliance of the said provision renders such sale as void transaction. To support his argument, learned Govt. Advocate has relied on the judgment of the Apex Court in the case of *State of Madhya Pradesh Vs. Chundru Veerraju (dead)* by LRS., reported in (2003) 12 SCC 286 and the judgment of Full Bench of this Court in the case of *Narbada Prasad Raghunandanlal Vs. State of M.P.* reported in 1981 MPLJ 260.

5. The respondents/purchasers have filed their reply and in their reply they support the order passed by the Board of Revenue and denied that the transaction being sham and bogus. Learned senior counsel for the respondents/ purchasers submits that respondent No.15 has produced ample oral as well as documentary evidence to show that respondent No.15 was in need of money for treatment of his daughter at London. For the said purpose, he had produced passport also. The Board of Revenue while deciding the appeal has taken into consideration all the aspects of the matter. He further argues that the purchasers are, in fact, in possession of the disputed land and they have sown their crops also. He further argues that only on the basis that the holder has failed to produce the photocopy of the passport of his daughter could not be a ground to discard the other evidence produced by respondent No.15. The ground stated by the holder regarding illness of his daughter was a good and sufficient ground. So far as possession of respondents No.1 to 14 on the land in dispute is concerned, the Board of Revenue, in its order, has held that on the basis of statement made by the Patwari who made inspection of the field only twice, cannot be relied to conclude that the respondents No.1 to 14 were not cultivating the land. Further, other witnesses, in their statement, have asserted before the Competent Authority that the purchasers were in possession of the suit land, which cannot be discarded. He, therefore, prays that the writ petition be dismissed with cost.

6. We have heard learned counsel for the parties and perused the record. The State legislature promulgated an Act, known as 'M.P. Ceiling on Agricultural Holdings Act, 1960'. Section 4 of the said Act provides for transfer or partition made after the publication of the Bill but before the commencement of that. Section 4 of the said Act reads as under :

> **"4. Transfers or partitions made after the publication of the Bill but before the commencement of the Act.-** (1) Notwithstanding anything contained in any law for the time

being in force, where after, (the 1st January, 1971) but before the appointed day, any holder has transferred any land held by him by way of sale, gift, exchange or otherwise or has effected a partition of his holding or part thereof or the holding held by the holder has been transferred in execution of a decree of any Court, the Competent Authority may, after notice to the holder and other persons affected by such transfer or partition and after such enquiry as it thinks fit to make, declare the transfer or partition to be void if it finds that the transfer or the partition, as the case may be, was made in anticipation of or to defeat the provisions of this Act.

(2) Nothing in this Section shall apply to a transfer made by a holder –

(a) who does not hold land in excess of the ceiling area; or

(b) who is a member of a family and where all the members of the family together do not hold land in excess of the ceiling area; as specified in sub-section (1) of Section 7 as substituted by Section 8 of the Madhya Pradesh Ceiling on Agricultural Holdings (Amendment) Act, 1974 on the date of the transfer.

(3) any person aggrieved by an order of the Competent Authority under this section may prefer an appeal against such order to the Board of Revenue. The decision of the Board and subject to the decision of the Board in appeal the decision of the Competent Authority shall be final.

(4) In regard to every transfer to which this section applies the burden of proving that the transfer was not benami or was not made in any other manner to defeat the provisions of this Act shall be on the transferor.

(5) Notwithstanding anything contained in ay law for the time being in force,-

(i) no Court shall entertain any suit for the specific performance of any contract of sale of land on the basis of any agreement or document made on or before the 1st January, 1971, or

> (ii) any decree passed by a Civil Court for the specific performance of the contract of sale of land on the basis of any agreement or document mode (on or before the 1st January, 1971) shall be null and shall not be enforceable, if such suit or decree is for the purpose of defeating the provisions of this Act."

7. As per this section, any transfer, transactions made between the publication of the Bill but before commencement of the Act i.e. from 01/01/1971 to 07/03/1974, are illegal and void. That legal presumption, however, is rebuttable. Such transactions, in law, will have to be declared as invalid, if it is found after conducting due enquiry that the same was made in anticipation of or to defeat the provisions of the Act.

8. In the present case, admittedly, the disputed fourteen transactions were made by respondent No.15 on one day (03/07/1972) i.e. between 01/01/1971 to 07/03/1974; and, therefore, burden of proof that the said transfer was not benami or was not made to defeat the provisions of the Act rested on the holder or transferor. The holder and transferor in the present case justified the transaction on the ground that it was due to grave and urgent need of finance/money for the treatment of his daughter who was suffering from 'Cerebral Palsy'. However, the holder has not produced any documentary evidence to establish that his daughter had to undergo such treatment during that period at London and incur heavy expenses therefor. He has not produced passport of his daughter and, therefore, the finding regarding the fact that the holder was badly in need of money for treatment of his daughter at London is not based on any legal and tangible evidence. It is pertinent to note that all the purchasers who were the employees of the holder and the fourteen transactions were of the same day, created reasonable suspicion against those transactions. The Full Bench of this Court in the case of *Narbada Prasad Raghunandanlal* (supra) in paragraph-17 has held as under :

> 17. Arguments were also addressed as to the ambit of the burden of proof laid on the transferor by sub section (4) of Section 4. In this connection, it was submitted that a mere denial by the transferor that he intended to defeat the provisions of the Act by the transfer or at any rate the giving of a plausible explanation by him should be sufficient to discharge the burden of proof. It was also submitted that the transferor cannot prove anything else in discharging the burden to prove a negative.

We are unable to agree. The occasion and reason for making the transfer are specially within the knowledge of the transferor. It is for him to state the facts relating thereto and to prove them by preponderance of probabilities. If the transferor is able to state and establish any good reason for the transfer by preponderance of probabilities, it should be held that the burden of proof laid on him under Section 4(4) is discharged. Looked from this angle it cannot be said that the burden on the transferor is to prove a negative fact. To hold that a mere denial or putting forward of some plausible explanation for the transfer would discharge the burden of proof laid by sub-section (4) would be entirely defeating its provisions for it would be easy for every transferor to deny that he made the transfer with a view to defeat the provisions of the Act and to put forward a plausible explanation which may be entirely false. In this connection, our attention was drawn to *P. Sambasiva Rao Vs. Revenue Divnl.* Officer which was followed by a Division Bench in *Chandrasekhar Vs. State of M.P.* The Andhra Pradesh case does lay down that if the transferor gives some plausible explanation, the burden of proof laid on him under Section 7 of the Andhra Pradesh Ceiling on Agricultural Holdings Act is discharged and the explanation given by the transferor must be accepted. To the same effect is the ruling of the Division Bench in *Chandrasekhar's* case. We are unable to agree with the view taken in these cases. Such a view will reduce sub-section (4) of Section 4 to a dead letter. A transferor must not only give a plausible explanation for the transfer but also support it by evidence and make it acceptable by preponderance of probabilities. It is only then that it can be said that the burden of proof is discharged."

(emphasis supplied)

On a bare reading of the aforesaid judgment, it is seen that the transferor was not only required to give plausible explanation for transfer but also support it by credible legal evidence which can be said to be acceptable by preponderance of probabilities. It is only then, it can be said that the burden of proof is discharged. In the present case, as the holder has failed to produce

any documentary evidence regarding treatment of his daughter, therefore, had failed to discharge the burden beyond preponderance of probabilities. Mere production of passport by the holder does not entail in discharging the burden of proof provided by the statute to substantiate the fact asserted by him about the seriousness of the illness of his daughter and more so disposal of surplus land because of necessity of funds therefor.

9. It is to be noted that in the present case, the appeal was not filed by the holder. The holder has thus allowed the finding of fact recorded by the Competent Authority against him on the factum of failure to discharge the burden of proof to attain finality. The purchasers who are claiming through the holder, therefore, cannot be allowed to contend to the contrary. Indeed, the said finding has been assailed by the purchasers by filing appeal. As per Section 4(4) of the Act, the transaction becomes rebuttable with regard to transfer or sale as void, only at the instance of transferor/holder of the land. Thus, it is the holder and transferor of the land who can rebut the transaction. The right to appeal, as provided under Section 4(3) of the Act, is to be the person aggrieved i.e. transferor/holder of the land. Since the purchasers are not required to and have no means to rebut the presumption operating against the holder; and are further not competent to discharge the burden of proving that the transfer was not void within the meaning of Section 4(1) of the Act and, thus, on conjoint reading of Section 4(1), 4(3) and 4(4) of the Act, it becomes clear that the person aggrieved necessarily means the holder of the land and the said finding can only be assailed by the holder. The purchaser at best could be made as a proper party in the appeal and could claim only through the holder (their predecessors in title). They cannot claim higher right than that of their predecessors in title. Thus, the Board of Revenue has committed a patent error by entertaining the appeal and, in particular, reverse the finding of fact recorded against the holder at the behest of purchasers. It is to be further noted here that although the lands were transferred by way of sale to the purchasers but they were not found to be in actual physical possession and neither the revenue record were corrected or modified nor the revenue was paid by the purchasers. It has been held that the revenue was being paid by the holder himself. Even on the basis of the statement made before the Competent Authority, the purchasers have failed to show their identity of the land and the names of the crops which were sown by them during the relevant period. On the basis of such statement, it becomes clear that the purchasers were not in possession of the said land; and, therefore, in law, the transfer of

the land was nothing but a sham and bogus transfer and was made with an intention to defeat the provisions of the Act. In the light of the aforesaid discussion, the decision of the Division Bench relied by the counsel for the respondent in *Chandrashekhar Harprasad Vs. State of M. P. and others* reported in 1981 M.P.L.J. 97 will be of no avail to the holder of the land or for that matter the subsequent purchasers claiming through the holder.

10. As per Section 5 of the Act, no land can be transferred by way of sale or by way of gift, exchange, lease or otherwise except the permission of Collector in writing. Sub section (2) provides that Collector may refuse to give such permission if in his opinion the transfer or sub-division of land is likely to defeat the object of this Act. In the present case, on the basis of the record, it has been categorically held by the Competent Authority that no prior permission of the Collector was obtained by the holder under Section 5 of the Act and, therefore, in the light of the non-compliance of the mandatory provision, as stated above, the sale ought to be treated as void.

11. The Apex Court in the case of *Chundru Veerraju* (dead) by LRS. (supra), in paragraph-6, in similar circumstances, has held as under :

> "6. We have carefully considered the submissions made by the learned counsel on either side. It is not in dispute that nine sale deeds were executed in the month of September and October, 1971 and one sale deed was executed in December, 1971. The Act came into force with effect from 1-1-1973 but as far as the ceiling law is concerned, the notified date is 1/1/1975. Admittedly, all the sale transactions were between 24/1/1971 to 1/1/1975. The controversy that was to be resolved was, whether the area of land covered by these ten sale deeds could be excluded on the ground that these transactions were effected bona fidely and not to defeat the provisions of the Act in regard to the ceiling area. The Primary Tribunal, on the basis of oral and documentary evidence, held that these sale deeds were brought into existence to defeat the provisions of the act in relation to the ceiling area. In other words, they were not bona fide transactions and the respondent did not discharge the burden of proof placed on him in this regard in terms of Section 7 of the Act. In so doing, the Primary Tribunal has recorded the following reasons: in the sale deeds,

the declarant, that is, the original respondent, and his wife did not state that they had sold the lands on the ground that they had become old and they were suffering from blood pressure and weakness and were to invest the sale consideration amount in moneylending business; in all the sale deeds, the declarants have taken lesser amounts at the time of sale and delivered possession of the lands and permitted the vendees to pay the remaining sale consideration amount later. No vendor will deliver the possession of lands by taking lesser amounts and allow the vendees to pay the remaining sale consideration amount later; the sale of lands made between September and December 1971, of an area of 89.86 acres covered by ten sale deeds within a period of two months or little more gave rise to the impression that the lands were disposed of in anticipation of and with a view to defeat the provisions of the Act in relation to the ceiling area; the land revenue receipts do not contain the survey numbers of the lands purchased by the vendees. Further neither the declarants nor the vendees have produced the land revenue receipts of earlier years. The stamped receipts are only bought up to suit the evidence and the contentions of the declarants. The Primary Tribunal has also looked into the other evidence and on a detailed consideration, concluded, as already indicated above, that these transactions covered by ten sale deeds were not bona fide and they were executed with a view to circumvent the provisions of the Act and as such the area covered by the ten sale deeds should not be excluded from the holding of the declarant, that is the original respondent. .....
....."

12. The respondents relying on the observations of the Supreme Court in the Case of *Surya Devi Rai Vs. Ram Chander Rai and others* – (2003) 6 SCC 675 had argued that the scope of interference in writ jurisdiction is circumscribed. However, in the present case we find that the Board of Revenue exceeded its jurisdiction in re-appreciating the evidence and material on record. More so, it has committed manifest error in overturning the finding of fact recorded by the Competent Authority against the holder at the instance of the

purchaser. The finding of fact so recorded by the Competent Authority was in conformity with the evidence produced by the holder who alone could have substantiated the defense taken by him that disposal of the surplus land during the relevant period was due to extreme necessity and not intended to defeat the provisions of the Act. The decision of the Board cannot stand the test of judicial scrutiny on either count.

13. In view of the aforesaid discussion, the order passed by the Board of Revenue is not sustainable in law and, therefore, the same is hereby set aside and the order passed by the Competent Authority dated 13.5.1996 is revived – declaring that the holder of the land held surplus land on the specified date and the fourteen sale deeds were void and intended to defeat the provisions of the Act.

14. The writ petition is allowed with no order as to cost.

Petition allowed.

I.L.R. [2016] M.P., 810
MISCELLANEOUS PETITION
Before Mr. Justice R.S. Jha
Misc.Petition No. 1084/1992 (Jabalpur) decided on 13 February, 2015

R.G. AGRICULTURAL CORPORATION (M/S) & ors. ...Petitioners
Vs.
MUNICIPAL COUNCIL, CHHATARPUR & ors. ...Respondents

Land Acquisition Act (1 of 1894), Sections 4, 6 & 17 - Land Acquisition - Delay & laches - **Petitioners were aware of the fact that the land in question had already been acquired even prior to filing of the present petition, however they chose not to challenge the acquisition proceedings at the time of filing the proceedings - Even after filing of the present petition when all the facts and details were brought on record by the respondent in the year 1992 & 1993, the petitioners chose not to assail the award or the acquisition proceedings and did so for the first time by filing an application for amendment of the petition on 02.02.1996, i.e. 6 years after passing of the award and 4 years after filing of the petition - Application for setting aside of the award thus suffers from inordinary delay and laches - Further, Transport Nagar for the establishment of which**

the land was acquired has become fully operational in the year 2013 providing additional ground to reject this Miscellaneous Petition - It was accordingly dismissed. (Paras 22 & 23)

भूमि अर्जन अधिनियम (1894 का 1), धाराऐं 4, 6 व 17 – भूमि अर्जन – विलंब और गफलत – याचीगण इस तथ्य से अवगत थे कि वर्तमान याचिका प्रस्तुत किये जाने के पूर्व ही प्रश्नाधीन भूमि अर्जित की जा चुकी थी, किन्तु कार्यवाहियां संस्थित किये जाने के समय उन्होंने अर्जन कार्यवाही को चुनौती नहीं देने का चुनाव किया – यहां तक कि वर्तमान याचिका प्रस्तुत किये जाने के पश्चात् जब प्रत्यर्थी द्वारा वर्ष 1992 व 1993 में समस्त तथ्य एवं विवरण अभिलेख पर लाये गये थे, तब भी याचीगण ने अधिनिर्णय अथवा अर्जन कार्यवाहियों को चुनौती नहीं देने का चुनाव किया, एवं प्रथम बार अर्थात् अधिनिर्णय पारित होने के 6 वर्ष पश्चात् और याचिका प्रस्तुत किये जाने के 4 वर्ष पश्चात् उनके द्वारा 02/02/1996 को याचिका में संशोधन किये जाने हेतु प्रस्तुत आवेदन पत्र के माध्यम से इस संबंध में चुनौती दी गई – अतएव्, अधिनिर्णय को अपास्त किये जाने हेतु प्रस्तुत आवेदन पत्र असाधारण विलंब और गफलत से ग्रसित है – इसके अतिरिक्त, जिस ट्रांसपोर्ट नगर की स्थापना हेतु भूमि अर्जित की गई थी, उसका वर्ष 2013 में ही पूर्णतः क्रियाशील हो जाना इस विविध याचिका को खारिज किये जाने हेतु एक अतिरिक्त आधार प्रदान करता है – तद्नुसार याचिका खारिज की गई।

Cases referred :

(2000) 2 SCC 48, (2011) 5 SCC 394, 2012 AIR SCW 5294.

G.S. Ahluwalia, for the petitioners.
Amit Khatri, for the respondents.

ORDER

R.S. JHA, J. :- The petitioners have filed this petition being aggrieved by the acquisition proceedings undertaken by the respondent authorities.

2. The petition was filed by the petitioners alleging that they had purchased 0.080 Acres of land comprising of Khasra No.1217/1 by registered sale deed dated 6.6.1988 and 0.053 Acres of land comprising of Khasra No.1218/1 vide sale deed dated 15.12.1988.

3. It is submitted that subsequently the petitioners applied for registration with the Industries Department for the purposes of setting up an industry and to the revenue authorities for mutation of their name on the land in question and consequently the petitioners' name were mutated in the revenue records

as is evident from the Khasra entries of the year 1990-91, copies of which have been filed as Annexure P-3. It is stated that the petitioners' application was processed by the Industries Department and the petitioners were granted provisional registration certificate on 22.9.1989, on the basis of which the petitioners got an amount of Rs.2,70,000/- sanctioned as loan from a Nationalized Bank. Subsequently, the petitioners' application for permanent registration was rejected by the respondent authorities by the impugned communication dated 6.3.1992 wherein the petitioners were informed that permanent registration cannot be given to the petitioners on account of the fact that the land had been acquired by the Town Improvement Trust. The respondent Town Improvement Trust, thereafter proceeded to take over possession of the land in question, pursuant to which the cost of buldozer, etc., which was used for removing the petitioners' structure, was sought to be recovered from the petitioners, vide Annexure P-21, which has also been challenged by the petitioners in the present petition.

4. On 14.3.1992 the petitioners sought 15 days time to vacate the premises. The petitioners thereafter filed the present petition challenging the rejection of the petitioners' application for permanent registration, Annexure P-20, dated 6.3.1992; the recovery of Rs.5,000/- as cost for removal of the encroachment Annexure P-21 and the communication dated 13.3.1992 issued by the Town Improvement Trust, Chhatarpur directing the Assistant Engineer of the Electricity Board to disconnect the electricity connection of the petitioners for the purposes of taking over possession.

5. The petitioners thereafter filed an application for amendment of the petition on 2.2.1996 which has been allowed by order dated 7.2.2013, whereby the petitioners have also challenged the notifications issued under sections 4, 6 & 17 of the Act, as well as the award passed in the acquisition proceedings dated 12.10.1990, Annexure P-26, on the ground that the notification issued by the respondent authorities under sections 4 & 6 of the Land Acquisition Act, 1894 (hereinafter referred to as 'the Act') is bad in law as it was issued on the same date; that the invocation of the emergency clause under section 17 of the Act, was and is erroneous as no emergency existed or has been demonstrated by the authorities which is also evident from the fact that after initiating proceedings and passing of the award in the year 1990 the said Transport Nagar was not established immediately thereafter.

6. It is submitted that the authorities while passing the award for

determining compensation has never issued any notice to the petitioner no.2 and, therefore, the award having been passed without following the procedure prescribed by law, deserves to be quashed. The learned counsel for the petitioners also submits that the possession of the land has also not been taken over in accordance with law and, therefore, the entire acquisition proceedings initiated by the respondents deserves to be quashed. The petitioners have also contended that the notice which is required to be published in two daily newspapers having local circulation has also not been done as is evident from a perusal of the award itself and, therefore, in view of the non-compliance of the mandatory provision of law, the petition filed by the petitioners deserves to be allowed and the impugned award passed by the authorities under the Act deserves to be quashed. It is contended by the learned counsel for the petitioners that the acquisition proceedings taken up by the respondent authorities are patently illegal as no notice was given to the petitioners for the same.

7. The respondents have filed a return and have stated that the petition, as filed by the petitioners, is totally misconceived and have taken a preliminary objection to the effect that the petition has been filed after passing of the award and also suffers from delay and laches. It is submitted that the scheme for preparation of the Transport Nagar was well within the knowledge of all concerned. It is further submitted that the notification under section 4 as well as section 17 of the Act, was published by the authorities on 14.10.1988 whereas the notification under section 6 of the Act, was published on 21.10.1988 and, therefore, the contention of the petitioners that they were published on the same date is factually incorrect and, therefore, this ground of challenge raised by the petitioners does not survive as it is based on incorrect appreciation of facts.

8. It is further alleged and stated that in view of the urgency clause invoked by the respondent authorities, possession of the land in question had already been handed over to the Town Improvement Trust vide document Annexure R-3 on 9.10.1990. It is further stated that the award was passed by the Land Acquisition Authorities on 12.10.1990 which fact was well within the knowledge of the petitioners as petitioner Govind Prasad was noticed and had filed objections before the authority inspite of which they chose not to challenge the award while filing the petition in the year 1992 though they had knowledge of the award and had also been informed on 6.3.1992 vide

annelxure (sic:Annexure) P-23. It is stated that the amount of compensation of Rs.1,76,350/- has already been deposited on 19.9.1991 and has also been disbursed.

9. It is submitted that apart from the above, the fact of passing of the award was also brought to the notice of this Court by the respondents by filing a return in the year 1992 itself and, thereafter again in the year 1993 but the petitioners, inspite of knowledge, chose not to assail or challenge the award immediately thereafter but have moved an application for amendment of the petition only in the year 1996 which, after restoration of the petition which had been dismissed on merits on account of non-appearance of the petitioners, has been allowed in the year 2013. It is submitted that in such circumstances, in view of the fact that the award had already been passed prior to filing of the petition and the petitioners have filed this petition after a considerable delay, the petition deserves to be dismissed.

10. The learned counsel for the respondents further pointed out that initially this Court had granted stay to the petitioners vide interim order dated 27.3.1992, however when all the facts were placed by the respondents, before this Court by filing I.A No.10525/1993 for vacating stay, this Court taking note of all the aforesaid facts, vacated the interim order on 13.12.1993. It is submitted that subsequent thereto the respondent authorities have taken steps to undertake construction and have also allotted plots and shops and the Transport Nagar has become fully generational and is functioning on the land which has been acquired since 2013 and, therefore, the petition filed by the petitioners at this belated stage, deserves to be dismissed.

11. It is further pointed out that the respondent authorities have in fact acquired a little more than 17 Acres of land for construction of the Transport Nagar from various individuals which has become fully functional whereas the petitioners in the present petition, are agitating only in respect of a small portion of the land acquired i.e. 0.30 and 0.22 acres of land comprising of Khasra Nos. 1217/1 and 1218/1. It is submitted that none of the persons whose land was acquired have objected to the acquisition of the land for the Transport Nagar which has already been constructed and is functional and is for the benefit of the public at large and in such circumstances the petition filed by the petitioners deserves to be dismissed.

12. The learned counsel for the respondents has pointed out that the sale

deed, Annexure P-1, which relates to Khasra No. 1217/1, was registered on 6.6.1988 whereas the second sale deed in respect of Khasra No. 1218/1 was executed on 15.12.1988, that is after the issuance of the notification under sections 4 & 17 of the Act, on 14.10.1988 and in such circumstances the challenge to the acquisition proceedings based on the second sale deed, Exhibit P-2, which was executed subsequent to the issuance of notification under section 4 of the Act, is totally misconceived as the petitioners have no right to claim any benefit in respect of the sale deed that was executed subsequent to issuance of the notification under sections 4 & 17 of the Act.

13. The learned counsel for the respondents in support of their submissions regarding maintainability and delay have relied upon the decision of the Supreme Court rendered in the case of *Municipal Council, Ahmed Nagar v. Shah Hyder Beig*, (2000) 2 SCC 48.

14. Having heard the learned counsel for the parties, at the very outset, I propose to first examine the contention of the respondents with regard to the objection raised by the respondents to the effect that the petition filed by the petitioners deserves to be dismissed as it has been filed after passing of the award and also suffers from the vice of delay and laches.

15. In the case of *Municipal Council, Ahmed Nagar v. Shah Hyder Beig* (supra), the Supreme Court while dealing with the said issue has held as under in paragraphs 17 and 18:-

> "17. In any event, after the award is passed no writ petition can be filed challenging the acquisition notice or against any proceeding thereunder. This has been the consistent view taken by this Court and in one of the recent cases *C. Padma v. Dy. Secretary to the Govt of T.N.*, (1997) 2 SCC 627, this court observed as below (SCC p.628, para-4):-
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> > "The admitted position is that pursuant to the notification published under Section 4(1) of the Land Acquisition Act, 1894 (for short "the Act") in GOR No. 1392 Industries dated 17.10.1962, total extent of 6 acres 41 cents of land in Madhavaram Village, Saidapet Taluk, Chengalpattu District in Tamil Nadu was acquired under Chapter VII of the Act for the manufacture of Synthetic Rasina by Tvl. Reichold

Chemicals India Ltd., Madras. The acquisition proceedings had become final and possession of the land was taken on 30.4.1964. Pursuant to the agreement executed by the company, it was handed over to Tvl. Simpson and General Finance Co. which is a subsidiary of Reichold Chemicals India Ltd., It would appear that at a request made by the said company, 66 cents of land out of one acre 37 cents in respect of which the appellants originally had ownership, was transferred in GOMs No. 816 Industries dated 24.3.1971 in favour of another subsidiary company. Shri Rama Vilas Service Ltd., the 5th respondent Which is also another subsidiary of the company had requested for two acres 75 cents of land; the same came to be assigned on leasehold basis by the Government after resumption in terms of the agreement in GOMs No. 439 Industries dated 10.5.1985. In GOMs No. 546 Industries dated 30.3.1986, the same came to be approved of. Then the appellants challenged the original GOMs No. 1392 Industries dated 17.10.1962 contending that since the original purpose for which the land was acquired had ceased to be in operation, the appellants are entitled to restitution of the possession taken from them. The learned Single Judge and the Division Bench have held that the acquired land having already vested in the State, after receipt of the compensation by the predecessor-in-title of the appellants, they have no right to challenge the notification. Thus the writ petition and the writ appeal came to be dismissed."

18. Similar is the view in an earlier decision of this Court in the case of *Municipal Corporation of Greater Bombay v. Industrial Development Investment Co. (P) Ltd.*, (1996) 11 SCC 501. Incidentally, the decision last noted was also on land acquisition and requisition under the Maharashtra Regional and Town Planning Act, 1966 and in paragraph 29 of the Report, this Court observed (SCC p.520):-

"It is thus well settled law that when there is inordinate delay in filing the writ petition and when all steps taken in the acquisition proceedings have become final, the Court should be loath to quash the notifications. The High Court has, no doubt, discretionary powers under Article 226 of the Constitution to quash the notification under Section 4(1) and declaration under Section 6. But it should be exercised taking all relevant factors into pragmatic consideration. When the award was passed and possession was taken, the Court should not have exercised its power to quash the award which is a material factor to be taken into consideration before exercising the power under Article 226. The fact that no third party rights were created in the case is hardly a ground for interference. The Division Bench of the High Court was not right in interfering with the discretion exercised by the learned Single Judge dismissing the writ petition on the ground of laches."

16. In the case of *Banda Development Authority, Banda vs. Motilal Agarwal and Others,* (2011) 5 SCC 394, while dealing with a case similar to the present one, where the authority concerned had invoked the provisions of Section 17 of the Land Acquisition Act and where the petition had been filed after considerable delay and latches and the petitioners had failed to offer any plausible explanation therefor and the land in question had been utilized for the public purpose either partly or wholly and third party rights had also been created after deposit of the necessary compensation, the Supreme Court affirmed the dismissal of the petition challenging the acquisition proceedings on the technical ground of improper taking over of possession of the land and while doing so culled the following principles in para 37 as under:-

"37. The principles which can be culled out from the above noted judgments are:

(I) No hard and fast rule can be laid down as to what act would constitute taking of possession of the acquired land.

(ii) If the acquired land is vacant, the act of the State authority concerned to go to the spot and prepare a

panchnama will ordinarily be treated as sufficient to constitute taking of possession.

(iii) If crop is standing on the acquired land or building/ structure exists, mere going on the spot by the authority concerned will, by itself, be not sufficient for taking possession. Ordinarily, in such cases, the authority concerned will have to give notice to the occupier of the building/structure or the person who has cultivated the land and take possession in the presence of independent witnesses and get their signatures on the panchnama. Of course, refusal of the owner of the land or building/structure may not lead to an inference that the possession of the acquired land has not been taken.

(iv) If the acquisition is of a large tract of land, it may not be possible for the acquiring/designated authority to take physical possession of each and every parcel of the land and it will be sufficient that symbolic possession is taken by preparing appropriate document in the presence of independent witnesses and getting their signatures on such document.

(v) If beneficiary of the acquisition is an agency/ instrumentality of the State and 80% of the total compensation is deposited in terms of Section 17(3-A) and substantial portion of the acquired land has been utilised in furtherance of the particular public purpose, then the Court may reasonably presume that possession of the acquired land has been taken."

17. The Supreme Court in the same case has also held that the petition deserves to be dismissed as it suffered from delay and latches in the following terms in paras 20 to 26:-

"20. In *Ajodhya Bhagat v. State of Bihar* (1974) 2 SCC 501, this Court approved dismissal by the High Court of the writ petition filed by the appellant for quashing the acquisition of is land and observed:(SCC p.506, para 23)

"23. The High Court held that the appellants were guilty of delay and laches. The High Court relied on two important facts. First, that there was delivery of

possession. The appellants alleged that it was a paper transaction. The High Court rightly rejected that contention. Secondly, the High Court said that the Trust invested several lakhs of rupees for the construction of roads and material for development purposes. The appellants were in full knowledge of the same. The appellants did not take any steps. The High Court rightly said that to allow this type of challenge to an acquisition of large block of land piecemeal by the owners of some of the plots in succession would not be proper. If this type of challenge is encouraged the various owners of small plots will come up with writ petitions and hold up the acquisition proceedings for more than a generation. The High Court rightly exercised discretion against the appellants. We do not see any reason to take a contrary view to the discretion exercised by the High Court." (emphasis supplied)

21. In *State of Rajasthan v. D.R. Laxmi,* (1996) 6 SCC 445, this Court referred to Administrative Law by H.W.R. Wade (7th Edn.) at pp. 342-43 and observed: (SCC p.453, para-10)

"10. The order or action, if ultra vires the power, becomes void and it does not confer any right. But the action need not necessarily be set at naught in all events. Though the order may be void, if the party does not approach the Court within reasonable time, which is always a question of fact and have the order invalidated or acquiesced or waived, the discretion of the Court has to be exercised in a reasonable manner. When the discretion has been conferred on the Court, the Court may in appropriate case decline to grant the relief, even if it holds that the order was void. The net result is that extraordinary jurisdiction of the Court may not be exercised in such circumstances....."

22. In *Girdharan Prasad Missir v. State of Bihar,* (1980) 2 SCC 83, the delay of 17 months was considered as a good

ground for declining relief to the petitioner. In *Municipal Corporation of Greater Bombay v. Industrial Development Investment Co. (P.) Ltd.*, (1996) 11 SCC 501, this Court held: (SCC p.452, para 9)

> "9. It is thus, well-settled law that when there is inordinate delay in filing the writ petition and when all steps taken in the acquisition proceedings have become final, the Court should be loath to quash the notifications. The High Court has, no doubt, discretionary powers under Article 226 of the Constitution to quash the notification under Section 4(1) and declaration under Section 6. But it should be exercised taking all relevant factors into pragmatic consideration. When the award was passed and possession was taken, the Court should not have exercised its power to quash the award which is a material factor to be taken into consideration before exercising the power under Article 226. The fact that no third party rights were created in the case, is hardly a ground for interference. The Division Bench of the High Court was not right in interfering with the discretion exercised by the learned Single Judge dismissing the writ petition on the ground of laches."

23. In *Urban Improvement Trust, v. Bheru Lal,* (2002) 7 SCC 712, this Court reversed the order of the Rajasthan High Court and held that the writ petition filed for quashing of acquisition of land for a residential scheme framed by the appellant- Urban Improvement Trust was liable to be dismissed on the ground that the same was filed after two years.

24. In *Ganpatibai v. State of M.P.,* (2006) 7 SCC 508, the delay of 5 years was considered unreasonable and the order passed by the High Court refusing to entertain the writ petition was confirmed. In that case also the petitioner had initially filed a suit challenging the acquisition of land. The suit was dismissed in 2001. Thereafter, the writ petition was filed. This Court referred to an earlier judgment in *State of Bihar v. Dhirendra*

Kumar (1995) 4 SCC 229 and observed: (*Ganpatibai* cases SCC p.510 para 9).

> "9. In *State of Bihar v. Dhirendra Kumar* this Court had observed that civil suit was not maintainable and the remedy to question notification under Section 4 and the declaration under Section 6 of the Act was by filing a writ petition. Even thereafter the appellant, as noted above, pursued the suit in the civil court. The stand that five years after the filing of the suit, the decision was rendered does not in any way help the appellant. Even after the decision of this Court, the appellant continued to prosecute the suit till 2001, when the decision of this Court in 1995 had held that suit was not maintainable."

25. In *Sawaran Lata v. State of Haryana,* (2010) 4 SCC 532, the dismissal of writ petition filed after seven years of the publication of declaration and five years of the award passed by the Collector was upheld by the Court and it was observed: (SCC p.535, para-11)

> "11. In the instant case, it is not the case of the petitioners that they had not been aware of the acquisition proceedings as the only ground taken in the writ petition has been that substance of the notification under Section 4 and declaration under Section 6 of the 1894 Act had been published in the newspapers having no wide circulation. Even if the submission made by the petitioners is accepted, it cannot be presumed that they could not be aware of the acquisition proceedings for the reason that a very huge chunk of land belonging to a large number of tenure-holders had been notified for acquisition. Therefore, it should have been the talk of the town. Thus, it cannot be presumed that the petitioners could not have knowledge of the acquisition proceedings."

26. In the instant case, the acquired land was utilized for

implementing Tulsi Nagar Residential Scheme inasmuch as after carrying out necessary development i.e. construction of roads, laying electricity, water and sewer lines, etc. BDA carved out plots, constructed flats for economically weaker sections and lower income group, invited applications for allotment of the plots and flats from general as well as reserved categories and allotted the same to eligible persons. In the process, BDA not only incurred huge expenditure but also created third party rights. In this scenario, the delay of nine years from the date of publication of the declaration issued under Section 6(1) and almost six years from the date of passing of award should have been treated by the High Court as more than sufficient for denying equitable relief to Respondent 1."

18. Though the learned counsel for the petitioners, to counter the submission of the learned counsel for the respondents, has relied upon decisions of the Supreme Court rendered in the case of *Patasi Devi vs. State of Haryana and others,* 2012 AIR SCW 5294, to contend that the petition was maintainable even after passing of the award and the petition cannot be dismissed solely on the ground of passing of the award, I am of the considered opinion that the said decision does not render any assistance to the petitioners in the present case in view of the fact that the observations made by the Supreme Court in the aforesaid decision were made on the basis of the fact that the possession of the land still continued with the owner inspite of completion of the acquisition proceedings and passing of the award whereas in the instant case, apparently and admittedly, after passing of the award the respondents have taken over the possession and have constructed the Transport Nagar which has become fully generational and is functioning on the land in question. In the backdrop of the aforesaid law laid down by the Supreme Court, the facts of the present case are examined.

19. A perusal of the record further indicates that the respondents invoked the provisions of Section 17 of the Act, by mentioning the same in the notification under section 4 of the Act itself, which was published on 14.10.1988 and thereafter an award in the acquisition proceedings have been passed on 12.10.1990. A perusal of the award further indicates that the petitioners were party no.11/respondent no.11 in the said acquisition proceedings. The respondents have also filed a typed copy of the notice, Annexure R-9, alleged

to have been issued to the petitioners in the acquisition proceedings for their appearance before the Land Acquisition Officer on 17.9.1990. It is observed that the learned counsel for the petitioners has vehemently denied the issuance or the receipt of any such notice to the petitioner no.2 and has stated that the respondents have not filed any acknowledgment or receipt of the notice to establish the same. No such denial has been made in respect of the petitioner no.1 who is stated by the respondents to have appeared and raised objections in the acquisition proceedings. A perusal of the petition further indicates that subsequently thereafter when the petitioners' application for permanent registration with the Industries Department was rejected vide impugned order dated 6.3.1992, the petitioners were again informed that the same was being rejected on account of the fact that the Town Improvement Trust had stated that the land had already been acquired by them. Annexure P-21 and P-23 also indicate the fact that pursuant to the award, the respondents were taking steps to construct the Transport Nagar therein and have removed the structure of the petitioners standing on the said land and, therefore, even otherwise it is evident that they were specifically informed about the passing of the award by the authorities vide communication dated 6.3.1992 inspite of which they did not challenge the land acquisition proceedings or the award before this Court at the time of filing of the petition on 20.3.1992. The fact that the respondents had also deposited the compensation long back is also undisputed.

20. It is further clear that the interim order granted by this Court was vacated on an application being filed by the respondents for vacating stay wherein it was again asserted and brought on record by the respondents that they had taken over possession of the land and were in the process of constructing the Transport Nagar pursuant to which the interim order granted by this Court was vacated on 13.12.1993. The record further indicates that inspite of the aforesaid knowledge, the petitioners chose not to challenge the award dated 12.10.1990 and it was for the first time that the petitioners filed an application for amendment of the petition proposing to challenge the award on 2.2.1996. However, as none appeared for the petitioners on 1.7.2004, the petition, as originally filed by the petitioners, stood dismissed without any orders being passed on the application for amendment. Subsequently, the petitioners filed MCC No.1168/2004 which was ultimately allowed on 16.3.2012 and the petition was restored and thereafter the application for amendment filed by the petitioners was allowed on 7.2.2013.

21. From a perusal of the reply filed by the respondent nos.1 & 2 in the present petition, it is further clear and apparent that pursuant to the acquisition proceedings, except for the petitioners, no other person has challenged the award or the acquisition of 17 Acres of land and that the petitioners have assailed the validity of the acquisition of only 0.30 Acres of their land for the purposes of construction of the Transport Nagar. From a perusal of the consequential reply filed by the respondents it is further clear that the Transport Nagar has already been constructed and is functional and its map alongwith photographs has also been brought on record by the respondent authorities alongwith the said application.

22. In view of the aforesaid facts and circumstances, it is clear that the petitioners were aware of the fact that the land in question had already been acquired even prior to filing of the present petition, however they chose not to challenge the acquisition proceedings at the time of filing the proceedings. It is further clear that even after filing of the present petition when all the facts and details were brought on record by the respondent authorities by filing a return in the year 1992 and 1993, the petitioners chose not to assail the award or the acquisition proceedings and did so for the first time by filing an application for amendment of the petition on 2.2.1996 i.e 6 years after passing of the award and 4 years after filing of the petition. In the circumstances, it is apparent that there is delay and latches on the part of petitioners in challenging the award of the acquisition proceedings which becomes an important aspect of the matter in view of the fact that the land after acquisition is already in the possession of the respondents since long and has been utilized for the purpose for which it was occupied and the Transport Nagar has already become functional in Chhatarpur. It is further apparent that the objection regarding taking over of possession raised by the petitioners are also misconceived and baseless in view of the facts as stated above and the law laid down by the Supreme Court in the case of *Banda Development Authority* (supra) in para-37 as quoted above.

23. It is also worth observing that the petitioners allege to have purchased 0.30 Acres of land comprising Khasra No.1217/1 vide registered sale deed dated 6.6.1988 whereas they have claimed right in respect of Khasra No.1218/1 Area 0.22 Acres on the strength of a sale deed executed on 15.12.1988, Exhibit P-2. A perusal of the notification issued by the respondent authorities under section 4 of the Act, makes it clear that the said notification

was published on 14.10.1988. In the circumstances, it is clear and apparent that the second sale deed that was executed by the petitioners was subsequent to the publication of the notification under section 4 of the Act, and, therefore, the contention of the respondents in this regard is correct and factually sustainable as the petitioners have admittedly purchased the land comprising of Khasra No.1218/1 subsequent to the publication of the notification under section 4 of the Act, and, therefore, the relief sought by them in respect of this Khasra number is misconceived and is, accordingly, held to be not maintainable.

24. In view of the aforesaid and the law laid down by the Supreme Court, it is evident that the present petition filed by the petitioners suffers from delay and latches on the part of the petitioners in challenging the award and also deserves to be dismissed in view of the fact that it was filed after passing of the award without challenging the same though it was within the knowledge of the petitioners and after taking over of possession of the property in question which is evident from the narration of facts made in the preceding paragraphs.

25. In view of the facts and circumstances, I do not find any merit in the petition which is, accordingly, dismissed in view of the law laid down by the Supreme Court in the aforementioned cases.

26. In the facts of the case there shall be no orders as to costs.

Petition dismissed.

I.L.R. [2016] M.P., 825
REVIEW PETITION
Before Mr. Justice Alok Aradhe
R.P. No.51/2015 (Jabalpur) decided on 30 June, 2015

M.P. MADHYA KSHETRA VIDYUT
VITRAN COMPANY LTD. ...Petitioner
Vs.
M/S SCHALTECH AUTOMATION P. LTD. ...Respondent

Civil Procedure Code (5 of 1908), Section 114 & proviso to Order 5 Rule 9 (5) and High Court of Madhya Pradesh Rules, 2008, Chapter 15 Rule 13 **- Review of order is sought on the ground of procedural illegality as the petitioners were not served with the notice and the office has erred in treating the petitioners to have been served - Held - Presumption as to the service of notice - If the acknowledgement is**

not received within 30 days from the date of issuance of summons, presumption of service of notice has rightly been drawn by the office - Proviso to Order 5 Rule 9(5) is applicable to this proceeding - Petition is dismissed. (Para 8)

सिविल प्रक्रिया संहिता (1908 का 5), धारा 114 एवं आदेश 5 नियम 9(5) का परंतुक एवं उच्च न्यायालय मध्यप्रदेश नियम, 2008, अध्याय 15 नियम 13 – प्रक्रियात्मक अवैधता के आधार पर आदेश का पुनर्विलोकन चाहा गया है कि याचीगण पर नोटिस की तामील नहीं हुई थी एवं कार्यालय द्वारा याचीगण को तामीलशुदा मानने में त्रुटि कारित की गई – अभिनिर्धारित – नोटिस की तामील की उपधारणा – यदि समंस जारी होने के 30 दिवस के भीतर अभिस्वीकृति प्राप्त नहीं हुई थी तो कार्यालय द्वारा नोटिस की तामील की उपधारणा उचित रूप से गठित की गई – इस मामले में आदेश 5 नियम 9(5) का परंतुक लागू होगा – याचिका खारिज।

Cases referred :

AIR 1981 SC 606, AIR 2005 SC 1782, JT 1993 (5) SC 27.

Shobhitaditya, for the petitioner.
Rajesh Pancholi, for the respondent.

ORDER

ALOK ARADHE, J. :- This petition has been filed seeking review of the order dated 2.12.2014 passed by this Court in Arbitration Case No.8/2014. On admitted facts, the question which arises for consideration is whether the order dated 2.12.2014 suffers from procedural illegality which goes to the root of the matter.

2. The facts, giving rise to filing of the review petition, briefly stated, are that the respondent had filed an application under Section 11 (6) of the Arbitration and Conciliation Act, 1996 (in short 'the Act'), inter alia, on the ground that the respondent is a company incorporated under the provisions of the Companies Act, 1956 and was awarded a contract for survey, erection, testing commissioning and quality assurance of all items including all other associated works on turnkey basis to bring down the AT & C losses in area of Rajgarh, Sehore and Vidisha circle. The respondent served a notice on the petitioner on 20.12.2013 requiring it to appoint an arbitrator which was duly received by the petitioner on 25.12.2013. However, the petitioner failed to respond the aforesaid notice.

3. The respondent, thereafter, filed an application under Section 11 (6)

of the Act on 25.2.2014. The notice was issued to the petitioner on 7.3.2014. However, neither envelop nor the acknowledgement was received back. Therefore, the office treated the petitioner to have been served. This Court vide order dated 2.12.2014 allowed the application preferred by the respondent and appointed Mr. R.B.S. Baghel, District and Sessions Judge (retired) as arbitrator to adjudicate the dispute between the parties.

4. The counsel for the petitioner, at the outset, fairly submitted that there is no provision of review of an order passed in exercise of power under Section 11(6) of the Act. It is further submitted that even in the absence of a specific provision, in the facts of the case an application for review can be entertained since the order under review suffers from procedural illegality as the petitioner was not served with the notice of the proceeding and the office has grossly erred in treating the petitioner to have been served in view of the provision of Rule 13 Chapter 15 of the High Court of Madhya Pradesh Rules, 2008 inasmuch as the aforesaid rule applies to the writ petitions only. In support of aforesaid submissions reliance has been placed on the decisions of the Supreme Court in *Grindlays Bank Ltd. v. The Central Government Industrial Tribunal and Others.* - AIR 1981 SC 606 and *Kapra Mazdoor Ekta Union v. Management of M/s Birla Cotton Spinning and Weaving Mills Ltd and Others* - AIR 2005 SC 1782.

5. On the other hand, learned counsel for the respondent submitted that Rule 9 (5) of Chapter 15 of the High Court of Madhya Pradesh Rules, 2008 provides that provisions of Order V of the Code of Civil Procedure shall apply to service of process in all proceedings of this Court. Learned counsel for the respondent has invited the attention of this Court to proviso to sub-rule (5) of Rule 9 of Order 5 of the Code of Civil Procedure and submitted that Office has rightly treated the petitioner to have been served.

6. I have considered the respective submissions made by learned counsel for the parties. The expression "review" is used in two senses: (1) a procedural review which is either inherent or implied in a Court or Tribunal to set aisde (sic:aside) a palpably erroneous order passed under a misapprehension by it, and (2) a review on merits when the error sought to be corrected is one of law and is apparent on the face of the record. When a review is sought due to a procedural defect, the inadvertent error committed by the Tribunal must be corrected ex debeito justitiae to prevent the abuse of its process, and such power inheres in every court or Tribunal. The principle that the power to review must be conferred by statute either specially or by necessary implication

is inapplicable to decisions of Judicial Tribunal which is supposed to do complete justice to the parties before it. [See: *S. Nagaraj v State of Karnataka,* JT 1993 (5) SC 27 and Advanced Law Lexicon by P Ramanatha Aiyar, 3rd Edition] Thus, even in the absence of any specific provision for review in an Act, the power of procedural review can be invoked in a case where the Court commits procedural illegality, i.e., decides a case without notice to other party or decides the case under mistaken impression that other party has been served.

7. In this context, the sole question that arises for consideration in the instant review petition is whether the Office has rightly treated the petitioner to have been served. Rule 13 Chapter 15 of the High Court of Madhya Pradesh Rules, 2008 provides that presumption of service of notice shall be drawn in respect of the writ petition. However, Rule 9 (5) of Chapter 15 of the aforesaid Rules provides that provisions of Order 5 of the Code of Civil Procedure shall apply to service of process in all proceedings of this Court. Proviso to sub-rule (5) of Order 5 Rule 9 of the Code of Civil Procedure reads as under:

> "Provided that where the summons was properly addressed, pre-paid and duly sent by registered post acknowledgement due, the declaration referred to in this sub-rule shall be made notwithstanding the fact that the acknowledgement having been lost or mislaid, or for any other reason, has not been received by the Court within thirty days from the date of issue of summons."

8. From perusal of the proviso to Order 5 Rule 9 (5) of the Code of Civil Procedure which is applicable to this proceeding it is apparent that if acknowledgement is not received within thirty days from the date of issuance of summons, a presumption can be drawn. In the instant case, the notice was issued to the petitioner on 25.3.2014. However, the acknowledgement was not received within thirty days. Therefore, the Office has rightly drawn presumption of service of notice on the petitioner. No ground on which procedural review is permissible, as laid down by the Supreme Court in *Grindlays Bank Ltd.* (supra) and *Kapra Mazdoor Ekta Union* (supra), is made out in the fact situation of the case.

9. For the aforementioned reasons, the review petition fails and is hereby dismissed.

Petition dismissed.

I.L.R. [2016] M.P., 829
COMPANY PETITION
Before Mr. Justice Prakash Shrivastava
Comp. Pet. No. 35/2013 (Indore) decided on 15 September, 2015

CITIBANK N.A. LONDON BRANCH ...Petitioner
Vs.
M/S PLETHICO PHARMACEUTICALS LTD. ...Respondent

A. ***Sahayata Upkram (Vishesh Upabandh) Adhiniyam, M.P. (32 of 1978), Section 5*** **- Respondent company seeking stay on winding up proceedings - Based on notification issued by State Government u/s 3 of the Act declaring respondent/company as relief undertaking for one year - Held - Notification issued is within jurisdiction - Illegality of notification cannot be examined in collateral proceedings, proper remedy is to approach writ Court - Winding up proceedings stayed for one year from the date of notification - Notification u/s 3 alone without issuing notification u/s 4 will not effect on orders already passed in winding up proceedings - Respondent is directed to give inspection of books of accounts and records to inspecting officer - Application allowed. (Paras 1, 15, 26 & 30)**

क. ***सहायता उपक्रम (विशेष उपबंध) अधिनियम, म.प्र. (1978 का 32), धारा 5*** – प्रत्यर्थी कंपनी द्वारा परिसमापन कार्यवाही पर स्थगन चाहा गया – राज्य सरकार द्वारा धारा 3 के अंतर्गत अनावेदक कंपनी को एक वर्ष के लिए सहायता उपक्रम घोषित किये जाने हेतु जारी की गई अधिसूचना के आधार पर – अभिनिर्धारित – जारी अधिसूचना अधिकारिता के अंतर्गत है – अधिसूचना की अवैधानिकता संपार्श्विक कार्यवाहियों में परीक्षित नहीं की जा सकती, रिट न्यायालय उचित उपचार है – परिसमापन कार्यवाहियां अधिसूचना दिनांक से एक वर्ष के लिए स्थगित की गई – धारा 4 के अंतर्गत अधिसूचना जारी किये बिना, केवल धारा 3 के अंतर्गत जारी की गई अधिसूचना, परिसमापन कार्यवाहियों में पूर्व में जारी किये गये आदेशों पर प्रभावी नहीं होगी – प्रत्यर्थी को लेखा पुस्तक एवं अभिलेख निरीक्षण हेतु निरीक्षणकर्ता अधिकारी को सौंपने हेतु निदेश – आवेदन मंजूर।

B. ***Sahayata Upkram (Vishesh Upabandh) Adhiniyam, M.P. (32 of 1978), Section 3*** **- Notification issued under section 3 is applicable on "other legal proceedings" which includes winding up proceedings - Act of 1978 in pith and substance falls under concurrent list, therefore Article 254(2) will be attracted - It will prevail in the state even if there exists**

some repugnancy of earlier made law by parliament. (Paras 22, 23 & 24)

ख. सहायता उपक्रम (विशेष उपबंध) अधिनियम, म.प्र. (1978 का 32), धारा 3 – धारा 3 के अंतर्गत जारी अधिसूचना "अन्य विधिक कार्यवाहियों" पर लागू होती है, जिनमें परिसमापन कार्यवाहियाँ भी सम्मिलित हैं – 1978 का अधिनियम तत्व और सार में समवर्ती सूची के अंतर्गत आता है, अतएव अनुच्छेद 254(2) आकर्षित होगा – यहां तक कि संसद द्वारा पूर्व में निर्मित विधि में कुछ प्रतिकूलता विद्यमान होने पर भी, यह राज्य में अभिभावी होगा।

***C. Companies Act (1 of 1956), Section 446 - Stay on winding up proceedings* - Section 446 is not attracted in respect of issuance of notification under Madhya Pradesh Sahayata Upkram (Vishesh Upabandh) Adhiniyam, 1978. (Para 25)**

ग. कम्पनी अधिनियम (1956 का 1), धारा 446 – परिसमापन कार्यवाहियों का स्थगन – म.प्र. सहायता उपक्रम (विशेष उपबंध) अधिनियम, 1978 के अंतर्गत जारी की जाने वाली अधिसूचना के संबंध में धारा 446 आकर्षित नहीं होगी।

Cases referred :

(1987) 3 SCC 99, AIR 1954 SC 340, (1996) 1 SCC 435, (2004) 8 SCC 706, 2002 (2) Maharashtra Law Journal 911, (2011) 5 SCC 553, (2003) 113 Comp. Cases Page 466, AIR 1988 Rajasthan 16, AIR 1978 Calcutta 215.

B.L. Pavecha with *Nitin Phadke*, for the petitioner.
H.Y. Mehta, for the OL along with OL.
A.K. Sethi with *Pourush Ranka,* for the respondent.
R.C. Sinhal and *D.S. Panwar*, for the Allahabad Bank.

O R D E R

Prakash Shrivastava, J. :- I.A. No.4759/2015 has been filed by the respondent M/s. Plethico Pharmaceuticals Ltd. under Section 5 of Madhya Pradesh Sahayata Upkram (Vishesh Upbandh) Adhiniyam, 1978 (for short Act of 1978) seeking suspension/stay of the further proceedings in the present company petition till 15.6.2016.

2. OLR 17/2015 has been filed by the OL with a grievance that the management of the respondent-Company is not providing the details of the assets in terms of the order dated 7.4.2015.

3. In brief, this Company Petition has been filed for winding up of the respondent-Company under Section 433(e) & (f) read with Section 434 and 439 of the Companies Act, 1956. This Court vide order dated 1.10.2014 had admitted the company petition and vide order dated 7.4.2015 had appointed the Provisional Liquidator on certain terms and had permitted the petitioner publication of the Company Petition in terms of Rule 24 and 96 of the Company (Court) Rules. Since the direction issued by this Court on 7.4.2015 were not complied with, therefore, OLR 17/2015 was filed by the OL and at this stage respondent Company had filed the application under Section 5 of the Act of 1978 seeking stay of the proceedings.

4. Shri A.K. Sethi, learned senior counsel for the respondent-Company pressing I.A. No.4759/2015 submits that since the respondent Company has been declared as relief undertaking under Section 3 of the Act of 1978 vide Notification dated 16.6.2015, therefore, the proceedings in the present company petition are to be stayed under Section 5 of the Act. He has further submitted that the notification under Section 5 has the overriding effect and is applicable to the winding up proceedings also. He has further submitted that validity of the notification under Section 5 cannot be examined in these winding up proceedings and for the same, the proper remedy available to the other parties is to approach the writ court. He has further submitted that the subject for which the notification has been issued, falls in the concurrent list Entry 19, 23, 33 & 36 of the Constitution, therefore, question of repugnancy does not arise and Article 254(2) is attracted and consent of the President is relevant which has been taken. He has further submitted that Section 466 of the Companies Act is attracted after passing of the winding up order and that since issuance of notification is administrative act, therefore, Section 446(2)(d) of the Companies Act is not attracted.

5. Shri B.L. Pavecha, learned senior counsel appearing for the petitioner has submitted that the notification dated 16.6.2015 is void and without jurisdiction, therefore, it is a nullity and this aspect can be examined in collateral proceedings. He has further submitted that requisite recital about recording the satisfaction and that respondent is a state industrial undertaking is missing in the notification and no notification under Section 4 has been issued therefore Section 6 of Act will not be attracted. He further submits that applying the principle of *ejusdem generis*, the words "other legal proceedings" will take their colour from the previous word "suit", therefore, they are required to be

narrowly construed and notification will not be applicable to the winding up proceedings. He has further submitted that the subject matter of the notification is covered by Entry 43, 44 and 45 of the Union List, therefore, Article 254(2) is not attracted and assent of the President is not relevant. He has also submitted that the narrow interpretation will save the statute from the vice of repugnancy. Alternatively he has submitted that even if the notification dated 16.6.2015 is valid, then also it will not wipe off the order passed by this Court prior to the issuance of notification and those orders are to be given the full effect.

6. Shri H.Y. Mehta, learned counsel for the OL has submitted that Section 466 of the Companies Act provides for stay of the proceedings and the conditions of this section is not satisfied, therefore, the proceedings need not be stayed. He has further submitted that no leave has been taken in terms of Section 446(2)(d) of the Companies Act before issuance of notification.

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

8. The respondent-Company is seeking stay of the winding up proceedings under Section 5 of the Act of 1978 which has been enacted to enable the State Government to make special provisions for a limited period in respect of industrial relations, financial obligations and other like matters in relation to industrial undertaking the running of which is considered essential as a measure of preventing, or of providing relief against unemployment. Section 2(3), 2(4), 3, 4, 5 and 6 of the Act which are relevant for present controversy are quoted below as under :-

"Section 2-Definitions-

(1) **********

(2) **********

(3) "relief undertaking" means a State Industrial Undertaking in respect of which a declaration under Section 3 is in force;

(4) "State industrial undertaking" means an industrial undertaking--

(a) which is started or which, or the management of which is under any law or agreement acquired or otherwise taken over by the State Government or by a Government

Company and is run or proposed to be run by or under the authority of, the State Government or a Government Company; or

(b) to which any loan, advance, or grant has been given, or in respect of any loan whereof, a guarantee has been given, by the State Government or Government company; or

(c) in respect of which a notified order under the Industries (Development and Regulation) Act, 1951 (No. 65 of 1951) is in operation.

Section 3. Declaration of relief undertaking

The State Government may, if it is satisfied that it is necessary or expedient so to do in the public interest, with a view to enabling the continued running or restarting of a State Industrial undertaking as a measure of preventing, or of providing relief against, unemployment, declare, by notification, that the State industrial undertaking shall, on and from such date and for such period as may be specified in the notification, be a relief undertaking:

Provided that the period so specified shall not, in the first instance, exceed one year but may, by a like notification, be extended, from time to time, by any period not exceeding one year at any one time so however, that such periods in the aggregate shall not exceed [ten years]

Section 4- Application of certain enactments and contracts, agreements, etc., to relief undertaking-

That State Government may, if it is satisfied that it is necessary or expedient so to do for the purposes specified in Section 3, direct, by notification,--

(a) that in relation to any relief undertaking all or any of the enactments specified in the Schedule to this Act shall not apply or shall apply with such adaptations whether by way of modification, addition or omission (which does not, however affect the policy of the said enactments), as may be specified

in such notifications, or

(b) that the operation of all or any of the contracts, assurances of property, agreements, settlements, awards, standing orders or other instruments in force (to which any relief undertaking is a party or which may be applicable to any relief undertaking) immediately before the date on which the State Industrial undertaking is declared to be a relief undertaking, shall remain suspended or that all or any of the rights, privileges, obligations and liabilities accruing or arising thereunder before the said date, shall remain suspended or shall be enforceable with such modifications and in such manner as may be specified in such notification.

Section 5- Suspension of suits or other legal proceedings against relief undertakings

As from the date specified in the notification under [xxx] Section 3, no suit or other legal proceeding shall be instituted or commenced or, if pending, shall be proceeded with against the industrial undertaking during the period in which it remains a relief undertaking any law, usage, custom, contract, instrument, decree, order, award, settlement or other provisions whatsoever notwithstanding.

Section 6 – Over-riding effect of notification under Section 4-

A notification issued under Section 4 shall have effect notwithstanding anything to the contrary contained in any other law, agreement or instrument or any decree or order of Court, Tribunal, Officer or other authority."

9. In the present case the notification dated 16.6.2015 has been issued by the State Government under Section 3 of the Act of 1978 declaring the respondent-Company a relief undertaking for a period of one year from the date of the notification. Under Section 5 of the Act, from the date of issuance of notification under Section 3, the suit or other legal proceedings against the relief undertaking remain suspended.

10. The Supreme Court in the matter of *Binod Mills Co.Ltd. Ujjain (MP)*

Vs. Suresh Chandra Mahaveer Prasad Mantri, Bombay, reported in (1987) 3 SCC 99 considering the object of Section 5 of Act of 1978 has held that the section seeks to confer benefit to the relief undertaking from the ravages of litigation and consequent action during the period it remains a relief undertaking and the said bar operates only till the notifications remains in operation. The Supreme Court considering the object of the Act has held as under :-

> "9. It is evident from the above discussion that the High Court completely overlooked the purpose of the Act and the limited period of operation of Section 5. It has to be borne in mind that the Act in question was enacted with a specific purpose. The preamble to the Act states that the Act has been enacted "to enable the State Government to make special provisions for a limited period in respect of industrial relations, financial obligations and other like matters in relation to industrial undertakings the running of which is considered essential as a measure of preventing, or of providing relief against, unemployment." It is necessary to note that the State Government and other financial institutions invest large sums of money to revive sick units or relief undertakings. The Government and such institutions are interested in seeing that the amount so invested are utilised for the purpose of running the relief undertaking so that it can be gradually revived and what is more important, to provide continuous employment to a large number of workers. The Government is interested in making sure that the relief undertakings do not incur burdensome debts, engage in costly litigations and consequent attachment of their machineries and moveables thus gradually destroying the units completely. The Act has been enacted to safeguard the interest of the general public, the workers and the amounts invested. It is for this purpose that relief was given to the unit against execution of decrees for a maximum period of seven years. If creditors of the relief undertakings ingeniously manage to obtain decrees against them from Courts situated in areas where the Act is not in operation and thus try to circumvent the operation of the Act by getting such decrees transferred to the area where the Act is in operation and plead

that their decrees are saved from the mischief of the Act, such actions would be to defeat the very purpose of the Act. When we say this, we do not want to encourage such relief undertakings not to pay current liabilities. We are only concerned here with the interpretation of the sections of the Act. We will presently refer to some of the relevant sections and consider their operation both for pre-notification and post-notification debts.

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26. If the relief undertakings are not protected by a provision like Section 5, the position will be distressing. The creditors will proceed against them. Their properties and goods will be attached. The workers will be rendered jobless. In this case, this unit is said to employ nearly 2,000 workers. The creditors will not be in a more advantageous position either. If liquidation proceedings are initiated, the creditors will get only pro-rate from the sale proceeding of the assets, if creditors are permitted to proceed against the assets and the products of the undertaking, that would be detrimental to the heavy investment made by the State and other financial institutions. The concert of the Government in enacting this law is thus in the interest of the large number of workmen employed in these undertakings and in the revival, if possible, of sick unit. It is to protect them and not to render them unemployed that such relief undertakings are financed by the State."

11. The matter needs to be examined in the light of the various provisions of the Act and the object thereof.

12. The first issue which arises for consideration before this Court from the contentions of counsel for the parties is whether the notification dated 16.6.2015 is without jurisdiction and is nullity, therefore, it will have no effect on the present proceedings?

13. It is the settled position in law that since the defect of jurisdiction strikes at the very root of the matter, therefore, a notification, order or even a judgment or decree issued or passed without jurisdiction is a nullity, which can be established to be invalid even in collateral proceedings. Even the general

rule that the executing court cannot go behind the decree, has the exception that a decree suffering from the defect of lack of inherent jurisdiction of the Court passing it, can be set up as invalid in the execution proceedings. However there is a distinction between the inherent lack of jurisdiction and erroneous decision within jurisdiction. For an order passed by an authority or the court without jurisdiction, the defence of nullity can be set up by the party aggrieved even in collateral proceedings but if the order is erroneous or illegal though within jurisdiction, then that is required to be challenged in accordance with law before the appropriate forum. [See: *Kiran Singh and others Vs. Chaman Paswan and others* (AIR 1954 SC 340), *STATE OF KERELA VS. M.K. KUNHIKANNAN NAMBIAR MANJERI MANIKOTH NADUVIL (DEAD) AND OTHERS* (1996) 1 SCC 435, *Balvant N. Viswamitra and others Vs. Yadav Sadashiv Mule (Dead) through LRS and others* (2004) 8 SCC 706, *Apple Finance Ltd. Vs. Mantri Housing and Constructions Ltd.* [2002(2) Maharashtra Law Journal 911].

14. In the present case the notification issued under Section 3 of the Act of 1978 reads as under :-

> "No.F-10-04/2014/B-XI: Whereas the State Govt. is satisfied that it is necessary as well as expedient in the public interest of workers to declare the industrial company namely M/s. PLETHICO PHARMACEUTICALS LIMITED, INDORE (M.P.) a relief undertaking with a view to enabling the continued running of the industrial company as a measure of preventing and of providing relief against unemployment and also to safeguard the interest of the labour working in the said industrial company.
>
> 2. Now, THEREFORE, in exercise of the power conferred by Section 3 of the Madhya Pradesh Shayata Upkaram (Vishesh Upabandh) ADHINIYAM 1978 (No.32 of 1978) the State Government hereby decares the industrial company namely: Ms. PLETHICO PHARMACEUTICALS LIMITED, INDORE (M.P.) a relief undertaking for period of one year with effect from the date of this notification"

15. Section 3 of the Act empowers the State to declare any State industrial undertaking as Relief Undertaking. The State undertaking has been defined

under sub-section 4 of Section 2 of the Act. Section 2(4)(b) of the Act includes within the ambit of State industrial undertaking any industrial undertaking to which any loan, advance or grant has been given or in respect of any loan whereof, a guarantee has been given by the State Government or Government Company. It is the case of the respondent Company that the respondent-Company has been given loan by the Government companies. The record reflects that the notification has been issued by accepting the said plea of the respondent. In such a situation it cannot be held that the State Government had no jurisdiction to issue the notification dated 16.6.2015 under Section 3 of the Act. Hence I am of the opinion that the notification does not suffer from the defect of inherent lack of jurisdiction of the State. The issue if the notification is erroneous or illegal, cannot be examined in these collateral proceedings and for establishing the same, proper remedy available to the aggrieved parties is to approach the writ court under Article 226 of the Constitution of India. The contention of counsel for the petitioner that the notification has been issued by the State without recording the satisfaction in terms of Section 3, also cannot be accepted since a bare reading of the notification reveals that in the opening part of the notification itself the State has recorded its satisfaction. Whether the satisfaction is rightly recorded or wrongly recorded, cannot be gone into in these collateral proceedings, therefore, the petitioner is not entitled to the benefit of the judgment of the Supreme Court in the matter of *Radhy Shyam (Dead) through LRS and others Vs. State of Uttar Pradesh and others*, reported in (2011) 5 SCC 553.

16. The next issue raised by counsel for the petitioner is that on issuance of the notification under Section 3, the proceedings in a suit are suspended under Section 5 and since Section 5 is attracted to "suits or other legal proceedings" therefore, applying the principle of *ejusdem generis* word "other legal proceedings" will take their colour from the word "suit" and will apply to the proceedings relating to the suit and not to the present proceedings which are the winding up proceedings under the Companies Act.

17. Such a proposition cannot be accepted. The Supreme Court in the matter of *Binod Mills* (supra) considering the scope of Section 5 has already held that Section 5 has a free field of operation unfettered by any limitation. The Supreme Court while considering the question if the execution proceedings are included within the meaning "other legal proceedings" under Section 5, has held as under :-

14. So read, the object of the section becomes clear. The section seeks to confer benefit to the relief undertakings from the ravages of litigation during the period it remains a relief undertaking. The expression 'decree' is very material for our purpose. Inclusion of 'decrees' in the section shows that the fact that decrees were validly obtained against a relief undertaking will not pose any danger to it during the period the declaration is in force. In other words, the section prevents execution of a decree validly obtained against the undertaking during the period mentioned above. That takes us to the question as to whether the words "other legal proceedings" in the section would take in execution proceedings. It is not disputed that the Section bars institution of suits and starting of other proceedings. What is disputed is that expression "other legal proceedings" will not take in execution proceedings. The contention is grounded on the general principle that the execution court cannot go behind a valid decree and that the execution court cannot, therefore, refuse to execute it. It is admitted that the decree obtained from the Bombay High Court is a valid decree. That being so, law should take its course and execution should proceed. It is by virtue of the enabling provisions contained in Sections 40 & 42 of the Civil Procedure Code that this validly obtained decree got transferred to the Court in Madhya Pradesh. It is contended that by the mere transfer of this decree in accordance with the procedural law, its validity does not disappear nor its binding force cease to exist. We find difficulty in accepting this contention. If we are to accept this submission, it would be rendering section 5 of the Act nugatory and to 258 destroy the benefits sought to be conferred by that section. Nobody questions the validity of the decree. All that is sought to be done is to suspend its animation for the period mentioned in the notification. No Court in Madhya Pradesh can question its validity, nor can refuse to execute it after the period is over. To direct execution of the decree in the teeth of Section 5 would be to encourage filing of suits in Courts outside Madhya Pradesh, secure decrees and defeat the purpose of the Act.

We do not think that such an abuse is permissible in the face of Section 5 of the Act. We have, therefore, to answer this question in favour of the appellant.

15. For the disposal of this case, we do not think it necessary to refer to the lengthy discussion made by the High Court on substantive and procedural law. We have to construe and interpret the section as it stands. The section is unambiguous and full import has to be given to its words and its intent. The non obstante clause in this section takes within its ambit, all the decrees passed against the relief undertaking. The bar of 'institution or commencement' takes within its ambit suits or 'other legal proceedings' which include execution petitions also."

18. It has been held by the Supreme Court that the Section 5 is unambiguous and full import has to be given to its words and its intent. Similar argument advanced in the matte (sic:matter) of *Binod Mills* (supra) that the wide construction cannot be given to the expression "other legal proceedings", has been rejected by holding as under :-

"16. An attempt was made by the learned counsel for the respondent to contend that the expression "other legal proceedings" cannot take in proceedings to execute validly obtained decrees. It was further contended that if we give such a wide construction to the expression "other legal proceedings" institution of even claims of workers under the Industrial Disputes Act and other similar beneficial legislations, arising after the issue of notification, will be barred. On the wording of the section we feel such a conclusion is inescapable."

19. It has been held by the Supreme Court in *Binod Mills* (supra) that the Section 5 has been enacted with definite object of protecting the relief undertakings from litigations and consequent actions and the bar contained therein is absolute, by holding as under :-

"22. If we look into the scheme of the Act and the various sections, it will be evident that Section 5 is an independent section uncontrolled by Sections 4, 6 & 7. Sections 4, 6 & 7, deal with suspension or modification of certain remedies, rights

etc., stay of proceedings, their revival and continuance. Section 5 does not make any reference to Section 4. It had been enacted with a definite object and that is to protect the relief undertakings from litigations and consequent actions. The object is clear. The Government wants to relieve such undertakings from litigative pressure for a period of time. It is not a permanent relief. The Government are interested to see that the investments made by it and other financial institutions do not get frittered away by avoidable litigation and other legal proceedings. The bar contained in Section 5 by way of suspension of suits or other legal proceedings is thus an absolute bar but only for the period contemplated by the Act."

20. The Bombay High Court in the matter of *Baroda Rayon Corporation Ltd. Vs. ICICI Ltd. (Debenture Trustees) and others,* reported in (2003) 113 Comp.Cases Page 466 relying upon the judgment of *Binod Mills* (supra) and considering the provisions of Bombay Relief Undertakings (Special Provisions) Act, 1958, wherein the court receiver was already appointed in respect of the properties of the company and receiver had already taken possession and thereafter the notification under Section 3 of the Act was issued, has held that the order of the receiver cannot be enforced against the properties of the undertaking in Gujarat State so long as the notification is in force. The Rajasthan High Court also in the matter of *M/s Jaysynth Dyechem Vs. Mewas Textile Mills Ltd.,* reported in AIR 1988 Rajasthan 16 considering the provisions of the Rajasthan Relief Undertakings (Special Provisions) Act, 1961 has held that "any proceedings" does not exclude winding up proceedings and the provisions of the Act is to be given widest amplitude by observing as under :-

"9. So far as the second contention is concerned, I may at once state that the expression used by the State legislature in S.4(b) is of widest amplitude. Legal proceeding has been explained and the explanation makes it abundantly clear that the expression would mean, any proceeding before any Court. It cannot be conceived that the words "any proceeding" excludes the proceedings of winding up and the word court exclude the proceeding before the High Court. It should be presumed that the State legislature knows that the

proceeding in the nature of winding up exclusively fall within the jurisdiction of the High Court under the Companies Act. That being so, if the legislature had intended to exclude the proceeding before the High Court, the State legislature would have made such a provision. The very object of the Act, in that situation, would have been defeated. Normally industries are incorporated companies and if the companies winding up proceeding would have been outside the purview of the Act, then the whole object of the Act would be defeated. Thus the submission made on behalf of the creditor petitioners in my opinion, has no substance that the word legal proceedings explained is S.4(1)(b) excludes from its scope the proceedings of winding up before the High Court."

21. Hon'ble Justice G.P. Singh in his principles of statutory interpretation, 11th Edition while discussing rule of *ejusdem generis* has observed as under :-

"The rule of *ejusdem generis* has to be applied with care and caution. It is not an inviolable rule of law, but it is only permissible inference in the absence of an indication to the contrary, and where context and the object and mischief of the enactment do not require restricted meaning to be attached to words of general import, it becomes the duty of the courts to give those words their plain and ordinary meaning. As stated by LORD SCARMAN: "If the legislative purpose of a statute is such that a statutory series should be read *ejusdem generis,* so be it, the rule is helpful. But, if it is not, the rule is more likely to defeat than to fulfil the purpose of the statute. The rule like many other rules of statutory interpretation, is a useful servant but a bad master." So a narrow construction on the basis of *ejusdem generis* rule may have to give way to a broader construction to give effect to the intention of Parliament by adopting a purposive construction."

22. Considering the aforesaid position in law, judgments as also the object of the provision and its scope as already been examined by the Supreme Court in the matter of *Binod Mills* (supra), I am of the opinion that the application of the notification under Section 3 cannot be restricted to the proceedings in a suit but in my considered opinion, the words "other legal

proceedings" under Section 3 will include winding up proceedings also.

23. The next argument of counsel for the petitioner is that the subject is covered by Entry 43, 44 and 45 of the Union List and Section 3 is repugnant to the Central Act i.e. Industrial (Development and Regulation) Act, 1951, therefore, even the assent of the President will not save it and to avoid the repugnancy, the principle of reading down should be applied by holding that the Section 3 is attracted only in the proceedings of a suit. Such a submission is found to be devoid of any merit in view of the fact that the Act of 1978 has been enacted to provide relief to certain categories of industrial undertakings against unemployment and the Act in pith and substance falls in Entry 23 and 33 of the Concurrent List. The Full Bench of the Calcutta High Court in the matter of *Pushraj Puranmull and another Vs. N. Roy and others,* reported in AIR 1978 Calcutta 215 considering the similar provisions contained in West Bengal Relief Undertaking (Special Provisions) Act (13 of 1972) which is a similar legislation has held that the legislation directly falls under Entry 23 of List 3. The Rajasthan High Court has also examined this issue in the matter of *M/s Jaysynth Dyechem* (supra) while considering the provisions of Rajasthan Relief Undertaking (Special Provisions) Act, 1961 has held that the true character of the legislation made by the State Legislature is to make law in relation to the subjects falling under entries 23 and 33 and although incidentally, it just impinges upon the proceeding of winding up, which are regulated by the Companies Act, enacted by the Parliament under entry 43 of List 1 but this is only the incidental effect and it is not the true nature of the law.

24. Hence the view taken by this Court above is supported by the Full Bench judgment of the Calcutta High Court as also the judgment of the Rajasthan High Court noted above. Since the subject matter of the Act in pith and substance falls in the Concurrent List, therefore, Article 254(2) will be attracted and on account of the fact that the Act of 1978 has been enacted with the consent of the President, it will prevail in the State even if there exists some repugnancy with the provisions of the earlier law made by the parliament.

25. Counsel for the OL has also raised an issue that without satisfaction of the conditions in Section 466 of the Companies Act, the stay cannot be granted and the leave of this court was not obtained in terms of Section 446(2)(d) of the Companies Act before issuance of notification, but such a submission cannot be accepted because stay has been sought under Section 5 of the Act of 1978. That apart Section 466 relates to the power of tribunal

to stay winding up proceedings after the order of winding up is passed and even otherwise it empowers the Court to stay the winding up proceedings on being satisfied in this regard. So far as the objection relating to not taking leave under Section 446(2)(d) is concerned, Section 446 is not attracted in the facts of the present case specially in respect of issuance of notification under the Act of 1978.

26. Having held that the notification dated 16.6.2015 does not suffer from the defect of inherent lack of jurisdiction and it is applicable to the winding up proceedings under the Companies Act, this Court is required to see the effect of the notification. In the present case, only the notification under Section 3 has been issued and no notification under Section 4 has been issued. The effect of issuance of notification under Section 3 is that the suits or other legal proceedings (which include the winding up proceedings also as held above) are suspended during the period notification remains effective but such a notification under Section 3 alone without issuing any notification under Section 4, will not have any effect on the orders already passed in the present winding up proceedings.

27. Learned counsel appearing for the respondent on 24.8.2015 had rightly admitted before this Court that the orders which are passed prior to the issuance of the notification are to be complied with. Even otherwise the object of the Act and the notification is to provide relief against unemployment. This Court while passing the order dated 7.4.2015 and appointing the Official Liquidator of this Court as Provisional Liquidator, has considered the fact that the respondent-Company is a running concern employing large number of workers, therefore, to strike the balance between the interest of the petitionercreditor as also the respondent-Company, this Court had passed following order on 7.4.2015 :-

> ".....This court considering the entire circumstances of the case has already admitted the winding up petition by order dated 1/10/2014. Substantial time has lapsed thereafter. The division bench has already rejected the respondents prayer for grant of stay.
>
> Counsel for petitioner referring to the order of the Company Law Board dated 11/2/2015 has expressed the apprehension that the respondent company may indulge in

alienation of the assets of the company. The said apprehension is not found to be without any basis. Though, after admitting the petition, the interest of the petitioner is required to be protected, but at the same time this court is conscious of the fact that the respondent company is a running concern employed large number of workers. Therefore, keeping in view the entire circumstances of the case, the OL is appointed as provisional liquidator on the following conditions:-

[1] That, the provisional liquidator will take paper possession of all the assets of the company in liquidation and prepare an inventory of all the immovable and movable assets of the company in liquidation and the respondent will extend full co-operation to the OL in this regard.

[2] The respondent company is permitted to carry out its business activity but it is restrained from alienating or creating any charge on immovable or movable properties of the company.

[3] The respondent company will furnish details of account in respect of sale of its finished product to the OL on monthly basis. The respondent company will also submit previous three years audited balance sheet and fixed asset register to provisional OL within two weeks from today."

28. In view of the legal and factual position noted above, the respondent is required to give effect to the order dated 7.4.2015.

29. The OL in OLR 17/2015 has alleged that the respondent-Company is not cooperating with the OL and is not furnishing the full particulars in pursuance to the order dated 7.4.2015. The reply to the OLR filed by the respondent reflects that the direction of this Court has not been complied with in entirety. The said direction has been issued with a view to permit the respondent to run the business activity and at the same time to protect the assets of the Company from being misappropriated. The above direction is in consonance with the Scheme and object of the Act of 1978. Hence the direction is to be fully complied with.

30. In these circumstances I hold that by virtue of the notification dated

16.6.2015 issued under Section 3 of the Act of 1978, the further proceedings in the present winding up petition are stayed till 16/6/2016. However this order will not effect the order already passed on 7.4.2015 appointing Provisional Liquidator on certain conditions prior to issuance of the notification. To give effect to the order dated 7.4.2015 and to protect the properties, the respondent-Company is directed to give inspection of books of accounts and records of the company to the inspecting officer appointed by the Regional Director/Registrar of Corporate Affairs. The Managing Director and other Directors and officers of the respondent-Company are also directed to provide/ submit the requisite information and document in this regard to the Inspecting Officer.

31. OLR 17/2015 and I.A. No.4759/2015 are accordingly disposed of.

List after 6 weeks.

C.C. as per rules.

Order accordingly.

I.L.R. [2016] M.P., 846
APPELLATE CIVIL

Before Mr. Justice S.K. Gangele & Mr. Justice S.K. Palo
F.A. No.55/2013 (Gwalior) decided on 17 September, 2014

TARUN KADAM & anr. ...Appellants
Vs.
STATE OF M.P & anr. ... Respondents

***A. Juvenile Justice (Care and Protection of Children) Act (56 of 2000), Section 41 and Juvenile Justice (Care and Protection of Children) Rules 2007, Rule 33(5)* - Court - Implies - Civil Court - Which has jurisdiction in the matter of adoption and guardianship, includes, District Court, Family Court, City Civil Court. (Para 6)**

क. किशोर न्याय (बालकों की देख–रेख और संरक्षण) अधिनियम (2000 का 56), धारा 41 एवं किशोर न्याय (बालकों की देख–रेख और संरक्षण) नियम 2007, नियम 33(5) – न्यायालय – तात्पर्य – सिविल न्यायालय – जिसे दत्तक ग्रहण एवं संरक्षकता के मामलों को सुनने की अधिकारिता हो, जिसमें जिला न्यायालय, कुटुम्ब न्यायालय एवं सिटी सिविल न्यायालय सम्मिलित हैं।

B. Juvenile Justice (Care and Protection of Children) Act

***(56 of 2000), Section 41 (6)* - Jurisdiction - To entertain application for adoption - Family Court can. (Para 16)**

ख. किशोर न्याय (बालकों की देख–रेख और संरक्षण) अधिनियम (2000 का 56), धारा 41(6) – अधिकारिता – दत्तक ग्रहण हेतु प्रस्तुत आवेदन ग्रहण करना – कुटुम्ब न्यायालय कर सकता है।

Cases referred :

2008 Cri.L.J 2368, 2000 (2) Bombay CR 244.

Sankalp Sharma, for the appellant.
Raghvendra Dixit, G.A. for the respondent/State.

JUDGMENT

The Judgment of the Court was delivered by : **S.K. Palo, J. :-** Aggrieved by the order dated 21.8.2012 passed by the Additional Principal Judge, Family Court, Gwalior in Case No. 08/2012 Guardian & Wards Act, 1890 the plaintiff has filed this appeal under Section 19 of the Family Court Act 1984.

2. By the impugned order the Additional Principal Judge, Family Court, Gwalior has rejected the application under Section 7 read with Section 9(4) of Hindu Adoption and Maintenance Act, 1956.

3. The disputes lies in a narrow compass. The learned Additional Principal Judge, Family Court Gwalior observing that "Court" in Rule 2 (V) of Madhya Pradesh Juvenile Justice (Care and Protection of Children) Rules, 2003 means Court of Principal Civil Court of the District, rejected the application stating that it has no jurisdiction to try the application.

4. The appellant - plaintiff moved an application under Section 7 read with Section 9(4) of Hindu Adoption and Maintenance Act 1956 for adoption of (2) F.A. No. 55/2013 the subject a abandoned child who is in the custody of respondent No.2- Balkalyan Samiti. The same was decided by the impugned order. Therefore, in this appeal, without going into the merits of the case, we set to decide the question of jurisdiction only.

5. On behalf of the appellant, it is submitted that the learned Family Court erred in holding that it has no jurisdiction, whereas Section 7 (g) of the Family Court Act, 1984 clearly indicates that it can decide "a suit or proceeding in

relation to the guardianship of the person or the custody of, or access to, any minor". It has also been submitted that as per sub-section (1) (b) of Section 41 of Juvenile Justice (Care & Protection of Children) Act, 2000 provides "to adopt a child of same sex irrespective of the number of living biological sons or daughters". It has further fervently argued that the learned Family Court while deciding the application relied on the Single Bench judgment of Kerala High Court in the case of *Andreq Mendez & Others Vs. State of Kerala,* 2008 CrilJ 2368, in which judgment of Bombay High Court in the case of *Manuel Theodore D' Souza* , 2000(2) Bombay CR 244, has been followed. In our opinion, it is not the correct view. These cases are distinguishable from the present case. Hence, the impugned order is liable to be set aside.

6. Learned counsel for the appellant also submitted that under the provision of Section 68 of Juvenile Justice (Care & Protection of Children) Act, 2000, the (3) F.A. No. 55/2013 Central Government has power to frame Rules. Thus the Central Government has framed The Juvenile Justice (Care & Protection of Children) Rules, 2007. In sub-Rule (5) of Rule 33, it is provided that for the purpose of Section 41 of the Act, "Court" implies "Civil Court which has jurisdiction in the matter of adoption and guardianship and may include the Court of District Court, **Family Court,** City Civil Court". These rules have been framed by the Central Government in the year 2007 and published in the Gazette of India on 26-10-2007.

7. It can be safely said that in the case of *Manuel Theodore D' Souza* (supra), the Court had no occasion to refer The Juvenile Justice (Care & Protection of Children) Rules, 2007 as it was decided on 27.10.1999. The learned Single Judge of the Kerala High Court in the case of *Andreq Mondez and others* (supra) has followed the decision referred in case of *Manuel Theodore D' Souza* (supra) decided in the year 1999.

8. Learned counsel for the respondent- State has fairly conceded that after framing of The Juvenile Justice (Care & Protection of Children) Rules, 2007, this dispute has been set at rest.

9. The Family Courts Act, 1984 has been enacted with a view to promote to reconciliation and secure safety, settlement of dispute relating to marriage and family affairs and for matters connected there with.

10. For the better understanding of the provision we extract Section 7 of

the Family Courts Act, 1984.

> "7. Jurisdiction – (1) Subject to the other provisions of this Act, a Family Court shall -
>
> (a) have and exercise all the jurisdiction exercisable by any **district court** or any subordinate civil Court under any law for the time being in force in respect of suits and proceedings of the nature referred to in the explanation; and
>
> (b) be deemed, for the purposes of exercising such jurisdiction under such law, to be a **"district court"** or, as the case may be, such subordinate civil court for the area to which the jurisdiction of the Family Court extends".

11. For the better understanding of the matter in dispute, we also reproduce the provision of Sub Rule (5) of the Rule 33 of Juvenile Justice (Care and Protection of Children) Rules 2007 -

> "(5) For the purpose of Section 41 of the Act, 'Court' implies a Civil Court, which has jurisdiction in matters of adoption and guardianship and may include the court of the District Judge, Family Court and City Civil Court".

12. The intend of the legislation clearly shows that the "Family Court" has the same jurisdiction which is exercisable by any District Court or any sub-ordinate Civil Courts.

13. In Madhya Pradesh, the Family Courts are established in different districts but jurisdiction has been restricted to the municipal areas of that place in which the courts have been established; whereas the District Courts have jurisdiction to try such cases arising out of the area other than the municipal area of that district in which the Family Court is established.

14. That being so, the dispute regarding the jurisdiction of Family Court is now very clear after the enactment of Juvenile Justice (Care and Protection of Children) Rule, 2007.

15. We descent the view expressed by the learned Single Bench of Kerala High Court in the case of *Andreq Mendez & Others* (supra).

16. We, therefore, find it absolutely safe to come to a definite conclusion

that "Family Court" can have jurisdiction to entertain the application under Section 41 (6) of Juvenile Justice (Care & Protection of Children) Act, 2007(sic:2000).

17. Before parting with the case, we deem it necessary to circulate copy of order this to the District Courts and Family Courts so that for such petty matters the new born kids, abandoned, destitute or similarly situated child, who has a right to have a family, a name and a nationality, should not be allowed to remain in the Balkalyan Samiti for such a long time, whereas the prospective parents are eager to adopt them and to look after them.

18. A copy of this judgment be sent to the Registrar General for circulation to district courts and family courts in the State.

19. Accordingly, allow this appeal and set aside the impugned order.

Appeal allowed.

I.L.R. [2016] M.P., 850
APPELLATE CIVIL
Before Mr. Justice Jarat Kumar Jain
M.A. No. 1791/2014 (Indore) decided on 15 April, 2015

PRAMOD KUMAR ...Appellant
Vs.
SAIYAD RAJIY SULTAN & ors. ...Respondents

A. Civil Procedure Code (5 of 1908), Order 7 Rule 11(d) - Preliminary issue - **When from the averment of the plaint it is clear that the suit is barred by any law, then plaint can be rejected - But when disputed question in relation to the issue of limitation is involved, the Court cannot reject the plaint. (Para 14)**

क. सिविल प्रक्रिया संहिता (1908 का 5), आदेश 7 नियम 11 (डी) – प्रारंभिक विवाद्यक – जब वादपत्र के प्रकथन से यह स्पष्ट है कि वाद किसी विधि द्वारा वर्जित है, तब ऐसे वादपत्र को नामंजूर किया जा सकता है – परंतु, जब परिसीमा के विवाद्यक के संबंध में विवादित प्रश्न अंतर्ग्रस्त है, तब न्यायालय वादपत्र को निरस्त नहीं कर सकता।

B. Civil Procedure Code (5 of 1908), Order 14 Rule 2 - Issue of adverse possession - **Mixed question of law and fact - It cannot be decided without taking evidence. (Para 11)**

ख. *सिविल प्रक्रिया संहिता (1908 का 5), आदेश 14 नियम 2 – प्रतिकूल कब्जे का विवाद्यक* – विधि एवं तथ्य का मिश्रित प्रश्न – बिना साक्ष्य लिये इसको विनिश्चित नहीं किया जा सकता।

C. Civil Procedure Code (5 of 1908), Order 14 Rule 2 - Preliminary issue - **Issue of limitation - Is a mixed question of fact and law which can be decided only after framing issues and recording evidence.** **(Para 14)**

ग. *सिविल प्रक्रिया संहिता (1908 का 5), आदेश 14 नियम 2 – प्रारंभिक विवाद्यक* – परिसीमा का विवाद्यक – यह तथ्य एवं विधि का मिश्रित प्रश्न है, जिसे केवल विवाद्यकों को विरचित किये जाने तथा साक्ष्य अभिलिखित किये जाने के पश्चात् ही विनिश्चित किया जा सकता है।

D. Limitation Act (36 of 1963), Article 65 - **Suit was filed for possession of immovable property - Admittedly the suit is governed by this Article.** **(Para 10)**

घ. *परिसीमा अधिनियम (1963 का 36), अनुच्छेद 65* – अचल संपत्ति के कब्जे के लिये वाद प्रस्तुत किया गया – स्वीकृत रूप से वाद इस अनुच्छेद से शासित होगा।

E. Limitation Act (36 of 1963), Article 65 - Limitation - **Provides 12 years of limitation and limitation starts when the possession of the defendant becomes adverse to the plaintiff.** **(Para 10)**

ङ. *परिसीमा अधिनियम (1963 का 36), अनुच्छेद 65 – परिसीमा* – 12 वर्ष की परिसीमा उपबंधित एवं परिसीमा तब आरंभ होती है जब प्रतिवादी का कब्जा वादी के प्रतिकूल हो जाता है।

Cases referred :

(2003) 1 SCC 557, 2008 (1) MPLJ 30, AIR 2009 SC 103, 1992 (2) MPJR 281, (2007) 3 SCC 114, (2004) 3 SCC 376, AIR 2008 SC 363, 2006 (1) MPWN 10 (SC), (2006) 5 SCC 658.

A.K. Sethi with *Harish Joshi*, for the appellant.
Siraj Khan, for the respondent No. 1.
None for the respondent Nos. 2 & 3.

ORDER

J.K. JAIN, J. :- THIS Misc. Appeal under Order XLIII Rule 1 (u) of the Code of Civil Procedure [in brief "the Code"] is filed against the judgment dated 11.08.2014 passed by Second ADJ, Barwani in Civil Appeal No.13-A/2014, by which set aside the order dated 14.01.2013 passed by Civil Judge, Class-II, Rajpur in Civil Suit No.15-A/2012 and the matter was remanded back to the Trial Court.

2. Brief facts of this case are that the Respondent No.1/plaintiff has filed a suit for declaration, possession and *mesne* profits in respect of Khandhar and appurtenant land described in para 2 of the plaint [for short "suit property"]. The appellant/defendant No.1 has filed an application under Order VII Rule 11 of the Code which was allowed and consequently the plaint filed by the Respondent No.1/plaintiff was rejected. However, the compensatory cost has not been awarded to the appellant. Then the Respondent No.1/plaintiff has filed Civil Appeal No.13-A/2014. The appellant/defendant No.1 has also filed Civil Appeal No.12-A/2014 against non award of compensatory cost. Both the appeals were decided by the impugned judgment by which the appellant's appeal was dismissed; whereas the Respondent No.1/plaintiff's appeal was allowed and the set aside order passed by the Trial Court and the matter was remanded back to the Trial Court for deciding the suit after framing the issues and recording the evidence. Being aggrieved with this judgment, the appellant has filed this appeal.

3. Learned Senior Counsel for the appellant submits that at the time of considering the application under Order VII Rule 11 of the Code, the Court has to consider the averments made in the plaint and the plea taken by the defendants in the written-statement would be wholly irrelevant at that stage. Therefore, a direction of the learned appellate Court that the application be decided after framing of the issues and taking evidence is not justified. For this purpose he placed reliance on the judgment of Hon'ble apex Court in the case of *Saleem Bhai v/s State of Maharashtra* [(2003) 1 SCC 557].

4. Learned Senior Counsel for the appellant further submits that considering the averments made in the plaint as a whole and considering the documents, it is clear that the suit is apparently barred by law of Limitation. Therefore, the plaint can be rejected in exercise of power under Order VII Rule 11 (d) of the Code. For this purpose, he placed reliance on the judgment of Hon'ble apex Court in the case of *Hardesh Ores (P) Ltd. v/s Hede &*

Company [2008 (1) MPLJ 30].

5. Learned Senior Counsel for the appellant further submits that the learned lower appellate Court has committed an error of law in not considering that the Respondent No.1/plaintiff is claiming the ownership on the basis of registered sale-deed dated 9/10-04/1985. Therefore, the suit for possession may be filed within 12 years i.e. up to 08.04.1997. In alternative, it is submitted that in the earlier Civil Suit No.27-A/1985 decided between the parties on 23.09.1991 it has been held that the Respondent No.1 is owner of the suit property, but the Respondent No.1 can not interfere with the possession of the appellant. The Respondent No.1 has filed Civil Appeal No.18-A/1992 which was dismissed on 15.02.1994. However, liberty was granted to the Respondent No.1 to initiate appropriate legal proceedings for obtaining possession. Against which, Respondent No.1 has filed Second Appeal No.157 of 1994 before the High Court which was dismissed on 23.09.1994 for want of prosecution. Thus, the Respondent No.1 can file civil suit for possession within 12 years from the appellate Court's judgment (dated 15.02.1994) i.e. before 15.02.2006; whereas the present suit was filed on 14.08.2012 which is apparently barred by time. Learned first appellate Court misinterpreted the provisions of Article 65 of Limitation Act and set-aside the order and remanded the matter back to the Trial Court. Therefore, the impugned judgment is liable to be set-aside.

6. It is also submitted that the suit for declaration of title is governed by Article 58 of Limitation Act, which prescribes 3 years of limitation. Thus, the relief sought for declaration is also barred by limitation.

7. On the other hand, learned counsel for the Respondent No.1/plaintiff vehemently opposed the prayer. He submits that the suit for possession is governed by Article 65 of the Limitation Act and starting point of limitation commenced when the possession of the defendant becomes adverse to the plaintiff. The question of adverse possession is a mixed question of law and fact as held by the Hon'ble apex Court in the case of *Hemaji Waghaji Jat v/s Bhika Bhai Khengar Bhai and others* [AIR 2009 SC 103]. He further submits that the suit is for possession of immovable property on the basis of title, therefore, it is not necessary to calculate the limitation 12 years back from the date of the suit as held by this Court in the case of *Pataria and others v/s Mst. Chitia and others* [1992 (2) MPJR 281]. For this purpose he also placed reliance on the judgment of Hon'ble apex Court *M. Durai v/s*

Mutthu [(2007) 3 SCC 114]; *Basanti Ben Prahladji Naik v/s Somnath Moolji Bhai Naik* [(2004) 3 SCC 376]; and *C. Natrajan v/s Ashin Bai and others* [AIR 2008 SC 363].

8. Learned counsel for the Respondent No.1 further submits that Hon'ble apex Court in the case of *Popat and Kotecha Property v/s State Bank of India Staff Association* [2006 (1) MPWN 10 (SC)] held that the disputed questions in regard to limitation cannot be decided at the time of considering an application filed under Order VII Rule 11 of the Code. In the present case, the question of limitation is a disputed question and mixed question of law and fact, therefore, it can not be decided without framing the issues and taking evidence. Thus, he supports the impugned judgment.

9. After hearing learned counsel for the parties, perused the record.

10. The present suit was filed for possession of immovable property on the basis of title and not merely possessory title. Thus, admittedly the suit is governed by Article 65 of Limitation Act. Section 65 of Limitation Act provides 12 years of limitation and limitation starts when the possession of the defendant becomes adverse to the plaintiff. Thus, the question before this Court, what is the starting point of limitation for calculating the limitation of 12 years ? As per the learned Senior Counsel for the appellant, limitation starts on 9/10-04/1985 when the sale-deed of the suit property executed in favour of Respondent No.1 and in alternative, the limitation starts on 15.02.1994 when in earlier litigation between the parties, while dismissing the appeal of Respondent No.1, first appellate Court granted a liberty to file appropriate proceedings for taking possession of the suit property. I am unable to convince with the arguments of learned Senior Counsel for the appellant. The limitation commences from the date when defendant's possession become adverse as held by this Court in the case of *Pataria and others* (supra) and *Basanti Ben Prahladji Naik* (supra). Thus, it is clear that starting point of limitation commences from the date appellant's (defendant's) possession become adverse to the Respondent No.1 (plaintiff).

11. Adverse possession is a mixed question of law and fact. Therefore, it cannot be decided without taking evidence. Hon'ble apex Court in the case *Hemaji Waghaji Jat* (supra) held "a plea of adverse possession is not a pure question of law but a blended one of fact and law".

12. Hon'ble apex Court in the case of *Balasaria Constructioin (P) Ltd.*

v/s Hanuman Seva Trust [(2006) 5 SCC 658] held as under :-

> **"8. After hearing counsel for the parties, going through the plaint, application under Order7 Rule 11 (d) CPC and the judgments of the trial court and the High Court, we are of the opinion that the present suit could not be dismissed as barred by limitation without proper pleadings, framing of an issue of limitation and taking of evidence. Question of limitation is a mixed question of law and fact. Ex facie in the present case on the reading of the plaint it cannot be held that the suit is barred by time."**

14. Now, I have considered the precedence relied upon by learned counsel counsel for the appellant. Hon'ble Apex Court in the case of *Popat and Kotecha* (Supra) considered the judgment of *Salim Bhai* (Supra) and various other judgments and held that when from the averments of the plaint it is clear that the suit is barred by any law, then the plaint can be rejected under Order 7 Rule 11 of the C.P.C., but when disputed question in relation to issue of limitation is involved, the Court cannot reject the plaint in exercise of powers under Order 7 Rule 11 of the C.P.C. Another judgment which is relied upon by learned senior counsel for appellant is the case of *Hardesh Ores* (Supra). In this case, Hon'ble Apex Court while dealing with the case of injunction, held that the case was governed by Article 113 and in that case, no disputed question in relation to the issue of limitation was involved, whereas in the present case, the starting point of limitation can be decided only on the basis when the possession of appellant (defendant) became adverse to the Respondent No.1 (plaintiff). This is a mixed question of fact and law, therefore, it cannot be decided only on the basis of plaint allegations. Hence, in the present facts, the judgments relied upon by senior counsel for appellant, are not helpful to the appellant.

14. With the aforesaid discussions, I am of the considered view that in the present case the ISSUE of limitation is a mixed question of fact and law which can be decided only after framing issues and recording evidence. Therefore, the learned first appellate Court rightly set-aside the order of the Trial Court allowing the application under Order VII Rule 11 (d) of the Code and remanded back the matter for trial. I, therefore, found no merit in this appeal and the same is accordingly dismissed. No order as to costs.

Appeal dismissed.

I.L.R. [2016] M.P., 856
APPELLATE CIVIL
Before Mrs. Justice S.R. Waghmare
S.A. No. 323/2011 (Indore) decided on 13 May, 2015

STATE OF M.P. ...Appellant
Vs.
SHRIMANT TUKOJIRAO PANWAR ...Respondent

Limitation Act (36 of 1963), Section 5 - Condonation of delay - **Delay has not been properly explained even considering the fact that the first appeal was dismissed by the lower Court on the ground of limitation - Colossal delay has occasioned again at the time of filing the second appeal - Such high handedness and bureaucratic attitude cannot be permitted at any costs - Appeal dismissed for want of limitation. (Para 10)**

परिसीमा अधिनियम (1963 का 36), धारा 5 – विलंब के लिये माफी – इस तथ्य के विचारोपरांत कि निचले न्यायालय द्वारा प्रथम अपील परिसीमा के आधार पर खारिज की गई थी, विलंब का कोई समुचित स्पष्टीकरण प्रस्तुत नहीं किया गया – पुनः द्वितीय अपील प्रस्तुत किये जाने में भी अति विलंब कारित हुआ है – इस प्रकार की स्वेच्छाचारी एवं नौकरशाह मनोवृत्ति किसी भी कीमत पर अनुज्ञेय नहीं – परिसीमा के अभाव में अपील खारिज की गई।

Cases referred :

(1996) 10 SCC 634, (2009) 13 SCC 192, 2010 (3) MPLJ 351, (2011) 4 SCC 363.

Pramod Mitha, for the appellant.
Mukul Mandloi, for the respondent.

(Supplied: Paragraph numbers)

ORDER

S.R. WAGHMARE, J. :- By this second appeal appellant/State is aggrieved by the judgment dated 06.07.2006 passed by the III Additional District Judge, Dewas in Civil First Appeal No.13-A/06 dismissing the appeal on ground of limitation.

2. Briefly stated the facts of the case are that the order dated 28.02.2003

was passed by the Revenue Authority Dewas in Revenue Case No.2/A-1/2001-2002 concerning land survey No.293 area 5.30 acre situated in Ganji Compound, Dewas. The respondent Shrimant Tukojirao Panwar had filed a suit under Section 57(3) of Land Revenue Code before the II Civil Judge Class-II, Dewas for declaration and permanent injunction against the State Government, claiming the land on his owner ship and that he was in possession for more than 65 years and had acquired Bhumi Swami rights. The State filed the written statement before the trial Court and denied the right of the plaintiff respondent and submitted that the land belonged to the State Government and was recorded in the Revenue record as Nazul Land and after coming to the force that MP Land Revenue Code the land vested in the State Government and the plaintiff respondent had no right title over the same, and it also challenged the jurisdiction of the trial Court to try the suit. The trial Court however, granted the decree of title in favour of the plaintiff and the order passed by the Revenue Authority, declaring the land to be Nazul land was quashed.

3. Being aggrieved, the appellant-State had filed an appeal before the III Additional District Judge, Dewas and the appeal was registered as No.13-A/2006, however the Appellate Court dismissed the appeal on ground of limitation and hence the present second appeal.

4. Counsel for the appellant-State has candidly admitted that the appeal was barred by 382 days and the application under Section 5 of Limitation Act has been filed for condonation of delay since the time was spent in obtaining the certified copy and other sanctions and the State has prayed that the delay be condoned.

5. The Appellate Court also considering the fact that the respondent plaintiff was in possession of land through out, even during the period of limitation and moreover the State was unable to explain the delay especially since the judgment and decree were fixed for particular date and prompt action was not taken and they could not claim lack of knowledge. Moreover Counsel placed reliance on the Apex Court judgment *Special Tehsildar, Land Acquisition, Kerala vs. K.V. Ayisumma* (1996) 10 SCC 634, whereby the Court observed that even the State could be excused, for not filing appropriate application, since, it was well known that the business of the Government is always done leisurely by officers, who had no or evince no personal interest at different levels and it would be very difficult to explain the day to day delay.

Counsel submitted that the attitude of the appellate Court in this light was perverse illegal and ought to be set aside and the appeal should have been decided on merit. Counsel urged that the respondent plaintiff has now been declared Bhumi Swami over the Government land. The State has undoubtedly failed to take action promptly but the essential action was taken by Revenue Authority by order dated 28.02.2003 and it was fully in accordance with provisions of law and in this light the judgment of the trial Court also needed to set aside.

6. At this juncture, however Counsel candidly admitted that the present second appeal is also barred by 1687 days, which is more than four years. He however is placed reliance in the matter of *Special Tehsildar* (supra) whereby the Government was seeking condonation of delay and the Apex Court had directed that approach of the Court should be pragmatic but not pedantic and the Government should not be insisted upon to explain each and every day's delay. Counsel submitted that since several permissions were required for filing the appeal in the present case also and it was not received on time and the delay has occasioned. Officers and Agencies of the State Government were moving at a slow pace and as observed by the Court that encumbered process of pushing the files from table to table and keeping it on the table for a considerable time was the cause of delay. Counsel submitted that delay in the present case also be condoned. He further placed reliance in the matter of *State of Karnataka vs. Y. Moideen Kunhi (dead) By LRS. And others* (2009) 13 SCC 192, whereby the word 'sufficient cause' was throughly discussed and the Apex Court held that since there was no element of fraud alleged in delay against Government officials and persons concerned; penalizing them and the Government served sufficient fruitful purpose and the Court held that the strict proof of compliance and it's proof sometimes fails to bring public justice and although it also resulted in public mischief by so many delays in process in filing the appeal.

7. Counsel submitted that in the said case more than 4000 acres of land was involved and the High Court imposed Rs.10,0000/- (ten lakh) to the concerned officials and the Apex Court, therefore was inclined to condone the delay. Counsel submitted that in the present case there was only delay of 1687 days. Finally Counsel placing reliance in the matter of *Pyarelal s/o Puttulal vs. State of M.P. and others* 2010 (3) MPLJ, 351, whereby our own Court was concerned that the public properties being declared as property of individuals requires a bi-parte decision on merit and the First Appellate

Court rightly condoned the delay of so many days by the State Government. Counsel submitted that the application needs to be allowed.

8. On considering the above submissions, however I find that the first appeal itself is barred by 382 days and now the second appeal is barred by 1687 days and delay has not been properly explained. Moreover most important fact that cannot be marginalized is that the respondent plaintiff has been in possession of the said land for more than 75 years now and this Court has even in the matter of *Pyarelal* (supra) has categorically held that the law of limitation makes no distinction amongst the State and the Citizens of the Country and, therefore, the State has to approach the Court well within prescribed period of limitation. However when the 'State' as an abstract entity prays for condonation of delay, the requirement of strict proof sometimes leads to miscarriage of justice. The approach of the Court should be pragmatic but not pedantic.

9. On considering the application for condonation of delay in this light also, I find that in all the aforesaid cases dealt with limitation as required to be condoned at certain stage in the first appeal; but this is the second appeal in which the delay of 1687 days has occasioned. In the first appeal also there was a delay of 382 days and now in the second appeal also Counsel is praying for condonation of delay of more than 1000 days and such negligence and bureaucratic attitude of State can not be accepted,. And moreover in the present appeal the respondent's fundamental right to the property is effected: more so when person is in possession for such a long period of 75 years. This Court in the matter of Chunnilal s/o Shri Sakharam passed in Second Appeal No.162/2009 placing reliance on *Lanka Venkateswarlu (Dead) vs. State of Andhra Pradesh and others* (2011) 4 SCC 363, held that the discretion should be exercised systematically and the Court should not override substantial law of limitation, especially when Court finds no justification for delay. The Apex Court was considering the delay of 3703 days condoned by the High Court. The Apex Court held thus:

> **"High Court not justified in allowing applications for condonation of delay, High Court failed to exercise its discretion to condone delay in reasonable impartial and objective manner. Hence, applications dismissed and appeal of respondents before High Court held to have abated."**

10. In this regard also, I find that the application for condonation of delay cannot be allowed. The delay has not been properly explained in the instant case, even considering the fact that the first appeal was dismissed by the lower Court on grounds of limitation; again a colossal delay has occasioned again at the time of filing this second appeal Such high handedness and bureaucratic attitude cannot be permitted at any costs. This appeal is, therefore dismissed for want of limitation.

11. No costs.

Appeal dismissed.

I.L.R. [2016] M.P., 860
CRIMINAL CONTEMPT
Before Mr. Justice P.K. Jaiswal & Mr. Justice D.K. Paliwal
Concr. No. 3/2015 (Indore) decided on 24 August, 2015

BAR ASSOCIATION, MANAVAR ...Applicant
Vs.
SHRI SATYENDRA SINGH ...Non-applicant

Contempt of Courts Act (70 of 1971), Sections 10, 15 & 16 **- Shri Jitendra Singh Chouhan, Advocate practicing at Manavar - He appeared before the Court of Tehsildar - Petition has been filed praying that respondent Tehsildar has committed criminal contempt of Court by insulting and misbehaving with the Advocate by obstructing the administration of justice, therefore, prayed that he be suitably punished - Held - A legal practitioner has important duty and obligation to co-operate with the Court for just and proper administration of justice - Chouhan without submitting his vakalatnama was seeking adjournment and shouting in the Court, while Tehsildar was hearing other case - When Tehsildar asked Shri Chouhan to maintain the decorum of the Court, he continued shouting there - Tehsildar asked Shri Chouhan, Advocate to leave the Court does not amount to contempt of Court - No case is made out against Tehsildar for committing contempt of Court - Petition dismissed. (Para 9)**

न्यायालय अवमान अधिनियम (1971 का 70), धाराऐं 10, 15 व 16 – श्री जितेन्द्र सिंह चौहान, अधिवक्ता मनावर में वकालत का पेशा करते हैं – वह तहसीलदार के न्यायालय के समक्ष उपस्थित हुआ – याचिका यह प्रार्थना करते हुए

प्रस्तुत की गई है कि प्रत्यर्थी तहसीलदार ने अधिवक्ता से दुर्व्यवहार एवं उसका अपमान करके न्याय प्रशासन में बाधा डालते हुये न्यायालय की दाण्डिक अवमानना कारित की है, इसलिये, प्रार्थना की गई कि उसे उचित रूप से दण्डित किया जाये – अभिनिर्धारित – न्यायसंगत एवं उचित न्याय प्रशासन हेतु एक विधि व्यवसायी का यह महत्वपूर्ण कर्तव्य एवं बाध्यता होती है कि वह न्यायालय का सहयोग करे – चौहान बिना अपना वकालतनामा प्रस्तुत किए स्थगन चाह रहा था एवं न्यायालय में चिल्ला रहा था, जबकि तहसीलदार अन्य प्रकरण की सुनवाई कर रहा था – जब तहसीलदार द्वारा श्री चौहान को न्यायालय की गरिमा बनाये रखने हेतु कहे जाने के बाद भी उन्होंने चिल्लाना जारी रखा – तहसीलदार द्वारा श्री चौहान, अधिवक्ता को न्यायालय से जाने के लिये कहना न्यायालय की अवमानना की कोटि में नहीं आता है – तहसीलदार के विरूद्ध न्यायालय की अवमानना कारित करने का कोई मामला नहीं बनता है – याचिका खारिज।

Jerry Lopez, for the applicant.
A.K. Sethi with *Harish Joshi,* for the non-applicant.

(Supplied : Paragraph numbers)

ORDER

The Order of the Court was delivered by :
D.K. PALIWAL, J. :- Heard

2. This contempt petition has been filed under Section 10 read with Section 15 and 16 of Contempt of Courts Act.

3. Brief facts are that Shri Jitendra Singh Chouhan, Advocate practising at Manawar, District Dhar on 16.7.2014 had appeared before the respondent Tehsildar in the matter of Hari S/o Dharamiya, R/o Vayal and sought time to file reply. Advocates Shri Himanshu Bhakt Shri Amit Sharma and Shri Yogendra Singh Tomar were also present in the Court room. The respondent Tehsildar questioned Advocate Shri Jitendra Singh Chouhan regarding his power to appear in the case, upon it Advocate Shri Jitendra Singh Chouhan has submitted his Vakalatnama, but respondent pointing his finger at Advocate refused to accept the Vakalatnama. Respondent also told that he shall hear the case at 4.00 PM and shall accept the Vakalatnama then only and thereafter thrown the Vakalatnama and asked Advocate Shri Jitendra Singh Chouhan to get out from the Court room. The respondent also stated that he shall accept the Vakalatnama if he wishes to or he can also reject the Vakalatnama. Shri Jitendra Singh Chouhan, Advocate made a complaint against the respondent to the

Bar Association, Manawar regarding the aforesaid incident. On receipt of the complaint the Bar Association called a General Body Meeting and it was resolved to constitute a Investigating Team consisting of Advocate Shri D.D.Patidar, Shri H.R.Patidar, Shri K.C.Patidar, Shri N. Choyal and Shri Siraj Khan to investigate into the matter. The Investigating Team recorded the statements of witnesses and also sought explanation from respondent, but he did not appear or made himself available before the Investigating Team. The Investigating Team submitted its report to the Bar Association, which is marked as Annexure P/2. The respondent too also submitted a complaint dated 16.7.2014 on 17.7.2014 before the Bar Association. The Bar Association, Manawar on consideration of the report submitted by the Investigating Team and complaint of the respondent concluded that respondent is obstructing the Lawyer in carrying out his legal duties during continuance of judicial proceeding, hence it amounts to criminal contempt and it was resolved by the General Body to institute contempt, proceedings. The President of Bar Association, Manawar has applied for consent under Section 15 of the Contempt of Courts Act, 1971 from the Advocate General, State of Madhya Pradesh and the Advocate General, Madhya Pradesh vide its DO No.17168 dated 26.9.2014 gave his consent to the President, Bar Association, Manawar for instituting this petition. Thereafter, this petition has been filed praying that the respondent has committed criminal contempt of Court by insulting and misbehaving with the Advocate by obstructing the administration of justice, therefore, prayed that he be suitably punished.

4. In reply respondent denied the allegations. It is denied that Shri Jitendra Singh Chouhan, Advocate has submitted his Vakalatnama before the. respondent and respondent has refused to accept the Vakalatnama. It is further denied that respondent has pointed his finger at Shri Jitendra Singh Chouhan, Advocate and told that he shall appear in the matter at 4.0.0 PM and shall submit Vakalatnama then only. It is stated that on 16.7.2014 the respondent was hearing the revenue mater (sic: matter) in his Court at about 2.45 PM Shri Jitendra Singh Chouhan, Advocate appeared in the Court and sought time for filing reply till then no Vakalatnama has been filed by Shri Jitendra Singh Chouhan, Advocate on behalf of Shri Hari S/o Dharamiya. In the meantime Shri Jitendra Singh Chouhan, Advocate started shouting in the Court of respondent. When respondent was taking up some another matter, but complainant of the case and Shri Jitendra Singh Chouhan, Advocate had started discussing the matter in a shouting language. Respondent made both of them

understand that they will not shout each other in such a fashion and maintain decorum of the Court. On this Shri Jitendra Singh Chouhan, Advocate continued to shout in the Court as a result of which not only the Court, but other parties present in the Court and the Court staff were disturbed. The respondent has again tried to make Shri Jitendra Singh Chouhan, Advocate understand that he should maintain decorum of the Court and did not shout, but he continued shouting. In the circumstances the respondent asked Shri Jitendra Singh Chouhan , Advocate to go out of the Court so that the decorum shall be maintained. The respondent has been found that no Vakalatnama has been filed by Shri Jitendra Singh Chouhan, Advocate in the matter. It is further stated that on 16.7.2014 itself respondent has sent a letter to the Bar Association and also endorsed a copy to the SDO(R), Manawar as well as the Chairman of the State Bar Council. It is stated that the respondent was performing the quasi judicial work, therefore, every Advocate including Shri Jitendra Singh Chouhan, Advocate was required to maintain the decorum of the Court and if it was not maintained then ask the person concerned to maintain decorum of the Court, which cannot amount to contempt of Court. It is stated that there is no factual and legal force in this petition and it deserves to be dismissed. It is, therefore, prayed that the same may be dismissed with costs.

5. We have considered the submissions made by learned counsel for the parties. The complaint made by Shri Jitendra Singh Chouhan, Advocate to the Adhyakh (sic: Adhyaksh) Bar Association, Manawar (Annexure P/1) reveals that he appeared at 2-30 p.m. On 16/07/14 along with his client. He and his client sought adjournment from Tehsildar. Tehsildar Satyendra Singh told that his power has not been filed, then he filed the power Shri Satyendra Singh refused to accept his power pointing a finger towards him and told that case be taken at 4-00 PM and then he would accept the power. He also asked, to leave the Court and thrown his power in air and thus misbehaved with him. It is further mentioned that Shri Satyendra Singh used to drink cold drink and also eat Alubada, Kachouri and Sev during the course of the case in the dais which is against the dignity of the Court and, thus, he has committed Contempt of Court. A committee of Advocates have enquired into the complaint and submitted its report. On perusal of report (Ex.P/2) it appears that during enquiry, statement of Shri Jitendra Singh Chouhan, Advocate, Shri Himanshu Bhakt, Advocate Shri Amit Sharma, Advocate and Shri Yogendra Singh Tomar, Advocate were recorded. It is also mentioned that members of the committee went to the office of the Tehsildar, Manawar to collect the information. They

were informed that Shri Satyendra Singh is out of station. It is mentioned that on the basis of the statements recorded by the committee, it is proposed that Satyendra Singh has committed Contempt of Court. Hence, proceeding be initiated against him.

6. From perusal of copies of statements recorded by the committee, it appears that Shri Jitendra Singh, Advocate has repeated the allegations made in his complaint. Shri Himanshu Bhakt, Advocate, Shri Amit, Sharma, Advocate and Shri Yogendra Singh Tomar, Advocate have supported the statement of Shri Jitendra Singh Chouhan, Advocate. It is surprising that the committee has not recorded the statements of any other person present in the Court at the time of hearing. Only the statements of members of Bar Association have been recorded. No any notice has been given to respondent to appear or submit his reply by the investigating team. It is also pertinent to mention that if it is assumed that Satyendra Singh was not available on 17/07/14, it is expected from the committee to wait for some time to get the version of Satyendra Singh regarding the allegations made by Shri Jitendra Singh against respondent and without knowing his stand, the report has been submitted which is against the well established principles of natural justice. It is also pertinent to mention that the report (Annexure P/2) shows that no finding has been recorded how Shri Satyendra Singh has committed the Contempt of Court.

7. Respondent Shri Satyendra Singh had denied the allegations made by Shri Jitendra Singh Chouhan, Adv. and stated that on 16/07/14, respondent was hearing the revenue matter in his Court, at about 2-45 P.M. Shri Jitendra Singh Chouhan, Advocate appeared in the Court and sought time for filing reply, till then no Vakalatnama has been filed by Shri Jitendra Singh Chouhan, Advocate on behalf of Shri Hari S/o Dharamiya. In the meantime, Shri Jitendra Singh Chouhan started shouting in the Court of respondent. When respondent was taking up some another matter, complainant of the case and Shri Jitendra Singh Chouhan, Advocate started discussing the matter in shouting language. Respondent made both of them understand that they will not shout each other and maintain the decorum of the Court. On this, Shri Jitendra Singh Chouhan, Advocate continued to shout in the Court. As a result of which, not only the Court, but other parties present in the Court and the Court staff were disturbed. Looking to such situation, it appeared that there may be fighting in the Court between complainant and Shri Jitendra Singh Chouhan, Advocate. The respondent asked the Advocate to go out of the Court so that the decorum of the Court shall be maintained. It is further stated that on 16/07/14, respondent has sent a letter to the petitioner Association.

8. On perusal of the copy of the letter addressed by the respondent to Adhyaksh, Bar Association, Manawar, it appears that it has been sent on 16/07/14 mentioning the facts stated above. Respondent has filed his affidavit and no counter affidavit has been filed therefore, there is no reason to disbelieve the version of the respondent.

9. A legal practitioner has important duty and obligation to co-operate with the Court for just and proper administration of justice. Considering the fact that respondent without submitting his Vakalatnama was seeking adjournment and shouting in the court while respondent was hearing other case and when respondent asked Shri Jitendra Singh Chouhan, Advocate to maintain the decorum of court, Shri Jitendra Singh Chouhan, Advocate continued shouting, in such circumstances, in our opinion the respondent asking Shri Jitendra Singh to leave the court does not amount to contempt of Court.

10. In view of the aforesaid, we find that no case is made out against the respondent for committing Contempt of Court.

11. Consequently, this petition is dismissed.

12. *Rule Nishi,* if any, be discharged.

C.c. as per rules.

Petition dismissed.

I.L.R. [2016] M.P., 865
CRIMINAL REVISION
Before Mr. Justice U.C. Maheshwari
Cr.Rev. No. 367/2012 (Jabalpur) decided on 4 February, 2014

SADHNA PANDEY (SMT.) ...Applicant
Vs.
P.C. JAIN ...Non-applicant

A. ***Negotiable Instruments Act (26 of 1881), Section 138 and Evidence Act (1 of 1872), Section 45 - Examination of signature by hand writing expert*** **- Dishonor of cheque on the ground of insufficient fund and not on ground of difference of signature - Not permissible. (Para 5)**

क. *परक्राम्य लिखत अधिनियम (1881 का 26), धारा 138 एवं साक्ष्य अधिनियम (1872 का 1), धारा 45 – हस्तलिपि विशेषज्ञ द्वारा हस्ताक्षर का परीक्षण* – अपर्याप्त रकम के आधार पर चैक का अनादरण, न कि हस्ताक्षर में भिन्नता के

आधार पर – अनुज्ञेय नहीं।

B. Negotiable Instruments Act (26 of 1881), Section 138 and Evidence Act (1 of 1872), Section 45 - Dishonor of cheque - Defence - **Difference of signature - Not taken in reply of demand notice - Nor cross- examined complainant's witnesses on such specific defence - Not available. (Para 5)**

ख. परक्राम्य लिखत अधिनियम (1881 का 26), धारा 138 एवं साक्ष्य अधिनियम (1872 का 1), धारा 45 – चैक का अनादरण – बचाव – हस्ताक्षर में भिन्नता – मांग नोटिस के जवाब में नहीं लिया गया – न ही उक्त विनिर्दिष्ट बचाव के संबंध में परिवादी के साक्षीगण का प्रतिपरीक्षण किया गया – उपलब्ध नहीं।

C. Negotiable Instruments Act (26 of 1881), Section 138 and Evidence Act (1 of 1872), Section 45 - Defence - **The grounds which are not subject matter of the case, could not be permitted to raise. (Para 5)**

ग. परक्राम्य लिखत अधिनियम (1881 का 26), धारा 138 एवं साक्ष्य अधिनियम (1872 का 1), धारा 45 – बचाव – ऐसे आधार जो प्रकरण की विषयवस्तु से संबंधित नहीं है, उठाये जाने की अनुमति नहीं दी जा सकती।

Cases referred :

AIR 1999 SC 2222, 2007 Cri.L.J. 2312, Vol-IV (2008) BC 673.

Ashish Shroti, for the applicant.
Shobhit Aditya, for the non-applicant.

ORDER

U.C. MAHESHWARI, J. :- The applicant accused has preferred this revision under Section 397 of Cr. P. C. being aggrieved by the order dated 17.11.2011 passed by 7th Additional District Judge, Bhopal allowing the revision of the respondent and reversing the order dated 7.7.2011 passed by the Judicial Magistrate First Class, Bhopal in Criminal Case No.18427/2008, instituted by the respondent to prosecute the applicant under Section 138 of Negotiable Instruments Act (in short "the Act"), allowing his application filed under Section 45 of Evidence Act to get examine her alleged signature on the cheque in dispute from the hand writing expert and dismissed such application.

2. The facts giving rise to this revision in short are that the applicant herein to pay the consideration had given the impugned cheque to the

respondent. The respondent deposited the same with his banker for collection but was returned to him with the memo of his banker with endorsement that same has been dishonored due to insufficient fund, on which after complying the technical provisions of Section 138 and other related provisions of the Act the respondent had filed the impugned complaint against the applicant, in which the cognizance of Section138 of the Act was taken against the applicant and after his appearance the plea was recorded, he abjured the guilt, on which the trial was passed. After recording the evidence of the respondent the impugned application of Section 45 of Evidence Act was filed on behalf of the applicant with a prayer to get examine her signature on the cheque through hand writing expert. Such application was opposed by the respondents saying that such defence being not taken at any earlier stage either in response of demand notice or in the cross-examination of respondent's witnesses, is not available to the applicant. Such prayer is also opposed on the ground that cheque was not dishonored by the banker of the applicant on such ground of difference of the signature but the same was dishonored only on the ground of insufficient fund, so the examination of signature of the applicant on the cheque from the hand writing expert is neither necessary nor could be permitted. On consideration the impugned application was allowed by the trial Court and applicant was permitted to get examine her signature of the cheque from the hand writing expert, on which the respondent had filed the criminal revision before the Sessions Court. After extending the opportunity of hearing to the parties on consideration vide impugned order dated 17.11.2011 by holding that cheque being dishonored only on the ground of insufficiency of fund and not on difference of the signature of the applicant, the examination of such cheque from hand writing expert is not necessary the revision was allowed and by setting aside the order of the trial court the impugned application of the applicant was dismissed on which the applicant has come to this court with a prayer to set aside the order of the revisional court by restoring the order of trial court.

3. The applicant's counsel after taking me through the revision memo along with the impugned order argued that although the impugned cheque was dishonored on the ground of insufficiency of fund and not on difference of the signature of the applicant but the applicant has a right to take all the available defence. In such premises the impugned application to get examine the signature from the expert was rightly allowed by the trial Court and no error of jurisdiction was committed. He further said that in any case the order

of the trial court could not be interfered by the appellate Court under the revisional jurisdiction because the same was passed by the trial Court under its vested discretionary jurisdiction. In continuation, he said that if she is not permitted to examine the cheque from expert then she would be deprived to defend the matter on material and important defence regarding difference of the signature on the cheque and prayed to set aside the impugned order of the revisional Court by restoring the order of the trial court by admitting and allowing this revision.

4. Responding the aforesaid arguments by justifying the impugned order of the revisional court Shri Shobhit Aditya, learned counsel for the respondent said that the same being passed on proper appreciation of the available factual matrix and existing legal position is in inconformity with law, it does not require any interference at this stage. In continuation he said that on taking into consideration the provision of presumption enumerated under Section 118, 119 and 120 of the Act the aforesaid defence is not available to the applicant. He also said that the impugned cheque was dishonored by the banker of the applicant on the ground of insufficiency of fund then other ground raised by the applicant regarding difference of signature on the cheque is not required any consideration, as the impugned cheque was neither dishonored on such ground nor the case of the respondent is based on such ground therefore, such defence is not available to the applicant and in such premises, the applicant could not be permitted to to get examine the signature of the applicant on the cheque from hand writing expert. In support of such contention he also place his reliance on the decision of the Apex Court in the matter of *L. C. Goyal Vs. Mrs. Suresh Joshi and ors* reported in AIR 1999 S. C. 2222, so also on the case law of Karnataka High Court in the matter of *H. M. Satish Vs. B. N. Ashok* reported in 2007 Cri. L. J. 2312 and the case law of Andhra Pradesh High Court in the matter of *Manda Syhamsundra Vs. Kurella Anjaneyachari & anr.* reported in Vol- IV (2008) BC 673 and prayed for dismissal of this revision.

5. Having heard the counsel at length, keeping in view their arguments in order to decide the controversy, I have carefully gone through the revision memo as well as the impugned order of the revisional Court. On perusing such order, I have gathered the information that the impugned cheque given by the applicant to the respondent to pay the due consideration was dishonored by the banker of the applicant on the ground of insufficiency of fund and not

on any other ground. I have not found any reply of the applicant, given by him to the respondent, in response of his demand notice given to her before filing the complaint, to show that such defence regarding difference of signature on the cheque was taken by her at the initial stage. Even in the cross-examination of the respondent's witnesses before the trial Court no such specific defence was put forth on behalf of the applicant. The impugned complaint was filed by the respondent only on the ground of dishonoring the cheque on account of insufficiency of fund and not on the ground of difference of signature of the applicant. As such the grounds which are not the subject matter of the case could not be permitted to raise in the defence. In the case at hand when the banker of the applicant itself has not dishonored the cheque on the ground of difference of the signature then the applicant/ accused could not take such defence. The applicant has only right to defend the case on the ground of insufficiency of fund and rebut the evidence of the respondent adduced on such count. In such premises the applicant could not be permitted to get examine her signature on the cheque from hand writing expert. So, in such premises the trial court had committed grave error in allowing the impugned application of the applicant but on consideration the revisional Court has rightly rectified such error by setting aside the order of the trial Court and dismissing such application by allowing the revision of the respondent. My aforesaid approach is fully fortified by the decision of the Apex Court in the matter of *L. C. Goyal* (Supra), in which it was held as under :

> (2) Dishonoring of the cheque issued by the appellant Ex.C/4 by the bank on account of insufficient fund in the account of the appellant.
>
> The complainant alleged that when the appellant realized that the complainant has come to know that he has misappropriated a sum of Rs. 25,491/-, he gave a cheque for a sum of Rs. 38,000/- which is Ext.C-4. The said cheque was drawn on UCO Bank and the same was deposited in the Central Bank of India in the account of Union, viz., Siemens Employees Union, New Delhi. But the said cheque was dishonored due to insufficient funds. The appellant denied his signature on Ext. C-4 and contended that his signature was forged by the complainant. It is in this context that it was urged before the Bar Council of India that some hand-writing expert be examined

in order to find out the genuineness of the signature on Ext. C-4. As stated above, the cheque bounced not on account of the fact that the signature on Ext. C-4 was not tallying with the specimen signature of the appellant kept with the Bank, but on account of insufficient funds. Had the signature on Ext. C-4 been different, the bank would have returned the same with the remark that the signature on Ext. C-4 was not tallying with the appellants specimen signature kept with the bank. The memos Ext. C-6 and Ext. C-8 issued by the bank clearly show that signature of the appellant on Ext. C-4 was not objected to by the bank, but the same was returned with the remark insufficient fund. This circumstance shows that the signature on Ext. C-4 was that of the appellant.

(3) . . . . . .

4) No reply to the notices (Exts.C-12 and C-13) dated 9.6.93 and 11.1.93, respectively.

The complainant sent two notices on behalf of M/s Siemens Union to the appellant wherein she inter alia alleged, that a sum of Rs. 25,102/- was misappropriated by the appellant under the pretext of payment of the court fee for the suit filed by the plaintiffs, that the appellant did not press the application for injunction, and that the appellant misled the complainant as regards the progress of the case. These notices were not replied to by the appellant which is a material circumstance against the appellant when, receipt of the notices sent to him have been admitted.

5) No FIR lodged with regard to theft of the cheque book. The case set up by the appellant before the Bar Council was that, in fact, the complainant somehow managed to get his cheque book and she after forging his signature on one of the leaf presented the same to the bank for payment. If it was true, why did the appellant not lodge any FIR with the Tilak Marg Police Station regarding theft of the cheque book. However, it was subsequently explained by the appellant that he did send a letter to the SHO of the said Police Station. But, in normal course, FIR is not lodged by letter at the first instance.

Moreover, SHO, Tilak Marg Police Station gave a certificate Ext. C-14, to the effect that he did not receive any registered letter or report from the appellant regarding theft of his cheque book.

"5. These established circumstances stated above, clearly show that the signature on Exts. C-1, C-2 and C-4 were that of the appellant himself. Moreover, during the course of hearing of the case, we ourselves examined and compared the admitted signature of the appellant with that of Ext. C-4 leaving nothing to chance lest any injustice is caused to the appellant. On comparison, we found striking similarity between the admitted signature and that of the disputed one and there is no reason to doubt the genuineness of the signature on Ext. C-4. The circumstances established in the present case speak for themselves and candidly point out towards the misconduct committed by the appellant. When the established circumstantial evidence is so patent that it leads to only one conclusion that the signature on Ext. C-4 was not forged; there was no need for an opinion of a hand writing expert. We are, therefore, satisfied that the established circumstantial evidence as well as the documentary evidence in the present case show that the allegations of the complainant were well substantiated and in such circumstances of the case, the Bar Council of India was justified in declining to summon a hand-writing expert for finding out the genuineness of the signature on Ext. C-4."

6. Subsequently such case law was followed by the Karnataka High Court in the matter of *H. M. Satish* (Supra), in which it was held as under:

7. In the case of denial of signature of drawer of a cheque, the best witness would be the concerned Bank Manager and not a hand writing expert The learned Magistrate has allowed the application solely on the ground that the accused would be put to greater hardship if the application were rejected. The learned magistrate has not appreciated the facts on record while allowing the application. It is useful to refer to the decision of the Hon'ble Apex court rendered in *L.C. Goyal v. Mrs. Suresh Joshi and Ors*. Has observed in para 8 of its judgment

as under that

> ...the cheque bounced not on account of the fact that the appellant of Ext.C-4 was not talking with the specimen signature of the appellant kept with the bank, but on account of insufficient funds. Had the signature on Ext C-4 been different, the bank would have returned the same with the remark that the signature on Ext C-4 was not tallying with the appellant's specimen signature kept with the bank. The memos Ext. C-6 and Ext.C-8 issued by the bank clearly show that the signature of the appellant on Ext.C-4 was not objected to by the bank, but the same was returned with the remark "insufficient funds". This circumstances shows that the signature of Ext.C-4 was that of the appellant.
>
> 8. The above said decision is applicable on all the fours to the case on hand and the impugned order is not sustainable in law and the same calls for interference by this Court.
>
> 9. In the result, the Revision Petition is allowed and the impugned older dated 21.7.2006 made in CC No. 937/2005 on the file of JMFC at Mudigere, is set aside, and the application filed by the accused under Section 45 of the Indian Evidence Act is dismissed. The learned Magistrate is directed to dispose of the criminal case, in accordance with law, within 3 months from the date of receipt of this order.

7. Aforesaid decision of the Apex Court was further followed by the Andhra Pradesh High Court in the matter of *Manda Syamsundra* (Supra), and the application of the accused concerned filed under Section 45 of the Evidence Act was dismissed by following verdicts:

> "5. In the light of the above decision and in the light of the return of the cheque not on the ground of signature not tallying, no purpose will be served in sending the documents to the handwriting expert and there are no grounds to interfere with the order of the Lower Court."

8. In the light of aforesaid legal position, in the available factual matrix of the impugned case, as discussed above, I have not found any illegality,

irregularity or anything against propriety of law in the impugned order of the revisional Court setting a side the order of the trial court and dismissing the application of the applicant filed under Section 45 of the Evidence Act,

9. In view of the aforesaid discussion, I have not found any merits in this revision, consequently, by affirming the impugned order of the revisional Court, the same is hereby dismissed. However, the trial court is directed to proceed with the trial in accordance with law and take an endeavor to conclude the same as early as possible probably within three months from the date of receiving the copy of this order under intimation to this court.

10. Revision is dismissed as indicated above.

Revision dismissed.

I.L.R. [2016] M.P., 873
CRIMINAL REVISION
Before Mr. Justice S.K. Palo
Cr.Rev. No. 930/2014 (Gwalior) decided on 9 December, 2014

SONERAM RATHORE ...Applicant
Vs.
STATE OF M.P. & ors. ...Non-applicants

***Criminal Procedure Code, 1973 (2 of 1974), Section 311 - Recalling of witness* - Held - No application which will tantamount to the filling up the lacunae of the case could be permitted. (Para 10)**

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 311 – साक्षी को वापस बुलाया जाना – अभिनिर्धारित – ऐसा कोई भी आवेदन पत्र जो कि प्रकरण की कमियों की पूर्ति करने हेतु आशयित है, स्वीकार नहीं किया जा सकता।-

Cases referred :

2002 Cr.L.J 794, AIR 1980 SC 1314.

Mahesh Goyal, for the applicant.
Neelesh Tomar, P.L. for the non-applicant/State.

ORDER

S.K. PALO, J. :- This revision under Section 397 read with Section 401 of Cr.P.C has been filed challenging the legality, validity and propriety of

the impugned order dated 31.10.2014 passed by the II ASJ, Sabalgarh in ST No. 63/2013, by which the application under Section 311 of Cr.P.C for re-calling the witness has been rejected.

2. The facts just necessary for disposal of the case are that;

the petitioner is accused in ST No. 63/13 and facing charge under Section 376 of IPC. During the trial, PW-1, prosecutrix was examined on 17.5.2013. PW-2 Darshan was examined on 18.6.2013, PW-3, Dr. Archna has been examined on 19.6.2013.

3. The petitioner / accused filed an application under Section 311 of Cr.P.C dated 2509/2014 which was decided by the impugned order dated 31.10.2014 by the trial Court. The petitioner accused submitted that during the examination of prosecutrix some important questions could not be asked by Advocate Shri A.K. Shrivastava. Therefore, her cross examination could not be conducted properly and effectively. The mistake committed by the counsel has to be corrected. Now, the petitioner accused has changed his counsel. Now, the petitioner is represented by Shri Puran Singh Yadav, Advocate. Therefore, the prosecutrix be re-called for further cross examination. It is also stated that, because of altercation regarding partition, the prosecutrix and her husband Darshan lodged reports on 12.12.2012 and on 5.12.2012 at Police Station, Sabalgarh, on the basis of which Crime No. 129/12 was registered for the offence under Sections 151,107, 116 (3) of IPC and on 5..12.2012 the petitioner accused was arrested from his house by the Police Sabalgarh. He was released on bail on 6.12.2012 at 7 PM from the Jail Sabalgarh. Therefore, on this point questions could not be asked to the prosecutrix. The alleged incident said to have taken place on 6.6.2012. The petitioner, therefore, prayed for re-calling the prosecutrix for further cross examination.

4. The learned trial Court vide its impugned order rejected the prayer, stating that enough opportunities were granted to the accused petitioner and permission cannot be granted for further cross examination of prosecutrix PW-1 hence, application is rejected.

5. The learned counsel for the petitioner argued that section 311 of Cr.P.C provides re-calling of the witness, it is essential for just decision of the case, re-call and re-cross examination of prosecutrix specifically mentioned in the application can prove him innocent. Therefore, the impugned order be set

aside and it be directed to the Trial Court to recall the prosecutrix for re-cross-examination.

6. On behalf of the State, learned PL submitted that the order impugned is proper in the eyes of law, proper opportunity were provided to the petitioner to cross examination the prosecutrix. Prosecutrix (PW-1) was cross examined on 17.6.2013. Subsequently, again on 21.5.2013 the prosecutrix was elaborately cross examined by the learned counsel Shri Anil Kumar Shrivastava. Therefore, enough opportunities were granted to the petitioner. Case was further adjourned for examination of accused and at the belated stage such application was filed which is intended to fill up the lacuna. That being so, the impugned order does not call for any interference.

7. Section 311 of Cr. P.C. Provides for recalling of witness at any stage of the trial, to prevent the failure of justice and gives wide discretion to the Court. The power conferred under Section 311 of Cr.P.C should be invoked by the Court only for the ends of justice.

8. This provision to recall witness or to re examine or further cross examination can be used if it is necessary in the interest of justice. The same has to be exercised after taking into consideration the facts and circumstance of each case.

9. Where the prosecution witness is over, an application by the accused for recalling the prosecution witness for further cross examination was nothing but abuse of process of law, the rejection of the application by the Court was held proper in the case of *Popatlal Jethabhai Shah Vs. State of Maharashtra,* 2002 Cr.L.J 794. The Hon'ble Apex Court in *" State of Rajasthan Vs. Daulat Ram* AIR 1980 SC 1314 has observed that;

> "The discretion cannot be allowed to be used to fill up the gaps in the evidence of a party who seeks recourse to the use of this provision".

10. In the present case also after a lapse of six months, when the case was proceeded for examination of accused to fill up the lacuna, the application has been filed under Section 311 of Cr.P.C. No application which will tantamount to the filling in the lacunae of the case could be permitted. Therefore, the evidence being sought to be introduced by the defense after a lapse of six months to fill up lacuna is not permissible. Otherwise also the petitioner accused

can enter into its defense and substantiate the same by evidence relating to release from the custody on 6.12.2012 by filing proper documents. Therefore, no prejudice will be caused to the petitioner accused.

11. In the case of *Popatlal Jethabhai Shah* (supra), it is held that, where application for recalling of the prosecution witness was filed on the ground that the new counsel had been engaged, as the earlier counsel could not elicit some material contradictions, the application not being bona fide was disallowed.

12. In view of the above circumstance and looking to the legal aspects of the case, the petition sans merits and is hereby dismissed.

Petition dismissed.

I.L.R. [2016] M.P., 876
CRIMINAL REVISION
Before Mr. Justice C.V. Sirpurkar
Cr. Rev. No. 200/2015 (Jabalpur) decided on 16 September, 2015

SHIV KUMAR GUPTA ...Applicant
Vs.
STATE OF M.P. ...Non-applicant

Criminal Procedure Code, 1973 (2 of 1974), Section 397/401 - Quashing of charge **- Police seized 32 bottles of Cosome and 38 bottles of Codex syrup from the possession of co-accused - It is alleged that the same were supplied by the applicant to co-accused for Sale - Question for consideration is that whether above drugs fall within the ambit of "Manufactured drug" or "Psychotropic substance" punishable u/s 8(b) r/w section 21(b) of the NDPS Act - Held - Since both syrups contained Codeine Phosphate in proportion of 10 milligrams per 5 millilitres means 10 milligrams per dose unit, which is permissible in view of Entry No. 35 of the Notification - Same does not fall within the ambit of manufactured drug - Therefore, even if the entire allegation and documents filed with charge sheet are taken at their face value and true, no offence as alleged is made out - Applicant is discharged - Revision petition allowed. (Paras 10, 11, 16 & 18)**

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 397/401 – आरोप अभिखंडित किया जाना – पुलिस ने सह–अभियुक्त के आधिपत्य से कोसोम की 32

शीशियां एवं कोडेक्स सिरप की 38 शीशियां जब्त की – यह अभिकथित है कि आवेदक द्वारा उक्त शीशियां सह–अभियुक्त को विक्रय हेतु प्रदाय की गई थीं – विचारण हेतु प्रश्न यह है कि क्या उपरोक्त वर्णित औषधियां एन.डी.पी.एस. अधिनियम की धारा 8(बी) सहपठित धारा 21(बी) के अंतर्गत दण्डनीय "निर्मित औषधि" अथवा "मनःप्रभावी पदार्थ" की परिधि में आती हैं – अभिनिर्धारित – चूंकि उपरोक्त दोनो ही सिरप में प्रति 5 मिलीलीटर में कोडीन फॉस्फेट की मात्रा 10 मिलीग्राम के अनुपात में अर्थात् 10 मिलीग्राम प्रति खुराक इकाई थी, जो कि अधिसूचना की प्रविष्टि क्र. 35 के आलोक में अनुज्ञेय है – यह निर्मित औषधि की परिधि में नहीं आती है – अतएव, यदि संपूर्ण आक्षेप एवं अभियोग पत्र के साथ प्रस्तुत दस्तावेजों को यथा दर्शित एवं सत्य मान भी लिया जाये, तब भी अभिकथित अपराध गठित नहीं होता है – आवेदक को आरोपमुक्त किया गया – पुनरीक्षण याचिका मंजूर।

Cases referred :

1996 CRI.L.J. 3329, 1997 CRI.L.J. 3104, 1998 CRI.L.J. 1460.

B.K. Vaishya, for the applicant.
K.S. Patel, P.L. for the non-applicant/State.

ORDER

C.V. SIRPURKAR, J. :- This criminal revision filed on behalf of applicant Shiv Kumar Gupta, is directed against the order dated 22-12-2014 passed by Special Judge under Narcotic Drugs and Psychotropic Substances Act, 1985, (hereinafter referred in the order as "the Act"), Sidhi, in Special Case No.12/2014, whereby a charge under section 8 (b) read with section 21 (b) of the Act, was framed against applicant Shiv Kumar Gupta and two other co-accused persons Vidya Charan Shukla and Ajay Kumar Rawat.

2. Shorn of details, the prosecution case may be stated thus: On 25-11-2014, Inspector Manish Mishra of P.S. Kotwali, Sidhi, received information from an informer that accused persons Vidya Charan and Ajay are sitting in a Tata Super Loading Vehicle No.MP-55-GA-2257 with Psychotropic drugs for sale for being used for the purpose of intoxication. After completing necessary formalities, they reached the place mentioned by the informer near Gala Mandi Sidhi and raided the vehicle. Accused persons Vidya Charan Shukla and Ajay Rawat were sitting in the vehicle with 32 bottles of Cosome LCD syrup and 38 bottles of Codex syrup in an old white bag. Each bottle contained 100 milliliters of syrup. It was recorded on the label of each bottle that each 5 milliliters of cough syrup contained 10 milligrams of

Codeine Phosphate. As such, each bottle of syrup contained 2 milligrams of Codeine Phosphate and 70 bottles of cough syrup contained 14 grams of psychotropic substance Codeine Phosphate.

3. On inquiry, accused persons Shiv Kumar Gupta and Ajay Kumar Rawat informed that Vidyacharan runs a medical shop in the name and style of Vidya Medical Store at Sidhi and Ajay was his driver. They were sitting in the vehicle with the bottles of the syrup for sale to the addicts, who purchased bottles of syrup for the purpose of intoxication, paying Rs.100/- for each bottle. They also informed that the bottles of cough syrup were supplied to them by applicant Shiv Kumar Gupta, who runs a Medical Store in the name of his father, called "Shiv Medical Store". Applicant Shiv Kumar Gupta also admitted that he supplied bottles of aforesaid cough syrup to co-accused persons Vidya Charan Shukla and Ajay Kumar Rawat for being sold as intoxicants because the addicts used it for the purpose of intoxication and payed anything between Rs.100/- to Rs.150/- for each bottle, generating huge profits. Police also seized a receipt book of estimates from the possession of applicant Shiv Kumar Gupta. The book contained estimate No. 556 which was in the form of a carbon copy, bearing the date of 22-11-2014, issued in favour of Vidya Medical Store Sidhi, wherein the transaction relating to 72 such 100 m.ls. bottles of Cosome (LCD) was recorded.

4. Applicant Shiv Kumar Gupta has challenged the framing of charge mainly on the ground that both the syrups namely Codex and Cosome are manufactured drugs established in therapeutic practice. Notification No. S.O. 826(E), dated 14th November, 1985, issued by the Central Government in exercise of powers conferred upon it by sub-clause (b) of clause (xi) of section 2 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (61 of 1985), declares certain narcotics substances to be manufactured drugs. Entry No.35 *inter alia* relates to Methyl Morphine (commonly known as 'Codeine') and Ethyl Morphine and their salts (including Dionine). The concentration in which the Codeine Phosphate was found in Codex and Cosome Cough Syrups, is exempted by Entry No. 35 from the category of manufactured drugs. Thus, it has been argued that neither syrup Codex nor syrup Cosome fall within the purview of manufactured drugs. Therefore, no charge is made out against the applicant under section 8 read with either 21 or 22 of the Act.

5. Learned Panel Lawyer for the respondent/State on the other hand has supported the impugned order framing charge. It has been argued on behalf

of respondent/State that syrups Cosome and Codex are widely used for the purpose of intoxication by those who are addicted to Narcotic drugs and psychotropic substances; therefore, no leniency should be shown to the applicant, who in the garb of Medical Store, is supplying contraband to the drug addicts.

6. The question that arises for consideration before this Court is whether any of the above drugs or substances fall within the definition of "manufactured drug" or "psychotropic substance" made punishable under the Act?

7. If any of these drugs or substances does not fall within the ambit of the aforesaid two expressions, or is exempted by the Act or any rule framed thereunder or any notification or order issued thereunder, no charge can be framed under the Act.

8. Section 21 of the Act provides for punishment for contravention in relation to manufactured drugs and preparations. The term "Manufactured Drug" has been defined in section 2 (xi) of the Act. It *inter alia* means a narcotic substance or preparation which the Central Government may by notification in official gazette, declare to be a manufactured drug.

9. In exercise of powers conferred by sub-clause (b) of clause (xi) of section 2 of the Act, the Central Government had issued Notification No. S.O.826(E), dated 14th November, 1985, which declares certain narcotics substances to be manufactured drugs. The Entry No.35 of the Notification reads as follows:

> *"Methyl morphine (commonly known as 'Codeine') and Ethyl morphine and their salts (including Dionine), all dilutions and preparations except those which are compounded with one or more other ingredients and containing not more than 100 milligrams of the drug per dosage unit and with a concentration of not more than 2.5 per cent in undivided preparations and which have been established in therapeutic practice."*

10. From the perusal of the aforesaid entry in the notification, it is clear that a preparations containing not more than 100 milligrams of drug codeine phosphate per dosage unit and with concentration of not more than 2.5 per cent in undivided preparations and which have been established in therapeutic

practice, is exempted from the application of section 21 of the Act.

11. Reverting back to the facts of the case, this Court finds that as per prosecution, the label affixed to each bottle declared that it contains Codeine Phosphate in the ratio of 10 milligrams per 5 milliliters of syrup. 5 milliliters quantity of syrup is equivalent to one dosage unit. As such, both syrups contained Codeine Phosphate in proportion of 10 milligrams per 5 m.ls., that is to say 10 milligrams per dosage unit, which is permissible in view of Entry No. 35 of the Notification. In other words, it also does not fall within the ambit of manufactured drug.

12. Now the Court shall consider as to what was the concentration of Codeine Phosphate in undivided preparations? At the outset let it be mentioned that there is no report of any Forensic Science Laboratory on record. However, in the case of *Amrik Singh vs. State of Punjab,* 1996 CRI. L. J. 3329, the Punjab and Haryana High Court was faced with similar situation. In that case, cough syrup Phensedyle was seized from the possession of the accused in 125 m.l. bottles. Each bottle contained codeine phosphate in proportion of 9.5 m.gs. per 5 m.ls. The sample was sent to Forensic Science Laboratory and as per the report of FSL the concentration of Codeine Phosphate in undivided preparations came to 1.9%. In the instant case, syrup Codex and Cosome contained Codeine Phosphate in proportion of 10 m.gs. per 5 m.ls., which would surely be less than 2.5% in concentration in undivided preparations.

13. Likewise, in the case of *Deep Kumar v. State of Punjab,* 1997 CRI. L. J. 3104, on similar grounds, the Punjab & Haryana High Court held that Phensedyle cough syrup was not a manufactured drug, as defined under the Act.

14. It is not disputed that both cough syrups namely Codex and Cosome (LCD) are established in therapeutic practice for treatment of cough.

15. The argument that such syrups are being widely used by the drug addicts as substitutes for narcotic drugs and psychotropic substances by itself, is not sufficient to prosecute the applicant. In this regard, this Court adopts with approval the observations made in paragraph No. 20 of the judgment rendered in the case of *Rajeev Kumar Vs. State of Punjab and others* reported in 1998 CRI. L. J. 1460, which read as follows:

"It has to be borne in mind that the Act applies to certain

narcotic drugs and psychotropic substances and not to all kinds of intoxicating substances. It may be stated that all penal statutes ought to be construed strictly, that is to say, that the Court must say that the thing charged as an offence is within the plain meaning of the words used and must not strain the words so as to bring it within the mischief of the statute. Maxwell on Interpretation of Statutes, 12th Edition at page 239 says, the strict construction of penal statutes seems to manifest itself in four ways in the requirement of express language for the creation of an offence; in interpreting strictly words setting out the elements of an offence; in requiring the fulfilment to the letter of statutory conditions precedent to the infliction of punishment and in insisting on the strict observance of technical provisions concerning criminal procedure and jurisdiction."

16. In aforesaid view of the matter, even if all allegations contained in the charge sheet and the documents filed therewith are taken at their face value and taken to be true, no offence under section 8 read with section 21 of the NDPS Act is made out against the applicant.

17. It is not disputed that the applicant is carrying on business as retail druggist under the name and style of Shiv Medical Store. If the petitioner has contravened any provision of the Drugs and Cosmetics Act, 1940, or the Rules framed thereunder, Drugs Inspector appointed under the that act shall be free to initiate requisite action against the petitioner in accordance with the provisions of that Act.

18. On the basis of aforesaid discussion, this revision petition is allowed. The impugned order 22.12.2014 passed by Special Judge (Narcotic Drugs and Psychotropic Substances Act) Sidhi, passed in Special Case No. 12/2014, in so far as it relates to the applicant Shiv Kumar Gupta, is set-aside and applicant Shiv Kumar Gupta is discharged of the offence punishable under section 8 read with section 21 of the Act.

19. Let a copy of this order be transmitted to the concerned Drug Inspector for information.

Revision allowed.

I.L.R. [2016] M.P., 882
CRIMINAL REVISION
Before Mr. Justice C.V. Sirpurkar
Cr.Rev. No.579/2013 (Jabalpur) decided on 24 September, 2015

NILOFER KHAN (SMT.) ...Applicant
Vs.
MOHD. YUSUF KHAN ...Non-applicant

A. Criminal Procedure Code, 1973 (2 of 1974), Section 397/401 - **Accused fraudulently deceived complainant by making a false representation with regard to his age and has intentionally induced the complainant to accord her consent to the marriage - Held - Necessary ingredients - It cannot be said that the complaint as filed, does not disclose the ingredients of cheating as defined u/s 415 of the IPC - However, allegations cannot be taken at its face value, being inherently improbable, which can be arrived at without referring to the defence. (Paras 16 & 17)**

क. दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 397/401 – अभियुक्त ने अपनी आयु के संबंध में मिथ्या व्यपदेशन करते हुए परिवादी के साथ कपटपूर्वक प्रवंचना की एवं जानबूझकर परिवादी को विवाह हेतु सहमति देने के लिए उत्प्रेरित किया – अभिनिर्धारित – आवश्यक घटक – यह नहीं कहा जा सकता कि शिकायत, यथाप्रस्तुत, भा.दं.सं. की धारा 415 में परिभाषित 'छल' के घटकों को प्रकट नहीं करती है – यद्यपि, अभिकथनों को अंतर्निहित रूप से असंभव होने के नाते प्रत्यक्षतः नहीं लिया जा सकता जिन्हें बचाव को निर्दिष्ट किये बिना निष्कर्षित किया जा सकता है।

B. Penal Code (45 of 1860), Sections 415 - Cheating - **Delivery of property or consent for retention of property by any person is not necessary in all cases of cheating - Offence of cheating may be committed without aforesaid elements under second limb of section 415 - However allegation that respondent was 60 years of age and obtained her (Applicant/Complainant) consent by mispresenting that he is 45 years of age is preposterous - Revisional court rightly dismissed the complaint. (Paras 16 to 19)**

ख. दण्ड संहिता (1860 का 45), धारा 415 – छल – छल के समस्त प्रकरणों में संपत्ति का परिदान अथवा किसी व्यक्ति द्वारा संपत्ति के प्रतिधारण की सहमति होना आवश्यक नहीं है – छल का अपराध धारा 415 के द्वितीय भाग के अंतर्गत बिना पूर्वकथित तत्वों के भी कारित किया जा सकता है – यद्यपि, यह आक्षेप

निरर्थक है कि प्रत्यर्थी की आयु 60 वर्ष थी एवं उसने दुर्व्यपदेशन द्वारा अपनी आयु 45 वर्ष बताते हुए उसकी (आवेदिका/परिवादी) सहमति प्राप्त की – पुनरीक्षण न्यायालय द्वारा परिवाद उचित रूप से खारिज।

Cases referred :

2010 (3) MPHT 59, 2002 Cr.L.J. 131, AIR 1976 SC 1947, 2000 CRI. L.J. 3487 SC, AIR 1965 SC 333.

Paritosh Trivedi, for the applicant.

ORDER

C.V. SIRPURKAR, J. :- This criminal revision under Section 397 read with section 401 of the Cr.P.C. filed on behalf of the applicant/complainant Nilofer Khan is directed against the order dated 21.01.2013 passed by the Court of 6th Additional Sessions Judge, Bhopal in Criminal Revision No.844/2012, whereby the order dated 01.09.2012 passed by the Court of JMFC, Bhopal directing registration of complaint against the respondent/accused her Ex-husband Mohammad Yusuf Khan under Section 420 of the IPC, was set aside.

2. The facts necessary for disposal of this criminal revision may briefly be stated thus: applicant Nilofer Khan filed a private complaint on 28.03.2012 against her Ex-husband Mohammad Yusuf Khan under Section 200 of the Cr.P.C. for offences under Sections 419, 420 and 506 of the IPC. It was alleged in the aforesaid private complaint that the respondent/accused approached the family members of the applicant/complainant with a proposal for marriage and disclosed that he has done his doctorate and is in Government Service. He represented that his age was 45 years. From the appearance of the accused also, it could not be said that he was making a false statement regarding his age. On the basis of aforesaid facts, complainant consented to marry and their marriage was performed on 23.12.2012 as per Muslim rites. In the marriage deed (Nikaahnama), accused recorded his age as 45 years. However, when the complainant went to live with the accused at Indore, she learnt from his certificates regarding his educational qualifications etc. that his age was more than 60 years. As such, the accused had defrauded the complainant by making aforesaid false representation with regard to his age and had obtained consent from the complainant for marriage. The complainant was mentally hurt by the discovery and felt that her future was dark. At the

time of the marriage, age of the complainant was only 35 years.

3. It has further been submitted in the private complaint that on 11.12.2011, the complainant confronted the accused with the information as to his age but the accused responded by bluntly telling her that since the marriage had been performed, there was nothing she could do about it. When the complainant told the accused that she would complain to her family members, the accused got enraged and abused and beat up the complainant. The dispute between the parties continued and she was beaten up on multiple occasions. Ultimately on 16.10.2011, the accused turned the complainant out of her matrimonial home. The following night, the accused visited the complainant's parental home and abused her family members. He threatened and manhandled the complainant.

4. Subsequently, on 28.3.2012, this private complaint was filed. Learned Magistrate recorded the statements of complainant and her witness Akbar Khan under Section 200 of the Cr.P.C. and on the basis of aforesaid statements and documents filed along with complaint, directed registration of complaint in respect of the offence punishable under Section 420 of the IPC, holding that the accused had made a false representation with regard to his age and thus, intentionally induced the complainant to enter into wedlock with him, which she would not have done otherwise.

5. The order dated 01.09.2012 passed by the learned Magistrate was challenged before Additional Sessions Judge in Criminal Revision No.844/2012, which was allowed by impugned order dated 21.01.2013 and as a result, order dated 01.09.2012 registering private complaint under Section 420 of the IPC was set aside. Revisional Court inter alia held that there were glaring discrepancies between the private complaint and the statements made by the complainant under Section 200 of the Cr.P.C.; as such, the complaint could not be taken at its face value. It was inconceivable that a man who is about 60 years of age would succeed in defrauding an educated women into believing that he was 45 years of age and thus, induce her to marry him. Learned Revisional Court further observed that it has not been proved as to who had enterrd the age of accused as 45 years at the time of marriage in Nikaah Nama. It was also held that the case of complainant does not disclose ingredients necessary to constitute offence of cheating as defined under Section 415 of the IPC. Consequently, the order passed by the learned Magistrate was set aside.

6. The order of the Revisional Court has been challenged before this Court mainly on the ground that learned Revisional Court had erred in setting aside the well-reasoned order passed by the learned Magistrate. Inviting attention of the Court to the judgment passed by this Court in the case of *Pistabai Vs. Narendra Singh*, 2010 (3) MPHT 59, it was argued that at the time of taking cognizance, the Magistrate is not entitled to consider the defence of the accused. Likewise, placing reliance upon the judgment passed by the Allahabad Court in the case of *Thakurs and Others Vs. State of U.P. and Others*, 2002 Cr.L.J. 131, it has been submitted that at the time of taking cognizance, the allegations made in the complaint and the evidence adduced in support thereof should be considered and not the proposed defence of the accused.

7. On the contrary, learned counsel for the respondent/accused has submitted that the complaint and the material filed in support thereof does not disclosed the ingredients necessary to constitute offence of cheating. The averments made in the complaint are also inherently improbable; as such, learned Revisional Court was perfectly justified in setting aside the order taking cognizance of the offence under Section 420 of the IPC.

8. In the cas e of *Nagawwa v . Veeranna Shivalingappa Konjalgi*, AIR 1976 SUPREME COURT 1947, it has been held that:

> *It is true that in coming to a decision as to whether a process should be issued the Magistrate can take into consideration inherent improbabilities appearing on the face of the complaint or in the evidence led by the complainant in support of the allegations but there appears to be a very thin line of demarcation between a probability of conviction of the accused and establishment of a prima facie case against him. The Magistrate has been given an undoubted discretion in the matter and the discretion has to be judicially exercised by him. Once the Magistrate has exercised his discretion it is not for the High Court, or even the Supreme Court, to substitute its own discretion for that of the Magistrate or to examine the case on merits with a view to find out whether or not the allegations in the complaint, if proved, would ultimately end in conviction of the accused. These considerations are totally*

foreign to the scope and ambit of an inquiry under Section 202 which culminates into an order under Section 204. Thus in the following cases an order of the Magistrate issuing process against the accused can be quashed or set aside:

(1) where the allegations made in the complaint or the statement of the witness recorded in support of the same taken at their face value make out absolutely no case against the accused or the complaint does not disclose the essential ingredients of an offence which is alleged against the accused;

(2). where the allegations made in the complaint are patently absurd and inherently improbable so that no prudent person can ever reach a conclusion that there is sufficient ground for proceeding against the accused;

(3) where the discretion exercised by the Magistrate in issuing process is capricious and arbitrary having been based either on no evidence or on materials which are wholly irrelevant or inadmissible; and

(4) where the complaint suffers from fundamental legal defects, such as, want of sanction, or absence of a complaint by legally competent authority and the like. (Para 5)

9. In view of the aforesaid pronouncement of the Supreme Court, the order passed by the Magistrate issuing process against the accused can be quashed or set aside only under aforesaid four situations enumerated in the judgment. On due consideration of the rival contentions, the questions that arises for consideration before this Court are:

(i.) Whether the ingredients necessary to constitute offence of cheating as defined under Section 415 of the I.P.C. are disclosed in the private complaint and other relevant material produced by the complainant?

(ii.) Whether the averments made in the complaint regarding alleged deception are patently absurd and inherently

improbable?

Question No. (i)

10. In this regard, the main allegation of the complainant is that the accused falsely represented his age to her as being 45 years and had induced her to marry him and if the accused had not concealed his true age and disclosed the fact that he was above 60 years of age, the complainant would not have married him.

11. Thus, this Court will have to see whether the averments made in the complaint and the statement of the witnesses recorded in support of the same, taken at their face value, does not disclose the essential ingredients of the offence which is alleged against the accused.

12. Offence of cheating has been defined under Section 415 of the I.P.C., which reads as follows:-

> ***415. Cheating :-****Whoever by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to cheat."*

13. It is nobody's case that pursuant to the alleged deception practice by the accused upon the complainant, she was induced to deliver any property to any person or was induced to consent to retention of any property by any person.

14. However, the Supreme Court has, in the case of *G. V. Rao v. L.H.V. Prasad,* 2000 CRI. L. J. 3487 SUPREME COURT has held as follows:

> *"5.The High Court quashed the proceedings principally on the ground that Chapter XVII of the Indian Penal Code deals with the offences against properties and, therefore, Section 415 must also necessarily relate to the property which, in the instant case, is not involved and,*

consequently, the FIR was liable to be quashed. The broad proposition on which the High Court proceeded is not correct. While the first part of the definition relates to property, the second part need not necessarily relate to property. The second part is reproduced below:-

". . . . . :intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to "cheat."

6. This part speaks of intentional deception which must be intended not only to induce the person deceived to do or omit to do something but also to cause damage or harm to that person in body, mind, reputation or property. The intentional deception presupposes the existence of a dominant motive of the person making the inducement. Such inducement should have led the person deceived or induced to do or omit to do anything which he would not have done or omitted to do if he were not deceived. The further requirement is that such act or omission should have caused damage or harm to body, mind, reputation or property.

7. As mentioned above, Section 415 has two parts. While in the first part, the person must "dishonestly" or "fraudulently" induce the complaint to deliver any property; in the second part, the person should intentionally induce the complainant to do or omit to do a thing. That is to say, in the first part, inducement must be dishonest or fraudulent. In the second part, the inducement should be intentional."

15. Likewise, in the case of *Kanumukkala Krishnamurthy v. State of A.P.*, AIR 1965 SUPREME COURT 333, the apex Court has held that:

"Cheating can be committed in either of the two ways described in S. 415, I. P. C. 'Deceiving a person' is common in both the ways of cheating. A person deceived may be

fraudulently or dishonestly induced to deliver any property or to consent to the retention of any property by any person. The person deceived may also be intentionally induced to do or to omit to do anything which he would not have done if not deceived and which act of his caused or was likely to cause damage or harm in body, mind, reputation or property."

16. Hence, delivery of property or consent for retention of property by any person is not necessary in all cases of cheating. The offence of cheating may be committed without aforesaid elements under the second limb of section 415. Thus, it is clear that in this case though delivery of any property or consent for retention of any property by any person was not involved; yet, as per the complainant's case, the accused fraudulently deceived her by making a false representation with regard to his age and she was intentionally induced by him to accord her consent to the marriage, which she would not have done but for such false representation. It is also her case that her marriage to the accused, who is much older than her, had caused harm or damage to her in the body and mind. As such, it cannot be said that the complaint as filed, does not disclose the ingredients of cheating as defined under section 415 of the IPC. The offence of cheating as defined under section 415, is punishable under section 417 of the IPC. However learned revisional Court was right to the extent that ingredients of offence punishable under section 420 are not disclosed. Hence the question no. 1 is decided in favour of the complainant.

Question no. (ii):

17. As per allegations in the complaint, the accused falsely represented that his age was 45 years; whereas, at the time of marriage his age was more than 60 years; though, he did not look more than 45 years of age. It may be stated at the outset that this allegation is preposterous. It appears to be highly improbable that a person would look more than 15 years younger than his actual age. The complainant who was an educated woman, running her own N.G.O., was expected to make enquiries regarding her husband with whom she was entering into the contract of marriage. The accused being a government servant, the information with regard to his age was readily available. Thus, regardless of the fact that age of the accused was recorded in the *Nikahnama* as 45 years and who had provided such information, this allegation cannot be taken at its face value, being inherently improbable. This conclusion may be

arrived at without referring to the defence of the accused at all.

18. There is another aspect to the matter. From the copy of arrest memo filed along with the complaint, it is clear that another criminal case against the accused has been registered by P.S. Lasudia, Indore under Sections 498-A and 506 of the IPC and Section 3/4 of the Dowry Prohibition Act, 1961, at the instance of the complainant. In that case, the complainant does not seem to have made any allegation regarding the deception alleged to have been practiced upon her because no offence under section 417 or 420 has been registered. Now, after a lapse of considerable time she has unearthed new material against the accused and has filed the present complaint, making fresh allegations. In these circumstances, motive of harassment cannot be ruled out.

19. Thus, this Court is of the view that interference by the Revisional Court in the order of the Magistrate issuing process against the accused was within the parameters laid down by the Supreme Court in the case of *Nagawwa* (Supra). As such, the impugned order does not suffer from any illegality, irregularity or impropriety warranting interference in revisional jurisdiction of the High Court.

20. Consequently, this Criminal Revision is dismissed.

Revision dismissed.

I.L.R. [2016] M.P., 890
CRIMINAL REVISION
Before Mr. Justice Subhash Kakade
Cr.Rev. No. 961/2009 (Jabalpur) decided on 16 October, 2015

NARAYAN DATT TIWARI ...Applicant
Vs.
SMT. LAXMIBAI TIWARI ...Non-applicant

Criminal Procedure Code, 1973 (2 of 1974), Section 397/401 - Grant of maintenance **- Order rejecting application by Judicial Magistrate First Class on the ground that the respondent was living separately without any just and proper cause was set- aside by Revisional Court - Held - Maintenance cannot be denied on the ground that the husband has been acquitted from the charges u/s 498-A of the IPC or on account of dissolution of marriage between the parties - It is obligatory on the part of the husband to maintain his wife - No**

interference is called for - Revision dismissed. (Paras 13, 16 & 18)

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 397/401 – भरण–पोषण प्रदान किया जाना – न्यायिक दण्डाधिकारी प्रथम श्रेणी द्वारा प्रत्यर्थी के बिना किसी वैध एवं उचित कारण के पृथक निवास करने के आधार पर आवेदन को निरस्त किये जाने के आदेश को पुनरीक्षण न्यायालय द्वारा अपास्त किया गया – अभिनिर्धारित – पक्षकारों के मध्य विवाह का विघटन हो जाने अथवा भा.दं.सं. की धारा 498–ए के आरोपों से पति के दोषमुक्त हो जाने के आधार मात्र पर भरण पोषण से इंकार नहीं किया जा सकता – पति के लिये अपनी पत्नी का भरण पोषण करना बंधनकारी है – हस्तक्षेप की कोई आवश्यकता नहीं – पुनरीक्षण खारिज।

Cases referred :

AIR 1978 SC 1807, 2005 (2) SCC 503, 2000 Cr.LJ 1498 (SC), (1999) 6 SCC 326, 1982 Cr.L.J 485, AIR 1960 Mad 348:1960 Cr. L.J 1098.

Surendra Mishra, for the applicant.

ORDER

SUBHASH KAKADE, J. :- This revision under Section 397/401 of the Code of Criminal Procedure, 1973 (hereinafter referred to as 'the Code' for short) has been filed by the applicant/husband against the order dated 28.04.2009, passed in Criminal Revision No.134/2008, by II Additional Sessions Judge (FTC) Katni, whereby the learned Revisional Court allowed the revision filed by the respondent/wife under Section 125, Cr.P.C. by setting aside the order dated 18.11.2008, passed in M.J.C. No.07/2008, by the learned Judicial Magistrate First Class, Katni.

2. The application on behalf of the respondent/wife filed under the provisions of Section 125 of the Code before the learned Judicial Magistrate First Class, Katni, contending that the marriage between the applicant and the respondent was solemnized on 20.04.2001 as per the Hindu rites and rituals. It is alleged by the respondent that after sometime of marriage the applicant and his family members demanded Rs.25,000/- cash as dowry and also demanded a motorcycle and thus, tortured her. On 14.04.2004 a complaint was made by the respondent before Superintendent of Police, Katni. On 12.05.2004 after reconciliation the respondent live with the applicant but again after passing of some time applicant again forced to left her husband house. The respondent has no source of income neither her parents has been able to

take care of her. It is also contended that the applicant is a contractor of sand checkpost and earns Rs.1,50,000/- per annum and is also receiving a house rent of Rs.10,000/- per month.

3. Applicant entered his appearance by filing reply and contended that the respondent has not fulfilled her marriage obligations. She was mentally discarded lady and was facing psychosis disease and her all activities like a lunatic lady. The applicant got treated her but she could not be cured. The respondents came to her parental home and was not ready to go her matrimonial house even calling by the applicant several times. The applicant has no source of income and he unemployed. The respondent without any reason left the house of the applicant and never turned up. The applicant also paid maintenance to the tune of Rs.900/- per month as directed by the Court of Sessions at Katni under the provisions of Section 24 of the Hindu Marriage Act, therefore, the application filed by the respondent deserves to be dismissed.

4. Learned Judicial Magistrate First Class dismissed the the application filed by the respondent. Against this rejection order dated 18.11.2008 the respondent filed a revision before the learned Lower Revisional Court. The learned Lower Revisional Court allowed the revision filed by the respondent vide order dated 28.04.2009 and ordered the applicant to pay Rs.800/- per month as maintenance to respondent, hence, this application.

5. Shri Surendra Mishra, learned counsel for the applicant submitted that the order passed by the learned Revisional Court is illegal, arbitrary and against the law and fact, and hence, unsustainable in the eye of law. The Revisional Court without summoning notice to the applicant, passed the order without providing opportunity of hearing, therefore, the same is illegal, arbitrary and against the principle of natural justice and is liable to be set aside. The learned Revisional Court ought to have considered the finding of the learned Judicial Magistrate by which the application has been rejected holding that the respondent is mentally discarded lady and is not ready to live with the applicant. She herself deserted the applicant. The learned Revisional Court has also failed to consider that the respondent has filed false and frivolous case under Section 498-A of IPC and Section 3/4 of Dowry Prohibition Act against the applicant and the same has also been dismissed by the learned trial Court, therefore, the impugned order dated 28.04.2009 is liable to be set aside.

6. Heard learned counsel for the applicant at length and after perusal of

the available record carefully, this Court has came to conclusion that this application has no substance; hence, not worth acceptance.

7. This fact is not disputed that the respondent is legally wedded wife of applicant.

8. Section 125 of the Code is a measure of social justice and is specially enacted to protect women and children and as noted by the Apex Court in *Captain Ramesh Chander Kaushal v. Mrs. Veena Kaushal and Ors.* reported in (AIR 1978 SC 1807) falls within constitutional sweep of Article 15(3) reinforced by Article 39 of the Constitution of India, 1950.

9. It is meant to achieve a social purpose. The object is to prevent vagrancy and destitution. It provides a speedy remedy for the supply of food, clothing and shelter to the deserted wife. It gives effect to fundamental rights and natural duties of a man to maintain his wife, children and parents when they are unable to maintain themselves. The aforesaid position was highlighted by the Apex Court in the case of *Savitaben Somabhai Bhatiya vs. State of Gujarat and Ors.* reported in [2005(2) SCC 503].

10. The husband cannot desert the wife by merely denying the relationship on any ground, if the grounds are not just and reasonable one. The husband cannot save or shield himself by saying that the respondent is not his wife or his marriage with the lady is not valid or ab initio void or the respondent is his divorce wife or criminal proceedings initiated on instance of wife terminated in acquittal of the applicant/husband?

11. It is pertinent to mention here that the learned Judicial Magistrate First Class, Katni rejected the initial application filed by the respondent/wife on the ground that she was living separately without any just and proper reason, hence the M.J.C. No.07/2008 was rejected vide order dated 18.11.2008 on two counts.

12. Firstly, it is true that applicant/husband was acquitted by the Competent Court for the offence punishable under Section 498-A of IPC, which was registered on the report lodged by the respondent wife.

13. But, learned trial Magistrate same time ignored this legal position that even then if the criminal proceedings for physical cruelty and ill-treatment was registered against the husband on the report lodged by the wife for the offence punishable under Section 498-A of IPC and husband were acquitted even

then it is "just ground" for wife's living apart, acquittal does not give the right to the husband to claim that the wife is living separately without just and reason.

14. Secondly, from the perusal of judgment and decree dated 09.10.2007 passed by learned Ist Additional District Judge, Katni in Hindu Marriage Case No.31/2007, it is apparent that the decree of dissolution of marriage between the parties is in existance.

15. The Apex Court in case of *Rohtash Singh vs Smt. Ramendri and others,* reported in 2000 Cr.LJ 1498 (S.C.) observed that a wife against whom a decree for divorce has been passed on account of her deserting the husband can claim Maintenance Allowance under Section 125 of the Code and the plea of desertion by wife cannot be treated to be an effective plea in support of the husband's refusal to pay her the Maintenance Allowance. After decree for divorce is passed she is under no obligation to live with the husband but though marital relations come to an end by the divorce granted by family Court under Section 13 of Hindu Marriage Act, the respondent continues to be wife within meaning of Section 125 of the Code on account of Explanation (b) to sub-section (1) of Section 125 of the Code which provides that a woman who has been divorced by her husband on account of a decree passed by the Family Court under the Hindu Marriage Act, continues to enjoy the status of a wife for a limited purpose of claiming Maintenance Allowance from her ex-husband. As a wife, she is entitled to maintenance unless she suffers from any of the disabilities indicated in Section 125(4) of the Code. In another capacity, namely as a divorced woman, she is again entitled to claim maintenance from the person of whom she was once the wife. A woman after divorce becomes a destitute. If she cannot maintain herself or remains unmarried, the man who was, once, her husband continues to be under a statutory duty and obligation to provide maintenance to her.

16. It is the obligation of the husband to maintain wife, father to maintain children and son to maintain parents. It will, therefore, be for him to show that he has no sufficient means to discharge his obligation: *Rajathi vs. C. Ganesan* (1999) 6 SCC 326. Means does not signify only visible means, such as real property or definite employment: *Basanta vs. Sarat* 1982 CrLJ 485. An able-bodied person has sufficient means: *Kandaswami vs. Angammal* AIR 1960 Mad 348: 1960 CrLJ 1098.

17. Learned Revisional Court rightly held that the applicant also having

sufficient means of income to pay maintenance and, therefore, rightly awarded the maintenance amount of Rs.800/- per month which is also reasonable.

18. After appreciation of evidence on both the counts learned Revisional Court rightly held that learned Judicial Magistrate First Class, Katni committed error holding that the respondent living separately without any just cause, hence learned Revisional Court allowed the revision and passed impugned order for payment of maintenance at the rate of 800/- per month as maintenance to the respondent, which does not requires any interference.

19. In view of the aforesaid, this revision under Section 397/401 of the Code stands dismissed.

20. A copy of this order be sent to the learned Court below.

Revision dismissed.

I.L.R. [2016] M.P., 895
INCOME TAX APPEAL
Before Mr. Justice Sheel Nagu & Mr. Justice Rohit Arya
I.T.A. No. 2/2013 (Gwalior) decided on 5 September, 2015

ANAMAY CONSTRUCTION CO. (M/S) ...Appellant
Vs.
UNION OF INDIA & ors. ...Respondents

Income Tax Act (43 of 1961), Section 32 and Income Tax Rules, 1962, Appendix I, Item III sub-item 3(ii) - Whether special rate of 30% depreciation is allowable in the case of motor vehicles used by assessee in the business of civil construction - **Held - No - Such depreciation is allowable only in case of tour operator or travel agent using his vehicles in providing transportation service to tourist or vehicles used in assessee's business of transportation of goods on hire and not on vehicles used in some other non-hiring business - The test is the use of vehicles in the business of transportation of the assessee - In the present case the assessee being in civil construction business using his vehicles for transporting earth to facilitate laying of roads cannot be said to be in business of hiring out his trucks for removal and transportation of earth as they are only sub-process of his main business of laying of roads - Appeal dismissed. (Paras 6-8)**

आयकर अधिनियम (1961 का 43), धारा 32 एवं आयकर नियम, 1962, परिशिष्ट I, आइटम III सब–आइटम 3(ii) – क्या सिविल कंस्ट्रक्शन के व्यापार में करदाता द्वारा मोटर वाहनों का उपयोग किये जाने के मामले में 30% अवमूल्यन की विशेष दर स्वीकार योग्य है – अभिनिर्धारित – नहीं – ऐसा अवमूल्यन केवल ऐसे मामलों में स्वीकार योग्य है जहां टूर संचालक अथवा यात्रा अभिकर्ता अपने वाहनों के उपयोग द्वारा पर्यटकों को परिवहन सुविधा उपलब्ध कराते हैं अथवा ऐसे मामलों में जहां करदाता द्वारा भाड़े की वस्तुओं के परिवहन व्यापार में वाहनों का उपयोग किया जाता है न कि गैर–भाड़ेदार वस्तुओं के परिवहन व्यापार में – करदाता के परिवहन व्यापार में उसके द्वारा प्रयुक्त वाहनों के आधार पर इसकी जांच की जा सकती है – वर्तमान प्रकरण में करदाता सिविल कंस्ट्रक्शन के व्यापार में संलग्न होकर सड़क निर्माण के कार्य हेतु मिट्टी ढोने में अपने वाहनों का उपयोग कर रहा है, जिससे यह नहीं कहा जा सकता है कि वह मिट्टी खोदने एवं उसे ढोने के कार्य हेतु अपने ट्रकों को भाड़े पर चलाने के व्यापार में संलग्न है, क्योंकि उक्त कार्य तो उसके मुख्य व्यापार अर्थात् सड़क निर्माण की प्रक्रिया का एक हिस्सा मात्र है – अपील खारिज।

Cases referred :

(2010) 190 Taxman 406, (2006) 206 CTR (Guj) 14, 239 ITR 466 (M.P.), AIR 2001 SC 835, (1993) 114 CTR (SC) 420.

Vishal Tripathi, for the appellant.
D.P.S. Bhadoria, for the respondents.

JUDGMENT

The Judgment of the Court was delivered by : **ROHIT ARYA, J. :-** This appeal, by the assessee, under Section 260A of the Income Tax Act, 1961 (for short "the Act"), is admitted on the following substantial question of law:-

> *"Whether on facts and in the circumstances of the case, the assessee is entitled for special rate of 30% depreciation on the Trucks purchased by him during the previous year, relevant to assessment year 2008-2009, under sub-item 3(ii) of Item III of Appendix I of the Income Tax Rules, 1962, as the special rate of 30% depreciation is allowable in the case of motor vehicles used in the business of running them on hire or where such motor vehicles are used in the assessee's business of transportation of goods on hire ?"*

2. With the consent of the parties, heard finally.

3. The assessee is engaged in civil construction business. In the Return of income filed for the assessment year 2008-2009, assessee claimed depreciation of Rs.18,78,623/- at the rate of 30% on the Trucks purchased during the previous year relevant to the assessment year 2008-2009. The Assessing Officer while framing regular assessment under Section 143(3) of the Act, considered the aforesaid claim and disallowed the same on the premise that 30% depreciation would have been allowable on his motor vehicles had the assessee been engaged in running of his Trucks on hire. As the assessee was engaged in the business of civil construction, only 15% depreciation i.e. Rs.9,39,312/- was allowable and not 30% i.e. Rs.18,78,623/-. Hence, the balance was added to the income of the assessee as excess claim of depreciation.

4. On appeal, the CIT (Appeals) allowed the claim of depreciation at the rate of 30% for the reason that the appellant was required to transport the earth from one place to another for filling. Since the earth so transported did not belong to the appellant and as such the appellant's business receipts to a large extent could be held to be price or the charges received for transporting the goods from one place to another, referring to CBDT's Circular No.652 dated 14/6/1993, higher rate of depreciation was found admissible on motor vehicles used. In support thereof, the CIT (A) also referred to the judgment of High Court of Kerala in the case of *CIT, Cochin Vs. Gaylord Constructions* (2010) 190 Taxman 406 (Ker), as well as, *CIT Vs. Gujrat Tube Well Co.* (2006) 206 CTR (Guj) 14, to justify its order of allowing depreciation at the higher rate of 30%. Accordingly, disallowance of depreciation at Rs.9,39,312/- was deleted.

5. On appeal before the ITAT by the Revenue, the Tribunal set aside the order of CIT (A) and restored the order of Assessing Officer, following the judgment of jurisdictional High Court in the case of *CIT Vs. Anupchand & Co.* 239 ITR 466 (M.P.) and relying upon the order of ITAT in ITA Nos.42 & 58/ Agr/2012. The relevant extract of the order of M.P. High Court in *Anupchand's* case (Supra) is reproduced as under:-

> "The assessee was a registered firm deriving income from contract work. The assessee claimed depreciation allowance at the rate of 40 per cent on trucks used for its business purpose. The Income Tax Officer allowed only 30

per cent allowance on the ground that the vehicles were used for the assessee's own business of transporting goods. On a reference :

Held, that the benefit of 40 per cent depreciation allowance was admissible only for vehicles used for business of hire in view of the provisions of Entry No. III(ii)E(1-A) of Part I of Appendix I to the Income Tax Rules, 1962, and since the assessee used the vehicles for its own business of transporting its goods only 30 per cent depreciation was allowable."

6. Being aggrieved thereby, the assessee is before us by filing the instant appeal under Section 260A of the Act. Appendix I, relevant for assessment year 2008-2009, *inter alia*, under sub-item 3(ii) of Item III, provides for higher (30%) rate of depreciation allowance as percentage of written down value of motor buses, motor lorries and motor taxis used in the business of running them on hire, allowable under Section 32 of the Act. The aforesaid clause has been clarified by Board's Circular No.609 dated 29/7/1991 (S.No.244) reproduced in Circular No. 652 dated 14/6/1993, that where a tour operator or travel agent uses motor buses or motor taxis owned by him in providing transportation services to tourists, higher rate of depreciation would be allowed on such vehicles. It is further clarified that higher depreciation will also be admissible on motor lorries used in the assessee's business of transportation of goods on hire. The higher rate of depreciation, however, would not apply if the motor buses, motor lorries, etc., are used in some other non-hiring business of the assessee.

7. The Hon'ble Supreme Court in the case of *Commr. Of Income Tax, Gujrat Vs. Gupta Global Exim (P) Ltd.* (Civil Appeal No.3342 of 2008) has well discussed the identical issue and laid down the test for applicability of higher rate of depreciation in the context of sub-item 3(ii) of item III of Apendix I appended to the Rules. It is held that as higher rate of depreciation is admissible on motor trucks used in a business of running them on hire, therefore, the use of the same in the business of the assessee of transportation is the test.

8. In the present case, admittedly, the assessee is in the business of civil construction. The assessee had engaged his own Trucks for transporting earth to facilitate laying of roads. Under such circumstances, the assessee cannot be said to be in the business of hiring out his Trucks for removal of earth to

make him entitled for higher rate of depreciation, as removal and transportation of earth are only sub-processes of his main business of laying of roads. The order of CIT (A) entitling the assessee for higher rate of depreciation on the premise that his motor vehicles were used for removal of earth and since the earth did not belong to the assessee, therefore, the use of his motor vehicles was on hire, in the opinion of this Court, is not correct, either on facts or in law, besides not being in conformity with the test laid down by the Apex Court, as indicated above, and also, with the Board's Circular No.609/Circular No. 652 dt. 14/6/93 (Supra).

9. In the case of *Gaylord Constructions* (Supra) the question raised in appeal filed by the Revenue was "whether the Tribunal was justified in upholding the assessee's claim for depreciation of earth moving equipment, namely, JCB at the rate of 40%; the rate provided for 'Motor Buses, Motor Lorries, Motor Taxis', used in the business of running them on hire" and as such, the assessee was in the business of running the motor vehicles on hire, however, the question was "whether higher rate of depreciation was available for putting the JCB machine on hire" and the Court ruled that the expression "motor lorry", covered by the entry in the Appendix-I of Income Tax Rules providing for higher rate of depreciation, has a wide meaning and will include the JCB machine, which is basically used for excavation of soil, it is a heavy vehicle also used for transportation of excavated soil, relying on the judgment of Hon'ble Supreme Court in the case of *Bose Abraham* v. *State of Kerala and another*, AIR 2001 SC 835. Hence, the aforesaid case is of no assistance to the facts in hand.

In the case of *CIT vs. Gujrat Tubewell* (Supra) the Court had addressed on the issue "as to whether construction of dam, bridge, building, road will fall within the meaning of manufacture or production of an article or thing entitling depreciation under sub-clause (iii) of clause (b) of sub-section (2) of Section 32A" and answered the same in negative and in favour of Revenue relying on the judgment of the Hon'ble Supreme Court in the case of *CIT v. N.C. Budharaja & Co. and Anr.* (1993) 114 CTR (SC) 420 where the Supreme Court held that the aforesaid provision of the Income Tax Act does not comprehend within its ambit the construction of dam, bridge, building, road, canal and other similar construction. Hence, this case is also of no assistance to the facts in hand.

10. Accordingly, the substantial question of law framed is answered in the

negative and in favour of the Revenue upholding the order passed by the ITAT.

11. The appeal, accordingly, stands dismissed, without any order as to costs.

Appeal dismissed.

I.L.R. [2016] M.P., 900
MISCELLANEOUS CRIMINAL CASE
Before Mr. Justice S.K. Palo
M.Cr.C. No. 7751/2014 (Gwalior) decided on 2 December, 2014

JAYANT THIRANI & anr. ...Applicants
Vs.
GYANCHAND DUBEY ...Non-applicant

Criminal Procedure Code, 1973 (2 of 1974), Section 397 - Revision **- Notice to accused - Applicant was arrayed as accused in complaint - Complaint u/s 138 N.I Act was dismissed without issuing notice to applicant - Revisional court without issuing notice to applicant set aside the order of Trial Magistrate and directed to take cognizance - Held - Valuable right to defend was denied to applicant by revisional court - Order set aside - Matter remanded back. (Para 25)**

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 397 – पुनरीक्षण – अभियुक्त को नोटिस – आवेदक को परिवाद में अभियुक्त बनाया गया – परक्राम्य लिखत अधिनियम की धारा 138 के अंतर्गत प्रस्तुत परिवाद को आवेदक को नोटिस जारी किये बिना ही खारिज कर दिया गया – पुनरीक्षण न्यायालय ने आवेदक को नोटिस जारी किये बिना विचारण दण्डाधिकारी के आदेश को अपास्त किया एवं संज्ञान लेने हेतु निदेशित किया – अभिनिर्धारित – पुनरीक्षण न्यायालय द्वारा आवेदक को बचाव के बहुमूल्य अधिकार से वंचित किया गया – आदेश अपास्त – मामला प्रतिप्रेषित किया गया।

Cases referred :

2011 (II) MPWN 126, 2013 (III) MPWN 75, (2006) 1 SCC (Cri) 345, (2009) 2 SCC 363, (2012) 10 SCC 517.

Prashant Sharma, for the applicants.
H.K. Shukla, for the non-applicant.

ORDER

S.K. PALO, J. :- Heard.

Petitioners have preferred this revision petition under Section 482 of Cr.P.C for invoking the inherent jurisdiction of this Court and seeking the relief to quash the order dated 22.5.2014 passed by the learned ASJ, Gwalior in Criminal Revision No. 397/2013 whereby the order dated 25.9.2013 of the Trial Court in un-registered complaint *"Gyanchand Dubey Vs. Jayant Thirani and other"*, was set aside and the trial court was directed to take cognizance of offence under Section 420 of IPC.

2. Brief facts of the dispute are as under:

Respondent / complainant filed complaint under Section 420, 467, 468, 471/34 of IPC against the petitioners before the JMFC, Gwalior, stating that the complainant was working as Assistant Works Manger in Supersack Division of Midland Plastic Ltd. The complainant resigned from the company on 1.10.2010. For the settlement of his dues complainant received cheque of Rs. 95,000/- dated 30.8.2011 and another cheque Rs. 93, 365/- dated 31.8.2011. Both these cheques were presented before the Bank on 27.2.2012 for encashment. These cheques were returned for there was insufficient fund. The respondent / complainant filed a complaint under Section 420, 467, 468, 471 of IPC before the JMFC.

3. The learned JMFC vide order dated 25.9.2013 passed the order, stating that the cheques were presented for encashment after a period of six months. Therefore, for the purpose of honoring the cheque,the company is not liable. The the trial Court also opined that no case is made out against the proposed accused persons / petitioners.

4. The respondent / complainant filed a revision before the learned ASJ, Gwalior, which was registered as Cr. Revision No.397/2013. The learned ASJ, Gwalior has passed the impugned order on 22.5.2014.

5. In this revision, the petitioners / proposed accused persons were not noticed. The revisional Court held that on 27.2.2012 the complainant presented both the cheques within the period of six months. Therefore, without giving any notice to the other parties, (ie the petitioners), the impugned order was passed and setting aside the order of the trial Court dated 25.9.2013, directing the trial Court to proceed against the petitioners under Section 420 of IPC.

6. The petitioners challenged the impugned order, on the ground that the petitioners were not given an opportunity in the revisional proceedings to defend their case. Dishonor of cheques for not having sufficient fund does not constitute any offence under Section 420 of IPC, as exclusive provisions of Section 138 of Negotiable Instruments Act is provided for the same. Therefore, the revisional Court has committed error. Hence, the impugned order be set aside.

7. Heard both parties at length.

8. Learned counsel for the respondent opposed the submissions and submitted that the accused petitioners were absent and not served before the trial Court and the complaint was dismissed at a pre notice stage. Therefore, at the revisional Court it was not necessary to notice the accused persons / petitioners.

9. It is further contended that before taking cognizance of offence, the accused has no right whatsoever to defend it's case. Hence, in the revisional Court if at all they are not noticed the same is not irregular.

10. Before proceeding with the matter, it is necessary to understand the provisions of Section 398 of Cr.P.C, which read as follows:

Power to order inquiry.

> 398. On examining any record under Section 397 or otherwise, the High Court or the Sessions Judge may direct the Chief Judicial Magistrate by himself or by any of the Magistrates subordinate to him to make, and the Chief Judicial Magistrate may himself make or direct any subordinate Magistrate to make, further inquiry into any complaint which has been dismissed under section 203 or subsection (4) of section 204, or into the case or any person accused of an offence who has been discharged:
>
> **Provided** that no Court shall make any direction under this section for inquiry into the case of any person llwho has been discharged unless such person has had an opportunity of showing cause why such direction should not be made.

11. During the course of arguments, learned counsel for the respondent

has drawn attention of this Court to the provisions of Section 362 of Cr.P.C and submitted that the petitioners instead of filing application under Section 362 of Cr.P.C could have filed this application before the revisional Court, if they were aggrieved with the order they could have requested the revisional Court to remove the mistake.

12. It is necessary to quote Section 362 of Cr.P.C for better understanding of the provision which reads as under:

Court not to alter judgment.

362. Save as otherwise provided by this Code or by any other law for the time being in force, no Court, when it has signed its judgment or final order disposing of a case, shall alter or review the same except to correct a clerical or arithmetical error.

13. This provision is very clear and the Court passing the order cannot review the same except to correct the clerical or arithmetical error.

14. This is not clerical or arithmetical error. Hence, provision of Section 362 is not not attracted in the present circumstances.

15. The learned counsel for respondent placed reliance in the case of *Vishnu Agarwal Vs. State of U.P. & another*, reported in 2011 (II) MPWN 126, in which it is held that,

"Criminal P.C., 1973 – S. 362 – provision cannot be considered in rigid manner to defeat the ends of justice – High Court rightly recalled its order and directed the case to be listed for fresh hearing.

16. Similarly, counsel for respondent has also been placed reliance in the case of *State of Madhya Pradesh Vs. Jitendra Singh,* reported in 2013 (III) MPWN 75, in which it is held that,

"Criminal Procedure., 1973 – S. 362 – Court has inherent power to recall earlier order in exceptional circumstances – order of issuing nonbailable warrant of arrest against respondents recalled.

2011 (II) MPWN 126 (SC) followed.

17. In the case of *Vishnu Agarwal* (supra), the High Court recalled its order dated 2.9.2003. On that day no one appeared on behalf of the Revisionist, though the counsel for respondents appeared. In these circumstances the order was passed. The order was recalled on the ground that in the main list case was not shown and in the computer list it was shown. Therefore, the revisionist had not noted the date, hence, failed to appear.

18. Similarly, in the case of *Jitendra Singh* (supra), the order of issuance of non bailable warrant against respondent was recalled. For the reasons that the non bailable warrant was issued against respondent at the time of granting of leave to file appeal, whereas, the appeal was not admitted at that time.

19. These judgments do not in any manner support the case of the respondent.

20. Reverted back to the proviso of Section 398 of Cr.P.C, it is also clear that a person who has been discharged has a opportunity to explain himself. Without affording any opportunity to the petitioners / accused persons passing of such directions by the revisional Court seems to be erroneous.

21. This view is fortified by the decision rendered in *P. Sundarrajan & Others Vs. R. Vidhya Sekar* (2006) 1 SCC (Cri) 345:

> "Criminal Procedure Code, 1973 -S. 401- Revision – Notice- Complaint alleging offence punishable under S. 420 IPC having been dismissed by Judicial Magistrate, revision petition filed by the complainant before High Court – High Court without issuing notice to the respondent before it (appellant the Supreme Court) and without considering the defence available to him proceeding to consider the material produced by the revision petitioner and directing the Magistrate to proceed with the complaint in accordance with law- Held, order unsustainable as it violated principles of natural justice as also requirements of law of hearing a party before passing an adverse order – Natural Justice – *Audi alteram partem*- Show cause / Notice – Opposite party in criminal revision before High Court, held entitled to"

22. In this regard, reference can also be made to the decision of Hon'ble Apex Court in *Raghu Raj Singh Rousha Vs. Shivam Sundaram Promoters Private Limited & Another* reported in (2009) 2 SCC 363, in the Hon'ble Apex Court has held that:

"Criminal Procedure Code, 1973 – Ss. 397 & 401 and Ss. 1156 (3) & 200 – Revisional powers of High Court – Exercise of in absence of accused – Sustainability – Respondent 1, a registered company filing a complaint petition before Metropolitan Magistrate alleging commission of offences purported to be under Ss. 323, 382, 420, 465, 468, 471, 120-B, 506 and 34 IPC accompanied by an application under S. 156(3) – Metropolitan Magistrate refusing to direct investigation in terms of S. 156(3) and complainant asked to lead pre-summoning evidence – However, Hight Court in revision application filed thereagainst wherein only State was impleaded, without hearing accused setting aside siad order and directing Metropolitan Magistrate to examine matter afresh after calling report from police authorities – Held, one of the questions which arises for consideration is as to whether the learned Magistrate has taken cognizance of the offence – Indisputably, if he had taken cognizance of the offence and merely issuance of summons upon the accused persons had been postponed, in a criminal revision filed on behalf of the complainant, the accused was entitled to be heard before the High Court – S. 401(2) refers not only to an accused but also to any person land if he is prejudiced, he is required to be heard – An order was passed partially in his favour as Metropolitan Magistrate had refused to exercise its jurisdiction under S. 156(3) – Had an opportunity of hearing been given to the appellant, he could have shown that no revision application was maintainable and/ or even otherwise, no case has been made out for interference with the impugned judgment – Besides, in the instant case learned Magistrate had taken cognizance – He had applied his mind and refused to exercise his jurisdiction under S. 156(3) - He arrived at a conclusion that the dispute is a private dispute in relation to an immovable property and, thus, police investigation is not necessary – It was only with that intent in view, he directed examination of the complainant and his witnesses – Hence, impugned judgment cannot be sustained and is accordingly set aside – Penal Code, 1860, Ss. 323, 382, 420, 465, 468, 471, 120-B 506 and 34.

23. The decision in *Manharibhai Muljibhai Kakadia and another vs.*

Shaileshbhai Mohanbhai Patel and others (2012) 10 SCC 517, can be profitably referred, in which the Hon'ble Apex Court has held:

> "Criminal Procedure Code, 1973 -Ss. 397, 401(2), 203, 200, 202 and 204 – Complaint case- Revision petition filed by complainant against dismissal of complaint under S. 203 – Opportunity of hearing to accused suspect, held, is necessary.
>
> - Held, dismissal of complaint under S. 203, whether at stage of S. 200 itself or after following process contemplated under S. 202, culminates in termination of complaint proceedings – Therefore, when complainant files revision petition threagainst before High Court or Sessions Judge, accused / suspect arraigned in complaint gets right of hearing before Revisional Court, as is expressly provided in S. 401(2), notwithstanding that order impugned in revision was passed without his participation
>
> - However, if Revisional Court remands impugned order to Magistrate for fresh consideration, accused / suspect arraigned in complaint would not be entitled to hearing before Magistrate until consideration of matter for issuance of process – Expressions "prejudice", "other person", "in his own defence" occurring in S. 401(2) – Meaning of – Penal Code, 1860, Ss. 420, 467, 468, 471 and 120-B.

24. In the case of *Manharibhai Muljibhai Kakadia and another* (supra) in para 46 the Hon'ble Apex Court has made it crystal clear that :

> "The legal position is firly well-settled that in the proceedings under Section 202 of the Code the accused / suspect is not entitled to be heard on the question whether the process should be issued against him or not. As a matter of law, up to the stage of issuance of process, the accused cannot claim any right of hearing. Section 202 contemplates postponement of issue of process where the Magistrate is of an opinion that further inquiry into the complaint either by himself is required and he proceeds with the further inquiry or directs an investigation to be made by a police officer or by such other person as he thinks fit for the purpose of deciding

whether or not there is sufficient ground for proceeding with the complaint and dismisses the complaint under Section 203 of the Code, the question is whether a person accused of crime in the complaint against the order of the dismissal of the complaint. Parliament being alive to the legal position that the accused/ suspects are not entitled to be heard at any stage of the proceedings until issuance of process under Section 204, yet in Section 401(2) of the Code provided that no order in exercise of the power of the revision shall be made by the Sessions Judge of the High Court, as the case may be, to the prejudice of the accused or the other person unless he had an opportunity of being heard either personally or by pleader in his own defence.

25. In view of the aforesaid discussion, and following the principle of natural justice, the petitioners' valuable right to defend themselves before the revisional Court was denied to them, therefore, this Court has no hesitation in allowing this application under Section 482 of Cr.P.C and setting aside the order dated 22.5.2014 passed in Cr. Revision No.397/2013, the matter is remanded back to the Court of III ASJ, Gwalior to afford the petitioners opportunity of hearing and to pass appropriate order. Both the parties are directed to present themselves before the learned III ASJ, Gwalior on 15.1.2015.

26. A copy of this order be sent to learned III ASJ, Gwalior for compliance.

Order accordingly.

I.L.R. [2016] M.P., 907

MISCELLANEOUS CRIMINAL CASE

Before Mr. Justice B.D. Rathi

M.Cr.C. No. 1602/2009 (Gwalior) decided on 3 December, 2014

M.P. MADHYA KSHETRA VIDYUT VITRAN COMPANY LTD. ...Applicant

Vs.

KALYAN SINGH CHAUHAN & ors. ...Non-applicants

***Electricity Act (36 of 2003), Section 135 and Criminal Procedure Code, 1973 (2 of 1974), Section 200 - Theft of electricity - Complaint* - If written complaint is not filed before police station, there is no bar to file a private complaint - Similarly, if written complaint is**

filed before the police station concerned, in that event a private complaint can also be filed and the court can take cognizance u/s 151 of the Act. (Para 13)

विद्युत अधिनियम (2003 का 36), धारा 135 एवं दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 200 – विद्युत की चोरी – परिवाद – यदि पुलिस थाने में लिखित शिकायत प्रस्तुत नहीं की गई है, तब भी निजी परिवाद प्रस्तुत करने हेतु कोई वर्जन नहीं है – इसी प्रकार, यदि संबंधित पुलिस थाने में लिखित शिकायत प्रस्तुत कर दी गई है तब उस दशा में भी निजी परिवाद प्रस्तुत किया जा सकता है एवं न्यायालय, अधिनियम की धारा 151 के अंतर्गत संज्ञान ले सकता है।

Case referred :

(2014) 3 SCC 696.

Vivek Jain, for the applicant.
None for the non-applicants even after service of notice.

ORDER

B.D. Rathi, J. :- The instant petition under Section 482 of the Code of Criminal Procedure (for short "the Code") has been filed by the petitioner on being aggrieved by the order impugned dated 16/10/2008 passed by the Special Court (Electricity), Gwalior whereby private complaint filed under Section 135 of the M.P. Electricity Act, 2003 for short "the Act 2003" was returned on 16/10/2008 on the ground that as per the procedure prescribed in second proviso of section 135(1) (A) of the Act itself, written complaint for the commission of the alleged offence was not lodged to the police station having jurisdiction.

2. The brief facts that would emerge from the material placed on record are that one private complaint was filed by petitioner against the respondents under section 135 of the Act by alleging that on 9/3/2008 when premises of the respondents was checked by the Board officials they found un-authorised use of electricity by using direct line but on making complaint, the court refused to take cognizance for non-compliance of the mandatory procedure prescribed in second proviso of section 135(1) (A) of the Act 2003. The cognizance was also refused on the ground that amended proviso given under section 155 of the Act authorises the court to take cognizance only upon a report of police officer under section 173 of Cr.P.C. It was also mentioned in the impugned order that the power to investigate the matter was given to police under section

151 (A) and offences under sections 135 to 140 of the Electricity Act, in the light of section 151-B of the Act are cognizable and non-bailable.

3. It is submitted by the learned counsel Shri Jain appearing for the petitioner that the impugned order passed by the court below is patently illegal erroneous and against the settled principles of law because amended proviso given under section 151 of the Act does not preclude the court to take cognizance on a private complaint. It is thus submitted that the court-below committed mistake in refusing to take cognizance on the private complaint preferred by the petitioner and prayed that the petition may be allowed and the relief claimed for may be granted in favour of the petitioner. In support of the arguments reliance is placed on the decision of Hon. Apex Court in the case of *Vishal Agrawal and another Vs. Chhattisgarh State Electricity Board and another* (2014) 3 SCC 696.

4. Having regard to the arguments advanced by the learned counsel for petitioner, the entire case has been examined.

5. At this stage, it may be mentioned here that the Act, 2003 is a complete code in itself. For facility of reference, relevant provisions of the Act which are applicable to the case in hand are quoted below:

> **"135. Theft of electricity.-**
>
> (1) XXX XXX XXX XXX
>
> (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 further that such officer of the licensee or supplier, as the case may be, shall lodge a complaint in writing relating to the commission of such offence in police station having jurisdiction within twenty-four hours from the time of such disconnection."

6. Though in the aforesaid provisions correspondingly there is a mandate commanding the complainant to lodge a report in writing relating to the commission of offence in concerning police station having jurisdiction within 24 hrs. from the time of disconnection of the electric supply yet it does not

infringe or waive the right of the petitioner to file a private complaint in the court. At this juncture, Section 151 of the Act comes into play which provides the procedure for taking cognizance of the offences relating to theft. It reads as under:

> **"151. Cognizance of offences.-** No court shall take cognizance of an offence punishable under this Act except upon a complaint in writing made by Appropriate Government or Appropriate Commission or any of their officer authorised by them or a Chief Electrical Inspector or an Electrical Inspector or licensee or the generating company, as the case may be, for this purpose:
>
> Provided that the court may also take cognizance of an offence punishable under this Act upon a report of a police officer filed under section 173 of the Code of Criminal Procedure, 1973:
>
> Provided further that a special court constituted under section 153 shall be competent to take cognizance of an offence without the accused being committed to it for trial."

7. In view of first proviso of aforesaid section, it is very much clear that the court can also take cognizance of an offence on the basis of the police report filed under section 173 of Cr.P.C. It postulates that if any written complaint was lodged to the police officer then certainly the court can take cognizance on the final report of the police in view of the proviso given under section 151 of the Act. These provisions have been added because of the offence under sections 135 to 140 and section 150 of the Act have been made cognizable and non-bailable by the dint of section 151-B of the Act. Section 151-B of the Act reads as under:-

> **"151B. Certain offences cognizable and non-bailable.-**
>
> Notwithstanding anything contained in the Code of Criminal Procedure, 1973, an offence punishable under sections 135 to 140 or section 150 shall be cognizable and non-bailable."

8. These two provisos under section 135((1)(A) and section 151 of the Act were added which had been made enforceable w.e.f. 15/6/2007. On the same day, section 151-B of the Act was also incorporated to declare the

offences as cognizable and non-bailable.

9. The definition of cognizable offence was given under section 2 (c) of Cr.P.C. which is as under:-

> **"Definitions Section 2 of the Code of Criminal Procedure, 1973.** In this Code, unless the context otherwise requires,-
>
> (a) XXX XXX XXX XXX
>
> (b) XXX XXX XXX XXX
>
> (c) "cognizable offence" means an offence for which, and "cognizable case" means a case in which, a police officer may, in accordance with the First Schedule or under any other law for the time being in force, arrest without warrant;

10. Under section 151(A) of the Act is in relation to power of police to investigate alike chapter XII of the Code of Criminal Procedure, 1973. It runs as below:-

> **"151A. Power of police to investigate.-** For the purposes of investigation of an offence punishable of this Act, the police officer shall have all the powers as provided in Chapter XII of the Code of Criminal Procedure, 1973.

11. Similarly in this case one more relevant aspect is that a Notification was issued on 8/6/2005 by the Central Govt. in exercise of powers under section 176 of the Electricity Act. This also requires a mention. Vide this Notification the Electricity Rules 2005 have been framed and Rule 12 which is relevant reads as under:-

> **"12. Cognizance of the offence.-** (1) The police shall take cognizance of the offence punishable under the Act on a complaint in writing made to the police by the appropriate Government or the appropriate Commission or any of their officers authorised by them in this regard or a Chief Electrical Inspector or an Electrical Inspector or an authorised officer of licensee or a generating company, as the case may be.
>
> (2) The police shall investigate the complaint in accordance with the general law applicable to the investigation of any

complaint. For the purposes of investigation of the complaint the police shall have all the powers as available under the Code of Criminal Procedure, 1973.

(3) The police shall, after investigation, forward the report along with the complaint filed under sub-clause (1) to the court for trial under the Act.

(4) Notwithstanding anything contained in sub-clauses (1)(2) and (3) above the complaint for taking cognizance of an offence punishable under the Act may also be filed by the appropriate Government or the appropriate Commission or any of their officers authorised by them or a Chief Electrical Inspector or an Electrical Inspector or an authorised officer of licensee or a generating company, as the case may be directly in the appropriate court.

(5) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, every Special Court may take cognizance of an offence referred to in Sections 135 to 139 of the Act without the accused being committed to it for trial."

12. On perusal of the the Rule 12 sub-clause (4) again it is clear like a noon that even after lodging the written complaint before the police and matter has already been investigated by the police even then complainant has a right to file a complaint as provided in section 151 of the Act and if such kind of private complaint is filed then the court is competent to take cognizance of the offence by virtue of the vested right given under section 151 of the Act which otherwise were not affected by declaring the offences under sections 135 to 140 of the Electricity Act as cognizable and non-bailable under section 151-B of the Act to lay down that private complaint cannot be entertained or cognizance cannot be taken by the the court.

13. To understand the matter easily it is pertinent to mention here that as per mandatory provisions given in proviso of section 135(1)(A) of the Act, a written complaint in regard to commission of offence shall be lodged before the concerning police station within 24 hrs. Thereafter because of offences are cognizable and non-bailable, the police shall investigate the matter in view of the powers under section 151-A of the Act and thereafter may file final report before the appropriate court. It is strange to note that nowhere it is

mentioned in the Act that private complaint cannot be filed under Section 151 of the Act. For an example suppose if written complaint is not filed before the police station concerned even then there is no bar to file a private complainant (sic:complaint) under section 151 of Cr.P.C. Similarly, if written complainant is filed before the police station concerned in that event a private complaint can also be filed and the court competent can take cognizable as provided under section 151 of the Act.

14. Hence in view of the detailed observations on factual and legal spears, this court is of the considered opinion that the order passed by the trial court is in utter disregard to the provisions contemplated above and therefore same is hereby set aside. The petitioner is free to file a private complaint before the court and if such kind of complaint is re-presented by the petitioner which was returned by the court against an endorsement made in the impugned order itself, same shall be entertained and dealt with by the court-below in accordance with law.

15. Copy of this order be sent to the concerning Court for compliance.

Order accordingly.

I.L.R. [2016] M.P., 913
MISCELLANEOUS CRIMINAL CASE
Before Mr. Justice Sushil Kumar Gupta
M.Cr.C. No. 1603/2009 (Gwalior) decided on 8 January, 2015.

M.P. MADHYA KSHETRA VIDYUT VITRAN COMPANY LTD. ...Applicant
Vs.
RAMSWAROOP KUSHWAH & anr. ...Non-applicants

Electricity Act (36 of 2003), Section 151 - Cognizance of offences **- Held - That even when a Magistrate is to take cognizance on the police report, that would not mean that no other option is available and the private complaint cannot be lodged. (Para 10)**

विद्युत अधिनियम (2003 का 36), धारा 151 – अपराधों का संज्ञान – अभिनिर्धारित – यह कि, पुलिस प्रतिवेदन पर किसी दण्डाधिकारी द्वारा संज्ञान लिये जाने का यह अर्थ नहीं होगा कि अन्य कोई विकल्प उपलब्ध नहीं है एवं निजी परिवाद दर्ज नहीं किया जा सकता है।

Case referred :

(2014) 3 SCC 696.

Ajay Sharma, for the applicant.

ORDER

SUSHIL KUMAR GUPTA, J. :- This petition has been preferred under Section 482 of the Code of Criminal Procedure 1973 (in short "the Code 1973") against the impugned order dated 16.10.2008 passed by Special Court (Electricity), Gwalior whereby the private complaint filed under Section 135 of MP Electricity Act, 2003 (in short "the Act 2003") was returned on 16.10.2008 on the ground that complaint has been filed by the complainant without adopting the prescribed procedure under Section 135(1)(1-A) of the Act 2003.

2. The brief facts of the case are that on 09.03.2008 when premises of the respondent was checked by the officers of the petitioner then they found unauthorised use of electricity and committing theft. On making private complaint under Section 135 of the Act 2003 the Court refused to take cognizance for non-compliance of the mandatory provision prescribed in second proviso of Section 135(1)(1-A) of the Act 2003. The Court was also refused to take cognizance on the ground that as per amended proviso given under Section 151 of the Act 2003 which authorises the Court to take cognizance only upon a report of police officer. It was also mentioned in the impugned order that the power to investigate the matter was given to the police under Section 151-A and offences under Section 135 to 140 of Electricity Act in the light of Section 151-B of the Act are cognizable and non-bailable.

3. Learned counsel for the petitioner submits, during the course of argument, that the impugned order passed by the Court below is manifestly illegal, erroneous and contrary to law because amended proviso given under Section 151 of the Act 2003 does not preclude the Court to take cognizance on a private complaint. It is further submitted that the Court below committed error in refusing to take cognizance on the basis of the private complaint preferred by the petitioner. It is further submitted that the learned Court below has gravely erred in passing the impugned order on the basis of second proviso of Section 135(1)(1-A) of the Act 2003. The second proviso qualified Section 135(1-A). It is further submitted that all the provisos of particular provision have to be read together, and not in isolation. The first proviso prescribes the

appropriate authority for disconnecting the connection in the case of detection of theft. However the second proviso lays down the further action to be taken after disconnection. It is further submitted that while passing the impugned order the learned Court below has not gone into the mandatory provision of Section 151 of the Act 2003 which clearly provides that cognizance of an offence shall be taken upon a complaint in writing made by Appropriate Government or Appropriate Commission or any of their officer authorised or Chief Electrical Inspector or licensee or the generating company, as the case may be. By insertion of proviso, parallel powers have been given to the police authorities also to lodge a report of offence under Section 173 of the Code 1973. It is further submitted that no stretch of imagination or interpretation of any legal provision, the Court could have refused to take cognizance upon the complaint made by the complainant. Learned counsel for the petitioner further submitted that on these grounds, petition may be allowed and the relief claimed for may be granted in favour of the petitioner. In support of the arguments reliance is placed on the decision of Hon. Apex Court in the case of *Vishal Agrawal and another Vs. Chhattisgarh State Electricity Board and another* (2014) 3 SCC 696.

4. Having regard to the arguments advanced by the learned counsel for petitioner, the entire case has been examined.

5. Before consideration of the argument advanced by learned counsel for the petitioner, it would be proper to reproduce the relevant provision of the Act 2003.

135. Theft of electricity.-

(1) XXX XXX XXX XXX

(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:

Provided further that such officer of the licensee or supplier, as the case may be, shall lodge a complaint in writing relating to the commission of such offence in police station having jurisdiction within twenty four hour from the time of such disconnection:

151. Cognizance of offences.- No court shall take congnizance (sic:cognizance) of an offence punishable under this Act except upon a complaint in writing made by Appropriate Government or Appropriate Commission or any of their officer authorised by them or a Chief Electrical Inspector or an Electrical Inspector or licensee or the generating company, as the case may be, for this purpose.

Amendment of section 151. - In section 151 of the principal Act, the following provisos shall be inserted, namely:- "Provided that the court may also take cognizance of an offence punishable under this Act upon a report of a police officer filed under section 173 of the Code of Criminal Procedure, 1973 (2 of 1974);

Provided further that a special court constituted under section 153 shall be competent to take cognizance of an offence without the accused being committed to it for trial."

Insertion of new sections 151A and 151B. - After section 151 of the principal Act, the following sections shall be inserted, namely:-

151A. Power of police to investigate. - For the purposes of investigation of an offence punishable under this Act, the police officer shall have all the powers as provided in Chapter XII of the Code of Criminal Procedure, 1973 (2 of 1974).

151B. Certain offences to be cognizable and non-bailable. - Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), an offence punishable under sections 135 to 140 or section 150 shall be cognizable and non-bailable."

175. Provisions of this Act to be in addition to and not in

derogation of other laws.- The provisions of this Act are in addition to and not in derogation of any other law for the time being in force.

6. In this backdrop, the Notification dated 08.06.2005 issued by the Central Government in exercise of powers under Section 176 of the Electricity Act also requires a mention. Vide this notification the Electricity Rules, 2005, have been framed and Rule 12, which is relevant, reads as under:

12. Cognizance of the offence-

(1) The police shall take cognizance of the offence punishable under the Act on a complaint in writing made to the police by the Appropriate Government or the Appropriate Commission or any of their officer authorized by them in this regard or a Chief Electrical Inspector or an Electrical Inspector or an authorized officer of Licensee or a Generating Company, as the case may be.

(2) The police shall investigate the complaint in accordance with the general law applicable to the investigation of any complaint. For the purposes of investigation of the complaint the police shall have all the powers as available under the Code of Criminal Procedure, 1973.

(3) The police shall, after investigation, forward the report along with the complaint filed under sub-clause (1) to the Court for trial under the Act.

(4) Notwithstanding anything contained in sub-clauses (1), (2) and (3) above, the complaint for taking cognizance of an offence punishable under the Act may also be filed by the Appropriate Government or the Appropriate Commission or any of their officer authorized by them or a Chief Electrical Inspector or an Electrical Inspector or an authorized officer of Licensee or a Generating Company, as the case may

be directly in the appropriate Court.

(5) Notwithstanding anything contained in the Code of Criminal Procedure 1973, every special court may take cognizance of an offence referred to in sections 135 to 139 of the Act without the accused being committed to it for trial.

6. From the bare perusal of Section 135(1)(1-A) of the Act 2003, it is clear that requirement to lodge police report of an offence of theft of electricity only when disconnection of supply of electricity is made only after detection of theft but petitioner/complainant does not debar to file a private complaint in the Court.

7. At this stage, it is pertinent to mention here that the Court below did not consider the mandatory provision of Section 151 of the Act 2003 which clearly provides that cognizance of an offence punishable under this Act 2003 shall be taken upon a complaint in writing made by Appropriate Government or the Appropriate Commission or any of their officer authorised by them in this regard or Chief Electrical Inspector or Electrical Inspector or a authorised officer of licensee or the generating company, as the case may be.

8. By virtue of first proviso of amended Section 151, parallel powers has also been given to the police authorities to lodge a report of offence under Section 173 of Cr.P.C. By the amended provision, such power has been given to the police because the offence under Section 135 to 140 and 150 of the Act 2003 have been made cognizable and non-bailable, as per the amended provision under Section 151-B of the Act 2003. And also the power to investigate the offence punishable under this Act has been given to the police by amended proviso of Section 151-A.

9. It is also clear from the bare perusal of Rule 12 sub-clause (4) of the Act that even if any matter has already been investigated by the police even then powers to file the private complaint is not curtail and complainant has a right to file a private complaint as provided under Section 151 of the Act 2003 which otherwise were not affected by declaring the offences under Section 135 to 140 of the Act 2003 as cognizable and non-bailable under Section 151-B of the Act to lay down that private complaint cannot be entertained or cognizance cannot be taken by the Court.

10. Thus, the clear principle which emerges from the aforesaid discussion

is that even when a Magistrate is to take cognizance on the police report that would not mean that no other option is available and the private complaint can not be lodged. It also enables certain persons/ parties, as mentioned in Section 151, to become complainant in such cases and file complaint before a Court in writing. When such a complaint is filed, the Court would be competent to take cognizance straightway. However, that would not mean that other avenues for investigation into the offence which are available would be excluded. It is more so when no such special procedure for trying the offences under the Electricity Act is formulated and the cases under this Act which are also to be governed by the Code of Criminal Procedure.

11. Therefore, in view of the aforesaid, discussion and observations on factual and legal aspects, I am in the considered opinion that the impugned order passed by the Court below is not correct in the eye of law and contrary to the provisions of the Act 2003 and therefore, same is hereby set aside. Petitioner is free to resubmit the private complaint before the Court and if such kind of complaint is re-submitted by the petitioner which was returned by the Court against an endorsement by passing the impugned order, same shall be entertained and dealt with by the Court below in accordance with law.

12. Copy of this order be sent to the concerning Court for necessary compliance.

Order accordingly.

I.L.R. [2016] M.P., 919
MISCELLANEOUS CRIMINAL CASE
Before Mrs. Justice S.R. Waghmare
M.Cr.C. No. 5974/2014 (Indore) decided on 7 July, 2015

ARPIT JAIN ...Applicant
Vs.
VIJAY SISODIYA ...Non-applicant

Criminal Procedure Code, 1973 (2 of 1974), Section 482 and Penal Code (45 of 1860), Section 379 - Theft - Quashment of proceedings - **Accused/ petitioner prayed that the borrower non-applicant failed to make the payment of instalments of loan - The financier is entitled to take possession of financed vehicle as per the terms of the contract and filing of the complaint against accused was bad in law - Held - At this stage it**

would be difficult to come to conclusion, whether the recovery by the financial institution was proper and was in accordance with law - Without scrutiny of evidence to stifle the proceedings at this stage would be improper - The trial Court would be able to adjudicate the matter only after adducing proper evidence and hence petition for quashing criminal proceeding is dismissed. (Paras 3 & 7)

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 482 एवं दण्ड संहिता (1860 का 45), धारा 379 – चोरी – कार्यवाहियों अभिखंडित की जाना – अभियुक्त/याची ने प्रार्थना की कि उधार लेने वाले/अनावेदक ने ऋण की किस्तों के भुगतान में चूक की – संविदा की शर्तों के अनुसार वित्तदाता वित्तपोषित वाहन का आधिपत्य प्राप्त करने का हकदार है एवं अभियुक्त के विरूद्ध परिवाद प्रस्तुत किया जाना विधि की दृष्टि में अनुचित था – अभिनिर्धारित – इस प्रक्रम पर, इस निष्कर्ष पर पहुंचना कठिन होगा कि क्या वित्तीय संस्थान द्वारा की गई वसूली समुचित एवं विधि अनुसार थी – बिना साक्ष्य की संवीक्षा के, इस प्रक्रम पर कार्यवाहियों को समाप्त करना अनुचित होगा – केवल उचित साक्ष्य प्रस्तुत होने के पश्चात् ही विचारण न्यायालय प्रकरण का न्यायनिर्णयन करने में समर्थ होगा, अतएव, दाण्डिक कार्यवाहियों को अभिखंडित किये जाने हेतु प्रस्तुत याचिका खारिज की गई।

Cases referred :

1996(7) SCC 212, 2001 CRI.L.J. 2441, 2002(1) MPLJ 321, 2006(I) MPWN 133, 2006(II) MPWN 96, 1980 Cri.L.J. 822, 2013(1) SCC 400, 2003(1) MPLJ 274, 2004(2) JLJ 234, 2013 (1) DCR 184, 2012 (2) SCC (Cri) 506, 2015 CRI.L.J. (NOC) 107 (H.P.), AIR 2012 SC 509.

Vinay Saraf, for the applicant.
Nilesh Sharma, for the non-applicant.

ORDER

S.R. WAGHMARE, J. :- By this petition under Section 482 of the Cr.P.C. the petitioner Arpit Jain has prayed for quashment of Criminal Case No.35600/2013 pending before the Judicial Magistrate First Class, Indore.

2. Briefly stated the facts of the case are that the respondent Vijay Sisodiya had filed a criminal complaint against one Cholamandalam Investment and Finance Co. Ltd. alleging that Tata Truck bearing registration No.1109 was purchased by the respondent from Sanghi Bros. (Indore) Pvt. Ltd. The agreement of hire purchase was signed by him but since it was in English language, he could not understand the agreement. Counsel urged that he issued

48 security cheques in favour of the company, the vehicle was registered at No.MP-46-G-0664. That the installment were payable two months after the purchase, however, the financial condition of the respondent Vijay Sisodia was in dire straits and he could not pay the installment on the stipulated time and on the date of the incident i.e.23.11.2012 when the vehicle was parked in front of the residence of his brother Surendra Singh at Bicholi Mardana, Indore; one Jabbar along with 2-3 persons came there at 9 O' Clock in the night and asked his brother to remove the vehicle since they wanted to park their dumper there. They took the keys from Surendra Singh and took away the truck without any permission of Surendra Singh. Hence this report was filed by brother Surendra Singh at P.S. Palasia but the police did not take any action and thereafter the criminal complaint was filed. It also happened that the name of the petitioner and Jabbar were added by way of amendment. Cognizance was taken by the Magistrate for offence under Section 379 of IPC against accused Jabbar *vide* order dated 13.11.2013. Hence this petition for quashment of the order.

3. Counsel for the petitioner has vehemently urged the fact that the name of the petitioner was added by way of amendment on 03.09.2013 and was an abuse of process of law. The complaint was initially recorded under Section 200 of the Cr.P.C. and no case was made out for offence under Section 379 of the IPC against the petitioner Arpit Jain. Counsel submitted that it was a settled position of law that if the borrower failed to make the payment of installments of loan, the financier is entitled to take possession of the financed vehicle as per the terms of the contract and filing of the complaint was bad in law and the alleged ingredients of the offence under Section 379 of the IPC were not made out. It was also alleged that the vehicle was voluntarily handed over by Surendra Singh brother of the complainant and in this sense also the intention to cause wrongful gain or wrongful loss is absent in the present case and the important fact cannot be marginalised is that respondent has admitted that his financial condition was not good and therefore, he could not make the payment of installments. Similarly there is no mens rea and the petitioner cannot be accused for offence under Section 373 of IPC. Counsel prayed for quashment of the further proceedings since it would result of miscarriage of justice and the order was manifestly unjust, unwarranted and perverse. Counsel prayed that the proceedings be quashed.

4. Counsel for the petitioner placed reliance on *K.A. Mathai @ Babu*

and another Vs. Kora Bibbikutty and another [1996(7) SCC 212] to state that where the case was considered by the Apex Court that the bus was purchased under the hire purchase agreement and complainant had defaulted in payment and the financier had taken possession of the bus with the help of A-1 and A-2 and the Court held that the offence of theft was not made out and the Financier was right to resume possession. Similarly more or less the same has been held in the matter of *M/s. Sundaram Finance Ltd Vs. Mohd. Abdul Wakeel* [2001 CRI.L.J. 2441], *Charanjit Singh Chadha and others Vs. Sudhir Mehra* [2002(1) MPLJ 321], *Mohan Singh Rathore v. State of M.P.* [2006(I) MPWN 133], *Managing Director, Orix Auto Finance (India) Ltd. v. Shri Jagmander Singh and another* [2006(II) MPWN 96], *Trilok Singh and other v. Satya Deo Tripathi* [1980 Cri.L.J. 822], *Anup Sarmah Versus Bhola Nath Sharma and others* [2013(1) SCC 400], *Issac Jaise Vs. Jasmit Sing Saluja* [2003(1) MPLJ 274].

5. Finally Counsel relied on *Anup Sarmah Vs. Bhola Nath Sharma and others* [2013(1) SCC 400] to state that in an agreement of hire purchase, the purchaser remains merely a trustee/bailee on behalf of the financier but ownership remains with the latter and if the vehicle was seized by the financier, no criminal action can be taken against him as he is only repossessing goods owned by him and there was no reason for interference. Counsel prayed that the petition be allowed and the proceedings in the trial Court be quashed.

6. Counsel for the respondent, on the other hand, has fully supported the order framing charge and the consequent proceedings. Counsel submitted that the investigation proceedings were not complete and the Court has to evaluate the material on record and in such cases the investigation proceedings cannot be quashed. And it was impossible for the High Court to look into the materials while exercising the jurisdiction under Section 482 of the Cr.P.C. Counsel placed reliance on *State of M.P. Vs. Awadh Kishore Gupta and others* [2004(2) JLJ 234] to state that when the factual position of the case at hand was completely different, the financier cannot recover the vehicle illegally and proper show cause notice had to be issued and snatching a vehicle amounted to theft under Section 379 of the IPC. In the present circumstances the vehicle was handed over by the brother Surendra Singh on trust and it was without the knowledge of the owner that the truck has taken away by playing a fraud. Counsel prayed that the petition was without merit. He also relied on *M/s. Shivraj Wires Limited and others Versus State of Punjab and another*

[2013(1) DCR 184] whereby the Court was considered the case for offence under Section 138 of the NI Act and the question was regarding quashment of the FIR and subsequent proceedings quashing the complaint itself under Section 138 of the N.I. Act and the Court had held that **allowing** the amendment application prior to recording of preliminary evidence is not against the law as no prejudice is caused to the accused and the High Court of Punjab had held that it did not call for any interference. In the present case also, Counsel submitted that the amendment had introduced the name of Jabbar and Arpit Jain since they were essential parties to the complaint and the accused in the said case. Hence Counsel prayed that the petition be dismissed. He placing reliance on *State of Orissa and others Vs. Ujjal Kumar Burdhan* [2012(2) SCC (Cri) 506] to state that although the powers of the High Court under Section 482 of the Cr.P.C. are very wide, the Apex Court had held that they do not confer arbitrary jurisdiction and it has to be exercised sparingly with circumspection and the High Court should not interfere unless the case of gross abuse of power is made out against the person-in-charge of investigation and the Apex Court had held that the High Court had erred in quashing investigation initiated by the Vigilance Department and Counsel prayed that in the present case also the offence registered against the complainant cannot be quashed without taking proper evidence and the criminal prosecution cannot stifle in this fashion. Finally relying on *H.D.F.C. Bank Limited v. State of Rajasthan & another* [2015 CRI.L.J. (NOC) 107 (H.P.), Counsel submitted that the High Court at Jaipur had considered the alleged vehicle hypotheticated by the Bank and complainant had made default in payment of installments of loan and similar recovery by agents of the bank allegedly stopped the motorcycle of complainant and torn his shirt and had taken away Rs.50,000/- from his pocket along with motorcycle and the Court had considered the question of the facts regarding the recovery being legal and use of force were questions which could not be adjudicated in petition under Section 482 of Cr.P.C. and had to be determined during the course of the trial. Counsel prayed that in the present case also the same benefit be granted to the petitioner. Similarly placing reliance on *Citicorp. Maruti Finance Ltd. v. S. Vijayalaxmi* [AIR 2012 SC 509] and Counsel submitted that the recovery by the financial institution was against the process of law and use of force cannot be permitted. Counsel prayed that the petition was without merit and the same be dismissed.

7. On considering the above submissions, I find that the sole question

arises for adjudication is whether the criminal proceedings can be quashed at this stage. The authorities relied on by the Counsel for the petitioner also categorically stated that mens rea and dishonest intention have to be established for offence under Section 317 and at this stage it would be difficult to come to conclusion whether the recovery by the financial institution or the petitioner was in accordance with the provisions of law. And without there being proper scrutiny of evidence to stifle the proceedings at this stage would be improper and proceedings under Section 482 of the Cr.P.C. cannot be utilised for quashing the proceedings at this stage and should not amount to abuse of process of law as already stated above. I find that although much has been made about the accused having defaulted in payment, but at the same time the important fact cannot be marginalised or blinked away is that whether the recovery is in accordance with the provisions of law and whether the respondent had legal remedy available to him. In this light also the petition cannot be allowed. The trial Court would be able to adjudicate the matter only after adducing proper evidence and hence the present petition is **dismissed** as being without merit.

Petition dismissed.

I.L.R. [2016] M.P., 924
MISCELLANEOUS CRIMINAL CASE
Before Mr. Justice Jarat Kumar Jain
M.Cr.C. No. 1296/2015 (Indore) decided on 13 July, 2015

SHEIKH KALIM ...Applicant
Vs.
STATE OF M.P. ...Non-applicant

***Govansh Vadh Pratishedh Adhiniyam (6 of 2004), Sections 4, 5, 6, 6-A, 9, 11(5) & 11(B) and Prevention of Cruelty to Animals Act (59 of 1960), Sections 11(b), 11(d) & 11(5) - Prohibition on transport of cow or beef* - Penalty - Confiscation of vehicle - Revision - Treating animals cruelly - Collector can confiscate the vehicle when by a competent court it is found that any violation of section 4, 5, 6, 6-A and 6-B of the Adhiniyam has been committed - The Collector should have refrained from passing any order of confiscation of vehicle during pendency of the criminal case - In absence of any finding with regard to violation of said Section of the Adhiniyam, by the Criminal Court -**

The order passed by the Collector confiscating the vehicle u/s 11(5) of the Adhiniyam is bad in law. (Paras 6 & 11)

गौवंश वध प्रतिषेध अधिनियम (2004 का 6), धाराऐं 4, 5, 6, 6–ए, 9, 11(5) व 11(बी) एवं पशुओं के प्रति क्रूरता का निवारण अधिनियम (1960 का 59), धाराऐं 11(बी), 11(डी) व 11(5) – गौ अथवा गौमांस के परिवहन का प्रतिषेध – शास्ति – वाहन की जब्ती – पुनरीक्षण – पशुओं के प्रति क्रूरतापूर्ण व्यवहार – कलेक्टर किसी वाहन को जब्त कर सकता है, जब किसी सक्षम न्यायालय द्वारा यह पाया गया हो कि अधिनियम की धारा 4, 5, 6, 6–ए एवं 6–बी का उल्लंघन कारित हुआ है – दाण्डिक प्रकरण के लंबित रहने के दौरान कलेक्टर को वाहन जब्त करने संबंधी कोई आदेश पारित करने से विरत रहना चाहिए था – अधिनियम की उक्त धाराओं के उल्लंघन के संबंध में दाण्डिक न्यायालय के किसी निष्कर्ष के अभाव में कलेक्टर द्वारा अधिनियम की धारा 11(5) के अंतर्गत पारित वाहन जब्ती का आदेश, विधि की दृष्टि में अनुचित है।

Cases referred :

2013 (1) MPJR SN 10, 2000 (1) JLJ 304, 2008 (1) JLJ 427, AIR 2012 SC 61.

Santosh Khoware, for the applicant.
Yogesh Mittal, G.A. for the non-applicant/State.

ORDER

J.K. JAIN, J. :- THIS petition is filed under Section 482 of CrPC against the order passed by the 12th Additional Sessions Judge in Cr. R. No.948/2014 on 21.01.2015 whereby he has affirmed the order passed by the Commissioner, Indore in Cr. Appeal No.39/2013-14, by which Commissioner, affirmed the order of confiscation of the vehicle passed by the Collector, Burhanpur.

2. On 21.06.2013, Shri Anand Tiwari, A.S.I., Police Station, Ganpati Naka, Burhanpur on the basis of secret information intercepted a Bolero Pick-Up No.MP12-GA- 0924 and on checking it was found that 11 cow progeny were being transported in the vehicle. The cattle were being taken for slaughtering purpose to the State of Maharashtra. Nitesh and Bablu were driver and cleaner of the vehicle. They were not having valid license for transporting the cattle. The vehicle and the cattle were seized and Crime No.148/13 for the offence under Section 4, 6 and 9 of Govansh Vadh

Pratishedh Adhiniyam, 2004 (in brief Adhiniyam) and Section 11(d) of Prevention of Cruelty to Animals Act, 1960 has been registered. After completion of the investigation final report has been filed against Nitesh @ Santosh and Bablu. After trial in Criminal Case No.1292/2013 JMFC, Burhanpur vide judgment dated 21.03.2014 acquitted the accused persons, whereas as per the provisions of Section 11 (5) of Adhiniyam the District Magistrate after making inquiry found that there is a violation of Section 4, 5, 6, 6-A of the Adhiniyam and thus confiscated the vehicle. Against that order of confiscation, petitioner who is the registered owner preferred an appeal to the Divisional Commissioner, Indore which has been dismissed thereby affirming the order of Collector. Against that order as per the provisions of Section 11-B petitioner filed a Revision before the Sessions Court which affirmed the order of the Divisional Commissioner. Being aggrieved the petitioner filed this petition.

3. Learned Counsel for the petitioner submits that the courts below have not considered the fact that at the time of incident the applicant was not found in the vehicle and there is no evidence that in connivance with the applicant cattle were being illegally transported. During trial the prosecution has failed to prove the charges against the driver and cleaner, therefore, learned Magistrate has acquitted them from all the charges, thus, there is no evidence that at the time of incident the vehicle was used for the purpose of illegal transportation of the cattle. The petitioner is a registered owner of the vehicle, therefore, he is entitled for the custody of the vehicle. The orders passed by the courts below are contrary to the settled principles of law, thus, the petition be allowed and it be directed that the custody of the vehicle be handed over to the petitioner. Learned Counsel for the petitioner further submits that the vehicle cannot be confiscated by the Collector so long as criminal case is pending but the learned Collector has passed the order of confiscation before the conclusion of the trial. For this purpose he placed reliance on the judgment of this Court in the case of *Premdas V/s. State of M.P.* [2013 (1) MPJR SN 10].

4. On the other hand, learned Govt. Advocate for the non-applicant/ State supports the order of confiscation of the vehicle.

5. After hearing learned counsel for the parties, perused the record.

6. Undisputedly the Collector has passed the order of confiscation on

4-2-2014 i .e. before the conclusion of trial by the criminal court. The JMFC has passed the order of acquittal on 21.3.2014 holding that the Nitesh @ Santosh and Bablu have not committed an offence u/s 4,6, and 9 of the Adhiniyam and 11(d) of the Prevention of cruelty to Animals Act. As per the provision of section 11(5) of the Adhiniyam, the Collector can confiscate the vehicle when by a competent court it is found that any violation of section 4,5,6,6A and 6B of the Adhiniyam has been committed. The Collector should have refrained from passing any order of confiscation of vehicle during pendency of the criminal case.

7. That in the similar circumstances this Court while dealing a case under the Indian Forest Act read with the MP Vanopaj Vyapar Viniyaman Adhiniyam 1969 in case *Premdas* (supra) held that confiscation of the vehicle is unsustainable until and unless the criminal proceedings are finalized.

8. The Full Bench of this Court in the case of *Madhukar Rao Vs State of MP* [2000(1) JLJ-304] has laid down the principle that during pendency of the criminal case, confiscation proceedings should not be held and be finalized. This judgment has been affirmed by the Hon'ble Supreme Court in the case of *State of MP Vs Madhukar Rao* 2008(1) JLJ-427 wherein the Court observed that :-

> **".....The submission was carefully considered by the Full Bench of the High Court and on an examination of the various provisions of the Act it was held that the provision of Section 39(1)(d) would come into play only after a Court of competent jurisdiction found the accusation and the allegations made against the accused as true and recorded the finding that the seized article was, as a matter of fact, used in the commission of offence."**

9. The aforesaid principle laid down in *Madhukar Rao* (Supra) reiterated and affirmed by the Hon'ble Supreme Court in the case of *Principal Chief Conservator of Forest Vs J.K.Johnson* AIR 2012 SC 61.

10. In the present case the trial court has not found guilt of the accused persons and acquitted them from the charges of Adhiniyam as well as of the Prevention of Cruelty to Animals Act.

11. Thus, in absence of any finding with regard to violation of section 4,5,6,6A and 6B of the Adhiniyam, by the Criminal Court, the order passed by the Collector, confiscating the said vehicle under the section 11(5) of the Adhiniyam is bad in law.

12. Thus, in view of the above dictum the order of confiscation passed by the Collector is not sustainable and hence it is hereby set-aside and consequential orders in appeal before Commissioner and Revision before the Sessions Court are also set-aside. And it is herewith directed that the vehicle in question be released to the registered owner.

Order accordingly.

I.L.R. [2016] M.P., 928

MISCELLANEOUS CRIMINAL CASE

Before Mr. Justice Rajendra Mahajan

M.Cr.C. No. 2741/2015 (Jabalpur) decided on 30 September, 2015

HARSEWAK ...Applicant

Vs.

STATE OF M.P. ...Non-applicant

A. Penal Code (45 of 1860), Sections 457, 306 & 376, Protection of Children from the Sexual Offences Act (32 of 2012), Section 4, Juvenile Justice (Care and Protection of Children) Act (56 of 2000), Section 7A and Juvenile Justice (Care and Protection of Children) Rules, 2007, Rule 12(3) - Age determining enquiry - **Applicant - Date of incident is 15/09/2014 - Marksheet from 1st standard to 10th standard depicts date of birth as 05/05/1997 - Entry in admission register of school depicts date of birth as 07/04/1995 - Courts below held the date of birth as 07/04/1995 - Held - Mark-sheets of 1st standard to 10th standard produced as per Rule 12(3)(a)(i) will have precedence over any other document and in absence of it date of birth certificate from school as per Rule 12 (3)(a)(ii) will have precedence and so on - Applicant is a juvenile on date of commission of offence, being below 18 years of age - M.Cr.C accordingly disposed of. (Paras 13 to 18)**

क. दण्ड संहिता (1860 का 45), धाराऐं 457, 306 व 376, लैंगिक अपराधों से बालकों का संरक्षण अधिनियम (2012 का 32), धारा 4, किशोर न्याय

(बालकों की देख–रेख और संरक्षण) अधिनियम (2000 का 56), धारा 7ए एवं किशोर न्याय (बालकों की देख–रेख और संरक्षण) नियम, 2007, नियम 12 (3) – आयु निर्धारण हेतु जांच – आवेदक – घटना दिनांक 15/09/2014 – कक्षा 1 से कक्षा 10वीं तक की अंकसूची में जन्मतिथि 05/05/1997 अंकित है – विद्यालय की प्रवेश पंजी में जन्मतिथि 07/04/1995 अंकित है – निचले न्यायालयों ने जन्मतिथि 07/04/1995 अभिनिर्धारित की – अभिनिर्धारित – नियम 12(3)(ए)(i) के अनुसार प्रस्तुत कक्षा 1 से 10वीं तक की अंकसूचियों को अन्य किसी दस्तावेज के आगे प्राथमिकता होगी एवं उनकी अनुपस्थिति में नियम 12(3)(ए)(ii) के अनुसार विद्यालय के जन्मतिथि प्रमाणपत्र को प्राथमिकता दी जायेगी और इसी क्रम में आगे – अपराध कारित होने की तिथि को आवेदक 18 वर्ष से कम आयु का होने के नाते, किशोर है – एम.सी.आर.सी. तद्नुसार निराकृत।

B. Interpretation of statutes - Juvenile Justice (Care and Protection of Children) Act, (56 of 2000), Clause 4 of Section 1 - **Provisions of the Act regarding detention, prosecution, penalty or sentence shall have overriding effect over any other law and consequently Rules of 2007 will also be applicable in toto. (Para 7)**

ख. कानूनों का निर्वचन – किशोर न्याय (बालकों की देख–रेख और संरक्षण) अधिनियम, (2000 का 56), धारा 1 का खण्ड 4 – निरोध, अभियोजन, शास्ति एवं दण्डादेश से संबंधित अधिनियम के उपबंधों का अन्य किसी भी विधि पर अध्यारोही प्रभाव होगा एवं परिणामतः 2007 के नियम भी पूर्णतः लागू होंगे।

Cases referred :

AIR 2013 SC 553, AIR 2013 SC 1020, 2013 Cri. L.J. 1716 M.P.

R.K. Tamrakar, for the applicant.
Amit Pandey, P.L. for the non-applicant.

ORDER

RAJENDRA MAHAJAN, J. :- The petitioner has preferred this petition under Section 482 of the Cr.P.C. challenging the correctness and the legality of the order dated 09.02.2015 passed by the Additional Sessions Judge, Bijawar District Chhatarpur in Criminal Revision No.07/2015, affirming the order dated 16.10.2014 passed by the Judicial Magistrate First Class, Bijawar in the remand proceedings of Crime No. 134/2014 of Police Station, Gulganj District Chhatarpur, rejecting his revision. Vide order dated 16.10.2014, it is held by the learned JMFC that the petitioner was not a juvenile in the eye of

law on the date of the crime.

2. The essential facts for just and proper adjudication of the petition are given below:-

(2.1). The police of police station, Gulganj have registered Crime No. 134/2014 against the petitioner for the offences punishable under Sections 457, 306, 376 of the IPC and 4 of the Protection of Children from the Sexual Offences Act, 2012.

(2.2) On 07.10.2014, the petitioner had submitted an application in the Court of Judicial Magistrate First Class, Bijawar, praying that his date of birth is 05.05.1997 as per his academic records and the date of alleged incident is 15.09.2014. Thus, his age was 17 years, 4 months and 10 days on the date of incident. However, the police have recorded his age over 19 years in the F.I.R. on the basis of a false document of his age. Since he is below the age of 18 years on the date of crime, he is a juvenile in conflict with law. Therefore, he be declared juvenile; and he be released on bail during the period of his age determining enquiry.

(2.3) Upon the aforesaid application, the learned JMFC has fixed the case for determination of age of the petitioner. Upon the perusal of the proceedings, it appears that the learned JMFC has held the inquiry under Section 7 A of the Juvenile Justice (Care and Protection of Children) Act, 2000 (for short "the Act") and the Rule 12 (3) of the Juvenile Justice (Care and Protection of Children) Rules 2007 (for short "the Rules"). In the course of inquiry, the petitioner has examined Manpyare (AW-1) and Pandit Chhotelal (AW-2) and marked documents as Ex.A-1 to A-10 whereas the respondent has examined Mahesh Chandra (NAW-1) and marked a document as Ex. NA-1.

(2.4) On scrutiny of oral and documentary evidence, the learned JMFC has held in his order dated 16.10.2014 that the correct date of birth of the petitioner is 07.04.1995. Hence, he was not juvenile on the incident as his age was then 19 years, 5 months and 8 days.

(2.5) Feeling aggrieved by the aforesaid order, the petitioner has filed Criminal Revision No. 07/2015, which is decided by the Additional Sessions Judge Bijawar, vide the impugned order dated 09.02.2015. The learned ASJ has upheld the order dated 16.10.2014 passed by the learned JMFC dismissing the revision.

(2.6) Hence, this petition.

3. Learned counsel for the petitioner has submitted that the petitioner is a resident of village Angour. He has filed a certified copy of his admission form when he was admitted in 1st Standard of the Azad Bhagat Singh Middle School Angour in the academic year 2003- 2004. He has also filed mark-sheets from 1st standard to his high school i.e. 10th standard. In the aforesaid documents his date of birth is constantly recorded as 05.05.1997. As per the Rule 12 (3) (a) (i), it was mandatory for the learned JMFC to decide the petitioner date of birth on the basis of his High School Certificate Examination (10+2) 2013 mark sheet-cum-Certificate which was issued by the Board of Secondary Education M.P. Bhopal, an instrumentality of the Govt. of M.P. However, the learned JMFC had not decided the date of birth of the petitioner in accordance of the aforestated Rule instead he decided the date of birth of the petitioner on an entry of the admission register of the Govt. Boys Primary School, Angour. Hence, the order of the learned JMFC dated 16.10.2014 is *prima-facie* incorrect and illegal as it has been passed in flagrant violation of the aforesaid Rule. It is also submitted by him that it has been argued at the time of hearing on the revision before the learned ASJ that the date of birth of the petitioner was not decided by the learned JMFC following the procedure laid down in the Rule 12 (3) (a) (i). But the learned ASJ has not considered the said contention in right perspective and upheld the order of the learned JMFC. Hence, the impugned order suffers from legal infirmities. It is prayed by him that under the circumstances, both the orders dated 16.10.2014 and 09.02.2015 be set aside and this Court should decide juvenility of the petitioner

on the date of crime as per the provisions of Rule 12 (3).

4. On the other hand, learned Panel Lawyer has supported the impugned order.

5. I have anxiously considered the rival submissions and perused the entire records.

6. The seminal question that arises for consideration is whether the Courts below have rightly decided the date of birth of the petitioner as 07.04.1995, on account of which he was not juvenile on the date of crime?

7. Clause 4 of the Section 1 of the Act reads as under :-

> "Notwithstanding anything contained in any other law for the time being in force, the provisions of this Act shall apply to all cases involving detention, prosecution, penalty or sentence of imprisonment of juveniles in conflict with law under such other law."

On plain reading of the clause, it is crystal clear that in respect of a juvenile who is in conflict with law the provisions of the Act regarding detention, prosecution, penalty or sentence shall be applicable overriding any provisions contained in any other law. "The any other law" means General Law, Special Law or Local Law. Consequently, the Rules 2007 made under the Act will also be applicable in toto.

8. The definitions of juvenile or child and juvenile in conflict with law are given 2 (k) (l) of the Act respectively, which are relevant because of the controversy involved in the case. Hence, they are reproduced below:-

Juvenile or Child means a person who has not completed eighteen years of age.

Juvenile in conflict with law means a juvenile who is alleged to have committed an offence and has not completed eighteen years of age as on the date of commission of such offence.

9. Upon the conjoint reading of both the aforesaid words/phrases, it is evident that the age of the juvenile who is in conflict with law shall be decided in respect of the date of commission of the offence.

10. In *Ashwani Kumar Saxena Vs. State of M.P.* [AIR 2013 SC 553]. the Supreme Court has defined the word "inquiry" contemplated in Section 7A of the Act in para 32 of its decision as the procedure laid down in the Rule 12 (3). Therefore, it is mandatory for the Court to decide a claim of juvenility of a person as per the Rule 12 (3).

11. In *Ashwani Kumar Saxena's* case (supra) in para-36 of the decision, the Supreme Court has also observed thus:-

> "Age determination inquiry contemplated under the J.J. Act and Rules has nothing to do with an enquiry under other legislations, like entry in service, retirement, promotion etc. There may be situations where the entry made in the matriculation or equivalent certificates, date of birth certificate from the school first attended and even the birth certificate given by a Corporation or a Municipal Authority or a Panchayat may not be correct. But Court, J.J. Board or a Committee functioning under the J.J. Act is not expected to conduct such a roving enquiry and to go behind those certificates to examine the correctness of those documents, kept during the normal course of business. Only in cases where those documents or certificates are found to be fabricated or manipulated, the Court, the J.J. Board or the Committee need to go for medical report for age determination."

12. In *Abuzar Hossain @ Gulam Hossain Vs. State of West Bengal* [A.I.R. 2013 SC 1020] the apex Court has observed in para-36 thus:-

> "The Court where the plea of juvenility is raised for the first time should always be guided by the objectives of the 2000 Act and be alive to the position that the beneficent and salutary provisions contained in 2000 Act are not defeated by hyper-technical approach and the persons who are entitled to get benefits of 2000 Act get such benefits. The Court should not be unnecessarily influenced by any general impression that in schools the parents/guardians understate the age of their wards by one or two years for future benefits or that age determination by medical examination is not very precise. The matter should be considered prima-facie on the touchstone of preponderance

of probability."

13. From the aforesaid propositions of law it is crystal clear that the Court has to determine the age of an accused who claims to be juvenile as per the Rule 12 (3) and initial burden has to be discharged by him.

14. The Rule 12 (3) reads thus :-

"(3) In every case concerning a child or juvenile in conflict with law, the age determination inquiry shall be conducted by the court or the Board or, as the case may be, the Committee by seeking evidence by obtaining -

(a) (i) the matriculation or equivalent certificates, if available; and in the absence whereof;

(ii) the date of birth certificate from the school (other than a play school) first attended; and in the absence whereof;

(iii) the birth certificate given by a corporation or a municipal authority or a panchayat;

(b) and only in the absence of either (i), ((ii) or (iii) of clause (a) above, the medical opinion will be sought from a duly constituted Medical Board, which will declare the age of the juvenile or child. In case exact assessment of the age cannot be done, the Court or the Board or, as the case may be, the Committee, for the reasons to be recorded by them, may, if considered necessary, give benefit to the child or juvenile by considering his/her age on lower side within the margin of one year.

and, while passing orders in such case shall, after taking into consideration such evidence as may be available, or the medical opinion, as the case may be, record a finding in respect of his age and either of the evidence specified in any of the clauses (a) (I), (ii), (iii) or in the absence whereof, clause (b) shall be the conclusive proof of the age as regards such child or the juvenile in conflict with law."

underlined by me.

15. It is to be noted that in each sub-clause of clause (a) of sub-rule 3 of Rule 12, the expression "and in the absence whereof" (which is underlined in this order) is repeated. Hence the expression requires due weightage. If these sub clauses are read placing emphasis on the expression, it is manifest that the age of child/juvenile is to be ascertained by adopting first available option out of the options given in the clause (a) and the option given in the clause (b) is available only when the options of clause (a) are not available at all in a given case. An option expressed in a preceding sub-clause has overriding effect over an option expressed in subsequent sub-clause. The highest rated option available would conclusively determine the age of a child. For illustrative purpose, in a given case, if both the matriculation or equivalent certificate and the date of birth certificate from the school (other than a play school) first attended are available, then the matriculation or equivalent certificate will take precedence over the date of birth certificate from the school in the order of precedence, provided that its authenticity is not under challenge. This view of mine is based upon a proposition of law laid down in para-34 of the decision rendered in *Ashwani Kumar Saxena's* case (supra).

16. Now, it is to be seen how the learned JMFC has decided the age of the petitioner. Mahesh Chandra (NAW-1) is an In-charge and Head Master of Govt. Boys Primary School, Angour. On the basis of an entry made at serial No.1141 in the admission register of the school, which is marked as Ex. NA-1, he has deposed that the petitioner was admitted in 1st standard of the school on 12.07.2001. He has further stated that as per the aforesaid entry the date of birth of the petitioner is 07.04.1995 and the petitioner studied in the school from 12.07.2001 to 01.07.2002. This witness in his cross examination has admitted that the admission form of the petitioner was not available. In his cross, it is challenged by the petitioner that he had never been admitted in the school. Thus, the evidence given by this witness regarding the date of birth of the petitioner on the basis of the entry is sketchy, slender and infirm.

17. Manpyare (AW-1) has stated in his evidence that the petitioner is son of his brother Jagdish. He and his brother Jagdish have got a joint family. The petitioner was born on 05.05.1997. At the time of admission of the petitioner in the 1st standard of Azad Bhagat Singh Middle School, Angour in the year 2003, he himself had filled up the admission form in which he had disclosed his date of birth as 05.05.1997. He has also deposed that the petitioner had

never been admitted even for a short period in the Govt. Boys Primary School, Angour. It is pertinent to mention here that a certified copy of the admission form of the petitioner is produced in this Court. As per the entry in Ex. NA-1, the petitioner remained the student of Govt. Boys Primary School, Angour on 12.07.2001 to 01.07.2002. As per the admission form of Azad Bhagat Singh Middle School Angour, the petitioner was admitted in the school on 01.07.2003. In view of the above, had the petitioner been student of the Govt. Boys Primary School, Angour from the period 12.07.2001 to 01.07.2002 then he would have been admitted in July 2002 itself in the Azad Bhagat Singh Middle School, Angour, but as per his admission form he was admitted in the aforesaid school on 01.07.2003 i.e. one year later. Upon this evidence it is conclusively proved that the petitioner was never a student of Govt. Boys Primary School, Angour. Hence, the learned JMFC has erred in deciding the date of birth of the petitioner as 07.04.1995 relying upon the entry of Ex. NA-1.

18. Manpyare (AW-1) has tendered in his evidence the mark-sheets of the petitioner right from standard 1st to matriculation i.e. 10th standard Ex. A-1 to Ex. A-10. The genuineness of the aforesaid mark-sheets are not challenged by the respondent in his cross examination. Hence, there is no ground to disbelieve these mark-sheets. The date of birth of the petitioner is shown in all these mark-sheets as 5.5.1997 right from Ist standard to 10th standard. Since the petitioner's mark sheet-cum-certificate of High School Certificate Examination year (10+2) 2013, which is exhibited as Ex. A-10, is available on record. The learned JMFC and the learned ASJ ought to have decided the petitioner's juvenility at the time of commission of the offence taking into consideration his date of birth as 05.05.1997, as per the Rule 12 (3) (a) (i), but both the learned Judges committed a grave error by not deciding the petitioner's date of birth on the basis of Ex. A-10. In the case of *Subham Vs. State of Madhya Pradesh* [2013 Cri. L.J. 1716 M.P.], the matriculation certificate of the petitioner was available, the authenticity of which was not challenged by the contesting parties. Thereupon, this Court has held that the Courts below ought to have determined the age of the petitioner on the date of the commission of the offence on the basis of date of birth entered in it and nothing more could be seen at the time of the ascertainment of his age. In the Ex. A-10, the date of birth of the petitioner is shown as 05.05.1997 and as per the FIR of the case, the date of the incident is 15.09.2014. Thus, the age

of the petitioner on the date of incident was 17 years 4 months and 10 days. Consequently, the petitioner was juvenile on the date of the offence as his age was below 18 years.

19. In view of the above findings of this Court, the orders dated 09.02.2015 and 16.10.2014 passed by the learned JMFC and the learned ASJ are hereby set aside after allowing this petition. This Court declares that the petitioner Harsewak Rajpoot was a juvenile who is conflict with law on the date of incident. Therefore, the entire proceedings of Sessions Case No. 119/14 *State of M.P. Vs. Harsewak Rajpoot,* arising out of Crime No. 134/14 of Police Station Gulganj, pending on the file of Additional Sessions Judge, Bijawar District Chhatarpur against the petitioner are quashed. The S.H.O. Police Station, Gulganj is directed to submit the charge sheet against the petitioner before the concerned Juvenile Justice Board. The aforesaid trial Court is also directed to fix a date of appearance of the petitioner before the concerned Juvenile Justice Board and to return the charge sheet to the S.H.O. Police Station, Gulganj with case-property, if any.

20. Copies of this order be sent to the aforesaid A.S.J. Court and the S.H.O., police station, Gulganj for information and compliance without delay.

21. Accordingly, this M.Cr.C. Stands finally disposed of.

M.Cr.C. disposed of.

I.L.R. [2016] M.P., 937
MISCELLANEOUS CRIMINAL CASE
Before Mr. Justice Subhash Kakade
M.Cr.C. No. 14937/2015 (Jabalpur) decided on 9 October, 2015

MOHD. SHERU ...Applicant
Vs.
STATE OF M.P. ...Non-applicant

***A. Criminal Procedure Code, 1973 (2 of 1974), Section 439 - Bail - Object* - To secure the appearance of the accused at the time of trial - It is neither punitive nor preventive. (Para 9)**

क. दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 439 – जमानत – उद्देश्य – विचारण के समय अभियुक्त की उपस्थिति सुनिश्चित करना – यह न तो दण्डात्मक है न ही निवारक।

B. Criminal Procedure Code, 1973 (2 of 1974), Section 439 - Grant of bail - **Delay in trial - Inordinate and unexplained - Not attributable to the accused - Entitled for bail. (Para 10)**

ख. दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 439 – जमानत प्रदान की जाना – विचारण में विलंब – अपरिमित एवं अस्पष्ट – अभियुक्त पर आरोपणीय नहीं – जमानत हेतु हकदार।

C. Criminal Procedure Code, 1973 (2 of 1974), Section 439 - Bail - Ground of de-novo trial - **Record reconstructed after destroyed in fire - Delay not occasioned by accused - Entitled for bail. (Para 15)**

ग. दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 439 – जमानत – नये सिरे से विचारण का आधार – आग में नष्ट होने के पश्चात् अभिलेख पुनर्निर्मित किया गया – अभियुक्त द्वारा विलंब उत्पन्न नहीं किया गया – जमानत हेतु हकदार।

Cases referred :

(2009) 2 SCC 281, (2001) 4 SCC 280, (2005) 8 SCC 21, 2011(2) MPLJ (Cri.) (S.C.) 116 = (2011) 1 SCC 694, (1978) 4 SCC 47, (2005) 11 SCC 569, (2000) 9 SCC 443, (2000) 9 SCC 383.

J.N. Tripathi, for the applicant.
R.S. Shukla, P.L. for the non-applicant/State.

ORDER

SUBHASH KAKADE, J. :- This is the fourth bail application filed on behalf of the applicant under Section 439, Criminal Procedure Code, 1973, hereinafter referred to as 'the Code'.

Details of rejection orders:-

S.No.	Particulars	M.Cr.C. No.	Date of Rejection
1.	First application	8590/2014	11.07.2014
2.	Second application	11631/2014	26.08.2014
3.	Third application	18335/2014	17.03.2014

2. Applicant **Mohd. Sheru** is in custody since 20.04.2014 in connection with Crime No.285/2014 registered at Police Station Maihar, District Satna (M.P.) for the offence punishable under Sections 341, 323, 294 and 307/34

of the IPC.

3. It is submitted by Shri J.N. Tripathi, learned counsel for the applicant that the applicant is innocent and has been falsely implicated in this case. It is further submitted that the injury inflicted on the person of complainant Pintu Chourasia has not been opined by the Doctor as dangerous to life, therefore, no offence under Section 307 of IPC is made out and other co-accused persons have already been granted bail. Learned counsel further submitted that wife of the applicant is suffering from serious disease and as nobody is available in the family to look after her, hence, applicant's case may be considered sympathetically because the applicant is in custody for more than 15 months and conclusion of trial would take considerable time.

4. Shri J.N. Tripathi, learned counsel for the applicant submits that the circumstances in the case are changed drastically as after recording defence evidence original record of trial Court completely destroyed due to fire. It is also pointed out by learned counsel though vide order dated 12.08.2015 record is reconstructed but, there is remote possibility of completion of trial in near future. On this new ground, it is prayed that the applicant be released on bail.

5. Shri R.S. Shukla, learned counsel for the respondent/State vehemently opposed this repeat bail application.

6. The concept and philosophy of bail was discussed by the Apex Court in case of *Vaman Narain Ghiya vs. State of Rajasthan,* reported in (2009)2 SCC 281. The principles, which the Court must consider while granting or declining bail, have been culled out by the Apex Court in the case of *Prahlad Singh Bhati vs. NCT, Delhi,* (2001)4 SCC 280 and in case of *State of U.P. vs. Amarmani Tripathi,* (2005)8 SCC 21.

7. The Apex Court in case of *Siddharam Satlingappa Mhetre vs. State of Maharashtra,* 2011(2) MPLJ (Cri.) (S.C.) 116=(2011)1 SCC 694, the Apex Court observed:-

> *"116. Personal liberty is a very precious fundamental right and it should be curtailed only when it becomes imperative according to the peculiar facts and circumstances of the case."*

8. While discussing pre-trial detention, the Apex Court in case of *Moti*

Ram vs. State of M.P., reported in (1978)4 SCC 47, held:

> *"14. The consequences of pre-trial detention are grave. Defendants presumed innocent are subjected to the psychological and physical deprivations of jail life, usually under more onerous conditions than are imposed on convicted defendants."*

The Apex Court further observed:-

> *"Equally important, the burden of his detention frequently falls heavily on the innocent members of his family."*

9. Object of bail is to secure the appearance of the accused person at the time of trial by reasonable amount of bail – Object of bail is neither punitive nor preventive. Another relevant factor is as to whether the course of justice would be thwarted by him who seeks the benignant jurisdiction of the Court to be freed for the time being. The Court has to take into consideration the delay in concluding the trial which is one of the important factors in deciding whether to grant bail.

10. Right of liberty of the applicant is a fundamental right enshrined under Article 21 of the Constitution which cannot be curtailed unless otherwise provided by procedure established by law where there is possibility of inordinate and unexplained delay in conducting the trial and reasons for delay not attributable to the applicants, he can be directed to be released on bail.

11. In deciding bail applications an important factor which should certainly be taken into consideration by the Court is the delay in concluding the trial. Often this takes several years, and if the accused is denied bail but is ultimately acquitted, who will restore so many years of his life spent in custody? Is Article 21 of the Constitution, which is the most basic of all the fundamental rights in our Constitution, not violated in such a case? Of course this is not the only factor, but it is certainly one of the important factors in deciding whether to grant bail.

12. The Apex Court in case of *Babba vs. State of Maharashtra,* (2005)11 SCC 569, *Vivek Kumar vs. State of U.P.,* (2000)9 SCC 443 and *Mahesh Kumar Bhawsinghka vs. State of Delhi,* (2000)9 SCC 383 has taken the view that when there is a delay in the trial, bail should be granted to the accused.

13. Learned trial Court in its order dated 09.09.2015 observed that: -

"जहॉ तक अभिलेख के पुनर्निमाण किए जाने का प्रश्न है, तो अभियुक्तगण एवं अनुपस्थित अभियुक्त शेरू उर्फ फैज की तरफ से अधिवक्ता श्री एस.डी. त्रिपाठी एवं अभियुक्तगण के अधिवक्ता श्री एस.डी. त्रिपाठी, श्री अतुल कुमार द्विवेदी द्वारा अभियोजन की तरफ से प्रस्तुत अभियोग–पत्र की सत्यापित प्रति के कन्टेन्ट्स के संबंध में कोई आपत्ति न होना व्यक्त किया गया। अतः उभयपक्ष की तरफ से प्रस्तुत दस्तावेजों के कन्टेन्ट्स के संबंध में कोई आपत्ति न किए जाने के कारण सत्र प्रकरण कमांक 202/14 का पुनर्निर्माण कर पुर्नसंख्यांकित किया जाता है।"

14. It is further observed that: -

"प्रकरण में उभयपक्ष की तरफ से न्यायालय की आदेश पत्रिका एवं आरोप–पत्र की सत्य प्रतिलिपि या छायाप्रति को प्रस्तुत नहीं किया जा सका है। अतः यह उचित प्रतीत होता है कि प्रथमतः अभियुक्तगण के विरूद्ध आरोप विरचित किया जावे, तत्पश्चात् उपलब्ध दस्तावेजों के आधार पर विधि अनुसार कार्यवाही करते हुए प्रकरण में अग्रिम कार्यवाही की जावे।

प्रकरण अभियुक्तगण पर आरोप विरचन एवं अभियोजन साक्षियों के सत्य प्रतिलिपि को अभियुक्तगण की तरफ से प्रस्तुत किये जाने हेतु दिनांक 23.09.2015 को पेश हो।"

15. At this stage the Court will not expressing any opinion as to whether the allegations in the versions of the prosecution or defence are correct or not, as evidence has yet to be led *de-novo*. In the instant case, there is no such pleading or material on record to conclude that delay in the trial is occasioned by the applicant/accused and therefore, this Court is of the considered view that the applicant is entitled to the benefit of bail solely on account of above mentioned new circumstance, which has arisen after rejection of last bail application due to the fact that trial of the case will be commenced *de-novo* after re-construction of record which was destroyed on account of fire.

16. Accordingly, without expressing any opinion on merits of the case, the present application is allowed and it is directed that applicant be released on bail on his furnishing a personal bond in the sum of Rs.40,000/- (Rupees Forty Thousand Only) with two solvent surety each of Rs.20,000/- (Rupees Twenty Thousand Only) to the satisfaction of the trial Court.

This order will remain operative subject to compliance of the following conditions by the applicant: -

1. The applicant will comply with all the terms and conditions of the bond executed by him;

2. The applicant will co-operate in the trial, as the case may be;

3. The applicant shall not commit an offence similar to the offence of which he is accused.

17. A copy of this order be sent to the Court concerned for compliance.

18. Certified copy as per rules.

Order accordingly.